

SEPTEMBER 6, 2011

A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Mayor Nelson S. McDuffie in the Commission Chambers at City Hall at 6:00 p.m., Tuesday, September 6, 2011.

1. Roll call showed:

Present - Commissioner Thomas F. Carney, Jr.
Commissioner Fred B. Fetzer
Commissioner Angeleta E. Gray
Mayor Nelson S. McDuffie

Absent - Commissioner Adam Frankel

Also present were - David T. Harden, City Manager
Robert A. Barcinski, Assistant City Manager
Brian Shutt, City Attorney
Chevelle D. Nubin, City Clerk

2. The opening prayer was delivered by Father William “Chip” Stokes with St. Paul’s Episcopal Church.

3. The Pledge of Allegiance to the flag of the United States of America was given.

4. **AGENDA APPROVAL.**

Mayor McDuffie stated that with regard to **Item 9.I., Appointment to the Financial Review Board**, Warren Trilling has requested that his application for appointment to the Financial Review Board be withdrawn.

Staff requested that **Item 7.B., Resolution No. 31-11** be removed from the Agenda.

Dr. Alperin moved to approve the Agenda as amended, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 4 to 0 vote.

5. **APPROVAL OF MINUTES:**

Mrs. Gray moved to approve the Minutes of the Regular Meeting of August 2, 2011, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 4 to 0 vote.

Dr. Alperin moved to approve the Minutes of the Regular Meeting of August 16, 2011, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mrs. Gray – Yes. Said motion passed with a 4 to 0 vote.

6. PROCLAMATIONS:

6.A. None

7. PRESENTATIONS:

At this point, Mayor McDuffie presented a plaque to Commissioner Fetzner for the many years he served on the City Commission. Mr. Fetzner came forward to accept the plaque and gave a few brief comments.

7.A. Keep Palm Beach County Beautiful Grant – Marjorie Ferrer

Marjorie Ferrer, Executive Director of the Downtown Development Authority (DDA), stated last December Commissioner Gray contacted her and asked for help with fundraising for the Atlantic High School football team. Mrs. Ferrer stated Atlantic High School is not in the DDA but suggested that the merchants hire the football players on Saturday and Sunday mornings from 6:00-9:00 a.m. to pressure spray and clean the sidewalks. She stated the gum on the sidewalks was not coming up because they needed a hot pressure sprayer so they applied for a grant and now have a hot pressure cleaning machine. In addition, Mrs. Ferrer stated the grant will pay the students so much an hour toward their debt of the football uniforms and at the same time the merchants will be paying for the cleaning of the sidewalks and the checks will be made payable to the high school. She stated they hope to work with Parks and Recreation with the landscaping team and Public Works to have the students also learn more about their community by helping to paint curb stops and all those little jobs such as pulling weeds, etc. that can be done as a mentoring program. Mrs. Ferrer stated there were only 14 grants in the nation; two in Florida and they are very proud to have received this grant.

Lourdes Ferris, Keep Palm Beach Beautiful, stated she is happy to be in collaboration with the Downtown Development Authority, Waste Management, and Atlantic High School. She stated they were able to get a grant for \$10,000.00 and noted the cost of the hot pressure cleaning machine is \$4,000.00. In addition, Keep Palm Beach Beautiful has money to help the student athletes at Atlantic High School.

Butch Carter, Waste Management, stated it is their pleasure to serve the communities that they serve and assist in any way they can.

Ms. Ferris stated Keep Palm Beach Beautiful also entered into a Cigarette Litter Prevention Program with the City and they did fund a grant to purchase cigarette ash receptacles for the beach and invited everyone to participate in the upcoming International Coastal Cleanup coordinated with the Sandoway House on September 24,

2011.

Mayor McDuffie stated early in the year Atlantic High School's deficit for the football program was \$40,000.00. He stated due to the cutbacks in education across the State, programs are not there to fund the sports. Mayor McDuffie stated when his son was in high school they had already stopped funding the baseball program and many of the other programs so Booster Clubs were responsible for funding everything. He stated this has now happened to football which is the number one sport in high schools in this country.

Commissioner Gray thanked Dr. Victor Kirson for his donation as well and stated he purchased uniforms for the entire football team last year.

Rich Reade, Sustainability Officer, stated with regard to the location of the solar powered compactors there is one at Pompey Park, one at the Soccer Complex, two at Miller Park, and they are looking at receiving an additional six that will replace all the trash receptacles at Veteran's Park. Also, there will be an additional three; two on the beach and one on the Avenue that will be purchased with recycling dollars. Mr. Reade stated it is about 15-17 days where they have to go out and replace trash bags and empty the garbage bins. This has helped the City to save money and be able to provide additional and higher quality services.

Mayor McDuffie asked about the frequency before the solar powered compactors. Mr. Reade stated the frequency was every day.

7.B. RESOLUTION NO. 31-11: Approve Resolution No. 31-11 recognizing and commending Vivian Mitchell for 30 years of dedicated service to the City of Delray Beach.

The caption of Resolution No. 31-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, RECOGNIZING AND COMMENDING **VIVIAN MITCHELL** FOR THIRTY YEARS OF DEDICATED SERVICE TO THE CITY OF DELRAY BEACH.

(The official copy of Resolution No. 31-11 is on file in the City Clerk's office.)

Mayor McDuffie stated per staff's request, Resolution No. 31-11 has been removed from the Agenda and will be on the September 20, 2011 Agenda.

8. CONSENT AGENDA: City Manager Recommends Approval.

8.A. ACCEPTANCE OF A WATER UTILITY EASEMENT DEED/DELRAY MOTORS, INC.: Approve and accept a water utility easement deed for Delray Motors, Inc. for Delray Chrysler Jeep Dodge, located at 2102 South Federal Highway.

8.B. FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) PERMIT FEES: Approve payment of permit fees in the amount of \$23,561.41 for the upcoming Beach Renourishment fill event tentatively scheduled for March, 2012. Funding is available from 332-4164-572-31.30 (Beach Restoration Fund: Professional Services/Engineering/Architectural).

8.C. REQUEST FOR SIDEWALK DEFERRAL/738 SEASAGE DRIVE: Approve a request to defer the installation of a sidewalk along Seasage Drive for a proposed single family residence located at 738 Seasage Drive.

8.D. MODIFICATIONS TO THE CONTRACTOR PREQUALIFICATION PROCEDURE AND APPLICATION PROCESS: Approve modifications to the Contractor Prequalification Procedure and Application process.

8.E. CONTRACT CLOSEOUT (C.O. NO. 1/FINAL)/VILA AND SON LANDSCAPE CORPORATION: Approve a Contract Closeout (Change Order No. 1/Final) in the amount of a \$92,897.68 decrease and final payment in the amount of \$27,971.60 to Vila and Son Landscape Corporation for completion of the Atlantic Avenue Median Landscape Beautification Project. Funding is available from 334-3162-541-61.15 (General Construction Fund: Capital Outlay/Improvements-Medians).

8.F. AMENDMENT NO. 1 TO THE ELEVATOR MAINTENANCE SERVICE CONTRACT/ORACLE ELEVATOR COMPANY: Approve Amendment No. 1 to the Elevator Maintenance Service Contract with Oracle Elevator Company providing for the addition of the elevator at Miller Park. Funding is available from 001-4121-572-34.90 (General Fund: Other Contractual Service).

8.G. AMENDMENT NO. 1 TO THE AGREEMENT (CHANGE ORDER NO. 1)/SOUTHLAND PAINTING CORPORATION: Approve Amendment No. 1 to the Agreement (Change Order No. 1) to Southland Painting Corporation in the amount of \$28,935.00 for the additional rehabilitation work of Clarifier #4 at the Water Treatment Plant. Funding is available from 442-5178-536-46.90 (Water & Sewer & Replacement Fund: Repair & Maintenance Service/Other Repair/Maintenance Cost).

8.H. AMENDMENT NO. 1 TO THE JOINT PARTICIPATION AGREEMENT, FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT): GATEWAY FEATURE: Approve Amendment No. 1 to the Joint Participation Agreements with the Florida Department of Transportation (FDOT) for the proposed landscaping along Atlantic Avenue (SR 806) from I-95 to N.W./S.W. 12th Avenue.

8.I. INTERLOCAL AGREEMENT/PALM BEACH COUNTY FOR S.W. 12TH AVENUE/AUBURN AVENUE/S.W. 14TH AVENUE: Approve an Interlocal Agreement with Palm Beach County for reimbursement to the City in the amount of \$1,000,000.00 for costs associated with improvements along S.W. 12th Avenue/Auburn Avenue/S.W. 14th Avenue from S.W. 10th Street to West Atlantic Avenue.

8.J. DISASTER RECOVERY INITIATIVE (DRI)/HOUSING REHABILITATION CONTRACT AWARD: Approve one Housing Rehabilitation contract award for 354 N.W. 6th Avenue to South Florida Construction Services, Inc., the lowest responsive bidder, in the amount of \$37,875.95 for housing rehabilitation under the Disaster Recovery Initiative (DRI) Program. Funding is available from 118-1960-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation).

8.K. FOURTH AMENDMENT TO DISASTER RECOVERY INITIATIVE AGREEMENT (DRI2)/PALM BEACH COUNTY: Approve a fourth Amendment to the agreement between the City and Palm Beach County for the Disaster Recovery Initiative Housing Rehabilitation Program (DRI2) Program as proposed.

8.L. ANNUAL PROJECT HOLIDAY/YOU ARE NOT ALONE ORGANIZATION: Approve a request for city support and assistance for the 6th Annual Project Holiday sponsored by the You Are Not Alone Organization, which provides packages to armed services personnel.

8.M. AMENDMENT NO. 1 TO THE LEASE AGREEMENT/DELRAY BEACH LIBRARY ASSOCIATION, INC.: Approve Amendment No. 1 to the Lease Agreement with Delray Beach Library Association, Inc.

8.N. SUBLEASE AGREEMENT/DELRAY BEACH LIBRARY ASSOCIATION, INC./BUZZ AGENCY, LLC: Approve a Sublease Agreement between the Delray Beach Library Association, Inc. and the Buzz Agency, LLC. for twenty-six (26) months with two (2) two (2) year optional renewals.

8.O. INTERLOCAL AGREEMENT/PALM BEACH COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT: Approve an Interlocal Agreement with Palm Beach County to provide for a fair share contribution by the City for funding of the administration of the County Department of Environmental Resources Management (DERM) Wellfield Protection Program.

8.P. CONTRACT ADDITION (CHANGE ORDER NO. 2)/BRANG CONSTRUCTION INC.: Approve a Contract Addition (Change Order No. 2) to Brang Construction, Inc. in the amount of \$8,900.00 for two (2) additional decorative columns for the Martin Luther King Jr. Drive Beautification Project. Funding is available from Contract's Unforeseen Conditions Allowance and from 334-4141-572-68.57 (General Construction Fund: Other Improvement/Cultural Loop/MLK Drive Phase I).

8.Q. ADDITIONAL SCOPE/FOSTER MARINE CONTRACTORS, INC.: Approve additional scope with Foster Marine Contractors, Inc. for work to relocate ten (10) sewer cleanouts for the S.W. 12th Avenue/Auburn/S.W. 14th Avenue Project to be paid from the Unforeseen Conditions Allowance.

8.R. RESOLUTION NO. 33-11/BUDGET AMENDMENT: Approve Resolution No. 33-11 amending Resolution No. 55-10 and Resolution No. 25-11 which made appropriations of sums of money for all necessary expenditures of the City of Delray Beach for FY 2010/2011, by setting forth the anticipated revenues and expenditures for the operating funds of the City for FY 2010/2011.

The caption of Resolution No. 33-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING RESOLUTION NO. 55-10 ADOPTED SEPTEMBER 21, 2010 AND RESOLUTION NO. 25-11 ADOPTED JUNE 21, 2011, WHICH MADE APPROPRIATIONS OF SUMS OF MONEY FOR ALL NECESSARY EXPENDITURES OF THE CITY OF DELRAY BEACH, FLORIDA, FOR THE FISCAL YEAR 2010/2011, BY SETTING FORTH THE ANTICIPATED REVENUES AND EXPENDITURES FOR THE OPERATING FUNDS OF THE CITY FOR THE FISCAL YEAR 2010/2011; REPEALING ALL RESOLUTIONS INCONSISTENT HERewith.

(The official copy of Resolution No. 33-11 is on file in the City Clerk's office.)

8.S. EXTENSION OF THE INSURANCE AGENT/BROKER SERVICE AGREEMENT/THE PLASTRIDGE AGENCY, INC.: Approve an extension of the Insurance Agent/Broker Service Agreement with The Plastridge Agency, Inc. for an additional one year period beginning 10/1/11. Funding is available from 551-1575-591-45.11(Insurance Fund/Insurance/General Liability Premiums), 551-1575-591-45.31 (Insurance Fund/Insurance/Package Policy Premium), and 551-1575-591-45.32 (Insurance Fund/Insurance/Package Policy Premiums, Excess Workers' Comp Premium)

8.S.1. PROPOSED RENEWAL OF PROPERTY AND CASUALTY INSURANCE/THE PLASTRIDGE AGENCY, INC.: Approve a proposed renewal of the City's major property and casualty insurance programs, including workers' compensation, for the period October 1, 2011 thru September 30, 2012. Funding is available from 551-1575-591-45.11 (Insurance Fund/Insurance/General Liability Premiums), 551-1575-591-45.31 (Insurance Fund; Insurance Package Policy Premium), and 551-1575-591-45.32 (Insurance Fund; Insurance Package Policy Premiums, Excess Workers' Comp Premium).

8.T. EXTENSION OF CONSULTING AGREEMENT/GALLAGHER BENEFIT SERVICES, INC.: Approve an extension of the Consulting Agreement with Gallagher Benefit Services, Inc. in the expected amount of \$114,654.00 for employee benefits management consulting services. Funding is available from 551-1575-591-45.20 (Insurance Fund: Insurance/Claims Handling Costs).

8.U. STATE HOMELAND SECURITY GRANT AGREEMENT: Approve an Agreement with the Florida Department of Financial Services in the amount \$53,716.00 to accept the 2010 Domestic Preparedness Grant from the State Homeland Security Grant Program to sustain equipment and training for hazardous materials incidents and incidents involving weapons of mass destruction.

8.V. MEMORANDUM OF UNDERSTANDING/DEPARTMENT OF HIGHWAY SAFETY: Approve a Memorandum of Understanding with the Department of Highway Safety to provide the Police Department access to D.A.V.I.D. (Driver and Vehicle Information Database) which allows searches of driver license records and vehicles to aid law enforcement in investigations.

8.W. GRANT APPLICATION; 2011 ASSISTANCE TO FIREFIGHTERS: Authorize submission of a grant application to the Federal Emergency Management Agency for the 2011 Assistance to Firefighters Grant.

8.X. GRANT AWARD/RECOVERY ACT EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG): Approve and accept the FY 2011 Recovery Act Edward Byrne Memorial Justice Assistance Grant (JAG) award in the amount of \$53,503.00 which will provide funding to support the Holiday Robbery Task Force.

8.Y. BOND COUNSEL SERVICE/ GREENBERG, TRAURIG, LLP/STEVEN D. SANFORD: Appoint Steven D. Sanford of Greenberg, Traurig, LLP as bond counsel for two (2) proposed water and sewer re-financings.

8.Z. FINANCIAL ADVISORY SERVICES/JAY GLOVER: Appoint Jay Glover, Public Financial Management, to act as financial advisor for two (2) proposed water and sewer re-financings.

8.A.A. RESOLUTION NO. 37-11: Approve Resolution No. 37-11 assessing costs for abatement action required to remove nuisances on five (5) properties throughout the City.

The caption of Resolution No. 37-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PURSUANT TO CHAPTER 100 OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, ASSESSING COSTS FOR ABATING NUISANCES UPON CERTAIN LAND(S) LOCATED WITHIN THE CITY OF DELRAY

BEACH AND PROVIDING THAT A NOTICE OF LIEN SHALL ACCOMPANY THE NOTICE OF ASSESSMENT; SETTING OUT ACTUAL COSTS INCURRED BY THE CITY TO ACCOMPLISH SUCH ABATEMENT AND LEVYING THE COST OF SUCH ABATEMENT OF NUISANCES; PROVIDING FOR AN EFFECTIVE DATE AND FOR A DUE DATE AND INTEREST ON ASSESSMENTS; PROVIDING FOR THE RECORDING OF THIS RESOLUTION, AND DECLARING SAID LEVY TO BE A LIEN UPON THE SUBJECT PROPERTY FOR UNPAID ASSESSMENTS.

(The official copy of Resolution No. 37-11 is on file in the City Clerk's office.)

8.B.B. SPECIAL EVENT REQUEST/12TH ANNUAL DOWNTOWN DELRAY BEACH THANKSGIVING WEEKEND ART FESTIVAL: Approve a special event request for the 12th Annual Downtown Delray Beach Thanksgiving Weekend Art Festival to be held on November 26-27, 2011 from 10:00 a.m. until 5:00 p.m., to grant a temporary use permit per LDR Section 2.4.6(F) for the use of N.E. 2nd Avenue from the alley just north of Atlantic Avenue to approximately 400 feet north of N.E. 3rd Street, leaving an access lane to the City Walk parking garage, and to authorize staff support for traffic control, security, and Fire Inspector with the sponsor paying all overtime costs.

8.C.C. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period August 15, 2011 through September 2, 2011.

8.D.D. AWARD OF BIDS AND CONTRACTS:

- 1.** Purchase award to Kuhn Flooring Gallery I LLC., in the amount of \$28,030.00 for the replacement of floor covering at Fire Headquarters Station No. 1 including removal of old floor covering, labor and materials. Funding is available from 001-2311-522-46.10 (General Fund: Repair & Maintenance Services/Building Maintenance).
- 2.** Purchase award to Innovyze in the amount of \$27,000.00 for the purchase of a Water Modeling program, "InfoWater Suite 8.1". Funding is available from 441-5123-536-66.10 (Water and Sewer Fund: Books/Publications/Software).
- 3.** Contract award to Foster Marine Contractors, Inc. in the amount of \$46,800.00 for the annual Lift Station Rehabilitation program. Funding is available from 442-5178-536-68.15 (Water & Sewer

Renewal & Replacement Fund: Improvements Other/Lift Station Rehabilitation).

4. Contract award to Odums Sod, Inc. in the amount of \$16,500.00 for 100,000 square feet of sod for the S.W. 3rd Street and 6th Ave Water Main Upgrade Project. Funding is available from 442-5178-536-68.62 (W & S Renewal & Replacement Fund: Improvements Other/S.W. 3rd Street & 6th Avenue WM Upgrade).
5. Purchase award to Motorola in the amount of \$18,316.46 for four (4) Motorola APX6000 portable radios in an effort to maintain equipment quality and service readiness. Funding is available 001-2315-526-64.90 (General Fund: Machinery/Equipment/ Other Machinery/Equipment).
6. Purchase award to Bergeron Sand, Rock & Aggregate, Inc. in the amount of \$16,500.00 for 1,000 tons of limerock, to be installed by the City's in-house construction crew, for the S.W. 3rd Street and 6th Avenue Water Main Upgrade Project. Funding is available from 442-5178-536-68.62 (W & S Renewal & Replacement Fund: Improvements Other/S.W. 3rd Street & 6th Avenue WM Upgrade).

Dr. Alperin moved to approve the Consent Agenda, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 4 to 0 vote.

9. **REGULAR AGENDA:**

9.A. **BID AWARD/RANDOLPH AND DEWDNEY CONSTRUCTION, INC.:** Consider approval of a bid award to Randolph and Dewdney Construction, Inc. in the amount of \$456,710.00 for renovations to the Pompey Park Concession Stand. Funding is available from 334-4127-572-62.10 (General Construction Fund: Building).

Richard Hasko, Director of Environmental Services, stated this item was tabled at the Special Workshop Meeting of July 12, 2011 so that staff could bring back some information as requested by the City Commission. Mr. Hasko stated staff recommends awarding the bid to Randolph and Dewdney Construction for \$456,710.00. He stated if the Commission decides to go with the first phase which would include replacement of the stairs for approximately \$233,000.00 staff would have to rebid that because they would have to reduce the scope and the project is an architectural project that is a lump sum bid. He stated last week there was discussion about the condition of the Plexiglas windows in the press box and one alternative would be installing impact resistant windows or a less expensive option would be to replace the Plexiglas with new Plexiglas.

Linda Karch, Director of Parks and Recreation, reiterated that they were hopeful to get the project done in one phase because it would be more economical for the City.

Dr. Alperin stated if this were done as two projects it would free up additional funds for other capital projects. He stated this needs to be done and it is going to cost more money if they split it up and does not see the logic in stretching it out by phasing it.

Mr. Carney stated he feels that spending today he has to spend money that is absolutely necessary and he agreed in July that there are certain parts of this project which were necessary (i.e. the stairs were bad and the downstairs needed to be refurbished) but his concern with respect to the creation of the upstairs/press box remains the same. He does not feel it is necessary today and feels you cannot say for certain it is more expensive in the future because we do not know what costs are going to be and what other dynamics may be at play in the future. Mr. Carney stated the City should do what is absolutely necessary to keep the facility maintained. Mr. Carney stated he supports the phased expenditures and spend the money we have now for Phase I.

Mrs. Gray stated prior to July this Commission agreed to move forward with the one phase and asked staff to give them options. She stated the applicants have spent money on the RFP and feels if we did not have this back and forth with this second lowest bidder that this would have been done months ago. Mrs. Gray stated she supports staff's recommendation to award the bid to Randolph and Dewdney Construction, Inc. for Phase I.

Mayor McDuffie reminded everyone since a Commissioner is absent this evening that a 2/2 vote should that happen is no action. The City Attorney stated if the vote is 2/2 this would have to come back when the fifth Commissioner is present.

Mayor McDuffie stated he has always been a supporter of quality youth sports for as long as he has been on the Commission and far beyond. He stated the City has also had to cut some of things that were being built because we did not have the money to build everything at the time. Mayor McDuffie stated the Soccer Complex was built from a two-story building that they were going to have where the concession stand is now to a one-story building because that is what the City could afford at the time. He stated that "blight" needs to be eradicated and believes that we need a safe structure. Mayor McDuffie stated what was shown to the Commission in Phase I of gutting the facility, installing new plumbing, and putting a staircase to the second floor will cure that and hopefully in the next budget year the City will have the money to finish the entire project.

Brief discussion by the Commission followed regarding prioritizing projects.

Mayor McDuffie stated Phase I of this will be a gorgeous facility but it just will not get expanded. Dr. Alperin stated if this does not pass he would like the Commission to receive a report as to what other projects are going to be done instead of this second part of this so they will know which projects are equally necessary. The City Manager stated staff can have this for the Commission at the next meeting.

Dr. Alperin moved to approve the bid award to Randolph and Dewdney Construction, Inc., seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – No; Mr. Carney – No. Said motion was a 2 to 2 vote (no action).

9.B. SETTLEMENT OFFER IN DOMINICK DIVENCENZO V. CITY OF DELRAY BEACH: Consider a Settlement Offer in the total amount of \$25,000.00 in Dominick DiVencenzo v. City of Delray Beach.

The City Attorney stated this is a settlement offer that the plaintiff has offered to settle this case that arose out of an arrest of the plaintiff by a City of Delray Beach Police Officer and the State Attorney's office. The Plaintiff spent 24 hours in jail and filed several claims against the City as well as the officer.

Dr. Alperin moved to approve the settlement offer in the amount of \$25,000.00, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 4 to 0 vote.

9.C. SPECIAL EVENT REQUEST/13th ANNUAL GARLIC FESTIVAL: Consider approval of a special event request for the 13th Annual Garlic Festival to be held February 10-12, 2012, and grant a temporary use permit per LDR Section 2.4.6(F) for use of City rights-of-way to include N.E. 1st Avenue from Atlantic to the grass area at Old School Square, Swinton Avenue from Atlantic to N.E. 1st Street and Old School Square Park, from 6:00 a.m., February 10 through midnight, February 12, 2012 and use of the Old School Square Parking Garage, CRA parking lots in Block 60, City Hall north lot, City Attorney lot and the County Parking Garage, and authorize staff support for traffic control and security, EMS assistance, barricading, banner hanging, signage preparation and installation, use of a City generator, and waiver of the two (2) hour parking limit in the downtown area during the event subject to the conditions listed in the staff report.

Robert Barcinski, Assistant City Manager, stated this is a request for the Commission to approve the 13th Annual Garlic Festival to be held on February 10-12, 2012, to grant a temporary use permit for the closure of N.E. 1st Avenue from Atlantic to the grass area at Old School Square, Swinton Avenue from Atlantic Avenue to N.E. 1st Street and Old School Square Park, from 6:00 a.m., February 9, through midnight, February 12, 2012; requested use of various parking areas and staff support for traffic control, security, EMS, barricading, banner hanging, signage preparation and installation, use of a City generator and a waiver of the two (2) hour parking limit in the downtown area during the event. The proposed event site plan shows the fence line on N.E. 1st

Avenue north to the Old School Square grounds and in the middle of the street. This is a change to allow access to the parking lot entrance off N.E. 1st Avenue to the lot behind Cabana El Rey. However, the property owner asked that the fence line be moved all the way to the west. The site plan splits it down the middle of the street and the Police Department recommends that we go all the way to the west. Mr. Barcinski stated Mr. Ryan is representing the Garlic Fest and they are agreeable to the western boundary. Therefore, that is no longer an issue and that fence line will be moved to the western parking spaces. The overtime costs are approximately \$14,860.00; signage costs \$250.00 and barricades \$200.00 of which the event producer pays 100% and pays 75% of the overtime. Staff recommends approval subject to the conditions listed in the staff report.

Dr. Alperin asked if the City has always approved the waiver of the two hour parking limit on Atlantic Avenue. Mr. Barcinski stated the City has done this for quite a few years and noted that this is done for others as well.

Dr. Alperin moved to approve the Special Event Request for the 13th Annual Garlic Festival to be held February 10-12, 2012, with the change in the boundary for the fence and subject to the conditions listed in the staff report, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mrs. Gray – Yes. Said motion passed with a 4 to 0 vote.

9.D. COMMISSION LIAISON APPOINTMENTS/SEAT #2: Reassignment of City Commission Seat #2 Liaison Appointments to various Advisory Boards and outside agencies.

Dr. Alperin moved to approve Dr. Alperin to resume Liaison Assignments to various Advisory Boards and outside agencies, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 4 to 0 vote.

9.E. APPOINTMENT TO THE HISTORIC PRESERVATION BOARD:
Appoint one (1) regular member to serve a two (2) year term ending August 31, 2013 to the Historic Preservation Board. Based upon the rotation system, the appointment will be made by Commissioner Gray (Seat #4).

Mrs. Gray moved to appoint Samuel Spear as a regular member to the Historic Preservation Board (HPB) to serve a two (2) year term ending August 31, 2013, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 4 to 0 vote.

9.F. APPOINTMENTS TO THE CODE ENFORCEMENT BOARD: Appoint one (1) regular member and one (1) alternate member to the Code of Enforcement Board to serve unexpired terms ending January 14, 2013. Based upon the

rotation system, the appointments will be made by Mayor McDuffie (Seat #5) and Commissioner Carney (Seat #1).

Mayor McDuffie stated he wished to appoint Ronald Gilinsky as a regular member to the Code Enforcement Board to serve an unexpired term ending January 14, 2013. Dr. Alperin so moved, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 4 to 0 vote.

Mr. Carney stated he would like to defer his appointment to the next regular meeting of September 20, 2011.

9.G. APPOINTMENT TO THE BOARD OF ADJUSTMENT: Appoint one (1) regular member to the Board of Adjustment to serve an unexpired term ending August 31, 2012. Based upon the rotation system, the appointment will be made by Commissioner Carney (Seat #1).

Mr. Carney stated he would like to defer his appointment to the next regular meeting of September 20, 2011.

9.H. APPOINTMENT TO THE NEIGHBORHOOD ADVISORY COUNCIL: Appoint one (1) regular member for Zone 2 to the Neighborhood Advisory Council to serve a three (3) year term ending July 31, 2014. Based upon the rotation system, the appointment will be made by Commissioner Carney (Seat #1).

Mr. Carney moved to appoint Stephen Lampel (Zone 2) as a regular member to the Neighborhood Advisory Council to serve a three (3) year term ending July 31, 2014, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mrs. Gray – Yes. Said motion passed with a 4 to 0 vote.

9.I. APPOINTMENT TO THE FINANCIAL REVIEW BOARD: Appoint one (1) alternate member to the Financial Review Board to serve an unexpired term ending July 31, 2013. Based upon the rotation system, the appointment will be made by Commissioner Alperin (Seat #2).

Dr. Alperin moved to appoint David Stein as an alternate member to the Financial Review Board to serve an unexpired term ending July 31, 2013, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 4 to 0 vote.

9.J. APPOINTMENT TO THE POLICE ADVISORY BOARD: Appoint one (1) regular member to the Police Advisory Board to serve an unexpired term ending July 31, 2012. Based upon the rotation system, the appointment will be made by Commissioner Gray (Seat #4).

Mrs. Gray stated she would like to defer her appointment to the next regular meeting of September 20, 2011.

The City Clerk stated since Mrs. Gray's appointment was previously deferred it will now roll over to the next Commissioner.

9.K. APPOINTMENT TO THE KIDS AND COPS COMMITTEE:

Appoint one (1) At-Large-Representative to the Kids and Cops Committee to serve a two (2) year term ending July 31, 2013. Based upon the rotation system, the appointment will be made by Commissioner Gray (Seat #4).

Mrs. Gray moved to reappoint Phyllis Willingham (At-Large-Representative) to the Kids and Cops Committee to serve a two (2) year term ending July 31, 2013, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 4 to 0 vote.

At this point, the time being 6:48 p.m., the Commission moved to **Item 12, First Readings.**

12. FIRST READINGS:

12.A. ORDINANCE NO. 29-11: Consider a city-initiated amendment to the Land Development Regulations (LDR) Section 4.4.13 "Central Business (CBD) District", Subsection (G), "Supplemental District Regulations" and Section 4.4.24, "Old School Square Historic Arts District (OSSHAD)", Subsection (G), "Supplemental District Regulations" to clarify the parking requirements for restaurants. If passed, a public hearing will be held on September 20, 2011.

The caption of Ordinance No. 29-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT", SUBSECTION (G), "SUPPLEMENTAL DISTRICT REGULATIONS", SECTION 4.4.24, "OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)", SUBSECTION (G), "SUPPLEMENTAL DISTRICT REGULATIONS", TO CLARIFY THE PARKING REQUIREMENTS FOR RESTAURANTS; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 29-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, AICP, Director of Planning and Zoning, stated this is a reconsideration of what was previously Ordinance No. 20-11 and has been renumbered to Ordinance No. 29-11 and involves a proposal to increase the parking from 6 per 1,000 to 12 per 1,000 square feet for restaurants to be equal to parking requirements City-wide. Mr. Dorling stated there were discussions that came up at the previous meeting that related to what the City had previously required for parking. He stated the CBD (Central Business District) was created in the 1970's and had different restaurant parking which began at 10 per 1,000 and was changed to 1 per 300 then went to 12 per 1,000 and went back to 1 per 300 and then went to 6 per 1,000. Mr. Dorling stated there is also a discussion about restaurant parking ration comparisons and whether 12 per 1,000 were reasonable for restaurants. He stated with a 1,000 square foot restaurant there is a potential for 40 seats; if you assume 2 per vehicle this would equate to an actual parking impact of 1,000 restaurants of 20 vehicles for the patrons and that does not factor in any number of spaces for employees and these types of uses generate high employee rates. Mr. Dorling stated it also does not assess any parking requirements for outside sidewalk cafés. He stated he has also provided some details of what other cities and municipalities do in Palm Beach County and the cities rates are consistent with them and range from 16 per 1,000 to 1 per 1,000 in one particular area in West Palm Beach. Mr. Dorling stated staff also looked at other planning organizations recommendations on restaurant numbers and the Urban Land Institute recommends 14 spaces per 1,000 and the Institute of Transportation Engineers recommends 13 spaces per 1,000. Mr. Dorling stated 12 spaces is reasonable and does not meet the actual demand that these sorts of uses actually create. Mr. Dorling stated there is discussion in the backup information about the diversity of uses and this area corresponds with Cluster 4 that was never adopted by the City Commission but provided valuable insight and some direction with respect to what businesses we should try to recruit going forward. Mr. Dorling stated this modification in no way prohibits the conversion of retail space to restaurants in this small area; it will however make it less attractive to locate a restaurant in this five block area which has seen a proliferation of restaurant uses. It will also have an effect of increasing interest in other areas for restaurant conversions that have not seen the proliferation which would include places like Pineapple Grove, West Atlantic Avenue and other parts of the CBD.

Dr. Alperin supports passing this ordinance in this form and that will give the Commission a chance to modify it and to also hear public comments on it too.

Mr. Carney stated when this was Ordinance No. 20-11 and was assured by staff that the vacant property there would be included if there were ever a change in use from its current vacant lot status into when someone actually applied to do something there that whatever was passed those requirements would apply to that property as improved. Mr. Dorling stated the ordinance as written says that the CBD within that area

described including that parcel would be subject to the ordinance. The property does not have the potential to be developed into retail or commercial uses and as soon as it is developed for commercial uses it would apply.

Mr. Carney expressed concern that sidewalk cafés are not included in the parking calculations.

Mrs. Gray stated she supports this ordinance this evening and is looking forward to the incentive that the City will be coming up with shortly. She expressed concern over the valet queues and asked if this is something that staff is going to be looking at as well as the pricing of them and the manning of the parking garages.

Mayor McDuffie stated while he agrees that we need to take a look at this because we need to encourage retail in Delray but he does not see that we are addressing that here. However, Mayor McDuffie stated he supports passing this on for second reading.

Dr. Alperin moved to approve Ordinance No. 29-11 on FIRST Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 4 to 0 vote.

At this point, the time being 7:01 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

10. PUBLIC HEARINGS:

10.A. RESOLUTION NO. 34-11 (TENTATIVE MILLAGE LEVY): A resolution tentatively levying a tax on all properties within the City of Delray Beach for operation and maintenance and for payment of principal and interest on bonded indebtedness for FY 2012.

The caption of Resolution No. 34-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, TO TENTATIVELY LEVY A TAX ON ALL PROPERTIES WITHIN THE CITY OF DELRAY BEACH, FLORIDA, FOR MAINTENANCE AND OPERATION, AND TO TENTATIVELY LEVY A TAX FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON BONDED INDEBTEDNESS, AND TO ALLOCATE AND APPROPRIATE SAID COLLECTIONS THEREUNDER.

(The official copy of Resolution No. 34-11 is on file in the City Clerk's office.)

A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

The City Attorney stated this is a tentative millage levy for the City of Delray Beach of 7.19 which is 4.03% below the rolled-back millage rate of 7.4922.

Mayor McDuffie declared the public hearing open.

The City Manager stated the City's millage this year is lower than it was in 2006 and the total tax roll is lower than it was in 2006. He stated the City's property tax levy has been decreased below what it was in 2006 and anyone's whose taxes have increased is because of the distortions in the property tax system not because of the taxes the City is levying overall.

Steve Blum, Antilles Homeowners Association, stated he spent all day today reviewing the preliminary 2012 budget (367 pages) and he wants the same union that represents the Police, Fire, and City employees to represent him. Mr. Blum stated they convinced the City Commission at the time that Delray Beach could forever afford their demands of high wages, great benefits, and lucrative retirements. He stated they convinced our leaders that the citizens of Delray Beach had bottomless pockets of cash and could raise taxes at any time. Mr. Blum stated the road they are on is unsustainable. Mr. Blum stated all over this country people are selling their buildings and homes not because they cannot afford the mortgage anymore but because they cannot afford the taxes or insurance being levied upon them. He also commented about the fire assessment fee. Mr. Blum stated he would like to see the City cut their services more and look at raising taxes a lot less. He stated he would like to see recommendations from the City Commission on where we can cut instead of raising taxes.

Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach), stated over the last couple of years he has attended numerous financial meetings and thanked the City Manager for the phenomenal job with getting everyone through the budget process.

Yvonne Odom, 3905 Lawson Boulevard, Delray Beach, FL 33445, stated she is opposed to the City's proposal regarding taxing the young people for use of the athletic field. Mrs. Odom stated kids walk from their homes to Pompey Park and urged the Commission to reconsider the \$5.00 fee. Also, she thanked the City for the many years of supporting the activities at Pompey Park.

Christina Morrison Pearce, 2809 Florida Boulevard Apt. #207, Delray Beach, FL 33483, publicly thanked the City Manager for his participation in the 6 pillars project with the Economic Council and for his financial leadership. Ms. Pearce stated she agrees that the tax base is way down and in reviewing the budget she suggested that the parking fees and valet fees be increased. She suggested that the City have electronic surveillance in the garages and feels this could make the garages flourish. Ms. Pearce

stated over 14% of the City's budget goes towards Parks and Recreation. She stated several employees have not had raises in many years.

Ed McCall, 3909 Maurice Drive, Delray Beach, FL 33445, commented about the newsletter regarding input from residents to look for ways to cut expenses and not affect needy programs and services and stated when he is downtown he sees volunteer police walking and riding around in the CBD. Mr. McCall stated this is a nice program for retirees but it is costing the City a lot of money. Mr. McCall stated that he would rather see these volunteers as ambassadors with the Chamber of Commerce.

There being no one else from the public who wished to address the Commission regarding Resolution No. 34-11, the public hearing was closed.

Dr. Alperin moved to approve Resolution No. 34-11 (Tentative Millage Levy), seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 4 to 0 vote.

10.B. RESOLUTION NO. 35-11 (TENTATIVE MILLAGE LEVY/DDA):
A resolution tentatively levying a tax of one mill on all properties within the Downtown Development Authority Taxing District of the City of Delray Beach for FY 2012.

The caption of Resolution No. 35-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, TO TENTATIVELY LEVY A TAX ON ALL PROPERTIES WITHIN THE DOWNTOWN DEVELOPMENT AUTHORITY TAXING DISTRICT OF THE CITY OF DELRAY BEACH, FLORIDA, FOR MAINTENANCE AND OPERATION, AND TO APPROPRIATE SAID COLLECTIONS THEREUNDER.

(The official copy of Resolution No. 35-11 is on file in the City Clerk's office.)

A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

The City Attorney stated Resolution No. 35-11 is setting the tentative millage levy for the DDA at 1.0 mill and it is greater than the rolled-back rate of 0.9860 by 1.42%.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission, the public hearing was closed.

Dr. Alperin moved to approve Resolution No. 35-11, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mrs. Gray – Yes. Said motion passed with a 4 to 0 vote.

10.C. RESOLUTION NO. 36-11 (TENTATIVE BUDGET ADOPTION FOR FY 2012): A resolution tentatively making appropriations of sums of money for all necessary expenditures of the City of Delray Beach for the period October 1, 2011 through September 30, 2012.

The caption of Resolution No. 36-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, MAKING TENTATIVE APPROPRIATIONS OF SUMS OF MONEY FOR ALL NECESSARY EXPENDITURES OF THE CITY OF DELRAY BEACH FOR THE PERIOD FROM THE 1ST DAY OF OCTOBER, 2011, TO THE 30TH DAY OF SEPTEMBER, 2012; TO PRESCRIBE THE TERMS, CONDITIONS AND PROVISIONS WITH RESPECT TO THE ITEMS OF APPROPRIATIONS AND THEIR PAYMENT; AND TO REPEAL ALL RESOLUTIONS WHOLLY IN CONFLICT WITH THIS RESOLUTION AND ALL RESOLUTIONS INCONSISTENT WITH THIS RESOLUTION TO THE EXTENT OF SUCH INCONSISTENCY.

(The official copy of Resolution No. 36-11 is on file in the City Clerk's office.)

A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Mayor McDuffie declared the public hearing open.

Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach), stated this is the easiest in the last three years that he has seen this budget accomplished and it is being evenly distributed. However, Dr. Kirson suggested eliminating the shortfall from the PBA.

The City Manager stated this is the 5th year in a row that the City has reduced its budget. In addition, the City Manager stated in looking at 2006, the City's pension cost have gone up \$2.5 million of which \$100,000 is General Employees and \$2.4 million is Police & Fire and health insurance costs have gone up approximately \$850,000. The City Manager stated the City has absorbed those increases at the same time we have been cutting the budget. He stated overall staff has worked very hard to

make this happen with minimal impact on the service the City provides.

Mrs. Gray moved to approve Resolution No. 36-11 (Tentative Budget Adoption for FY 2012), seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 4 to 0 vote.

11.B. From the Public.

11.B.1. Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach), stated Delray Beach is building two hotels to have more room for tourists but something as simple as three foot wide and one foot high stretching as far as you could see it on the beach at A-1-A and Atlantic will turn the tourists away once it gets here. Dr. Kirson stated he was informed that we used to clean the beach five days a week but because of budget cuts we reduced it to three. He stated he would like to see this go back to five days a week and stated over the labor holiday weekend it looked terrible.

11.B.2. Gladys Whigham, Assistant City Commissioner for Priscilla Taylor, stated on behalf of the Palm Beach County Commission, Priscilla Taylor would like to extend warm congratulations to Dr. Alperin on his recent appointment and wishes him well on his tenure. Ms. Whigham stated Commissioner Taylor's district (District 7) extends from Linton Boulevard in Delray Beach to Lake Park north incorporating ten municipalities. Ms. Whigham stated there is an informational meeting being held on Thursday, September 15, 2011 from 2:00-7:00 p.m. in Palm Beach Gardens and the purpose of this informational meeting is to get the local communities of Palm Beach County actively involved and get jobs back in the community. Ms. Whigham stated there is a \$900 million contract that has been awarded to build the new Waste-to-Energy facility in Palm Beach County and there are going to be various opportunities for a number of jobs for local contractors, vendors, and suppliers are made aware of this. Ms. Whigham stated the website is: www.swa-wteproject.com or call Commissioner Taylor's office (561)355-2207 or (561)276-1350 for additional information.

11.B.3. Al Jacquet, 236 S.E. 3rd Avenue, Delray Beach, FL 33483, speaking as a citizen of Delray Beach, the State of Florida has just completed its 26 meetings around the State doing the redistricting process. Mr. Jacquet stated discussions around the State dealt with Orlando gaining one congressional seat and the State of Florida is gaining two congressional seats because of the population growth; one is going to be around Orlando and the other one in South Florida. He stated Amendments 5 and 6 passed last year and noted that Amendment 6 is being challenged by two congresspersons. Mr. Jacquet stated one of the biggest issues right now is they are trying to make sure they comply with Amendment 5 which asks that they draw the districts to be compact and also dealing with Section 2 of the Voting Rights Act asking that they take into consideration race and language when drawing the lines as well. He stated Delray Beach was not a big topic with regard to the redistricting so this means the representation we have here now is fine.

11.B.4. **Ed McCall, 3909 Maurice Drive, Delray Beach, FL 33445,** expressed concern over the parking issue downtown during the day and stated when you get off the side streets the parking limits are inconsistent (2 hours, 4 hours and 6 hours) on different lots. Mr. McCall stated he does not like to see people getting a parking ticket during the day when they are downtown spending money either in the restaurants or businesses or a tourist from out-of-state getting a parking ticket. He stated he is not talking about the metered parking. Mr. McCall stated this needs to be made friendlier and suggested that the parking be free during the day.

11.B.5. **Yvonne Odom, 3905 Lawson Boulevard, Delray Beach, FL 33445,** stated when she took her grandchildren to the beach over the summer she noted the parking maximum is 2 hours so you cannot put any more money into the meter which makes this inconvenient for people. Mrs. Odom stated most people spend more than two hours at the beach and suggested extending this so that people can put more money into the meters or eliminate it altogether.

11.B.6. **Evelyn Dobson, 130 N.W. 3rd Avenue, Delray Beach, FL 33444,** commended the City Commission, the City Manager and staff for the improvements that are taking place west of Swinton Avenue. Ms. Dobson stated she has been a resident for over 35 years and is happy to see the beautification projects that are taking place on Martin Luther King Boulevard from Swinton Avenue to N.W. 12th and the improvements that are taking place on S.W. 12th.

11.A. **City Manager's response to prior public comments and inquiries.**

None.

At this point, the time being 7:35 p.m., the Commission moved back to **Item 12.B., First Readings.**

12.B. **ORDINANCE NO. 27-11:** Consider amendments to the Community Redevelopment Agency (CRA) Plan. If passed, a public hearing will be held on September 20, 2011.

The caption of Ordinance No. 27-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, MODIFYING THE COMMUNITY REDEVELOPMENT PLAN FOR THE CITY OF DELRAY BEACH; FINDING THAT THE MODIFICATIONS CONFORM TO THE COMMUNITY REDEVELOPMENT ACT OF 1969, AS AMENDED; FINDING THAT THE MODIFICATIONS ARE CONSISTENT WITH THE CITY OF DELRAY BEACH'S COMPREHENSIVE PLAN, AND MAKING FURTHER FINDINGS PURSUANT TO THE APPLICABLE REQUIREMENTS OF FLORIDA

STATUTE 163.360; PROVIDING A GENERAL
REPEALER CLAUSE, A SAVING CLAUSE AND AN
EFFECTIVE DATE.

(The official copy of Ordinance No. 27-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, AICP, Director of Planning and Zoning, stated the CRA Plan establishes projects and programs to be undertaken by the CRA in the coming years. Mr. Dorling stated this was originally adopted in 1986 and has been amended several times and the latest amendment was in December 2009. Mr. Dorling stated if approved, it will supersede the current redevelopment plan that is in place now. The proposed amendments are detailed in the staff report in particular the Planning and Zoning staff report but they basically include updated information on current plans, project and program descriptions and the addition of two new projects and an updating of the maps to reflect current conditions and potential future acquisitions.

At its meeting of July 6, 2011, the Pineapple Grove Main Street Executive Board reviewed the amendments and recommended approval with no changes. At its meeting of July 11, 2011, the Downtown Development Authority (DDA) reviewed the amendments and they requested more emphasis on parking improvements and business facility upgrades on Osceola Park and those improvements have been incorporated in the Community Redevelopment Plan. At its meeting of July 12, 2011, the West Atlantic Redevelopment Coalition (WARC) reviewed the amendment but recommended the addition of a new "economic diversity statement" to the program objectives of several sections, in order to promote CRA contracts with more minority-owned businesses located within the CRA District. The CRA Board declined to include the statement in the proposed amendment.

At its meeting of August 15, 2011, the Planning and Zoning Board reviewed the amendments and recommended approval.

Dr. Alperin stated it is exciting to see the changes and noted 12-22 years ago he used to watch the CRA struggling to get Atlantic Avenue east of Swinton Avenue going.

Mr. Carney stated the CRA does great work.

Mrs. Gray stated she too thinks that the CRA does great work and we have wonderful partnerships throughout the City. She suggested that the CRA appoint their WARC members.

Elizabeth Burrows, representative from the Community Redevelopment Agency, stated WARC is in the process of going through its bylaws and taking a look at not only the number of Board members that they have and the number of positions they require on that Board but also how those Board members are selected, the application process, and the terms that they would serve. Mrs. Burrows stated WARC's next meeting is actually scheduled for Tuesday, September 13, 2011 at 6:00 p.m. at the Delray Beach Public Library. She stated with regard to the CRA Board appointing members to WARC that has never actually been the case and speaking on behalf of WARC they prefer to maintain a certain level of sovereignty from the CRA in those types of decisions.

Dr. Alperin moved to approve Ordinance No. 27-11 on FIRST Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 4 to 0 vote.

12.C. ORDINANCE NO. 28-11: Consider an ordinance which provides definitions for fraud, waste, abuse, misconduct and mismanagement related to the Palm Beach County Inspector General. If passed, a public hearing will be held on September 20, 2011.

The caption of Ordinance No. 28-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 10, "GENERAL PROVISIONS". BY AMENDING SECTION 10.05, "DEFINITIONS", BY ADOPTING A PREAMBLE ALONG WITH FIVE (5) NEW DEFINITIONS WHICH SHALL BE INCLUDED AMONG THE EXISTING DEFINITIONS IN ALPHABETICAL ORDER; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 28-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance and stated the Inspector General ordinance was adopted by Palm Beach County in 2010 and provides that the Inspector General can provide oversight into transactions involving local governments. These definitions will help provide clarity to employees, officials, and vendors as far as what we would consider to be misconduct, mismanagement, fraud, or abuse. The City Attorney stated there is also a provision in the County ordinance that provides that the City Manager would have to report allegations of mismanagement or fraud within the City.

Brief discussion by the Commission ensued.

Mr. Carney moved to approve Ordinance No. 28-11 on FIRST Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 4 to 0 vote.

12.D. **ORDINANCE NO. 30-11:** Consider an Ordinance amending Chapter 96, “Fire Safety and Emergency Services”, of the Code of Ordinances, by amending Section 96.16, “Certain Codes Adopted by Reference”, to promote clarity, conciseness, and a common sense methodology. If passed, a public hearing will be held on September 20, 2011.

The caption Ordinance No. 30-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 96, “FIRE SAFETY AND EMERGENCY SERVICES”, OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTION 96.16, “CERTAIN CODES ADOPTED BY REFERENCE”, TO CLARIFY THE REQUIREMENTS FOR RECONSTRUCTION; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 30-11 is on file in the City Clerk’s official).

The City Attorney read the caption of the ordinance.

Lieutenant Jim Tabeek, Fire-Rescue Department, stated he is present for any questions the Commission may have.

Dr. Alperin moved to approve Ordinance No. 30-11 on FIRST Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mrs. Gray – Yes. Said motion passed with a 4 to 0 vote.

12.E. **ORDINANCE NO. 31-11:** Consider an amendment to Chapter 35, “Employee Policies and Benefits”, Section 35.089, “Definitions”, to revise the definition of “Normal Retirement Date”. If passed, a public hearing will be held on September 20, 2011.

The caption of Ordinance No. 31-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA,

AMENDING CHAPTER 35, "EMPLOYEE POLICIES AND BENEFITS", SECTION, "35.089, "DEFINITIONS", TO REVISE THE DEFINITION OF "NORMAL RETIREMENT DATE"; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 31-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance and stated this ordinance clarifies the normal retirement date for the people who were hired after October 6, 2010. However, the City Attorney stated staff did not take into account where we had employees who may have been employed prior to that date, that had left employment and were vested, and now have come back and have been re-employed by the City. Therefore, he stated staff has clarified that their prior retirement will be under the old system and since they were hired back after October 6, 2010, that amount of money they would receive from that retirement will be governed by the rules that are in affect after October 6, 2010.

Dr. Alperin moved to approve Ordinance No. 31-11 on FIRST Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 4 to 0 vote.

12.F. ORDINANCE NO. 26-11: Consider a city-initiated amendment to the Land Development Regulations (LDR), to amend Article 2.2, "Establishment of Boards Having Responsibilities for Land Development Regulations", and to amend Section 4.4.6, "Medium Density Residential (RM)", to provide for housekeeping corrections to outdated references. If passed, a public hearing will be held on September 20, 2011.

The caption of Ordinance No. 26-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH, BY AMENDING SECTIONS 2.2.1, "GENERAL PROVISIONS", 2.2.2, "THE PLANNING AND ZONING BOARD", SUBSECTIONS (A), "CREATION" AND (E), "DUTIES, POWERS, AND RESPONSIBILITIES"; 2.2.3, "THE SITE PLAN REVIEW AND APPEARANCE BOARD", SUBSECTION (D), "DUTIES, POWERS, AND RESPONSIBILITIES"; 2.2.4, "THE BOARD OF ADJUSTMENT", SUBSECTION (A), "CREATION"; AND 4.4.6, "MEDIUM DENSITY RESIDENTIAL (RM)

DISTRICT”, SUBSECTION (H), “SPECIAL REGULATIONS”, TO CORRECT OUTDATED REFERENCES THEREIN; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 26-11 is on file in the City Clerk’s office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, AICP, Director of Planning and Zoning, stated this ordinance proposes housekeeping corrections where previous amendments to the LDRs changed section numbers and placement without a corresponding change to those sections referenced elsewhere in the Code.

At its meeting of August 15, 2011, the Planning and Zoning Board recommended approval with a 6 to 0 vote (Connor Lynch absent).

Dr. Alperin moved to approve Ordinance No. 26-11 on FIRST Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 4 to 0 vote.

12.G. ORDINANCE NO. 33-11: Consider an amendment Amending Chapter 91, “Animals”, Section 91.03, “Trapping, Hunting Birds”; Chapter 95, “Emergency Management”, Section 95.05, “Declaration of a State Of Emergency”, and Section 95.09, “Police Emergencies”; Chapter 96, “Fire Safety and Emergency Services”, Section 96.25, “Discharge Or Use of Fireworks, Pyrotechnic Devices and Special Effects”; Chapter 101, “Parks, Beaches and Recreation”, Section 101.20, “Firearms and Weapons; Fireworks”, Section 101.36, “Additional Rules Applying to Parks, Recreational Facilities and the Municipal Beach”, Subsection 101.36(D), “Safety Hazards”, and Subsection 101.36(E), “Nuisances at Parks, Recreational Facilities and Municipal Beach Sites”; and Chapter 132, “Offenses Against Public Peace and Safety”, by repealing Section 132.02, “Disturbing the Peace; Public Places”, of the Code Of Ordinances, to conform with regulations set forth in House Bill 45 amending Section 790.33, Florida Statutes and to otherwise comply with State and Federal Statutes. If passed, a public hearing will be held on September 20, 2011.

The caption of Ordinance No. 33-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 91, “ANIMALS”, SECTION 91.03, “TRAPPING, HUNTING BIRDS”; CHAPTER 95, “EMERGENCY MANAGEMENT”, SECTION 95.05, “DECLARATION OF A STATE OF EMERGENCY”, AND SECTION 95.09, “POLICE EMERGENCIES”;

CHAPTER 96, "FIRE SAFETY AND EMERGENCY SERVICES", SECTION 96.25, "DISCHARGE OR USE OF FIREWORKS, PYROTECHNIC DEVICES AND SPECIAL EFFECTS"; CHAPTER 101, "PARKS, BEACHES AND RECREATION", SECTION 101.20, "FIREARMS AND WEAPONS; FIREWORKS", SECTION 101.36, "ADDITIONAL RULES APPLYING TO PARKS, RECREATIONAL FACILITIES AND THE MUNICIPAL BEACH", SUBSECTION 101.36(D), "SAFETY HAZARDS", AND SUBSECTION 101.36(E), "NUISANCES AT PARKS, RECREATIONAL FACILITIES AND MUNICIPAL BEACH SITES"; AND CHAPTER 132, "OFFENSES AGAINST PUBLIC PEACE AND SAFETY", BY REPEALING SECTION 132.02, "DISTURBING THE PEACE; PUBLIC PLACES", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, TO CONFORM WITH REGULATIONS SET FORTH IN HOUSE BILL 45 AMENDING SECTION 790.33, FLORIDA STATUTES AND TO OTHERWISE COMPLY WITH STATE AND FEDERAL STATUTES; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 33-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Cathy Kozol, Assistant City Attorney/Police Legal Advisor, stated this ordinance is done in response to the new House Bill 45 approved by the Governor on June 2, 2011 and becomes effective October 2, 2011. Ms. Kozol stated House Bill 45 expands the Legislature's preemption in the field of firearms and ammunitions regulations. She stated they want State consistency across the board between municipalities and counties. The City is thus compelled to amend certain sections of the Code of Ordinances to comply with this new legislation.

Dr. Alperin moved to approve Ordinance No. 33-11 on FIRST Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 4 to 0 vote.

13. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.

13.A. City Manager

The City Manager stated Commissioner Carney had raised a question about staff's response to public records requests. The City Manager noted the City Clerk's response was very comprehensive and thorough and he has nothing to add to it.

13.B. **City Attorney**

The City Attorney had no comments or inquiries on non-agenda items.

13.C. **City Commission**

13.C.1. **Dr. Alperin**

Dr. Alperin stated he really noticed this evening especially with the discussion regarding the budget he heard many more compliments than complaints and is thrilled the City has the people it has working for it.

13.C.2. **Mr. Carney**

Mr. Carney commented about the public records requests and stated he received correspondence related to the comparison between a public information request made to an adjoining town and here and the scope of our compliance is so much greater. Mr. Carney stated he asked the City Clerk to get back with him about how many public information requests are made to the Town of Gulf Stream and they average three a month and they do not provide any electronic copies in their response and is really limited to hard copies compared to all the scopes of all the activities that we do here. Mr. Carney stated it is really not a fair comparison and felt that the City Clerk's response was comprehensive and he is happy that staff is initiating a change to the website giving people a general idea what to expect.

Secondly, Mr. Carney stated with regard to reprioritizing expenses, etc. he understands the importance of getting the pavilion done and noted there are a variety of projects that are very important. He stated the City is not hiring in certain departments are not hiring because of the budget issue and feels a lot is being done to address staffing.

Lastly, Mr. Carney stated there were several comments this evening regarding parking which relate to the need of a comprehensive review of all the parking in the city and downtown as to how we want to address parking on the side streets and how we want to encourage the use of the parking garage. Mr. Carney stated the lack of security that some perceive in the parking garage warranted or unwarranted needs to be address and we need to do everything we can to assure anyone who parks there that they will be as safe as they can be. He stated there has been some discussion about creation of valet parking at the parking garages.

13.C.3. **Mrs. Gray**

Mrs. Gray stated she attended the Florida League of Cities Conference in Orlando they talked about the internet cafés and asked staff to look into this because this may become a big problem. She stated these internet cafés are setting up throughout Florida and would like to get information on that now so that we can be prepared when they start asking for permits or opening up in the city. The City Manager stated he has brought this issue to the City Attorney's attention and to Mr. Dorling's attention.

Secondly, Mrs. Gray stated with regard to Mrs. Odom's comments about the fee for athletes to participate in our city, she would like to look at some of the fields because she feels there is a lot of income at the soccer complex with tournaments and the uses of the City's fields throughout the year. She stated they use the field ten months out of the year and they actually sublease to other companies and she does not know if this is in the agreement or not but feels those are dollars that the City could be receiving instead of another organization.

Lastly, Mrs. Gray stated she knows the Community Redevelopment Agency (CRA) is getting away from low income housing and wants to make sure that they are still looking at workforce housing and not just getting rid of housing altogether.

13.C.4. **Mayor McDuffie**

Mayor McDuffie commended the City Clerk on her response about public records request. He stated he feels that things are responded to here as expeditiously as possible.

Secondly, Mayor McDuffie stated with regard to affordable housing he was looking for some rental property for a young single mom in Palm Beach County who approached him and wanted to know what he could find. He stated he did some research and today had a conversation with Dorothy Ellington regarding HUD assistance. Mayor McDuffie stated they put out a press release for applications for housing and the Delray Beach Housing Authority received 7,000 applications. This year they will put 1,000 people on the waiting list and for rental communities it may be 20 years before these people have housing available in these numbers.

Secondly, Mayor McDuffie stated Delray Beach will now have a PGA Superstore located at 1060 Linton Boulevard.

Mayor McDuffie commented about the Grand Opening for Aldi Grocery Store. He stated this is a very positive step for us to have people and businesses of this magnitude move into our community in these tough times.

At this point, Mr. Carney stated he was happy to represent the Mayor at the Grand Opening. He stated he had the opportunity to speak to several of the other shop owners and they are thrilled with the foot traffic this is going to generate. He stated

he welcomes the addition and is glad they had confidence in Delray Beach to open the store.

There being no further business, Mayor McDuffie declared the meeting adjourned at 8:09 p.m.



City Clerk

ATTEST:



MAYOR

The undersigned is the City Clerk of the City of Delray Beach, Florida, and the information provided herein is the Minutes of the Regular City Commission Meeting held on September 6, 2011, which Minutes were formally approved and adopted by the City Commission on September 20, 2011.



City Clerk

NOTE TO READER:

If the Minutes you have received are not completed as indicated above, this means they are not the official Minutes of the City Commission. They will become the official Minutes only after review and approval which may involve some amendments, additions or deletions as set forth above.