

**DECEMBER 7, 2010**

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, December 7, 2010.

**1.** Roll call showed:

Present - Commissioner Gary P. Eliopoulos  
Commissioner Fred B. Fetzer  
Commissioner Adam Frankel  
Commissioner Angeleta E. Gray  
Mayor Nelson S. McDuffie

Absent - None

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 Rabbi Greg Kanter with Temple Sinai.

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

**4.** **AGENDA APPROVAL.**

Mr. Frankel moved to approve the Agenda, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

**5.** **APPROVAL OF MINUTES:**

Mrs. Gray moved to approve the Minutes of the Regular Meeting of November 16, 2010, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

**6.** **PROCLAMATIONS:**

A. None

**8. CONSENT AGENDA:** City Manager Recommends Approval.

**8.A. CONTRACT CLOSEOUT (CHANGE ORDER NO. 2/FINAL) ROSSO PAVING & DRAINAGE INC.:** Approve Contract Closeout (Change Order No. 2/Final) in the net deduct amount of \$790.20 and final payment amount of \$6,901.78 to Rosso Paving & Drainage, Inc. for the completion of the Dixie – US1 Connector (N.E. 22nd Lane). Funding is available from 334-3162-541-63.83 (General Construction Fund: Improvement Other Than Buildings/Dixie Highway – US 1 Connector).

**8.B. SERVICE AUTHORIZATION NO. 19/MATHEWS CONSULTING, INC.:** Approve Service Authorization No. 19 with Mathews Consulting, Inc. in the amount of \$45,686.00 for Lift Station 100A Capacity Study. Funding is available from 442-5178-536-31.30 (W & S Renewal & Replacement Fund: Professional Services/Engineering/ Architect).

**8.C. GRANT AWARD/ALTERNATIVE WATER SUPPLY GRANT/SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD):** Approve and accept an Alternative Water Supply (AWS) grant award from the South Florida Water Management District (SFWMD) in the amount of \$210,900.00 to provide supplementary funding for the Area 11B Reclaimed Water System expansion.

**8.D. AMENDMENT NO. 2 TO THE LEASE AGREEMENT/PALM BEACH COUNTY/ HEAD START FACILITY:** Approve Amendment No. 2 to the Lease Agreement with Palm Beach County for the Head Start Facility at Catherine Strong Park.

**8.E. RELEASE OF LIMITED ACCESS EASEMENT AGREEMENT:** Approve release of a limited access easement that is over the south property line, adjacent to Tamarind Road, on the northeast corner of Tamarind Road and Seasage Drive.

**8.F. APPROVE AND ACCEPT A TEMPORARY CONSTRUCTION EASEMENT:** Approve and accept a temporary construction easement for construction of a brick paver public plaza at the S.W. corner of Martin Luther King, Jr. Drive and N.W. 5th Avenue.

**8.G. ACQUISITION AGREEMENT WITH ACS GOVERNMENT SERVICES, INC./ FIREHOUSE SOFTWARE:** Approve an acquisition agreement with ACS Government Services, Inc. for Firehouse Software.

**8.H. SPECIAL EVENT REQUEST/43rd ANNUAL SAINT PATRICK'S DAY PARADE AND PARTY:** Approve a special event request for the 43rd Annual St. Patrick's Day Parade and Party on Saturday, March 12, 2011, beginning with setup at 11:00 a.m., parade starting at 2:00 p.m. and ending at approximately 4:00 p.m., and an event at Old School Square from 11:00 a.m. to 7:00 p.m.; to grant a temporary use permit per LDR Section 2.4.6(F) for the use of Atlantic Avenue from Andrews Avenue to NW

1st Avenue for the parade, Atlantic Avenue from Andrews Avenue to the bridge with overflow on East Drive to Lowry Street and Gleason Street for staging of parade entries, and NE 1st Avenue from Atlantic Avenue to the east/west alley; and to approve staff support for traffic control and security, barricading, EMS assistance, use of half of the small stage and to allow event signage to be put up fourteen (14) days prior to the event; contingent upon receipt of the required Certificate of Liability Insurance and Alcohol Liability Insurance by March 2, 2011.

**8.I. SPECIAL EVENT REQUEST/49th ANNUAL DELRAY**

**AFFAIR:** Approve a special event request from the Chamber of Commerce to endorse the 49th Annual Delray Affair to be held on April 15-17, 2011, to grant a temporary use permit per LDR's Section 2.4.6 (F) for use of City property and rights-of-way as requested, to allow all vendor permits to be assigned and approved by the Chamber of Commerce, to allow this to be the only event held on these dates in the City, to provide a waiver of parking time restrictions in the downtown area during the event, and to provide staff support as requested; contingent upon the conditions of approval listed in the staff report.

**8.J. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD**

**ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period November 15, 2010 through December 3, 2010.

**8.K. AWARD OF BIDS AND CONTRACTS:**

- 1.** Contract award to MWI Corporation in the amount of \$16,237.00 for the rebuild of storm water pump #2 at the Atlantic Avenue Storm Water Pump Station. Funding is available from 448-5461-538-68.18 (Storm Water Utility Fund: Other Improvement/Storm Water Pump Station Rehab).
- 2.** Purchase award to Springfield Armory in the amount of \$28,630.36 to purchase twenty-two (22) Springfield TRP .45 ACP caliber handguns. Funding is available from 112-2172-521-64.90 (Law Enforcement Trust Fund FD: Machinery/Equipment/Other Machinery/Equipment).

Mr. Eliopoulos moved to approve the Consent Agenda, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

**9. REGULAR AGENDA:**

**9.A. CONDITIONAL USE REQUEST/TOTTERDALE TOWING**

**SERVICES:** Consider approval to allow the establishment of a towing service with an

outside storage facility for Totterdale Towing Services, located at 101 N.W. 18th Avenue (Northeast corner of N.W. 18th Avenue and Marty Fladell Dr. [N.W. 1st Street]).  
*(Quasi-Judicial Hearing)*

Mayor McDuffie read the City of Delray Beach procedures for a Quasi-Judicial Hearing into the record for this item.

Chevelle D. Nubin, City Clerk, swore in those individuals who wished to give testimony on this item.

Mayor McDuffie asked the Commission to disclose their ex parte communications. The Commission had no ex parte communications to disclose.

Paul Dorling, AICP, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2010-234 into the record.

Mr. Dorling stated this is a conditional use request to establish a towing service with an outside storage on a vacant parcel at the N.E. corner of N.W. 18<sup>th</sup> Avenue and Marty Fladell Drive. Mr. Dorling stated this is a former site of an automobile salvage/junk yard called Genco Auto Salvage (a non-conforming use). This is a 2.65 acre site and the non-conforming use vacated the site prior to February 2009. There has been some ongoing environmental cleanup which has been imposed by Florida Department of Environmental Protection (FDEP) as a result of that previous use and that is being finalized at this time. The site was temporarily used by the adjacent roofing company also for overflow parking since February 2009. The new applicant who has been diligent in doing the clean up after he purchased the site now wishes to establish towing service with that outside storage component.

At its meeting of November 15, 2010, this proposal went before the Planning and Zoning Board and was recommended for approval with a 4 to 0 vote subject to some conditions and those conditions include: (1) that a specific site plan be submitted, landscape plan and some site upgrades as well as some architectural elevation improvements to the existing building." Mr. Dorling stated to assure that this use does not mimic the prior non-conforming junk yard use, there are three (3) conditions that are in the staff report that have also been added. Those are: "that the site shall not exceed 200 stored vehicles at any one time" and "that all vehicles shall be parked in a conventional manner and not be stacked" and "that no vehicles shall be stored on site for longer than 90 days except as required by law for vehicles being stored longer than 90 days." He stated those three components will assure that it remains a towing service and not a junk yard service. Also, Mr. Dorling stated one of the conditions in the Planning and Zoning staff report is "that there be no sale of parts to the public on the site." Mr. Dorling stated the conditions also listed in the Planning and Zoning staff report include a Hold Harmless Agreement for landscaping to be placed in the public right-of-way along Marty Fladell Drive and N.W. 18<sup>th</sup> Avenue. Staff recommends approval at this time subject to the conditions listed on page nine (9) of the Planning and Zoning staff report.

The applicant was not present.

There was no cross-examination or rebuttal.

Mayor McDuffie stated if anyone from the public would like to speak in favor or in opposition of the conditional use request, to please come forward at this time. There being no one from the public who wished to address the Commission regarding the conditional use request, the public hearing was closed.

The City Attorney briefly reviewed the Board Order with the Commission who made findings according to their consensus (attached hereto is a copy and made an official part of the minutes).

Mr. Eliopoulos moved to adopt the Board Order (approving the conditional use request), seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

**9.B. SPECIAL EVENT REQUEST/CARNEVALE OF DELRAY BEACH:** Consider a special event request from Joe LaViola, a private promoter, for a first time event, Carnevale of Delray Beach, an Italian Festival, proposed to be held on the grounds of Old School Square and Old School Square Park on March 25-26, 2011 from noon to 11:00 p.m., and March 27, 2011 from noon to 10:00 p.m.; and to approve staff support for security, trash removal, cleanup assistance, trash boxes, EMS assistance and allow event signage to be put up fourteen (14) days prior to the event; contingent upon conditions listed in the staff report.

Robert A. Barcinski, Assistant City Manager, stated this item is for the Commission to consider approval of a first time event which is proposed to be held on the grounds of Old School Square in the Old School Square Park on March 25-26, 2011 from noon to 11:00 p.m., and March 27, 2011 from noon to 10:00 p.m. The event sponsor is Mr. Joe LaViola, a private promoter, who is also requesting staff assistance for security, trash removal, cleanup assistance, trash boxes and event signage. Mr. Barcinski stated although the event sponsor did not request EMS assistance, staff feels because of the size of the crowd, that EMS assistance is needed on-site as well as an inspector for the food. In addition, staff recommends the following conditions: (1) Receipt of a signed rental agreement with Old School Square by December 31, 2010, (2) Receipt of a signed rental agreement for Old School Square Park by December 31, 2010, (3) Receipt of a non-refundable security deposit in the amount of \$2,000.00 by December 31, 2010 since this a new event and the security deposit to be applied to the final bill, (4) Receipt of the Certificate of Event Liability Insurance, Alcohol Liability Insurance and Hold Harmless Agreement by March 4, 2011, and (5) Approval of private security plan by our Police Department. Mr. Barcinski stated the estimated overtime costs for this event are \$14,800, trash boxes \$245 and signage \$250 for a total estimated cost of \$15,295.

Mrs. Gray moved to approve the Special Event request for Carnevale of Delray Beach subject to the conditions as stated by Mr. Barcinski, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

**9.C. CONSULTING SERVICE AUTHORIZATION/CURRIE SOWARDS AGUILA ARCHITECTS:** Consider approval of a Consulting Service Authorization with Currie Sowards Aguila Architects in the amount of \$25,250.00 for professional design services for the first phase of rehabilitation of the Pompey Park Concession Stand Building. Funding is available from 334-4127-572-62.10 (General Construction Fund: Buildings).

Richard Hasko, Director of Environmental Services, stated this item is for consideration of a proposal from Currie Sowards Aguila Architects for the preparation of construction documents, acquisition of permits and construction administration for a first phase of the renovation/rehabilitation for the concession press box building at Pompey Park. Mr. Hasko stated the original project was a rehab of the entire facility and there was a budget established of a little over \$218,000 in the CIP (Capital Improvement Program) this year. He stated as the programming of the building proceeded and as far as the rehab the parameters were modified to come more in line with the usage of the building, the cost of that rehab increased.

Mr. Eliopoulos stated he is good with the fee and likes the design. With regard to the design, Mr. Eliopoulos stated he realizes that the elevator and stairs is Phase II; however, if the architect does the extension on the upstairs storage they have an opportunity to extend the new press box and bring it underneath the tower so that there is a covered area for the elevator.

**José Aguila, Architect with Currie Sowards Aguila Architects, 134 N.E. 1<sup>st</sup> Avenue, Delray Beach, FL 33444,** distributed the existing plans of what was built.

Mr. Eliopoulos stated Mr. Aguila may want to reconsider where the entrances are to these bathrooms. Mr. Eliopoulos stated it is not exactly the best situation when you are in a bathroom and you have to go back further into the bathroom to wash your hands when you are leaving. Mr. Eliopoulos confirmed that this is a concrete roof and stated during Phase I when redoing the bathrooms have their engineer take consideration into Phase II so that should Phase II happen with the upstairs, the existing deck can handle the load so it would not affect anything in Phase I which would be the bathrooms downstairs.

Mr. Hasko stated this is how staff typically handles the contracts and payments with all the consultants because the contracts are all generic in terms of those payment schedules whether it is an architectural project like this or whether it is an

underground pipeline infrastructure project assuming that the timeframe is more than 30 days for completion.

Mrs. Gray stated earlier today she asked Linda Karch to call the Community Redevelopment Agency (CRA) with possibly adding funds to this project and requested that she share with everyone what was said on that call.

Linda Karch, Director of Parks and Recreation, stated she spoke to Diane Colonna from the CRA who informed her that in their plan they have \$200,000.00 budgeted for parks in the Southwest neighborhood. Mrs. Karch stated it would have to be approved by their Board; they could have a plan amendment and a budget amendment to transfer that money to put towards the Northwest Neighborhood Park which would be Pompey Park. Mrs. Karch stated Ms. Colonna stated in order for something like that to occur, it would have to come from the Commission as direction. Mrs. Gray stated she would like the Commission to consider this and give direction to staff so that Mrs. Karch can go back and talk to the CRA about it. It was the consensus of the City Commission to direct Mrs. Karch to go back and talk to the CRA about it. Mrs. Gray asked when this project will start and end. Mrs. Karch stated she spoke to Mr. Hasko and since the season is from March-June they figured after the baseball season would be the best time to begin this project (June/July).

Mayor McDuffie stated staff would actually be budgeting for Phase II while this is being built.

Mrs. Gray asked if staff would be able to come up with the \$60,000.00 that would be needed to complete the project. The City Manager stated staff will need to work on that to see if there is something else they can move around to free up some money.

Mr. Hasko stated staff recommends that the Commission approve this first phase so that Mr. Aguila can work on it knowing that we have the funding to fill that and staff will immediately start to work with the CRA to see if they will provide the supplemental funding.

Mr. Frankel asked how the price increased from \$218,500.00 to \$442,000.00. Mr. Hasko stated the initial planning effort on this started in August and staff was well into the CIP process at that time and believes the \$218,500.00 was predicated on a basic number that would handle basic rehabilitation of the restrooms and kitchen area, etc. Mr. Hasko stated as discussions proceeded about the programming and what would be beneficial to address the press box in terms of its enlargement to get the ability to handle meetings that started to come together.

Mr. Eliopoulos asked if the meeting space is necessary when Pompey Park is right there and stated we could tailor the scope down in order to not have to worry about \$60,000.00. Mrs. Gray stated the parents meet at Pompey Park and sometimes the

meeting areas in Pompey Park have been filled on the same nights. Mrs. Karch stated the parents actually wanted a larger room upstairs.

Mrs. Gray moved to approve the Consulting Service Authorization with Currie Sowards Aguila Architects and that the contractor work with staff in order to develop a more specific scope of work for Phase I, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

**9.D. APPOINTMENT TO THE EDUCATION BOARD:** Appoint one (1) regular member to the Education Board to serve an unexpired term ending July 31, 2011. Based upon the rotation system, the appointment will be made by Commissioner Gray (Seat #4).

Mrs. Gray moved to appoint Myra Leavy Bazemore as a regular member to the Education Board to serve an unexpired term ending July 31, 2011, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

**9.E. APPOINTMENT TO THE FINANCIAL REVIEW BOARD:** Appoint one (1) alternate member to the Financial Review Board to serve an unexpired term ending July 31, 2011. Based upon the rotation system, the appointment will be made by Commissioner Frankel (Seat #3).

Mr. Frankel stated he would like to defer his appointment to the next regular meeting of December 14, 2010.

**10. PUBLIC HEARINGS:**

A. None

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

None.

**11.B. From the Public.**

None.

At this point, the time being 6:35 p.m., the Commission moved to **Item 12, First Readings.**

**12.**            **FIRST READINGS:**

**12.A.**            **ORDINANCE NO. 44-10:** An ordinance amending Chapter 112 "Alarm Systems", of the Code of Ordinances. If passed, a public hearing will be held on January 4, 2011.

The caption of Ordinance No. 44-10 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 112, "ALARM SYSTEMS", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, BY AMENDING SECTION 112.03, "DEFINITIONS", AMENDING CERTAIN DEFINITIONS; AMENDING SECTION 112.04, "PROHIBITION", TO PROVIDE AN ADDITIONAL PROHIBITION; REPEALING SECTION 112.20, "ALARM REGISTRATION REQUIRED; FEE; TERM OF REGISTRATION; NON TRANSFERABLE" IN ITS ENTIRETY; BY AMENDING SECTION 112.21, "APPLICATION FOR ALARM REGISTRATION; REPORTING CHANGES TO REQUIRED INFORMATION", TO PROVIDE INCREASED FINE AMOUNTS AND TO REQUIRE THAT APARTMENT COMPLEX OWNERS/PROPERTY MANAGERS MUST OBTAIN ALARM PERMITS FOR EACH UNIT AND RENUMBERING; ENACTING A NEW SECTION 112.21, "APPLICATION FOR ALARM REGISTRATION; REPORTING CHANGES TO REQUIRED INFORMATION; RENEWAL", TO PROVIDE FOR ANNUAL RENEWALS; REPEALING SECTION 112.22, "DUTY OF PERSON NOTIFIED TO PROVIDE ACCESS TO PREMISES, RENDER ASSISTANCE" IN ITS ENTIRETY AND ENACTING A NEW SECTION 112.22, "MONITORING REQUIRED", TO PROVIDE MONITORING REQUIREMENTS; AMENDING SECTION 112.23, "ISSUANCE OF ALARM REGISTRATION; DECAL REQUIRED" TO PROVIDE ADDITIONAL CRITERIA FOR DENIAL OF ALARM PERMITS; AMENDING SECTIONS 112.26, "VERIFICATION OF ALARM; REQUIRED RESPONSE TO ALARM; ALARM USER RESPONSIBILITY; ALARM MALFUNCTION AND CORRECTIVE ACTION", AND 112.27, "MULTIPLE ALARM MAL-

FUNCTIONS OR FALSE ALARMS DECLARED A PUBLIC NUISANCE; FEE CHARGES", TO PROVIDE GRADUATED FINES AND COURT COSTS FOR COLLECTION OF UNPAID FINES; AMENDING SECTION 112.28, "LIMITED RESPONSE", TO PROVIDE FOR LIMITED RESPONSE FOR FALSE ALARMS, OVERDUE FEES AND FAILURE TO REGISTER; REPEALING SECTION 112.29, "APPEAL", AND ENACTING A NEW SECTION 112.29, "APPEAL OF RESPONSE FEE AND APPEAL OF LIMITED RESPONSE STATUS"; TO PROVIDE FOR LIMITED RESPONSE AND APPEAL OF SAME; REPEALING SECTIONS 112.30, "RESERVED", 112.31, "RESERVED", AND 112.32, "NEWLY INSTALLED ALARM SYSTEMS" IN THEIR ENTIRETY; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 44-10 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Lula Butler, Director of Community Improvement, commended staff from Police, Fire, Finance, and Community Improvement for working on this ordinance. Mrs. Butler stated staff proposes a \$25.00 registration fee and an annual renewal fee of \$30.00.

Mr. Fetzer stated he is in favor of this in concept and noted the big change in his mind is that we are going to be asking for an annual renewal fee which we have never done before and asked how staff is going to get the word out on that. Mrs. Butler stated the renewal process will start in April and notices will start to go out in February and then staff will do a follow up. She stated the first year staff gives a grace period and will give 60 days to renew and honor it up to 90 days. Mr. Fetzer asked if someone has a registered alarm with the City now and they do not re-register, what happens when there is a call. Mrs. Butler stated if someone does not re-register and their information is not up-to-date they could end up being on limited response if they do not pay the required fines; if someone has an existing alarm system they do not have to re-register they would just pay the annual renewal fee. Mr. Fetzer asked if someone does not do the renewal what happens if there is a call. Mrs. Butler stated the Police will respond but if there is a false alarm you get the first three at no extra penalty but the fourth false alarm is a \$100.00 fee and if this is not paid then one is subject to limited response.

The City Manager stated limited response requires verification that there is something really going on from the homeowner or the alarm company.

Mrs. Butler stated there will be a Police Officer present at the second reading of this ordinance (Tuesday, January 4, 2011) to give further explanation of the fees for false alarms.

Mayor McDuffie asked if it is three false alarms to someone who is registered and legal or three false alarms to someone who is not registered or are we charging the registered person who has complied with our regulations the same amount of money for three false alarms that we are charging someone who is not registered at all. Mrs. Butler stated it starts off with someone who is not registered; if someone is registered then the City has their information and generally there is a contact person that staff can reach. Mrs. Butler stated false alarms are generally attributed to people who have not registered and the Police cannot contact anyone and the Police continue showing up at the house.

Mrs. Gray asked if this applies to businesses as well. Mrs. Butler stated this applies to businesses as well.

Mr. Eliopoulos moved to approve Ordinance No. 44-10 on FIRST Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

**12.B. ORDINANCE NO. 45-10:** Consider approval to amend Chapter 39, Section 39.01, "Service Charge for Returned Checks", to make this section consistent with Florida Statutes Section 166.251, "Service Fee for Dishonored Check". If passed, a public hearing will be held on January 4, 2011.

The caption of Ordinance No. 45-10 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 39, "RETURNED CHECK SERVICE CHARGE", OF THE CODE OF ORDINANCES BY AMENDING SECTION 39.01, "SERVICE CHARGE FOR RETURNED CHECKS", TO MAKE THIS SECTION CONSISTENT WITH FLORIDA STATUTES SECTION 166.251, PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 45-10 is on file in the City Clerk's

office.)

The City Attorney read the caption of the ordinance. The City Attorney stated the language in the Statute is much broader than what the language is in the ordinance and currently the City only addresses "returned checks" whereas staff has broadened the language to comply with State Statute to provide for other forms of payment other than checks such as credit cards, etc. The City Attorney stated when that has been dishonored then this would allow the City to have a charge for that.

Mr. Frankel moved to approve Ordinance No. 45-10 on FIRST Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 6:47 p.m., the City Manager stated in response to an earlier question on how someone gets limited responses is outlined on page 10, Section 112.28(B)(1), (2), and (3) of the ordinance: "The alarm system may be placed on limited response for any one of the following occurrences: (1) Alarm systems with six (6) or more false alarms, and corrective action prescribed by the Alarm Coordinator has not been completed; or (2) The alarm user has response fees which are overdue for sixty (60) or more calendar days; or (3) the alarm system is unregistered and the applicant has not registered or obtained a permit within thirty (30) calendar days after notification. The City Manager also referred to Section 112.28(C) which states: "Prior to being placed on limited response, except for an unregistered system, the alarm user shall be notified in writing with the date specific as to when the alarm system shall be placed on limited response. The Alarm Coordinator shall send out notice by certified mail to the alarm user. Any unregistered system shall be automatically placed on limited response, if the applicant has not registered within thirty (30) calendar days of notification, until such time that the alarm system is registered with the City."

Mr. Fetzer stated he feels that needs to be part of our informing the public on what this is all about. He stated he is not sure if he would have a high priority of re-registering his alarm unless he knew what the consequences were.

At this point, the time being 6:50 p.m., the Commission moved to **Item 13, Comments and Inquiries on Non-Agenda Items from the City Manager, the City Attorney, and the City Commission.**

**13.            COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.**

**13.A.        City Manager**

With regard to a comment expressed by Commissioner Eliopoulos at the November 16, 2010 City Commission meeting, regarding restaurants, bars, and the regulations for those, the City Manager stated Community Improvement is working with the Police Department and they are conducting an investigation of the downtown area

that will take approximately two weeks to complete and they will also work with the Bureau of Alcohol, Tobacco, and Firearms (ATF) during this investigation. The City Manager stated staff will give the Commission a report the first week of January after they finish their analysis.

Secondly, the City Manager asked Mr. Dorling to give a report about his meeting with the Segway representative today. Mr. Dorling stated he and Mrs. Butler met with him and he is processing an LDR amendment that will propose to accommodate Segway Tours and that tour operation is different from sale and rental of Segway's or mopeds. Mr. Dorling stated that would add that as a use within the CBD (Central Business District) and modify the special regulations section of the LDRs to say that in doing so things like the potential routes need to be reviewed by the City as part of that process and there be restriction with respect to the number of tours that can be offered and the number of people that can be within it. Mr. Dorling stated he is really modifying his to be very specific which is a little different from the overall issue of rental and sales of segways and mopeds. Mr. Dorling stated staff is meeting with the representative and their attorney for the electrical experience across from the Seagate tomorrow and they will be discussing the general category of sale and rental.

Mr. Fetzer asked what the process is as far as this going before any other boards. Mr. Dorling stated this would go to the Planning and Zoning Board for their recommendation then it would come before the City Commission. Mr. Fetzer asked if the Commission approves this is it for that one specific location or does this change the LDR totally. Mr. Dorling stated staff's desire would be that it would apply to more than one user. Therefore, Mr. Dorling stated staff will try to generalize it for the general category of anybody offering tours. Mr. Fetzer stated there is a big push from some businesses to have electric scooters which are not segways but are electric vehicles and asked if staff is recommending a separate text amendment. Mr. Dorling stated he is not aware that these people are interested in providing supervised tours; if they are interested in doing that it could be included under that category. Mr. Dorling stated if they are interested in renting or selling these vehicles then that is a different category which staff will address with the user tomorrow. Mr. Fetzer stated there is one other electric scooter business that has approached him that has wanted to follow the rules and not put banners up and open a business up without the proper occupational licenses and would like to make sure that they are receiving equal treatment and cooperation from the city under this process. Mr. Dorling stated staff is advising all such users that we are going through this process and they will be treated similarly. Mr. Dorling stated there are two specific arguments about the sale of the vehicles and whether these are in fact vehicles and whether they should or should not be allowed in the CBD which is a different use than the rental of them. The LDRs is specific now in the CBD and deals with rental of sporting equipment and bicycles but that rental excludes motorized vehicles so it is not allowed and to allow any rental of those sorts of vehicles would have to be added as a specific item. Mr. Dorling stated with the non-motorized bicycle sales and sporting good sales there are several special regulations including a separation between the uses to make sure that we do not get a whole conglomeration of them in one portion of the city

and there would be similar recommendations going forward if this use is accepted he would put that forth as staff's recommendation. Mr. Fetzer stated he wants to make sure that we are consistent in dealing with all these individual businesses.

Mrs. Gray asked where they would actually be riding a segway. Mr. Dorling stated in discussions with the representative today he acknowledges that he has no desire and we have no desire to have that sort of use going up and down Atlantic Avenue. Mr. Dorling stated he is now interested in running tours in the Lake Ida neighborhood and some of the areas east of the bridge. Mr. Dorling stated he has acknowledged and agrees that this sort of activity is not appropriate on Atlantic Avenue and this would also be part of those special regulations that staff tweaked with him this afternoon.

Mayor McDuffie asked if the segways are street legal. The City Attorney stated they are allowed on certain roads because there is a specific section of the Statute that if it is under 25 mph they can go in bicycle lanes and on a street; they can go on sidewalks if they yield to pedestrian traffic.

Mrs. Gray asked if people are going to be trained first on how to ride a segway. Mr. Dorling stated this tour operator does not have any interest in letting a layman come in and rent a segway and go off on his own; he would do supervised tours and part of that tour package is orientation on proper operation of the vehicle and he does that before each one of these tours.

Mr. Fetzer stated we need to have some understanding with the Chamber before we have a Grand Opening that there is an approved business there. He stated he would like some kind of communication between the City and the Chamber to agree to that.

The City Manager stated that issue has already been discussed by the Chamber Board and going forward they are going to be sure that the business is legitimate before they have a Grand Opening.

**13.B.**            **City Attorney**

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

**13.C.**            **City Commission**

**13.C.1.**         **Mr. Fetzer**

Mr. Fetzer complimented City staff on the latest Hometown Connection issue and thought it was a very concise summary of the City's budget.

**13.C.2.**      **Mr. Eliopoulos**

Mr. Eliopoulos stated Cason Methodist Church owns some homes in Lake Ida and it appears that they are feeding the homeless and the homeless are going over to Cornell Park and going back and forth to a house. Mr. Eliopoulos stated he understands it is cold but he does not think the intent is to have food being distributed in private neighborhoods.

Secondly, Mr. Eliopoulos stated this past week was the Grand Opening for Deck 84 and it was great.

Mr. Eliopoulos commented about the downtown signage and stated Tony's sandwich sign is an A-frame type signage with boars head on it. Mr. Eliopoulos stated Tony's feels like they are competing against Subway. The City Manager stated the conclusion so far is that they are not violating any of the regulations so long as they do not obstruct the sidewalk. The City Attorney stated a lot of this will be on a case-by-case basis. Mr. Eliopoulos stated Sazio's actually has their signage shining on a building and he likes this for creativity but asked if staff could look into this to see if this is allowed.

Mr. Eliopoulos stated he and Commissioner Gray were at Old School Square this week for the Levitt Pavilions and it is about an organization that comes to town and if it can be worked out with the City they help build a pavilion. He stated they must have 50 free concerts a year; ten of the concerts are catered toward children. Mr. Eliopoulos stated this is something for the City to consider.

Mr. Eliopoulos commented about the tree lighting and the Menorah lighting last week. He also stated Project Holiday went great and as something to consider for next year, it appears Delores Rangel could use the whole gymnasium for the event at the Community Center because you had to go into other rooms to circulate the boxes. Mr. Eliopoulos asked the Commission to consider opening up the gym for that day for Project Holiday. The City Manager stated a church has it rented for now. Mr. Frankel stated it got a little better in the later afternoon and then Project Holiday had the entire gym.

Mr. Eliopoulos stated Thanksgiving at Pompey Park was a great event. Mr. Eliopoulos asked about the money from the Turkey Trot and stated in the future should this event keep going on, he believes that event should acknowledge the City and the Parks and Recreation Department for what they do. Mr. Eliopoulos stated they did not give out the money during the presentation. The City Manager stated there is an issue and Linda Karch raised the question do we want to continue working with the Keith Straghn Foundation or deal with someone else like the Caring Kitchen because the Foundation were supposed to help provide staff for the Turkey Trot and that did not happen and then they misinformed the City about when to have the check clear. The City Manager stated there were some problems this year. Mr. Eliopoulos stated in the past the

City has had staff there and were always part of the entire presentation and he would like to see it go back to that.

Mr. Eliopoulos apologized for not being present at the Special Meeting on Tuesday, November 30, 2010 and stated he made a previous commitment to speak at an HOA meeting at Chuck Halberg's house and talk about politics in general of where the City is going and how the future is going to be especially with the economy.

Lastly, Mr. Eliopoulos announced that he will not be running for re-election in March 2011.

**13.C.3.**      **Mrs. Gray**

Mrs. Gray commented about the Levitt Pavilion and stated it was a great presentation. Mrs. Gray stated she would like to see how the City can move forward and be partners and she feels the 50 free extra concerts is wonderful. She stated with having staff on the Board she does not feel this will be a big issue because they will work around what we have planned.

Secondly, Mrs. Gray stated she attended the Village Academy Career Day and the youth were very inquisitive and had lots of questions. She stated she played both business owner and Deputy Vice Mayor and this was very exciting.

Mrs. Gray stated last Friday at Atlantic Community High School Shaq O'Neal's mom was there. Mrs. Gray stated Ms. O'Neal wrote a book and she was inspiring the kids with her book.

She stated on 5<sup>th</sup> Avenue the wreaths are not lit and asked if someone can check these lights. Mr. Barcinski stated staff will have to contact the installer to check out the lights because those were contracted by the DDA.

Mrs. Gray reminded everyone that on Thursday, December 9, 2010, there is a Minority Contractor/Vendors Workshop at 6:00 p.m.

**13.C.4.**      **Mr. Frankel**

Mr. Frankel complimented and recognized Mr. Robert Barcinski and staff for their efforts with the Menorah Celebration last week. Mr. Frankel also recognized Dr. Andre Fladell for the donation of the Menorah and others who participated in the planning of the program such as former Mayor Jeff Perlman as well as Greg Weiss and Nick Sadowsky who helped him on the second day. Mr. Frankel commented about the Holiday Celebration held on Thursday, December 2, 2010, in coordination with Jazz on the Avenue and he commended Sarah Martin and the volunteers for putting on an amazing program.

**13.C.5.      Mayor McDuffie**

Mayor McDuffie stated Deck 84 is an incredible addition to Atlantic Avenue and what they have done with this restaurant is magnificent.

Secondly, Mayor McDuffie stated the Menorah and the Christmas tree lightings were great. He stated the Holiday Celebration was a tremendously run event and was well attended.

Mayor McDuffie stated he will play tomorrow night at the Chamber Holiday Party at Crane's Beach House in Delray Beach.

Mayor McDuffie stated some people came to him a while ago with an idea and he has had the opportunity to meet with them and the staff of Old School Square and they want to have an event in Old School Square called "Delray Has Talent". Mayor McDuffie stated the date chosen for the event is March 10, 2011 and they want all the money that they raise to go to the City and for it to be dedicated to the Beach Master Plan. He stated right now they have some good ideas of how they are going to raise \$30,000.00 in this event.

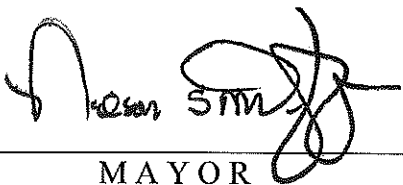
The City Clerk noted that on March 10, 2011 the Commission will have a Special Election where they will have to certify the election results which is normally held at 6:00 p.m.; however, she can see if this can be held earlier if need be.

Lastly, Mayor McDuffie gave a special thanks to CBS Channel 12 Susan Boyd for the use of the helicopter for Santa and for the great coverage of the Holiday Celebration.

There being no further business, Mayor McDuffie declared the meeting adjourned at 7:23 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 December 7, 2010, which Minutes were formally approved and adopted by the City Commission on January 4, 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.



IN THE CITY COMMISSION  
CHAMBERS OF THE CITY OF  
DELRAY BEACH, FLORIDA

**CONDITIONAL USE REQUEST FOR TOTTERDALE TOWING SERVICE**

**ORDER OF THE CITY COMMISSION  
OF THE CITY OF DELRAY BEACH, FLORIDA**

1. This conditional use request has come before the City Commission on December 7, 2010. The conditional use request is to establish a Towing Service at 101 NW 18<sup>th</sup> Avenue with outside storage within the MIC (Mixed Industrial Commercial District).

2. The City staff, applicant, and other persons have presented documentary evidence and testimony to the City Commission pertaining to the conditional use request of Totterdale Towing Service. All of the evidence is a part of the record in this case. Required findings are made in Sections I and II below.

**I. COMPREHENSIVE PLAN**

A. **Future Land Use Map:** The subject property has a CMR (Commerce) Future Land Use Map (FLUM) designation and is zoned MIC (Mixed Industrial and Commercial). The MIC zoning is consistent with the CMR land use designation. The proposal is to establish the Totterdale Towing Service with outside storage facility. Pursuant to LDR Section 4.4.19(D)(2)(f), within the MIC zone district towing services, with outside storage is listed as a conditional use in the MIC district. Based upon the above, a positive finding can be made with respect to consistency with the Future Land Use Map designation.

**Are the requirements of the Future Land Use Map met?**

Yes   ✓   No           

B. **Concurrency:** Objective B-2 of the Land Use Element of the Comprehensive Plan requires that development not exceed the ability of the City to fund and provide, or to require the provision of, needed capital improvements.

**Are the concurrency requirements met with respect to water, sewer, drainage, streets and traffic, parks, open space, solid waste and schools?**

Yes  No

C. **Consistency:** A finding of overall consistency must be made with regard to the following:

1. **Future Land Use Objective A-1.** Property shall be developed or redeveloped, in a manner so that the future use, intensity and density are appropriate in terms of soil, topographic, and other applicable physical considerations; encourage affordable goods and services; are complementary to and compatible with adjacent land uses and fulfill remaining land use needs.
2. **Future Land Use Element – Policy A.2.3.** Development of remaining vacant properties shall occur in a manner which is consistent with and complementary to adjacent development regardless of zoning designations. This policy shall be implemented through the review process associated with platting and site plans.

**Are the consistency requirements met such that the proposed project is complementary to and compatible with adjacent land uses and the beneficial aspects of the project outweigh the negative impact of identified points of conflict?**

Yes  No

## II. LDR REQUIREMENTS

A. **Section 2.4.5(E)(5) requires certain findings:** The conditional use will not:

1. Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;
2. Hinder development or redevelopment of nearby properties.

**Will Section 2.4.5(E)(5) be met?**

Yes  No

B. Pursuant to Section 4.4.19(D)(2)(f), towing services is allowed as a conditional use in the MIC Zoning District subject to the following requirements:

1. **LDR Section 4.6.9 (Parking):** Pursuant to Section 4.6.9(C)(5)(a), general industrial uses shall provide parking at the rate of 3 spaces per 1,000 sq. ft. of gross floor area devoted to such uses. In addition, one (1) space shall be provided for each 1,000 sq. ft. of

gross floor area devoted to inside storage and warehouse use. No floor area is proposed for storage and warehouse use, and thus, the required parking for the subject property is 14 parking spaces (4,716 x 3/1,000 = 14.1) and 23 spaces are being provided.

**Has this requirement been met?**

Yes  No

2. **Handicap Accessible Parking:** Pursuant to LDR Section 4.6.9(C)(1)(b), special parking spaces designed for use by the handicapped shall be provided pursuant to the provisions of Florida Accessibility Code for Building Construction. The Florida Accessibility Code for Building Construction and Federal ADA requires 1 ADA compliant space per 25 spaces up to the first 100 spaces plus an additional space per each 50 spaces up to 200. The existing development currently provides 23 regular parking spaces with 1 handicap parking space.

**Has this requirement been met?**

Yes  No

3. **LDR Section 4.3.4(K) – Development Standards Matrix:**

		<b><u>Required:</u></b>	<b><u>Provided:</u></b>
<b><u>Building Setbacks (min.):</u></b>	Front (South)	25'	58'
	Rear (East)	10'	10'
	Side Street (West)	25'	200'
	Side interior(North)	10'	215'
<b><u>Building Height:</u></b>		35'	N/A
<b><u>Open Space:</u></b>		25%	26.09%

**Have these requirements been met?**

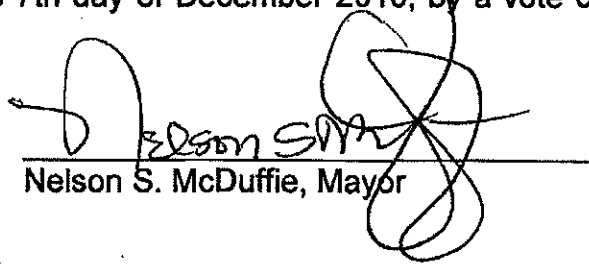
Yes  No

3. The City Commission has applied the Comprehensive Plan and LDR requirements in existence at the time the conditional use application was submitted.


4. The City Commission finds there is ample and competent substantial evidence to support its findings in the record submitted and adopts the facts contained

in the record including but not limited to the staff reports and testimony of witnesses supporting these findings.

5. Based on the entire record before it, the City Commission approves ✓ denies     the conditional use application subject to the conditions attached hereto in Exhibit "A" and hereby adopts this Order this 7th day of December 2010, by a vote of    5    in favor and    0    opposed.

  
\_\_\_\_\_  
Nelson S. McDuffie, Mayor

ATTEST:

  
\_\_\_\_\_  
Chevelle Nubin  
City Clerk

## **EXHIBIT "A"**

### **Conditions Related to Totterdale Towing Conditional Use**

1. That a site plan modification be processed to accommodate all LDR conditions identified in this report. These include but are not limited to:
  - Parking lot details including but not limited to appropriate landscape islands, required wheel stops, and dimension of parking spaces, drive aisles, dead end turnaround areas, etc.
  - Provision of a landscape plan;
  - Provision of required open space and submittal of a sketch showing all areas so delineated;
  - Dumpster details;
  - Internal sidewalk connections;
  - Provision of external sidewalks or the granting of appropriate relief;
  - Provision of total capacity of industrial storage areas based on 9' x 18' dimensions;
  - Dedication of right-of-way for NW 1<sup>st</sup> Street and NW 18<sup>th</sup> Avenue
2. That the use be subject to the following parameters:
  - That the site shall not exceed 200 stored vehicles at any one time;
  - That all vehicles shall be parked in a conventional manner and not be stacked;
  - No vehicles shall be stored on site for longer than 90 days except as required by law for vehicles stored longer than 90 days (this will exclude vehicles necessary to run the business);
  - That there shall be no sale or harvesting of parts to or by the general public;
3. That the existing office building associated with the towing service receive Site Plan Review and Appearance Board (SPRAB) approval with regard to architectural elevations.
4. That a Hold Harmless agreement shall be required if any landscape material is planted on the public right-of-way along NW 1<sup>st</sup> Street and NW 18<sup>th</sup> Avenue. The Hold Harmless agreement must be signed with the City of Delray Beach before Site Plan certification.
5. The removal of the reference to a (20,000) future building as no details or review for compliance has been undertaken as part of this review.

