

# City of Delray Beach

## Regular Commission Meeting



### RULES FOR PUBLIC PARTICIPATION

Tuesday, December 6, 2011

Regular Meeting 6:00 p.m.  
Public Hearings 7:00 p.m.  
Commission Chambers  
Delray Beach City Hall

**1. PUBLIC COMMENT:** The public is encouraged to offer comments with the order of presentation being as follows: City Staff, public comments, Commission discussion and official action. City Commission meetings are business meetings and the right to limit discussion rests with the Commission. **Generally, remarks by an individual will be limited to three minutes or less.** The Mayor or presiding officer has discretion to adjust the amount of time allocated.

- A.** Public Hearings: Any citizen is entitled to speak on items under this section.
- B.** Comments and Inquiries on Non-Agenda Items from the Public: Any citizen is entitled to be heard concerning any matter within the scope of jurisdiction of the Commission under this section. The Commission may withhold comment or direct the City Manager to take action on requests or comments.
- C.** Regular Agenda and First Reading Items: Public input on agendaed items, other than those that are specifically set for a formal public hearing, shall be allowed when agreed by consensus of the City Commission.

**2. SIGN IN SHEET:** Prior to the start of the Commission Meeting, individuals wishing to address public hearing or non-agendaed items should sign in on the sheet located on the right side of the dais. If you are not able to do so prior to the start of the meeting, you may still address the Commission on an appropriate item. The primary purpose of the sign-in sheet is to assist staff with record keeping. Therefore, when you come up to the podium to speak, please complete the sign-in sheet if you have not already done so.

**3. ADDRESSING THE COMMISSION:** At the appropriate time, please step up to the podium and state your name and address for the record. All comments must be addressed to the Commission as a body and not to individuals. Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Commission shall be barred by the presiding officer from speaking further, unless permission to continue or again address the Commission is granted by a majority vote of the Commission members present.

### APPELLATE PROCEDURES

Please be advised that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record includes the testimony and evidence upon which the appeal is based. The City neither provides nor prepares such record.

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The City will furnish auxiliary aids and services to afford an individual with a disability an opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by the City. Contact Doug Smith at 243-7010, 24 hours prior to the event in order for the City to accommodate your request. Adaptive listening devices are available for meetings in the Commission Chambers.

1. **ROLL CALL.**
2. **INVOCATION.**
3. **PLEDGE OF ALLEGIANCE TO THE FLAG.**
4. **AGENDA APPROVAL.**
5. **APPROVAL OF MINUTES:**
  - A. November 15, 2011 – Regular Meeting
6. **PROCLAMATIONS:**
  - A. None
7. **PRESENTATIONS:**
  - A. Florida City Government Month at Carver Morning Program
  - B. Lake Worth Drainage District (LWDD) recognizes and commends the City of Delray Beach on their 100<sup>th</sup> Anniversary – Ronald Crone
  - C. Chief’s Achievement Award – Chief Anthony Strianese
  - D. Downtown Development Authority (DDA) Marketing Summary Plan – Marjorie Ferrer
8. **CONSENT AGENDA:** City Manager Recommends Approval.
  - A. **FINAL SUBDIVISION PLAT APPROVAL/OCEAN APPLE ESTATES PLAT TWO:** Approve the final plat for a 1.52 acre three (3) lot, single-family subdivision known as Ocean Apple Estates Plat Two.
  - B. **ACCEPTANCE OF A WATER UTILITY EASEMENT DEED/LINTON DELRAY, LLC.:** Approve and accept a water utility easement deed with Linton Delray, LLC. for the adjacent development to be known as Franklin at Delray Beach which is located at 1030 S. Federal Highway.
  - C. **REQUEST FOR SIDEWALK DEFERRAL/1011 BUCIDA ROAD:** Approve a request to defer the installation of a sidewalk along Bucida Road for property located at 1011 Bucida Road.

- D. **CONTRACT ADDITION (CHANGE ORDER NO. 1)/INTERCOUNTY ENGINEERING, INC.:** Approve a Contract Addition (Change Order No. 1) to Intercounty Engineering, Inc. in the amount of \$44,062.41, for water main replacement on Island Drive and swale improvements for Reclaimed Water System Area 11B. Funding is available from 442-5178-536-63.50 (Water & Sewer Renewal & Replacement Fund: Improvements Other/Water Main) and 448-5461-538-46.43 (Storm Water Utility Fund: Repair & Maintenance Service/Drainage Swales).
- E. **CONTRACT ADDITION (CHANGE ORDER NO. 3)/FOSTER MARINE CONTRACTORS, INC.:** Approve a Contract Addition (Change Order No. 3) to Foster Marine Contractors, Inc. in the amount of \$55,674.20, for the construction of additional parking for two (2) additional properties, quantity overrun for additional water service relocations and a contract time extension of twenty-three (23) days for the S.W. 12th Avenue/Auburn/S.W. 14th Avenue project. Funding is available from 334-3162-541-68.04 (General Construction Fund: Other Improvement/S.W. 12th Avenue/Auburn/ S.W. 14th Avenue) and 442-5178-536-49.33 (Water/Sewer Renewal & Replacement Fund/Other).
- F. **PROFESSIONAL SERVICES VENDOR LIST/NEIGHBORHOOD STABILIZATION PROGRAM (NSP):** Approve the list of vendors for Professional Services required to carry out activities under the Neighborhood Stabilization Program (NSP) contingent on the list being approved by the Florida Department of Community Affairs.
- G. **AGREEMENT/PALM BEACH COUNTY/DISASTER RECOVERY INITIATIVE (DRI2) PROGRAM:** Approve an agreement between the City and Palm Beach County for the Disaster Recovery Initiative (DRI2) Housing Rehabilitation Program to extend the deadline from September 16, 2011 through September 16, 2012.
- H. **WORKFORCE HOUSING COVENANT AGREEMENT/BAMFOUR, LLC./DKB REALTY INVESTMENT, INC./MATHIAS DEVELOPMENT, INC.:** Approve a Workforce Housing Covenant Agreement, as proposed between the City and Bamfour, LLC., DKB Realty Investment, Inc., and Mathias Development, Inc. for Midtown Delray.
- I. **REVISED WORKFORCE HOUSING COVENANT/FLORANDA MHP, LLC./ NEW CENTURY EXECUTIVE QUARTERS, LLC.:** Approve a revised Workforce Housing Covenant between the City of Delray Beach and the Floranda MHP, LLC and New Century Executive Quarters, pursuant to the requirements under Section 4.7 of the Land Development Regulations.

- J. **CHANGE FUNDING SOURCE FROM DISASTER RECOVERY INITIATIVE (DRI) TO STATE HOUSING INITIATIVE PARTNERSHIP (SHIP)/HOUSING REHABILITATION CONTRACT AWARD:** Approval to reallocate the funding source from Disaster Recovery Initiative (DRI) to State Housing Initiative Partnership (SHIP) for the Housing Rehabilitation contract award for 303 S.W. 2<sup>nd</sup> Avenue. Funding from 118-1924-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation) and 118-1960-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation).
- K. **AMENDMENT NO. 1 TO THE INTERLOCAL AGREEMENT FOR FUNDING OF TRANSIT INFRASTRUCTURE/PALM BEACH COUNTY:** Approve Amendment No. 1 to the Interlocal Agreement for Funding of Transit Infrastructure between Palm Beach County and the City of Delray Beach to increase the amount of the grant to install an additional bus shelter at the northeast corner of the S.W. 10th Street and Congress Avenue intersection.
- L. **CONSENT TO ASSIGNMENT/FAMILY CENTRAL, INC./EARLY LEARNING COALITION OF PALM BEACH COUNTY/SCHOOL READINESS CHILD CARE SERVICE AGREEMENT:** Approve a Consent to Assignment between Family Central, Inc., the Early Learning Coalition of Palm Beach County, and the City of Delray Beach for Pompey Park and the Delray Beach Community Center/School Readiness Child Care Service Agreements.
- M. **AMENDMENT NO. 2/SCHOOL READINESS CHILD CARE SERVICE AGREEMENT:** Approve Amendment No. 2 to the School Readiness Child Care Service Agreement between Family Central, Inc., the Early Learning Coalition and the City of Delray Beach to amend the term of the agreement and the termination provisions for the afterschool programs located at Pompey Park and Delray Beach Community Center.
- N. **CONSENT TO ASSIGNMENT/FAMILY CENTRAL, INC./EARLY LEARNING COALITION OF PALM BEACH COUNTY/AFTERSCHOOL PROGRAM SERVICE AGREEMENT:** Approve a Consent to Assignment Agreement between Family Central, Inc., the Early Learning Coalition of Palm Beach County and the City of Delray Beach for the Pompey Park and the Delray Beach Community Center/Afterschool Program Service Agreements to Accept Scholarships for School Age Children.
- O. **AMENDMENT NO. 3/AFTERSCHOOL PROGRAM SERVICE AGREEMENT:** Approve Amendment No. 3 to the Afterschool Program Service Agreement to Accept Scholarships for School Age Children between Family Central, Inc., the Early Learning Coalition and the City of Delray Beach to amend the term of the agreement and the termination provisions for the afterschool programs located at Pompey Park and Delray Beach Community Center.

- P. **TERMINATION OF DEDICATION OF PARKING AGREEMENT/PINEAPPLE GROVE PROPERTIES, LTD.:** Approve Termination of the Dedication of Parking Agreement with Pineapple Grove Properties, Ltd., for the twelve (12) spaces adjacent to N.E. 3rd Avenue and behind the Astor development, located on privately owned property.
- Q. **SETTLEMENT AGREEMENT/BANK OF AMERICA CORPORATION (BAC):** Approval to participate in a Settlement Agreement between Bank of America Corporation (BAC) and 28 State Attorneys General to resolve allegations that BAC engaged in violations of state and federal antitrust laws.
- R. **RESOLUTION NO. 54-11/INTERNET SALES TAX LOOPHOLE:** Approve Resolution No. 54-11 supporting action by Florida's Governor and State Legislature to close the internet sales tax loophole.
- S. **RESOLUTION NO. 57-11/POLICE OFFICER AND FIREFIGHTER PENSION PLAN:** Approve Resolution No. 57-11 supporting Police Officer and Firefighter Pension Plan and disability presumption reforms to make the plans sustainable, sound and secure for current and future police officers and firefighters.
- T. **RESOLUTION NO. 58-11:** Approve Resolution No. 58-11 authorizing the execution and delivery of a Master Lease Agreement Equipment Schedule No. 03 in the amount of \$825,000, and related instruments, and determining other matters in connection with this equipment lease. Schedule No. 03 is an amendment to an existing Master Lease agreement dated May 20, 2004 with SunTrust Leasing Corporation and will provide financing for the reimbursement of Public Safety hardware and software expenses totaling \$825,000 at a rate of 1.855% for an 84 month term. Terms of the amendment provide for payments to be made in arrears and a 1% penalty for pre-payment.
- U. **SPECIAL EVENT REQUEST/ON THE AVE:** Approve a special event request to endorse On the Ave to be held on January 19, 2011 from 6:30 p.m. to 10:30 p.m., to grant a temporary use permit per LDR Section 2.4.6(F) for the closure of Atlantic Avenue from Swinton to the west side of N.E./S.E. 6th Avenue, Railroad Avenue from Atlantic north to 150 feet north of the east/west alley, and to the alleys north and south of Atlantic on N.E./S.E. 1st Avenue, N.E./S.E. 2nd Avenue, S.E. 3rd Avenue, and N.E./S.E. 4th Avenue; to authorize staff support for security and traffic control, EMS assistance and fire inspection, barricade set up and removal, and trash removal and clean up.
- V. **REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period November 14, 2011 through December 2, 2011.

W. **AWARD OF BIDS AND CONTRACTS:**

1. Contract award to Intercounty Engineering, Inc. in the amount of \$16,610.00 for replacing large valves used at City's Water Treatment Plant, Filter #3. Funding is available from 442-5178-536-64.90 (Water & Sewer Renewal & Replacement Fund: Machinery; Equipment/Other Machinery/Equipment).
2. Bid award to Lake Worth Monument in the amount of \$2,100.00 for the purchase of a pink granite base for the Boy Scout sculpture. Funding is available from 115-1702-579-46.90 (Special Project Funds: Repair & Maintenance Service).
3. Purchase award to Systems Maintenance Services (SMS) in the amount of \$21,960.45 for twenty (20) processors and forty (40) memory module kits for server upgrades, including installation. Funding is available from 334-6111-519-64.11 (General Construction Fund: General Government Service/Machinery/Equipment/Computer Equipment).

9. **REGULAR AGENDA:**

- A. **WAIVER REQUEST/27-43 SOUTH SWINTON AVENUE:** Consider a request to waive Land Development Regulations (LDR) Section 4.5.1(E)(3)(a)1.c., "Appurtenances, Fences and Walls", to permit the location of a six foot (6') high wall within the side street setback for 27-43 South Swinton Avenue. *(Quasi-Judicial Hearing)*
- B. **WAIVER REQUESTS/104 S.E. 1ST AVENUE:** Consider waivers to Land Development Regulations (LDR) Section 4.6.9(F)(3)(d), "Special Provisions", which requires a drive aisle width of 24', by permitting a drive aisle width of 22'; and to Section 4.6.9(F)(3)(i), "Valet Parking", which requires a perimeter landscape buffer of 10', by permitting a landscape buffer that varies from 1'6" to 6'4" for the attendant off-site parcel located at 104 S.E. 1st Avenue. *(Quasi-Judicial Hearing)*
- C. **WAIVER REQUESTS/BOSTON'S RESTAURANT - PHASE I:** Consider approval of requests to waive Land Development Regulations (LDR) Section 4.6.16(H)(3), "New Multiple Family, Commercial and Industrial Development", subparagraph (i) to allow 62 sq. ft. where 75 sq. ft. of plantable area is required near the southwest corner of the site, and subparagraph (j) to allow no landscape islands where terminal landscape islands are required in four locations, in association with Phase I of Boston's Restaurant. *(Quasi-Judicial Hearing)*

- D. **WAIVER REQUESTS/BOSTON'S RESTAURANT - PHASE II:** Consider approval of three (3) waiver requests to Land Development Regulations (LDR) Section 4.4.13(F)(1)(a), "Height", Minimum Building Height to allow 14' where 25' is required, Land Development Regulations (LDR) Section 4.6.9(D)(3)(b), "Minimum Width", Minimum Drive Aisle Width to allow 22' where 24' is required and Land Development Regulations (LDR) Section 4.6.9(D)(3)(c)(1), "Stacking Distance", Minimum Stacking Distance to allow 27' where 50' is required, in association with Phase II of Boston's Restaurant which includes demolition and acquisition of adjacent hotel properties to provide additional on-site parking and new outdoor seating and dining areas. (*Quasi-Judicial Hearing*)
- E. **REVOCAION OF VALET PARKING LICENSE AGREEMENT WITH CUGINI GRILLE:** Consider approval to revoke the valet parking license agreement with Cugini Grille for the valet parking queue located on the south side of the 200 block of East Atlantic Avenue.
1. **PARKING LICENSE AGREEMENT FOR VIC & ANGELO'S:** Consider approval of a parking license agreement with Vic & Angelo's to use the valet parking queue on the south side of the 200 block of East Atlantic Avenue, replacing Cugini Grille.
- F. **ASSIGNMENT OF VALET PARKING QUEUE/BREATHE RESTAURANT AND LOUNGE:** Consider a request from Breathe Restaurant and Lounge, located at 401 West Atlantic Avenue, to reestablish a parking valet queue.
- G. **APPOINTMENT TO THE GREEN IMPLEMENTATION ADVANCEMENT BOARD:** Appoint one (1) regular member to the Green Implementation Advancement Board to serve an unexpired term ending July 31, 2012. Based upon the rotation system, the appointment will be made by Mayor McDuffie (Seat# 5).
- H. **APPOINTMENT TO THE EDUCATION BOARD:** Appoint one (1) regular member to the Education Board to serve an unexpired term ending July 31, 2013. Based upon the rotation system, the appointment will be made by Mayor McDuffie (Seat #5).
10. **PUBLIC HEARINGS:**
- A. **CONSOLIDATED ANNUAL PERFORMANCE AND APPRAISAL REPORT (CAPER):** Consider approval of the 2010-2011 Consolidated Annual Performance and Evaluation Report required by the United States Department of Housing & Urban Development (HUD) for utilization of federal grant funds.
- B. **ORDINANCE NO. 43-11:** Consider amending Ordinance No. 70-89 which revises Section 1, "Designation", and Section 2, "Requirements of Designation" of Ordinance 70-89, and an amendment to Land Development Regulations (LDR) Section 4.5.1(K)(2), "Designation of Historic Sites", to provide for the revised legal description of the Fontaine Fox Designation.

11. **COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS FROM THE PUBLIC- IMMEDIATELY FOLLOWING PUBLIC HEARINGS.**

- A. City Manager's response to prior public comments and inquiries.
- B. From the Public.

12. **FIRST READINGS:**

- A. **ORDINANCE NO. 44-11:** Consider an ordinance amending the Charter of the City of Delray Beach by amending Article III, "Legislative", Section 3.02, "City Commission: Composition, Eligibility, Election, and Terms" and Section 3.09, "Term Limits"; amending Article V, "Elections", Section 5.02, "Types of Elections"; to provide for a change in the length of a term from a two (2) year term to a three (3) year term; providing for a referendum election to be held on March 13, 2012. If passed, a public hearing will be held on January 3, 2012.
- B. **ORDINANCE NO. 45-11:** Consider a city-initiated amendment to Land Development Regulations (LDR) Section 4.4.9, "General Commercial (GC) District", Subsection (G), "Supplemental District Regulations", Sub-subsection (3), "Four Corners Overlay District", to correct outdated references. If passed, a public hearing will be held on January 3, 2012.
- C. **ORDINANCE NO. 46-11:** Consider an Ordinance amending Chapter 113, "Alcoholic Beverages", Section 113.02, "Prohibition of Consumption or Possession of Open Containers of Alcoholic Beverages in Public Places". If passed, a public hearing will be held on January 3, 2012.

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

- A. City Manager
- B. City Attorney
- C. City Commission

POSTED: DECEMBER 2, 2011