



401 Clematis Street  
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[www.wpb.org](http://www.wpb.org)

Mayor Keith A. James  
Commission President Joseph A. Peduzzi (District 4)  
Commissioner Kelly Shoaf (District 1)  
Commissioner Sholanda Warren (District 2)  
Commissioner Christy Fox (District 3)  
Commissioner Christina Lambert (District 5)

City Administrator Faye W. Johnson  
City Attorney Kimberly Rothenburg  
City Clerk Hazeline Carson

**City of West Palm Beach  
City Commission  
Agenda  
Monday, October 18, 2021  
5:00 PM**

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three days prior to any proceeding, contact the City Clerk's Office, 401 Clematis Street, West Palm Beach, FL 33401, (561) 822-1210 (TTY) 800-955-8771.

**1. CALL TO ORDER**

**2. MOMENT OF SILENCE**

**3. PLEDGE OF ALLEGIANCE**

**4. CIVILITY AND DECORUM**

The City of West Palm Beach is committed to civility and decorum by its officials, employees and members of the public who attend this meeting. The City Code, Secs. 2-31(8), 2-31(18) and 2-31(22), provides in pertinent part:

- Officials shall be recognized by the Chair and shall not interrupt a speaker.
- Public comment shall be addressed to the City Commission as a whole and not to any individual on the dais or in the audience.
- Displays of anger, rudeness, ridicule, impatience, lack of respect and personal attacks are strictly prohibited.
- Unauthorized remarks from the audience, stamping of feet, whistles, yells and similar demonstrations shall not be permitted.
- Offenders may be removed from the meeting.

**5. ADDITIONS / DELETIONS / REORGANIZATION OF AGENDA**

**6. RECEIVED / FILED**

- 6.1. Receive and file ArtLife WPB FY 2020/21 annual report.

**Originating Department:**

Mayor's Office

- 6.2. Submittal of the following reports from the Internal Auditor's Office:
1. Police Special Investigations Audit Report AUD20-01, and
  2. Human Resources' Health Insurance Claims (CIGNA) Post Audit Report PAR21-08.

**Originating Department:**

Internal Audit

**Background Information:**

The two reports were presented to the Audit Committee on September 30, 2021, where they were approved by the Audit Committee Members. Copies of the reports have been provided to the Mayor and the City Commissioners.

**Fiscal Note:**

No fiscal impact.

## 7. CONSENT CALENDAR

All items listed under the consent calendar are considered routine and will be enacted by one motion. There will be no separate discussion of these items.

- 7.1. Minutes of the Regular City Commission Meeting of September 20, 2021

**Originating Department:**

City Clerk's Office

- 7.2. Minutes of the Special City Commission Meeting of September 23, 2021

**Originating Department:**

City Clerk's Office

- 7.3. Resolution No. 255-21(F) accepting funding in the amount of \$23,000 from the West Palm Beach Library Foundation to support the Mandel Public Library's Teen Homework Center.

**Originating Department:**

Library

**Ordinance/Resolution:**

RESOLUTION NO. 255-21(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OR TRANSFER OF CITY FUNDS IN FISCAL YEAR 2021/2022 IN ACCORDANCE WITH SECTION 4.03 OF THE CITY CHARTER OF THE CITY OF WEST PALM BEACH, FLORIDA, FOR THE PURPOSE OF AMENDING THE SPECIAL

REVENUE FUND TO PROVIDE APPROPRIATIONS FOR A CONTRIBUTION FROM THE WEST PALM BEACH LIBRARY FOUNDATION TO CONTINUE OPERATION OF THE TEEN HOMEWORK CENTER; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

On January 11, 2010, the City Commission of the City of West Palm Beach adopted Resolution No. 6-10 which authorized execution of a fundraising agreement between the City and the West Palm Beach Library Foundation, Inc. to solicit donations for the Mandel Public Library of West Palm Beach and to assist in funding enhanced services at the Library. The Library strives to provide unique programming for citizens of all ages in West Palm Beach such as health and fitness classes, art classes, computer workshops, homework help and so much more.

The West Palm Beach Library Foundation received funds from the Palm Beach County Sheriff's Office State Law Enforcement Trust Fund in the amount of \$23,000. Funding will continue to support the Teen Homework Center by employing local and certified public school teachers. The teachers will provide homework assistance in a safe and inviting setting for teens four nights a week at the Mandel Public Library of West Palm Beach. Not only will the teens receive homework assistance, they can also take part in STEM workshops and college preparation classes.

**Fiscal Note:**

Approval recognizes grant proceeds and provides appropriations for the Library Teen Homework Center

- 7.4. Resolution No. 209-21 approving two Conditional Settlement Agreements totaling \$160,000 in the matter of Shakeria Bush, Tiffany Simmons, and Odayer Evans v. City of West Palm Beach.

**Originating Department:**

City Attorney's Office

**Ordinance/Resolution:**

RESOLUTION NO. 209-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING TWO CONDITIONAL SETTLEMENT AGREEMENTS TOTALING \$160,000 IN THE MATTER OF SHAKERIA BUSH, TIFFANY SIMMONS, AND ODAYER EVANS V. CITY OF WEST PALM BEACH; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

A claim has been brought by Shakeria Bush, Tiffany Simmons, and Odayer Evans v. City of West Palm Beach, for an accident that occurred on March 8, 2021. The City has reached a settlement agreement with both Ms. Bush and Ms. Simmons to resolve the matter for a total of

\$160,000. The claim made by Odayer Evans was previously resolved and dismissed. Ms. Bush and Ms. Simmons have each signed a general release that releases the City from all claims arising from this incident, which ends all of the claims for damages, including all attorneys fees and costs, against the City of West Palm Beach .

Section 2-268(g)(4) of the Code of Ordinances of the City of West Palm Beach, Florida, provides that the authority for settlement of all claims over \$30,000 shall require the approval of the City Commission by formal resolution. Resolution No. 209-21 approves the conditional settlement agreement

- 7.5. Resolution No. 249-21(F) a donation from Brosnan Risk Consultants, LLC in the amount of \$10,000 to be used for technology for the Police Department.

**Originating Department:**

Police

**Ordinance/Resolution:**

RESOLUTION NO. 249-21(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, ACCEPTING A DONATION OF TEN THOUSAND DOLLARS FROM BROSNAN RISK CONSULTANTS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

The Brosnan Risk Consultants company as part of their public/private partnership and community outreach desires to donate Ten Thousand Dollars to the City to be used to for technology enhancements for the Police Department. This will help support technology upgrades and maintenance in the Police Department's Strategic intelligence Center. This is consistent with the Police Department's mission to provide a safe place to live, work and visit.

Brosnan Risk Consultants does not have any current contracts with the City.

**Fiscal Note:**

Approval provides additional revenue to the Police Department of \$10,000 to offset additional costs for enhanced police technology.

- 7.6. Resolution No. 252-21 approving a Conditional Settlement Agreement for \$70,000 in the matter of Arlene Albury-Willman v. City of West Palm Beach.

**Originating Department:**

City Attorney's Office

**Ordinance/Resolution:**

RESOLUTION NO. 252-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A CONDITIONAL SETTLEMENT AGREEMENT FOR \$70,000 IN THE MATTER OF ARLENE ALBURY-WILLMAN v. CITY OF WEST PALM BEACH; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

Ms. Albury-Willman tripped and fell on a sidewalk in the City of West Palm Beach on May 2, 2019. Ms. Albury-Willman subsequently filed a complaint for personal injury damages against the City of West Palm Beach, to wit: Arlene Albury-Willman v. City of West Palm Beach, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Case No.: 502021CA004937XXXMB. An agreement has been reached with Ms. Albury-Willman and her attorney to resolve her personal injury claim for \$70,000. Ms. Albury-Willman has signed a General Release that releases the City from all claims arising from this accident, which ends all of her claims for damages, including all attorneys fees and costs, against the City of West Palm Beach.

Section 2-268(g)(4) of the Code of Ordinances of the City of West Palm Beach, Florida, provides that the authority for settlement of all claims over \$30,000.00 shall require the approval of the City Commission by formal resolution. Resolution No. 252-21 approves the conditional settlement agreement.

**Fiscal Note:**

Fully budgeted

- 7.7. Resolution No. 265-21(F) appropriating \$29,140 for the State of Florida Department of Health Child Care Food Program to provide snacks during the City's after-school programs at two (2) community centers.

**Originating Department:**

Parks and Recreation

**Ordinance/Resolution:**

RESOLUTION NO. 265-21(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OR TRANSFER OF CITY FUNDS IN FISCAL YEAR 2021/2022 IN ACCORDANCE WITH SECTION 4.03 OF THE CITY CHARTER OF THE CITY OF WEST PALM BEACH, FLORIDA, FOR THE PURPOSE OF AMENDING THE GRANT PROGRAMS SPECIAL REVENUE FUND BUDGET TO PROVIDE APPROPRIATIONS FOR THE PURCHASE OF SNACKS FOR THE CHILD CARE FOOD PROGRAM AND FOR RECOGNIZING REIMBURSEMENT THROUGH A GRANT FROM THE STATE OF FLORIDA DEPARTMENT OF HEALTH CHILDCARE FOOD PROGRAM;

PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

In the City of West Palm Beach, many children only receive one (1) balanced meal a day and qualify for free meals at school. The State of Florida Department of Health (FDOH), in partnership with the U. S. Department of Agriculture (USDA), administers a reimbursement Child Care Food Program, whereby child care providers such as the City, are reimbursed for snacks/food served, food program administration, and supplies.

By Resolution No. 181-15, the City Commission approved the City's participation in the FDOH Child Care Food Program and authorized the Mayor to sign the permanent contract with the State.

The Department of Parks and Recreation developed the City's after-school program to provide a healthy snack during after-school care at the following two (2) after-school program locations: Gaines Park Community Center and South Olive Community Center.

This Resolution authorizes City expenses for the Child Care Food Program, not to exceed \$29,140 in Fiscal Year 2021-22, which expenses will be reimbursed to the City by the State of Florida Department of Health.

**Fiscal Note:**

Approval will provide approximately \$29,140 in reimbursable expenditures providing snacks to children in the after-school program

- 7.8. Resolution No. 273-21 authorizing the City Commission to approve a Facility Use and Maintenance Agreement with Phipps Youth Baseball

**Originating Department:**

Parks and Recreation

**Ordinance/Resolution:**

RESOLUTION NO. 273-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AN AGREEMENT FOR NON-EXCLUSIVE USE AND MAINTENANCE OF PHIPPS PARK BASEBALL FACILITIES WITH PHIPPS PARK BASEBALL, INC.; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

The City owns the baseball facilities located at Phipps Park (the "Park") which include four (4) baseball fields, batting cages and other baseball practice facilities, the restrooms, concession facilities and parking lot (the "Baseball Facilities"), which facilities are for the use and benefit of the public.

Phipps Park Baseball, Inc. ("Phipps") is a non-profit corporation which runs a baseball league for boys and girls and has been utilizing the Baseball Facilities.

The City has had agreements with Phipps since 2018 for use of the Baseball Facilities to conduct spring and fall youth baseball programs and to maintain the Baseball Facilities.

Under the proposed new Agreement, Phipps will continue to organize and conduct spring and fall youth baseball programs at the Park. Phipps will perform all legally required background checks and training, and provide documentation of same to the City.

Phipps will be responsible for maintaining the four ballfields from the fencing in, and the common areas surrounding the fields including the batting cages and overflow parking area. Phipps will be responsible for maintaining the batting cage structures, all netting, dugout, scoring tables and shelters. Phipps will also be responsible for mowing, weeding, fertilizing, watering, clay and general repair of the fields, removal of trash and cleaning of bathroom and concession facilities.

In consideration of Phipps' maintenance of the Baseball Facilities, the City agrees to pay the following maintenance fees:

Year One: \$165,000

Year Two: \$165,000

Year Three: \$165,000

The City will retain \$5,000.00 of each annual maintenance fee to pay for Phipps use of energy and utility bills at the Baseball Facilities.

Resolution No. 273-21 approves the Agreement with Phipps.

Phipps Park is located in Commission District 5: City Commissioner Christina Lambert

**Fiscal Note:**

Fully Budgeted in General Fund Parks Maintenance

- 7.9. Resolution No. 275-21 approving an Agreement for Vote Processing Equipment Use and Election Services with the Palm Beach County Supervisor of Elections for the March 2022 municipal election.

**Originating Department:**

City Clerk's Office

**Ordinance/Resolution:**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE CITY AND THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS FOR VOTE PROCESSING EQUIPMENT USE AND ELECTION SERVICES FOR THE MARCH 2022 MUNICIPAL ELECTIONS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

Resolution No. 275-21 approves an Agreement with the Supervisor of Elections for Vote Processing Equipment Use and Election Services for the March 2022 municipal election. The Agreement is substantially similar to one previously entered into between the City and the Supervisor of Elections for the March 2021 municipal election.

The Agreement requires the City to indemnify the Supervisor of Elections for any claims arising out of the City's negligence and to defend any legal challenge relating to the municipal election and be responsible for all legal costs including attorneys' fees for the defense of the municipality and the Supervisor of Elections.

**Fiscal Note:**

Fully budgeted

- 7.10. Resolution No. 279-21 approving a Third Amendment to the Interlocal Agreement for fire vehicle maintenance between Palm Beach County and the City of West Palm Beach.

**Originating Department:**

Fire

**Ordinance/Resolution:**

RESOLUTION 279-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING THE THIRD AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND PALM BEACH COUNTY FOR FIRE VEHICLE MAINTENANCE; PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

**Background Information:**

On September 9, 2008, the County and City entered into an Interlocal Agreement for fire vehicle maintenance (R2008-1567) for a term of ten (10) years (the "Agreement"). The Agreement was amended on November 20, 2018 (R2018-1827) to extend the term for an additional two (2) years through September 8, 2020 and to only include certain types of fire-rescue emergency response vehicles and/or apparatus. The Agreement was further amended last year, on October 20, 2020, (R2020-1592) to extend the term through September 8, 2021.



The parties mutually desire for the County to continue to provide maintenance and repair services for only certain types of the City's fire-rescue emergency response apparatus for an additional year and the desire is to extend the term of the Agreement for an additional year from September 9, 2021 through September 8, 2022, under the same terms and conditions set forth in the Agreement, except as otherwise provided in this Third Amendment.

**Fiscal Note:**

131, Fire Assessment Fund

- 7.11. Resolution No. 244-21(F) for Law Enforcement investigative expenses.

**Originating Department:**

Police

**Ordinance/Resolution:**

RESOLUTION NO. 244-21(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OR TRANSFER OF THE CITY FUNDS IN FISCAL YEAR 2021/2022 IN ACCORDANCE WITH SECTION 4.03 OF THE CITY CHARTER OF THE CITY OF WEST PALM BEACH, FLORIDA, FOR THE PURPOSE OF AMENDING THE MISCELLANEOUS TRUST FUND BUDGET TO PROVIDE APPROPRIATIONS FROM THE FEDERAL LAW ENFORCEMENT FORFEITURE RECEIPTS FOR LAW ENFORCEMENT INVESTIGATIVE EXPENSES OF THE WEST PALM BEACH POLICE DEPARTMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

The Federal Law Enforcement Trust Fund expenditure of \$115,775 will be used to achieve law enforcement objectives in accordance with the statutes and guidelines that govern the Federal Equitable Sharing Program as set forth in the current edition of the Department of Justice's Guide to Equitable Sharing for State and Local Law Enforcement. An excerpt from the current Guide to Equitable Sharing explains the permissibility of the proposed use: "Law enforcement, public safety, and detention facilities--costs associated with the purchase, lease, construction, expansion, improvement, or operation of law enforcement, public safety, or detention facilities used or managed by the recipient agency. Examples include the costs of leasing, operating, and furnishing an off-site undercover narcotics facility. Improvements should not be made on leased property or space since the law enforcement agency will not benefit from the improvements upon the termination of the lease. Agencies must contact MLARS prior to using the Department of Justice equitable sharing funds for all improvement and expansion projects. For example, the construction of a new facility or minor renovations including drywall, electrical, HVAC replacements, and internal modifications to an existing facility. Expenditures such as lease payments or utilities do not

require consultation."

The West Palm Beach Police Department continues to need additional space for investigative personnel. This request will cover the payments required for the leasing of space and continuing operational expenses: \$91,575 Lease Expenses; \$7,800 Electric; \$6,400 Contractual Services; and \$10,000 for maintenance, repairs, and service agreements as required under the lease agreements.

**Fiscal Note:**

No Fiscal Impact to FY2022 budget

- 7.12. Resolution No. 261-21 authorizing the assessment of city liens in the total amount of \$216,706.77 for unpaid water service, sewer service and storm water charges for the month of July 2021.

**Originating Department:**

City Attorney's Office

**Ordinance/Resolution:**

RESOLUTION NO. 261-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AND AUTHORIZING AN ASSESSMENT OF CITY LIENS FOR UNPAID WATER SERVICE, SEWER SERVICE, AND STORMWATER SERVICE FOR THE MONTH OF JULY 2021; PROVIDING THAT SAID LIENS SHALL BE PRIOR IN DIGNITY TO ALL OTHER LIENS AGAINST THE ASSESSED PROPERTIES, SAVE AND EXCEPT A LIEN FOR TAXES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

In accordance with the Code of Ordinances of the City of West Palm Beach, Florida, 2003, Sections 90-4 and 90-5, the City imposes liens on private real property for delinquent payments due for utility services. The liens to be assessed by Resolution No. 261-21 are for unpaid water service sewer service and stormwater service charges for the month of July 2021. The list of properties to be assessed and the associated charges totaling \$216,706.77 are attached to Resolution No. 261-21 as EXHIBIT A - Utility Lien List - July 2021.

**Fiscal Note:**

No Fiscal Impact

- 7.13. Resolution No. 276-21 authorizing the City to apply for State permits for temporary special effects lighting on State bridges for special events and requests.

**Originating Department:**

Parks and Recreation

**Ordinance/Resolution:**

RESOLUTION NO. 276-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, DESIGNATING THE MAYOR AS THE CITY OFFICIAL AUTHORIZED TO APPROVE SPECIAL EFFECTS LIGHTING OF STATE BRIDGES AND AUTHORIZING THE MAYOR TO APPLY FOR STATE PERMITS FOR SUCH BRIDGE LIGHTINGS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

At the January 27, 2020 City Commission meeting, the City Commission approved Resolution No. 22-20 authorizing the City to apply for State permits for temporary closure of State roads for special events.

From time to time, organizations also request the Royal Park Bridge lights be changed to specific colors in celebration and/or recognition of their mission. The Florida Department of Transportation has requested that the City, by resolution, designate a City official to authorize the lighting of State bridges in specific colors for temporary purposes.

The Community Events Division desires to expedite the issuance of state permits to facilitate requests for lighting of State bridges.

Resolution No. 276-21 designates the Mayor as the City official authorized to approve the temporary lighting of State bridges for special events and other requests and authorizes the Mayor to submit applications for State permits for such temporary lighting of State bridges.

**Fiscal Note:**

No fiscal impact.

## 8. RESOLUTIONS

- 8.1. Resolution No. 263-21 granting Face of the City approval for a large-scale mural entitled "Florida Flora" by artist Daniel Barojas to be installed on the perimeter wall of FPL's facility at 810 Charlotte Avenue.

**Originating Department:**

Mayor's Office

**Ordinance/Resolution:**

RESOLUTION NO. 263-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A LARGE-SCALE MURAL BY ARTIST DANIEL BAROJAS TO BE INSTALLED ON THE PERIMETER WALL OF THE PROPERTY OWNED BY FLORIDA POWER & LIGHT, COMPANY LOCATED AT 810 CHARLOTTE AVENUE PURSUANT TO A LICENSE AGREEMENT

BETWEEN THE CITY OF WEST PALM BEACH AND FLORIDA POWER & LIGHT; PROVIDING AN EFFECTIVE DATE; AND OTHER PURPOSES.

**Staff Recommended Motion:**

Approve Resolution No. 263-21.

**Background Information:**

On April 19, 2021, the City Commission adopted Resolution No. 72-21 which approved a license agreement with Florida Power & Light, Company ("FPL") to install an art mural on the perimeter wall of the property owned by FPL located at 810 Charlotte Avenue. The City and FPL's partnership aligns with the ArtLife WPB Committee's strategic goals to cultivate purposeful partnerships with other cultural institutions, businesses, and stakeholders by advocating creative design integrations into public and private buildings and infrastructure. Further, the project will promote West Palm Beach as an art destination.

After issuance of a Call to Artist, the ArtLife WPB Committee selected Daniel Barojas to develop and design a large-scale mural depicting the Florida flora theme.

On September 15, 2021 the ArtLife WPB Committee voted unanimously to approve Barojas' design for the perimeter wall of FPL's property located 810 Charlotte Avenue. In accordance with the terms of the license agreement, FPL representatives have also approved Barojas' design as it meets the goals of the project and the criteria set forth in section 78-125 of the City's Code of Ordinances.

Artwork:

The artist chose to use the entire wall which creates a powerful visual statement as residents and visitors enter the City through Okeechobee Boulevard. In keeping with the Florida Flora theme the mural pays tribute to the variety of plants in Florida. Further, the artist has created "color fields" which are primarily large fields of flat, solid colors which create a flat picture plane to render an overall consistency of form. In addition, the artist created a custom stencil pattern that he will use repetitively within the center of the artwork and on top of the sunset colors. The artwork will be a visually dynamic piece as a main entry point into the City. The concept proposal is attached for review.

Installation schedule

The installation is scheduled to begin at the beginning of November 2021 with an expected time of completion on or before February 28, 2022.

Criteria:

The ArtLife WPB committee reviewed the art concept by Daniel Barojas

for the following criteria set forth in Section 78-125 of the City's Code of Ordinances:

1. *Art*: The proposed art installation conforms to the definition of art contained in this article and will be created by a professional artist as defined in this article.
2. *Master Plan*: The proposed art installation complies with the public art master plan.
3. *Historic Significance*: Not applicable as the proposed art is contemporary.
4. *Cultural Significance*: The proposed art installation is culturally significant and reflects the natural aesthetics of the region.
5. *Visual Accessibility*: The proposed art installation will be readily visible to the public and meets the location requirements of this article.
6. *Quality*: The artist is professionally recognized in multiple mediums and the proposed art demonstrates a strong aesthetic quality and enduring value.
7. *Appropriateness to Site*: The proposed artwork, the design, scale, and materials are appropriate for the site.
8. *Diversity*: The art installation brings diversity to the public art program in terms of media, cultural, and/or historical significance, innovation, and creativity.
9. *Public Welfare*: The proposed art installation reflects an enduring artistic concept and is not detrimental to the public welfare and will not constitute a safety hazard.
10. *Maintenance*: The art installation will require only minimum maintenance.
11. *Valuation*: Not applicable. Funds were allocated from the Public Art Account.
12. *Location*: The identified location complies with the public art master plan and as defined in the code.
13. *Artist Qualifications*: The artist meets the definition of artist under this article, has demonstrated ability for work in his chosen media, has demonstrated good workmanship in prior artwork and the ability to complete this project in a timely manner.
14. *Budget*: The project budget meets the allocated funds for the project and a budget breakdown was part of the artist's proposal.

Resolution No. 73-21(F) appropriated the funds for this project.

This Resolution No. 263-21 will grant Face of the City Approval of the Artwork.

**Fiscal Note:**

No Fiscal Impact

- 8.2. Resolution No. 266-21 approving the Grant Agreement with Florida Department of Environmental Protection for \$105,000 in funding for tidal valve installations in the 2000-2800 blocks of Flagler Dr.

**Originating Department:**

Engineering

**Ordinance/Resolution:**

RESOLUTION NO. 266-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A GRANT AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND THE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR FUNDING ASSISTANCE RELATED OF UP TO \$105,000 TO THE WEST PALM BEACH FLOOD MITIGATION TIDAL VALVE PROJECT ; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Approve Resolution No. 266-21

**Background Information:**

Portions of Flagler Drive are subject to tidal flooding by seawater from the Lake Worth Lagoon backing up through the stormwater outfall pipes and drainage catch basins onto the road. During seasonal king tide events, City crews put out "Road Flooded" signs to warn drivers. With sea level rise, this flooding is becoming more frequent and with longer durations.

The West Palm Beach Flood Mitigation Tidal Valve Project (project) mitigates this tidal road flooding in the 2000 - 2800 blocks of S. Flagler Drive by installing tidal valves in the storm water outfall pipes to prevent the sea water from back flowing in the pipe past the valve. There are twelve (12) outfall pipes that potentially contribute to the tidal flooding in the 2000 – 2800 blocks of S. Flagler Drive. Three of these outfall pipes will be fitted with tidal valves as part of another construction project. Two of the outfall pipes will require a sediment box at the outfall to prevent the end of pipe from becoming buried as sand migrates up the coastline in the Lake Worth Lagoon. The remaining seven (7) outfalls will be outfitted with tidal valves. For some or all of these seven outfall pipes portions of the pipes will need to be cleaned, rehabilitated or replaced with new pipe so that the valves can be properly sealed in the pipes and manholes may need to be constructed in order to to insert, inspect and maintain the valves.

Pursuant to the 2021-22 General Appropriations Act, legislative appropriation was provided for the Statewide Surface Water Restoration and Wastewater Project category for the City's project through a cost reimbursement grant from the Department of Environmental Protection (DEP Agreement No. LPA0234). Grant funding assistance for the project will be provided up to a maximum amount of \$105,000 with Project completion no later than March 31, 2024.

Resolution No 266-21 would approve the Grant Agreement between the Florida Department of Environmental Protection and the City accepting up to \$105,000 in grant funds and authorizes the Mayor to execute the Agreement.

**Fiscal Note:**

The \$105,000 in grant funds will supplement the currently budgeted amount of \$709,358 in the Stormwater Capital Fund

- 8.3. Resolution No. 272-21 approving the submission of Application for Funding to the Florida Department of Economic Opportunity's (DEO) Community Development Block Grant Coronavirus Relief Fund (CDBG-CV) in the amount of \$567,974.

**Originating Department:**

Housing and Community Development

**Ordinance/Resolution:**

RESOLUTION NO. 272-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY REQUESTING THE AMOUNT OF \$567,974 FOR THE CLEAR LAKE TRAIL PROJECT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Approve Resolution No. 272-21.

**Background Information:**

Florida Department of Economic Opportunity (DEO) has made available the application cycle for eligible local governments to apply for funding through the Community Development Block Grant - CV (CDBG-CV) Small Cities and Entitlement programs.

CDBG-CV funds are federally awarded by the United States Department of Housing and Urban Development (HUD) and designed to help local governments prepare for, prevent, or respond to the health and economic impacts of the COVID-19 pandemic. Eligible CDBG-CV activities include public improvements such as the expansion of sidewalks to allow for social distancing and shall primarily benefit low- and moderate-income residents.

As a CDBG entitlement community, the City intends to apply to the State for a maximum award amount of \$567,974 to help supplement a portion of the costs of the project Clear Lake Multipurpose Trail project. The

project will construct a multimodal trail and boardwalk that will connect Palm Beach Lakes Boulevard to downtown West Palm Beach.

The deadline to submit the application to DEO is November 1, 2021. Approval of Resolution No.272-21 authorizes the Mayor to sign all necessary documents and authorizes the Housing and Community Development Department to submit the application.

## 9. PUBLIC HEARING

- 9.1. Public Hearing and First Reading of Ordinance No. 4974-21 amending the Code of Ordinances at Chapter 2 and Chapter 46 to permit certain boards and committees to meet through communication media technology.

**Originating Department:**

City Attorney's Office

**Ordinance/Resolution:**

ORDINANCE NO. 4974-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING CHAPTER 2, (ADMINISTRATION) OF THE CODE OF ORDINANCES, ARTICLE III (BOARDS, COMMITTEES AND COMMISSIONS), DIVISION 1 (GENERALLY), ADDING SECTION 2-65 (MEETINGS BY ELECTRONIC MEANS) TO 2-68 AND AMENDING CHAPTER 46 (LAW ENFORCEMENT); ARTICLE III (CRIMINAL JUSTICE ADVISORY COMMITTEE); SECTION 46-72 (MEETINGS AND ORGANIZATION) TO BE CONSISTENT WITH CHAPTER 2, ARTICLE III; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY AND CONFLICT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Motion to approve Ordinance No. 4974-21 on first reading and schedule second reading for November 1, 2021.

**Background Information:**

The City of West Palm Beach has home rule authority granted by the Florida Constitution and implemented by Chapter 166 Florida Statutes to exercise its legislative power necessary to conduct municipal government, perform municipal functions and render municipal services. The purpose of Ordinance No. 4974-21 is to permit various advisory boards to conduct their meetings through communication media technology.

**Fiscal Note:**

No Fiscal Impact

- 9.2. Public Hearing and First Reading of Ordinance No. 4954-21 authorizing



the sale and conveyance of property located at 1100 Okeechobee Road to Marto Rentals 2, LLC for \$775,000.

**Originating Department:**

Housing and Community Development

**Ordinance/Resolution:**

ORDINANCE NO. 4954-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING THE SALE AND CONVEYANCE OF CITY-OWNED PROPERTY LOCATED AT 1100 OKEECHOBEE ROAD TO MARTO RENTALS 2, LLC; AUTHORIZING EXECUTION OF A SALE AND PURCHASE AGREEMENT AND ALL ANCILLIARY DOCUMENTS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Approve Ordinance No. 4954-21.

The Ordinance must be approved by 4/5 of the Commission at either First or Second Reading, or both, as required by Sec. 2-31(27) of the Code.

**Background Information:**

The City of West Palm Beach owns property located at 1100 Okeechobee Road (PCN: 74-43-43-28-09-008-0010). Pursuant to the Florida Contraband Forfeiture Act under Sections 932.701-704 of the Florida Statutes (1989), the City was awarded ownership of the property on December 20th, 1990. The property has been vacant for some time and is not being utilized by the City.

On April 5, 2021, the City received a letter of intent to purchase the property from Marto Rentals 2, LLC. The interested party intends to utilize the site for expansion of Property Works, a minority-owned small business located at a neighboring site and intends to create 10 -15 local jobs to be offered to West Palm Beach residents. At the time, the offer exceeded the appraised value of the property, which was set at \$566,000, in accordance with the process of obtaining fair market value as detailed in the City's Code of Ordinances.

In accordance with Section 2-31 of the City's Code of Ordinances, by Resolution No. 145-21, the City Commission declared that City-owned property located at 1100 Okeechobee Road was not needed for City purposes, declared the property as surplus, and authorized the conveyance of the property through the negotiation of the sale with Marto Rentals 2, LLC.

Pursuant to Section 2-31(27)(c) of the Code of Ordinances, the sale price or lease rental price of City property shall not be less than 85 percent of the average fair market value of the property based on two appraisals that are not older than six months before the date the proposed agreement is

brought to the City Commission for First Reading of the Ordinance. In July 2021, the City obtained updated appraisals which determined the market value of the property as follows:

- Anderson & Carr, Inc. \$650,000 (Updated Report Date: July 30, 2021);
- M.R. Ford & Associates - \$900,000 (Updated Report Date: August 2, 2021).

The average of the two appraisals sets the appraised market value to be at \$775,000.

Due to the extent of the repairs needed, and that the sale will result in small business expansion within the same neighborhood and local jobs created, City staff recommends approval of the sale for \$775,000. Should the buyer fail to meet these obligations in accordance with the terms outlined in the agreement, the buyer shall pay the City an additional sum of \$25,000.

The registered agents for Marto Rentals 2, LLC are also the owners of Property Works, a current vendor of the City who provides landscape and maintenance services to various Departments. An ethics opinion was provided by the City's Ethics Officer which determined that transaction does not present a prohibited conflict.

Ordinance No. 4954-21 authorizes the sale of the real property at 1100 Okeechobee Road to Marto Rentals 2, LLC, for the price of \$775,000, and further releases all mineral and petroleum rights the City has in the property pursuant to Section 270.11, Florida Statutes.

This Ordinance will be scheduled for Second Reading on November 1, 2021.

- 9.3. Public Hearing and First Reading of Ordinance No. 4957-21 a City initiated text amendment to Article II Organization, Administration and Enforcement; Article IV Downtown Master Plan Urban Regulations; Article V Commercial District; Article VII Special Districts; Article IX Permitted Uses, Uses Permitted with Extra Requirements, and Special Uses; Article XV Parking; Article XVI Regulations of Nonconformities; Article XIX Definitions and Appendix A Master Use List of Chapter 94 Zoning and Land Development Regulations to make reasonable accommodation that the Federal Housing Act requires for group homes, community residences and/or recovery communities.

**Originating Department:**

Development Services

**Ordinance/Resolution:**

ORDINANCE NO. 4957-21: AN ORDINANCE OF THE CITY

COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF WEST PALM BEACH, FLORIDA, AT CHAPTER 94 - ZONING AND LAND DEVELOPMENT REGULATIONS, ARTICLE II – ORGANIZATION, ADMINISTRATION AND ENFORCEMENT; ARTICLE IV – DOWNTOWN MASTER PLAN URBAN REGULATIONS; ARTICLE V - COMMERCIAL DISTRICTS; ARTICLE VII - SPECIAL DISTRICTS; ARTICLE IX – PERMITTED USES, USES PERMITTED WITH EXTRA REQUIREMENTS AND SPECIAL USES; ARTICLE XV - PARKING; ARTICLE XVI – REGULATIONS OF NONCONFORMITIES; ARTICLE XIX – DEFINITIONS AND APPENDIX A – MASTER USE LIST, TO BE CONSISTANT WITH TO PROVIDE REASONABLE ACCOMODATIONS THE FAIR HOUSING ACT REQUIRED FOR COMMUNITY RESIDENCES AND/OR RECOVERY COMMUNITIES AND GENERAL LAW; DECLARING THIS AMENDMENT TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY; PROVIDING A CONFLICTS CLAUSE, A CODIFICATION CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

**THIS ITEM IS BEING CONTINUED TO THE NOVEMBER 1, 2021 COMMISSION MEETING.**

**Background Information:**

Addiction to drugs and alcohol is a consequential issue facing our nation which has only been exasperated by the opioid addiction crisis of recent years. One of the most essential strategies in combating addiction is the use of quality recovery residences or sober homes. As abuse of opioids and other substances has increased so has the demand for recovery residences. In 2018 and in response to the issues the City faced with increased demand for services, the Law Office of Daniel Lauber was hired to do an analysis of the City's Zoning and Land Development Regulations that govern community residences for people with disabilities, as well to ensure compliance with all State and Federal requirements. This report, attached as WPB Study, is the basis for the proposed text amendment.

The proposed amendments based on the study will seek to make the reasonable accommodations for community residences for people with disabilities that are necessary to achieve full compliance with applicable federal law and sound zoning and planning practices and policies. The recommended zoning approach is based upon a careful review of:

- The functions and needs of community residences and the people with disabilities who live in them;
- Sound city planning and zoning principles and policies;
- The Fair Housing Amendments Act of 1988 (FHAA) and amended, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601–

3619 (1982)

- Report No. 100–711 of the House Judiciary Committee interpreting the FHAA amendments (the legislative history);
- The HUD regulations implementing the amendments, 24 C.F.R. Sections 100–121 (January 23, 1989);
- Case law interpreting the 1988 Fair Housing Act amendments relative to community residences for people with disabilities;
- Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*(Nov. 10, 2016);
- Florida state statutes governing local zoning for different types of community residences: Title XXIX Public Health, chapters 393 (Developmental Disabilities), 394 (Mental Health), 397 (Substance Abuse Services), 419 (Community Residential Homes); Title XXX, chapters 429 (Assisted Care Communities — Part 1: Assisted Living Facilities, Part II: Adult Family–Care Homes); and Title XLIV, Chapter 760 (Discrimination in the Treatment of Persons; Minority Representation) (2016);
- Florida state statute establishing voluntary certification of recovery residences: Title XXIX Public Health, chapter 397 (Substance Abuse Services) §397.487 (2016);
- The actual Florida certification standards for recovery residences as promulgated and administered by the certifying entity, the Florida Association of Recovery Residences, based on standards established by the National Alliance of Recovery Residences; and
- The existing provisions of West Palm Beach’s Zoning and Land Development Regulations.

It is important to note that the Cities of Delray Beach, Pompano Beach, Fort Lauderdale and Palm Beach County have adopted similar zoning regulations as the ones that are proposed in this text amendment which also requires existing and proposed recovery residence and recovery communities to obtain certification from the Florida Association of Recovery Residences (FARR).

### **Analysis**

There are three (3) types of living arrangements that fall under community residences (see **Attachment II** in the Planning Board Code Revision Case staff report for the difference between community residences, institutional uses and rooming and boarding houses) that warrant slightly different zoning treatments tailored to their specific characteristics and discussed below:

#### **Family community residences**

Family community residences, which include uses commonly known as group homes and those recovery residences and sober living homes, that

offer a relatively permanent living environment that emulates a biological family. They are usually operated under the auspices of an association, corporation, or other legal entity, or the parents or legal guardians of the residents with disabilities. Some, like recovery residences for people in recovery from alcohol and/or drug addiction, are self-governing. Residency, not treatment, is the home's primary function. Their key distinction from transitional community residences is that people with disabilities can reside, are expected to reside, and actually do live in a family community residence for a year or longer, not just months or weeks.

### **Transitional community residences**

In contrast to the group homes and recovery residences that fit in the category of family community residences, transitional community residences are a comparatively temporary living arrangement that is more transitory than a group home or recovery residence and a bit less family-like. Residency is measured in weeks or months, not years. A recovery residence or sober living residence that imposes a limit on how long someone can live there exhibits the performance characteristics of a transitional community residence, much like the better known small halfway house. Typical of the people with disabilities who need a temporary living arrangement like a halfway house are people with mental illness who leave an institution and need only a relatively short stay in a halfway house before moving to a less restrictive living environment. Similarly, people recovering from addictions to alcohol or drugs move to a halfway house, short-term recovery residence, or sober living home following detoxification in an institution until they are capable of living in a relatively permanent long-term recovery residence or other less restrictive environment.

Halfway houses are also used for prison pre-parolees. However, such individuals are not, as a class, people with disabilities. Zoning can be more restrictive for halfway houses for people not covered by the Fair Housing Act. Consequently, zoning codes can and should treat halfway houses for prison pre-parolees or other populations not covered by the Fair Housing Act differently than classes that the Fair Housing Act protects.

### **Recovery community**

Recovery Communities consists of multiple dwelling units in a single multifamily structure that are not available to the general public for rent or occupancy. A recovery community provides a drug and alcohol-free living arrangement for people in recovery from drug and/or alcohol addiction. But, unlike a community residence, a recovery community does not emulate a biological family. A recovery community is a different land use than a community residence and it warrants a different zoning treatment.

Unlike a community residence with a maximum of 10 occupants whose

essence is emulating a biological family, a recovery community can consist of dozen and even scores of people in recovery making it more akin to a mini-institution in nature and number of occupants. Recovery communities constitute a segregated setting that does not facilitate interaction with people without disabilities, quite contrary to the core nature of community residence where in residence interaction with people without disabilities is a fundamental characteristic.

### **Maximum number of occupants**

The emulation of a biological family is a core component to community residences for people with disabilities, it is reasonable for a jurisdiction to establish the maximum number of individuals in a community residence it is confident can emulate a biological family. It is likely that as many as 10 — and conceivably as many as 12 — unrelated individuals in a community residence can emulate a biological family. It is highly doubtful if larger aggregations can.

Consequently, the proposed zoning amendments will cap community residences at 10 occupants and establish a structured administrative “reasonable accommodation” procedure to lift the cap for a specific community residence on a case-by-case basis. The burden will be on the applicant to show a therapeutic and/or financial need to house more than 10 residents and to convincingly demonstrate how the residents will emulate a biological family. The proposed community residence will be subject to the spacing and licensing/certification requirements applicable to all community residences for people with disabilities.

### **Proposed Amendment**

#### **Family community residences**

To make this reasonable accommodation for more than three (3) unrelated people with disabilities who wish to live in a community residence, the proposed zoning ordinance amendments will make family community residences for three to 10 people with disabilities a permitted use in all zoning districts where residential uses are currently allowed, subject to two objective, nondiscretionary administrative criteria:

- The specific community residence or its operator must receive authorization to operate the proposed family community residence by receiving the license that the State of Florida requires, the voluntary certification available through the Florida Association of Recovery Residences, or a self-imposed maintenance and set of criteria that are the functional equivalent of certification or licensing; and
- The proposed family community residence is not located within 660 feet, the length of a typical block, of an existing community residence as measured from the nearest lot lines.

### **Transitional community residences**

In multifamily districts by right, and single family districts with the approval of a special use permit, a transitional community residence for three (3) to 10 people with disabilities should be allowed as a permitted use subject to two (2) objective, nondiscretionary administrative criteria:

- The specific community residence or its operator must receive authorization to operate the proposed transitional community residence by receiving the license that the State of Florida requires, the voluntary certification available through the Florida Association of Recovery Residences, or a self-imposed set of criteria that are the functional equivalent of certification or licensing; and
- The proposed transitional community residence is not located within 660 feet, the length of a typical block, of an existing community residence as measured from the nearest lot lines.

### **Recovery community**

In a multifamily, commercial or industrial district, a recovery community for people with disabilities should be allowed as a permitted use subject to two (2) objective, nondiscretionary administrative criteria:

- The operator or applicant is licensed or certified by the State of Florida to operate the proposed recovery community.
- The proposed recovery community would be located at least 1,200 linear feet from the closest existing recovery community or community residence as measured from the nearest property line of the proposed recovery community to the nearest property line of the closest existing recovery community or community residence.

### **Other group home type facilities**

As part of this zoning amendments staff is proposing a new use category called Skilled Nursing and Rehabilitation Facilities. This use category will combine the Adult Congregate Living Facilities and the inpatient detoxification treatment center into one category since both uses provide similar care. These type of facilities will now be permitted with a Class B Special Use Permit in all Multifamily (MF) zoning districts, Permitted with Extra Requirements in an Office Commercial (OC), Professional Office Residential (POR) and Neighborhood Commercial (NC) zoning districts and Permitted by Right in a General Commercial (GC), Center Center 2 (CC2) and Community Service (CS) zoning districts. Within the Downtown Master Plan Area, they are permitted within the urban core, special district planning areas and Brelsford Park District-5 provided they comply with the requirements in Section 94-273(a)(2) and (d)(152). Since these zoning amendments are strictly for community residences *for people with disabilities*, there will be no change in how West Palm Beach regulates halfway houses for prison pre-parolees or sex offenders.

Currently, the City has 29 approved applications for Reasonable Accommodation (meeting community residence homes with more than

three (3) unrelated individuals) and four (4) are currently pending. The proposed amendments will not change the cap of three (3) unrelated individuals functioning as a single housekeeping unit in the zoning code's definition of "family." The zoning amendments will treat community residences that comply with the cap of three (3) unrelated individuals in the city's definition of "family" the same as any other family. The amendments will impose no additional zoning requirements upon them.

**STANDARDS:** The Planning Division has determined that the City initiated text amendment to Article II Organization, Administration and Enforcement; Article IV Downtown Master Plan Urban Regulations; Article V Commercial District; Article VII Special Districts; Article IX Permitted Uses, Uses Permitted with Extra Requirements, and Special Uses; Article XV Parking; Article XVI Regulations of Nonconformities; Article XIX Definitions and Appendix A Master Use List of Chapter 94 Zoning and Land Development Regulations to make reasonable accommodations that the Federal Housing Act requires for group homes, community residences and/or recovery communities meets all eight (8) of the required amendment standards found in Section 94-32 of the City of West Palm Beach Zoning and Land Development Regulations.

Compliance with the above referenced standards is detailed in the attached Planning Board Staff Report.

**DOWNTOWN ACTION COMMITTEE:** The Downtown Action Committee approved ( 7-0) of the request to the City Commission after a Public Hearing on April 14, 2021.

**PLANNING BOARD:** The Planning Board recommended approval (4-0) of the request to the City Commission after a Public Hearing on June 15, 2021.

## 10. PUBLIC HEARING - QUASI-JUDICIAL

Disclosure of ex-parte communications, if any\*  
Swearing-in of witnesses.

- 10.1. Public Hearing and Second Reading of Ordinance No. 4967-21 regarding a rezoning to change the zoning designation of ±1.16 acres generally located on the north side of Dock Street, between Parker Avenue and Flamingo Drive, from Single-family High Density Residential to Residential Planned Development, requesting waivers from the Zoning and Land Development Regulations, and to provide for the construction of fourteen (14) townhouse units and associated site improvements.

**Originating Department:**  
Development Services

**Ordinance/Resolution:**



ORDINANCE NO. 4967-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE ZONING MAP OF THE CITY OF WEST PALM BEACH, FLORIDA, BY REZONING ±1.16 ACRES GENERALLY LOCATED ON THE NORTH SIDE OF DOCK STREET, BETWEEN PARKER AVENUE AND FLAMINGO DRIVE FROM SINGLE-FAMILY HIGH DENSITY RESIDENTIAL TO RESIDENTIAL PLANNED DEVELOPMENT, APPROVING THE DEVELOPMENT REGULATIONS AND CONDITIONS FOR THE PARK CENTRAL RESIDENTIAL PLANNED DEVELOPMENT; GRANTING WAIVERS OF THE ZONING AND LAND DEVELOPMENT REGULATIONS; DECLARING THIS ZONING MAP AMENDMENT TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY; PROVIDING A CONFLICTS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Approve Ordinance No. 4967-21, changing the zoning designation of ±1.16 acres generally located on the north side of Dock Street, between Parker Avenue and Flamingo Drive from Single-family High Density Residential to Residential Planned Development, and approving the development regulations and conditions for the Park Central Residential Planned Development and granting waivers from the Zoning and Land Development Regulations. This motion is based upon the staff report, factual testimony, the recommendation of the Planning Board, and the findings that the request complies with Section 94-32 and Section 94-35 of the City's Zoning and Land Development Regulations.

**Background Information:**

(The information provided below is a general summary. A full analysis is included in the attached Staff Report)

The subject property is comprised of ±1.16 acres and is a small, irregular-shaped, infill parcel located on the north side of Dock Street, between Parker Avenue and Flamingo Drive. The property is comprised of three separate lots and is currently developed with a 5,740 square foot yoga studio, a residential duplex and a single-family residential dwelling unit. The area of the subject property is predominantly residential with single and multi-family units.

The applicant is seeking approval to rezone the subject property from Single-family High Density (SF14) Residential to Residential Planned Development (RPD) to provide for the construction of a fourteen (14) unit townhouse development. The location map, boundary and topographic survey, proposed site plan, landscape plan and architectural drawings are attached.

As part of the request for the RPD, the applicant is also requesting a total of eight (8) waivers from the Zoning and Land Development Regulations (ZLDRs) that are necessary to provide for the design of the RPD. The 8

waivers requested are as follows:

- Minimum Area Required for a Residential Planned Development
- Minimum Lot Size Requirement
- Minimum Lot Width Requirement
- Minimum Front Setback Requirement
- Minimum Corner Setback Requirement
- Minimum Interior Side Setback Requirement
- Minimum RPD Perimeter Setback Requirement
- Minimum Drive Aisle Width Requirement

CONCLUSION: Staff is recommending approval of the rezoning to RPD and the requested waivers from the Zoning and Land Development Regulations to provide for the proposed fourteen (14) unit townhouse development. The proposed RPD is an attractive development that is consistent with the residential development pattern of the immediate area, integrated with the existing street and sidewalk network, and will provide for additional housing stock in the area. The improvements to the site will enhance the aesthetics and character of the surrounding area.

NEIGHBORHOOD OUTREACH: Staff had requested that the applicant reach out to the adjacent Pineapple Park Neighborhood Association (PPNA) and the Flamingo Park Neighborhood Association (FPNA) for input and support on the proposed project. According to the letter and email provided in the Staff Report, the PPNA has offered their support for the project, while the FPNA has stated that collectively, it was not in their best interest to endorse any development project.

PLANNING BOARD: After a Public Hearing on August 17, 2021, the Planning Board recommended approval (7-0) of the requests, subject to the conditions contained in Ordinance No. 4967-21.

PUBLIC NOTICE: Individual Notices were mailed to all property owners within 500 feet of the property, and signs have been posted on the subject property. In accordance with the advertising requirements of the ZLDRs, Ordinance No. 4967-21 was advertised for Second Reading on October 8, 2021.

COMMISSION DISTRICT: The subject property is located within Commission District No. 5 – Commissioner Christina Lambert.

- 10.2. Public Hearing and First Reading of Ordinance No. 4971-21 regarding the transfer of the current BrandsMart USA CPD site development plans and development regulations to Resolution 256-21; and

Public Hearing of Resolution No. 256-21: Regarding a Major Planned Development Amendment to the BrandsMart USA CPD to permit the

construction of an approximately 103,611 square foot BJ's Wholesale Club store, with motor vehicle fuel sales, and site and landscape upgrades, including waivers.

The request was submitted by Ele Zachariades of Dunay, Miskel & Backman, LLP, on behalf of BrandsMart USA of South Dade, Inc., for a Major Planned Development Amendment to the BrandsMart USA Commercial Planned Development (CPD).

**Originating Department:**

Development Services

**Ordinance/Resolution:**

Ordinance No. 4971-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE PRIOR ORDINANCES RELATING TO THE BRANDSMART USA COMMERCIAL PLANNED DEVELOPMENT, LOCATED AT 751 WEST EXECUTIVE CENTER DRIVE, TO TRANSFER THE SITE DEVELOPMENT PLANS AND THE DEVELOPMENT REGULATIONS TO A SEPARATE RESOLUTION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Resolution No. 256-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A MAJOR AMENDMENT TO THE BRANDSMART USA COMMERCIAL PLANNED DEVELOPMENT, LOCATED AT 751 WEST EXECUTIVE CENTER DRIVE, TO REVISE THE SITE DEVELOPMENT PLANS AND THE DEVELOPMENT REGULATIONS BASED ON THE CONSTRUCTION OF A BJ'S WHOLESALE CLUB STORE, WHICH INCLUDES WAIVERS FROM THE ZONING AND LAND DEVELOPMENT REGULATIONS; DECLARING THIS AMENDMENT CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

APPROVE Ordinance No. 4971-21 authorizing the transfer of the current BrandsMart USA CPD site development plans and development regulations to Resolution 256-21.

Discuss Resolution No. 256-21 regarding the Major Planned Development Amendment to the BrandsMart USA CPD to permit the construction of an approximately 103,611 square foot BJ's Wholesale Club store, with motor vehicle fuel sales, and site and landscape upgrades, including waivers.

**Background Information:**

The BrandsMart USA CPD parcel was originally part of the Palm Beach Inn and Golf Course. On May 3, 1993, the City Commission approved Ordinance No. 2620-93 to rezone "Parcel 1" of the Palm Beach Inn and Golf Course to General Commercial (GC) and then to a CPD. The CPD

mandated that future development of the parcel required the approval of a Major Planned Development Amendment. On November 6, 1995, the City Commission approved Ordinance No. 2878-95, a Major Planned Development Amendment to permit the construction of a Walmart on the parcel. The Walmart was never constructed and on May 4, 1998, the City Commission approved Ordinance No. 3122-98, a Major Planned Development Amendment to permit the construction of the BrandsMart which currently occupies the site. On January 7, 2002, the City Commission approved Ordinance No. 3481-01 to permit the construction of a Steak n' Shake. On August 15, 2005, the City Commission approved Ordinance No. 3890-05 to permit the construction of a Golfsmith. Both the Steak n' Shake and the Golfsmith businesses closed, and the buildings sit vacant on the site.

BrandsMart is requesting that the City approve the construction of a stand-alone BJ's Wholesale Club store (BJ's), including an accessory motor vehicle fuel sale facility. BrandsMart has submitted a separate application to replat the parcel into two tracts, which does not get reviewed by the Planning Board but will be presented to the City Commission directly after it is reviewed by City staff.

#### *Site Plan*

The proposed development plan includes the construction of an approximately 103,611 square foot BJ's Wholesale Club store, a 12-station motor vehicle fuel sales facility, a completely reconstructed parking lot and two bioswale areas. The BJ's will replace the existing Steak n' Shake and Golfsmith buildings and the BrandsMart will remain in its current configuration. The BJ's building will include a tire center and a liquor store. The fuel sales facility will be remotely located along Interstate 95. The bioswale areas will be located along West Executive Center Drive. The redevelopment of the CPD requires five waivers to which staff does not object. The *Waivers* section of this report provides a full review of each requested waiver.

The entrances to the proposed BJ's and the liquor store are oriented internally to the site, while the tire center store entrance and bays are oriented toward Interstate 95. The entrance to the existing BrandsMart faces Interstate 95. The orientation of the front entrances of the buildings away from West Executive Center Drive is not ideal from an urban infill perspective. The original BrandsMart approval recognized this and required that the area between the rear of the BrandsMart building and West Executive Center Drive would either be built out with a neighborhood retail liner, or with an enhanced landscape area. The enhanced landscape area was installed. The orientation and placement of the existing BrandsMart building on the site limited the options for the orientation and the placement of the BJ's on the site, especially as it related to the areas available for parking. In order to mitigate the rear of

the BJ's building facing West Executive Center Drive, staff worked with the developer to install architectural detailing on the building as well as to provide a bioswale along West Executive Center Drive. Based on input from the Planning Board, the developer also added architectural detailing and extra landscape to the south side of the BJ's to present improved aesthetics along the main entry drive to the parking areas.

The bioswales will serve not only as dry detention areas planted with native material, but also as landscape buffers that will screen the buildings and provide shade for the sidewalk along West Executive Center Drive. The bioswale at the rear of the BrandsMart will include walking paths along the bioswale. The walking paths will lead to two overlooks where the public can observe the plantings and the function of the bioswale. These two bioswale areas will continue the goal of the original BrandsMart approval of not only having enhanced landscape along West Executive Center Drive to screen the back of the buildings, but also to enhance the pedestrian realm by providing shade and visual interest.

As previously mentioned, there will be architectural detailing installed on the side of the BJ's building facing West Executive Center Drive and the interior entrance drive. The architectural detailing includes tower elements, fake windows and scoring to provide visual interest. The BJ's building includes a tall tower element at the corner over the main entrance. The City's sign code only permits three signs for BJ's on the building; however, BJ's would like to have a sign on each side of the tower, plus a sign for the liquor store and the tire center. BJ's has requested a waiver to permit the six total signs.

The proposed motor vehicle fuel sales facility will be located along the Interstate 95 frontage and will not be visible from West Executive Center Drive. The stacking for the fuel pumps will be located between the fueling stations and the perimeter buffer and is not expected to negatively impact the site circulation. As part of the building permitting process, wayfinding directional signs meeting the sign code criteria will be installed on the site to guide customers to the fuel facility.

The redevelopment of the site includes four access points, instead of the two access points from West Executive Center Drive which exist today. One of the additional access points will be from West Executive Center Drive, which requires the approval of a waiver to the number of access points from one right-of-way. The second additional access point will be from the adjoining commercial site to the north of the BrandsMart USA CPD. The adjoining site is being redeveloped as a car wash, and the access point is at a location that has been contemplated to connect multiple properties in the area to permit additional cross access options without forcing all the vehicular trips out onto West Executive Center Drive. The development teams for the BrandsMart USA CPD and the car

wash site worked together to coordinate the access point location.

As previously stated, the owner of the site has submitted a request to subdivide the BrandsMart USA CPD into two parcels. One parcel will contain the existing BrandsMart and the other parcel will contain the BJ's. Since this is a redevelopment of an existing retail site, the two parcels will not have clearly defined boundaries for customers on the site. The parking areas, access drives and utilities will traverse the proposed property line between the parcels. In order to facilitate the shared features, as part of the subdivision, the owner will need to record a cross parking, cross access and cross utility agreement(s). Due to the proposed property line traversing the shared parking area, it would be an inefficient site design to install the code minimum five (5) foot landscape buffer on each side of the parcel line. The applicant has requested a waiver of this code provision.

The existing parking areas on the site will be completely reconstructed and new parking areas will be added to accommodate the proposed BJ's. The ZLDR require 883 parking spaces to be provided on site. The applicant is unable to provide the full number of parking spaces and thus has requested a parking waiver to have a parking requirement of only 737 parking spaces on site. The site plan provides 758 parking spaces on site, which includes ADA and compact parking spaces. The reduction in the parking requirement requires the approval of a ZLDR waiver, which is fully described in the *Waivers* section of the report.

The Best Buy store to the north of the site has a stormwater pipe that runs from the Best Buy site across a portion of the BrandsMart USA CPD to West Executive Center Drive. There is an existing City easement in the area that is wider than is necessary for the pipe that is installed, so the City has worked with both the BJ's and the car wash applicants to locate the pipe and lay out the appropriate 12-foot wide easement for the pipe. This narrower easement permits some trees to be installed within the required landscape buffer along the BrandsMart USA CPD north property line. However, there is an area where the easement does not permit the installation of buffer trees, so the applicant has requested a waiver for an interruption in the landscape buffer planting requirements. Staff is processing the reconfiguration of the drainage easement.

The landscape buffers for the majority of the exterior of the site exceed the code required five (5) foot minimum width. This includes the previously mentioned bioswales along the east property frontage, as well as the majority of the south buffer and the west buffers. The parking areas include staggered interior islands and landscape divider medians with trees to provide canopy shade for as many of the parking spaces as possible.

*Waivers*

Planned developments are permitted to relax or waive provisions of the ZLDR in order to create more desirable and attractive development in the City. The applicant is requesting five waivers from provisions of the ZLDR. In order to offset the waivers that are being requested, the applicant is transforming the existing landscape buffer along West Executive Center Drive into a landscaped bioswale. The portion of the bioswale in front of the BrandsMart building will have a perimeter walkway with bollard lighting and two overlooks to permit the public to view the natural area. The perimeter walkways and bioswale overlooks will be required to have a recorded public access easement prior to the Certificate of Occupancy for the BJ's.

The applicant is requesting waivers to the ZLDR standards listed below:

**Waiver #1** Section 94-207.b.13. Parking Waiver: 883 spaces required. Requested waiver: 737 spaces required (146 parking spaces less than required by ZLDR)

Planned Developments located east of Interstate 95 may request a reduction to the number of required parking spaces for the project provided that the project meets three of the five criteria listed in Section 94-207.b.13:

a. **COMPLIES:** No more than 30 percent reduction in the required parking spaces. The applicant is requesting a 17 percent reduction in the number of required parking spaces.

b. **NOT APPLICABLE:** Project must meet the concepts of new urbanism. Two big box retail stores that do not engage the street frontage do not meet this requirement.

c. **COMPLIES:** Provide a parking study showing the parking reduction is warranted. The applicant provided a parking study by Kimley-Horn and Associates. The parking study focused on the parking use of the existing BrandsMart store to show that the BrandsMart requires 146 less parking spaces than what is required based on the parking table in the ZLDR. The site plan provides 125 less parking spaces than the ZLDR require for BrandsMart, so there are 21 more parking spaces provided than the parking study minimum requirement. The BJ's will provide the full number of spaces that are required by the ZLDR parking table for that use.

d. **COMPLIES:** On-street parking is available to assist in meeting the parking needs for the project. There are 12 on-street parking spaces in front of the BrandsMart USA CPD along West Executive Center Drive.

e. **NOT APPLICABLE:** Other parking facilities within 300 feet are available for use. The parallel parking spaces within 300 feet of the site are heavily utilized by the multifamily residential residents and thus are not available for use by BJ's or BrandsMart customers.

The applicant has demonstrated compliance with the parking waiver criteria and thus staff does not object to the waiver request.

**Waiver #2** Section 94-312.1.a. Number of access points: Number of Access Points – Two permitted, Three requested

The current BrandsMart has two access points from West Executive Center Drive. The redevelopment plan leaves the southernmost access point in the same location and proposes to relocate the northern access point to a more central location along the property frontage. The final access point will be at the northern portion of the site and provide primarily truck access to the proposed BJ's, but also can be utilized by the internal connection to the car wash, gas station and Best Buy driveways. The City's Engineering Department has reviewed the additional access point and not raised any objection to the waiver request.

**Waiver #3** Section 94-408.d.1.d. Number of wall mounted signs for BJ's: Three permitted, Six requested

The building contains a tower element on which BJ's is requesting to mount a sign on each side, which would result in four signs. Additionally, BJ's would like to have a separate sign for the tire center and one for the liquor store, which would then total six wall mounted signs. The proposed signs will utilize much less of the square footage than is permitted on any of the four frontages and not result in excessive signage that will be a detriment to the area. Staff does not object to this waiver request.

**Waiver #4** Section 94-443.b.1. Minimum required landscape buffer: Five (5) feet wide. Requested waiver: No landscape buffer between parcels within the BrandsMart USA CPD

The applicant plans to subdivide the BrandsMart USA CPD into two parcels. The proposed parcel line would traverse the parking lot and along drive aisles. If the required five (5) foot landscape buffer was installed along the interior parcel line, the resulting 10-foot-wide buffer would not lead to a better site design. The parking lot and the interior of the site, when looked at as one site, comply with the landscape requirements of the ZLDR. Additionally, much of the site's perimeter buffers, especially along the West Executive Center Drive frontage, exceed the minimum required buffer widths, so the landscape for the public face of the site offsets the site not providing a landscape buffer along the internal parcel line. Staff does not object to this waiver request.



**Waiver #5** Section 94-443.b.4. Buffer tree planting: One tree every 30 feet required, Greater than 30-foot separation requested (location of City drainage easement)

There is an existing stormwater pipe covered by a drainage easement along an approximately 110-foot linear portion of the northern buffer that prohibits the installation of the required trees every 30 feet. The applicant is proposing to install the required number of trees along the buffer, but at a 25-foot separation where there is no easement issue. The ZLDR permit the clustering of trees when circumstances prohibit the strict code requirement, so the applicant has asked for the waiver. Staff does not object to the request since the minimum number of trees are still being maintained in the buffer.

**STANDARDS:** The Planning Division has determined that the Major Planned Development Amendment to the Brandsmart USA CPD meets all eight (8) of the required amendment standards found in Section 94-32 of the City of West Palm Beach Zoning and Land Development Regulations.

Compliance with the above referenced standards is detailed in the attached Planning Board Staff Report.

**PLANNING BOARD:** The Planning Board recommended approval (7-0) of the request to the City Commission after a Public Hearing on August 17, 2021.

**NOTICE:** Individual notices were mailed to all property owners within 500 feet of the Brandsmart USA CPD. Signs for the Major Amendment were posted on the property on July 29, 2021.

**COMMISSION DISTRICT:** The subject property is located within Commission District 3: Commissioner Christy Fox.

**Fiscal Note:**

No fiscal impact.

- 10.3. Public Hearing and First Reading of Ordinance No. 4972-21 regarding the transfer of the current development regulations for a portion of Parcel 3 of the Palm Beach Lakes Inn & Golf Course Commercial Planned Development (CPD) located at 879 West Executive Center Drive (known as the restaurant parcel) to Resolution 257-21; and

Discussion of Resolution No. 257-21 regarding a Major Planned Development Amendment to a portion of Parcel 3 of the Palm Beach Lakes Inn & Golf Course CPD located at 879 West Executive Center

Drive to construct an automated car wash facility and designate the parcel as the Flamingo Car Wash Parcel of the Palm Beach Lakes Inn and Golf Course CPD.

The request was submitted by Brian Cheguis of iPlan & Design, LLC., on behalf of Vybe Investments, LLC.

**Originating Department:**

Development Services

**Ordinance/Resolution:**

Ordinance No. 4972-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE SECTIONS OF ORDINANCE NO. 2622-93 RELATING TO THE PORTION OF PARCEL 3 OF THE PALM BEACH LAKES INN AND GOLF COURSE COMMERCIAL PLANNED DEVELOPMENT LOCATED WITH A PHYSICAL ADDRESS OF 879 WEST EXECUTIVE CENTER DRIVE (ALSO KNOWN AS RESTAURANT SITE), TO TRANSFER THE DEVELOPMENT REGULATIONS TO A SEPARATE RESOLUTION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Resolution No 257-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A MAJOR AMENDMENT TO THE PORTION OF PARCEL 3 OF THE PALM BEACH LAKES INN AND GOLF COURSE COMMERCIAL PLANNED DEVELOPMENT LOCATED WITH A PHYSICAL ADDRESS OF 879 WEST EXECUTIVE CENTER DRIVE (ALSO KNOWN AS RESTAURANT SITE), TO ESTABLISH DEVELOPMENT REGULATIONS, INCLUDING SITE DEVELOPMENT PLANS, BASED ON THE CONSTRUCTION OF AN AUTOMATED CAR WASH FACILITY AND TO DESIGNATE THIS PARCEL AS THE FLAMINGO CAR WASH PARCEL OF THE PALM BEACH LAKES INN AND GOLF COURSE COMMERCIAL PLANNED DEVELOPMENT; DECLARING THIS AMENDMENT CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

APPROVE Ordinance No. 4972-21 authorizing the transfer of the current development regulations for a portion of Parcel 3 of the Palm Beach Lakes Inn & Golf Course Commercial Planned Development (CPD) located at 879 West Executive Center Drive (known as the restaurant parcel) to Resolution 257-21.

Discuss Resolution No. 257-21 regarding the Major Planned Development Amendment to a portion of Parcel 3 of the Palm Beach Lakes Inn & Golf Course CPD located at 879 West Executive Center Drive to construct an automated car wash facility and designate the parcel as the Flamingo Car Wash Parcel of the Palm Beach Lakes Inn and Golf Course CPD .

**Background Information:**

The parcel located at 879 West Executive Center Drive was originally part of the Palm Beach Inn and Golf Course. On May 3, 1993, the City Commission approved Ordinance No. 2622-93 to rezone "Parcel 3" of the Palm Beach Lakes Inn and Golf Course to General Commercial (GC) and then to a CPD. The CPD established that the only use on permitted on the site was a stand-alone restaurant. A Chinese Restaurant operated on the site until it closed in 2016. The building has been vacant since the restaurant closed. The current application is to construct a Flamingo brand automated car wash on the site.

The applicant plans to demolish the existing building and parking lot and construct a new automated car wash building with detached pay station and vacuum stations. In order to continue the City's vision to have West Executive Center Drive present a comfortable pedestrian experience and the feel of an urban street, the applicant has placed the building along the street frontage, with the parking to the rear, shielded by the building. While the front entrance to the building does not directly access West Executive Center Drive, the car wash building has been designed with fenestration along the building frontage that permits the public to watch the cars being driven through the car wash. Additionally, the applicant will be installing a paved plaza in front of the fenestrated area with benches and shade trees to further enhance the public realm.

The site's vehicular access is not directly from West Executive Center Drive, but rather from an existing internal drive that is located on the adjoining gas station with convenience store parcel to the north. The gas station is also a part of the original Parcel 3 of the Palm Beach Lakes Inn and Golf Course CPD. There is an access easement over the entry road which permits access to the proposed car wash parcel. An additional access point will be constructed with the redevelopment of the adjoining BrandsMart USA CPD to provide cross access so that all the vehicular trips utilizing the various commercial parcels in the area do not need to utilize West Executive Center Drive. The development teams for the car wash and the BrandsMart USA CPD worked together to coordinate the access point location.

Car wash customers accessing the site from either of the entrances will pay for their car wash at the pay station and then proceed through the car wash building. After exiting the car wash, customers can access the vacuum stations that are provided on the western portion of the site.

There are two easements encumbering the site that the applicant needs to address. The first easement relates to a stormwater pipe that runs from the Best Buy site across a portion of the southern boundary of the car wash parcel then to West Executive Center Drive. There is an existing City easement in the area that is wider than is necessary for the

pipe that is installed, so the City has worked with both the car wash and BrandsMart applicants to locate the pipe and lay out a 12-foot wide easement for the pipe. The location of the portion of the easement on the car wash parcel does not create any buffer landscape issues.

The second easement is an existing cross-access easement that permits Best Buy to construct an access drive to West Executive Center Drive. The access easement traverses the southwest corner of the car wash parcel, which, if installed, would create a non-conforming landscape buffer for the car wash site. The owner of the Best Buy parcel has provided a letter agreeing to work with the car wash to abandon the access easement as the easement is no longer necessary as alternative access has been provided to the Best Buy parcel.

The landscape plan includes shade trees that overhang the sidewalk along West Executive Center Drive. The applicant is installing a sidewalk that parallels the entry drive from West Executive Center Drive to the boundary with the Best Buy. This new sidewalk will be shaded by the new trees installed along the northern buffer of the car wash site. It is important to note that the existing restaurant site does not have a landscape buffer along the majority of the north property line, so the new buffer will not only provide additional tree canopy, but will improve the aesthetics of the entry experience to the retail parcels. The landscape plan shows that the majority of the existing trees on the site will either remain in place or be relocated on-site.

**STANDARDS:** The Planning Division has determined that the Major Planned Development Amendment to the portion of Parcel 3 of the Palm Beach Lakes Inn & Golf Course CPD located at 879 West Executive Center Drive to construct an automated car wash facility meets all eight (8) of the required amendment standards found in Section 94-32 of the City of West Palm Beach Zoning and Land Development Regulations.

Compliance with the above referenced standards is detailed in the attached Planning Board Staff Report.

**PLANNING BOARD:** The Planning Board recommended approval (7-0) of the request to the City Commission after a Public Hearing on August 17, 2021.

**NOTICE:** Individual notices were mailed to all property owners within 500 feet of the portion of Parcel 3 of the Palm Beach Lakes Inn & Golf Course CPD located at 879 West Executive Center Drive to construct an automated car wash facility. Signs for the Major Amendment were posted on the property on July 29, 2021.

**COMMISSION DISTRICT:** The subject property is located within

Commission District 3: Commissioner Christy Fox.

**Fiscal Note:**

No fiscal impact.

- 10.4. Public Hearing of Resolution No. 227-21 a request by Brian Seymour of Gunster Law on behalf of Cohen Brothers Realty Corporation of Florida LLC for the approval of a Level III Site plan for the construction of a new 23-story 430,374 sf class A office building with 16,630 sf of retail on the ground floor, a 480 sf roof top café, and a 10-story 1,195 space parking garage at 801 South Dixie Highway.

**Originating Department:**

Development Services

**Ordinance/Resolution:**

RESOLUTION NO. 227-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, RELATING TO A DEVELOPMENT OF REGIONAL IMPACT (DRI) KNOWN AS "CITYPLACE" (FORMERLY KNOWN AS "DOWNTOWN/UPTOWN") GOVERNED BY ORDINANCE NO. 4412-12, WHICH AMENDED AND RESTATED ORDINANCE NO. 3098-97, AS AMENDED BY ORDINANCE NOS. 3124-98 AND 4154-08, BEING THE DEVELOPMENT ORDER OF THE CITY OF WEST PALM BEACH APPROVING THE CITYPLACE DRI; APPROVING A LEVEL III SITE PLAN PURSUANT TO ORDINANCE NO. 4412-12 TO ALLOW THE CONSTRUCTION OF A 23-STORY OFFICE BUILDING AT 801 SOUTH DIXIE HIGHWAY; DECLARING THE SITE PLAN TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY, THE CONDITIONS OF APPROVAL OF THE CITYPLACE DRI DEVELOPMENT ORDER, AND THE REQUIREMENTS OF SECTION 94-35 OF THE CITY'S ZONING AND LAND DEVELOPMENT REGULATIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Staff and developer are continuing to work to resolve the issues raised at the September 20th hearing. New factors may result in new or additional recommendations regarding conditions by staff. Staff will make their recommendation at the meeting.

Either:

Approved Resolution No. 227-21 granting the waivers and approving the site plan. This motion is based upon the application submitted, the factual testimony presented, the staff report, consideration of the Planning Board recommendation, and the standards listed in Sections 94-35, 94-108 and 94-109 of the Zoning and Land Development Regulations.

OR

Deny Resolution No. 227-21 based upon the findings that the proposed site plan does not comply with the following standards found in [Section 94-35, 94-108 or 94-109] of the City's Zoning and Land Development Regulations. [The specific standards not met must be identified].

OR

[move for further continuance to allow staff and the developer to continue to address the issues, if developer desires to submit revisions].

**Background Information:**

At the September 20, 2021 City Commission hearing, the Commission continued the item until the October 18, 2021. Staff is analyzing revisions submitted by the developer and will provide analysis and make staff's recommendation at the meeting. Revisions may require revised conditions requiring revisions to the proposed resolution.

Planning Staff fully supports the West Palm Point project. The proposed Site Plan would require 23 waivers from the Zoning and Land Development Regulations. Staff support 17 of the requested waivers. Staff cannot support the additional six (6) waivers requested regarding a reduction on the minimum setback required above the 1st floor, and a reduction on the minimum required active uses for floors 2nd through 5th along Okeechobee Boulevard, Dixie Highway, and Lakeview Avenue, as they relate to the parking garage. Staff proposes that the developer make adjustments to the design to ensure compliance, or an alternative design to the architectural treatment that enhances the design of the parking garage.

**BACKGROUND:**

The CityPlace Commercial Planned Development is approved for a mix of residential, retail, restaurant, office, hotel, and entertainment uses, as well as the Palm Beach County Convention Center. The CPD is nearing build out with only three (3) parcels remaining undeveloped. One of the vacant parcels is the 2.36-acre property located between Okeechobee Boulevard, Lakeview Avenue, Quadrille Boulevard, and Dixie Highway, known as the Tent site, and the subject of this application.

On August 13, 2018, the City Commission approved Ordinances Nos. 4783-18 and 4784-18 amending the Downtown Master Plan Element of the Comprehensive Plan and the Zoning and Land Development Regulations to create the Okeechobee Business District. The OBD, which includes the properties located between Rosemary Avenue, Okeechobee Boulevard, Flagler Drive, and Lakeview Avenue, stated as its goal to incentivize the construction of class A office buildings along the

Okeechobee Boulevard corridor. As a companion item to that amendment, the City Commission passed Ordinance No. 4782-18 and Resolution No. 150-18 amending the CityPlace CPD to include regulations for the two (2) blocks of the CityPlace CPD located within the boundaries of the OBD. Following the regulations of the OBD, the regulations implemented for the portion of the CPD within the OBD district through Resolution No. 150-18, included a limitation on the maximum development capacity allowed on those blocks, limitations on the number of parking spaces allowed, and the requirement for the implementation of several transportation demand management strategies. According to the approved regulations, the subject site is permitted a Floor area ratio (FAR) of 4.75 or a maximum development capacity of 490,024 sf. The proposed project complies with the maximum gross building area (GBA) allowed for the site. The project includes 447,484 sf of GBA (FAR 4.43) and 23-stories (308') in height, the proposed project is below the maximum 4.75 FAR and 25-stories allowed.

The proposed West Palm Point project contemplates a 23-story class A office building within the adopted development regulations of both the CityPlace Commercial Planned Development (CPD) and the Okeechobee Business District (OBD). The proposed project is planned for approximately 91% of the allowable development capacity, and the Planning staff supports this site as both an ideal location for a class A office building, as well as a prominent landmark building in the City's downtown.

The proposed application exceeds the current capacity allowed for office uses within the DRI, therefore a use conversion in accordance with the square footage conversion process established in the DRI is necessary to accommodate the total square footage of office space proposed by the project. The applicant has submitted a conversion analysis converting 4,788 sf of indoor recreation use into office use. The proposed conversion satisfies the DRI requirements regarding development capacity and allows the construction of the office project without an increase in the traffic capacity permitted by the DRI.

#### A.PROJECT ANALYSIS

The West Palm Point project is proposed as a two (2) building design, with a 23-story office free-standing tower located towards the Quadrille Boulevard frontage and a lower ten-story parking garage located towards the Dixie Highway frontage. Between the two buildings, a pedestrian passageway is proposed. The proposed design successfully marks the entrance to the core of the downtown area with its elliptical shaped office tower clad in glass that tapers as the tower goes up. The proposed configuration with two (2) separate structures also provides for a new public open space or passageway between the two buildings. It is staff's professional opinion that the proposed configuration is a desirable

configuration for the site and provides the opportunity for iconic architecture with quality public open space in the middle of an area typically associated with vehicles.

The proposed parking garage includes 1,195 parking spaces, which is in compliance with the maximum number of parking spaces permitted by Resolution No. 150-18. To achieve the hard-maximum number of parking spaces allowed on site, the applicant elected to make an annual contribution to the transit fund in an amount of \$862 per each additional parking space provided above the soft maximum parking (up to an additional .75/1,000sf) for a total amount of \$257,738 every year. The money received for the transit fund will be utilized in the operation of the trolley service or other transit related services and projects designated to enhance mobility in the City. The transit contribution allowed the project to add 299 parking spaces above the soft maximum allowed. In addition, the applicant is increasing the total number of parking space to a maximum of three (3) spaces per every 1,000 sf of office or retail through the implementation of specific transportation demand management strategies and the construction of one (1) parking level for future conversion into occupiable space.

In general, Staff supports the proposed project; however, staff has concerns regarding the treatment of the stand-alone parking garage structure. The project is proposing a stand-alone 10-story parking garage structure that includes retail uses at the ground floor, but no other active uses in the upper floors to screen the parking uses. The architect is presenting the architectural design of the parking garage as a unique piece where the horizontal movement of the different concrete slabs and the changes on its profile create enough variety to highlight the structure in itself and overlook the cars parked inside. Staff applauds the architect's intent to create a unique garage structure; however, due to the prominent location of the structure, staff is concerned the proposed design is not dramatic enough and the structure would be perceived as a simple garage with no screening whatsoever.

According to the Resolution No. 150-18, Building requirement, QBD-25CP, that regulates the subject site, active uses are required along a minimum of 60% of the building frontage on primary streets such as Dixie Highway, Lakeview Avenue, and Okeechobee Boulevard from floors two to five (68'). The proposed design provides only 35% active use frontage above the first floor along Okeechobee Boulevard and Lakeview Avenue (all located on the office tower) and 0% active uses along the Dixie Highway frontage above the first floor. The parking garage is totally exposed from floors two to ten, and the only active use provided is at the ground level.

Staff understands large office projects may require having parking garages without liner uses. Specific language included in Resolution No.



150-18 addresses this situation by allowing office buildings not to provide active use liners above the ground floor. However, the language requires the provision of architectural treatments to extend the façade of the office tower in such a way that the tower is perceived as having one continuous uninterrupted facade from the ground floor to the top of the building for 100% of the tower building frontage. In the case of the subject project, the garage is not integrated with the office tower, making the simple extension of the office facade not an option. As an alternative, the applicant opted for providing a creative design for the parking garage by proposing different horizontal projections for the concrete slabs that conform the parking garage and a modified profile for the same slabs as they meet the garage facade.

Due to the prominent location of the proposed parking garage, staff is concerned the proposed treatment is not sufficient to screen the parking facility or create an iconic parking garage, and the parking structure will have a negative impact on the surrounding environment due to its high visibility and size. The proposed variation on the parking levels projection and profile is not enough to elevate the parking garage above its utilitarian role. The parking garage occupies 50% of the site, and it is ten-stories and 104'4" in height. The garage does not comply with the minimum required active uses for floors two through five and provides minimum architectural treatment.

#### B.WAIVERS REQUEST

Staff has spent a great deal of time with the applicant in an effort to reduce the 23 waivers being requested and still feel some improvements to the design of the parking garage are warranted given its significant location on such a prime and visible site within the City's financial district. The applicant is requesting 17 waivers from the CPD requirements for the OBD-25CP included in Resolution No. 150-18, and six (6) waivers from the Downtown Master Plan urban regulations. From the total 23 waivers requested, staff supports 17, providing a substantial amount of flexibility to the project in response to the complex site and particular characteristics of the project. Staff cannot support the six (6) waivers requested regarding a reduction on the minimum setback required above the 1st floor, and a reduction on the minimum required active uses for floors two through five along Okeechobee Boulevard, Dixie Highway, and Lakeview Avenue as they relate to the parking garage and recommends that adjustments be made to the design to ensure compliance or an alternative design to the architectural treatment that enhances the design of the parking garage.

ART LIFE: The ArtLife WPB Committee has not yet reviewed the proposed public artwork on the garage, as required by Section 78-125 of the Code of Ordinances. The committee was introduced to the artist work and his practice as an informative presentation by the art consultant as a

non-action item. By code, the artist proposed artwork has a separate review process from planning and zoning requirements. Approval of the Site Plan does not approve the proposed public artwork.

PLANNING BOARD: The Planning Board recommended approval (7-0) of the requests described herein at their August 17, 2021 public meeting.

PUBLIC NOTICE: Individual notices were mailed to all property owners within 500 feet of the property, and signs were posted on the site. Resolution No. 227-21 was advertised in the Palm Beach Post on Friday, September 10, 2021.

COMMISSION DISTRICT: The subject property is located within Commission District No. 3: Commissioner Christy Fox.

## **11. COMMENTS FROM THE PUBLIC**

Public comments are limited to 3 (three) minutes. Anyone wishing to address the Commission should complete a "Comments by the Public" card and present it to the City Clerk prior to the Public Comments. When you are called to speak, please go to the podium and state your name and address for the record prior to addressing Commission. The Commission will not discuss the matter nor respond to the comment this evening. Comments made will become part of the record and may be addressed at a later date.

## **12. COMMENTS BY THE MAYOR AND CITY COMMISSIONERS**

## **13. ADJOURNMENT**

\*Pursuant to Resolution No. 179-95, adopted according to the provisions of Section 286.0115, Florida Statutes, members of the Commission shall disclose on the record: 1) ex-parte communications - verbal or written 2.) written communications shall be placed in the record; and 3) site visits, investigations, etc. shall be disclosed.

NOTICE: If any person decides to appeal any decision made by the City Commission at this meeting, that person will need a record of the proceedings, and that, for such purposes, may need to ensure that a verbatim records of the proceedings be made, which record includes the testimony and evidence upon which the appeal is based. The City of West Palm Beach does not prepare or provide such record.