



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  
DRAFT Agenda  
Monday, November 1, 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. PROCLAMATION**

- 6.1. Proclaiming the week of October 29 - November 5, 2021 as Mobility Week. Proclamation to be accepted by Xavier Falconi, City's Traffic

Engineer.

**Originating Department:**

Mayor's Office

## 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 October 4, 2021

**Originating Department:**

City Clerk's Office

7.2. Resolution No. 274-21 authorizing the Mayor to execute a release of code enforcement liens encumbering 734 Ardmore Rd.

**Originating Department:**

Code Enforcement

**Ordinance/Resolution:**

RESOLUTION NO. 274-21: A RESOLUTION OF THE CITY COMMISSION OF CITY OF WEST PALM BEACH, FLORIDA, CONDITIONALLY WAIVING CITY LIENS; AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A RELEASE OF CODE ENFORCEMENT LIENS ENCUMBERING CERTAIN REAL PROPERTY LOCATED AT 734 ARDMORE ROAD, WEST PALM BEACH, FLORIDA; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

**Background Information:**

The previous owner of 734 Ardmore was cited numerous times for code violations on the property, including violations involving necessary repairs to the exterior and roof, pests and rodents, a bee infestation, overgrowth, and debris. As a result of the previous owner's failure to repair the property, a fine has accrued to approximately \$89,300. A new owner has recently purchased the property and plans to rehabilitate the property. The rehabilitation of the property will eliminate unpleasant conditions and improve the area. This resolution will allow the release of the \$89,300 fine/lien if certain conditions are met, including payment of an \$8,000 administrative fine, payment of any outstanding utility liens or taxes, and completion of the property rehabilitation by November 1, 2022.

**Fiscal Note:**

No fiscal impact.

7.3. Resolution No. 278-21 authorizing the Mayor to execute a release of code enforcement liens encumbering 408 El Vedado.

**Originating Department:**

Code Enforcement

**Ordinance/Resolution:**

RESOLUTION NO. 278-21: A RESOLUTION OF THE CITY COMMISSION OF CITY OF WEST PALM BEACH, FLORIDA, CONDITIONALLY WAIVING CITY LIENS; AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A RELEASE OF CODE ENFORCEMENT LIENS ENCUMBERING CERTAIN REAL PROPERTY LOCATED AT 408 EL VEDADO, WEST PALM BEACH, FLORIDA; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

The previous owner of 408 El Vedado was cited numerous times for code violations on the property, including violations involving roof, walls, and foundation repairs, failure to obtain a rental license and certificate of use, overgrowth, trash and debris. As a result of the previous owner's failure to repair the property, a fine has accrued to approximately \$716,800. A new owner has recently purchased the property and plans to rehabilitate the property. The rehabilitation of the property will eliminate unpleasant conditions and improve the area. This resolution will allow the release of the \$716,800 fine/lien if certain conditions are met, including payment of a \$15,000 administrative fine, payment of any outstanding utility liens or taxes, and completion of the property rehabilitation by May 1, 2022.

**Fiscal Note:**

No fiscal impact.

- 7.4. Resolution No. 268-21 authorizing the submission of an application to the Florida Department of Transportation for a grant in the amount of \$116,000 to fund an Aggressive Driving Program; and Resolution No. 267-21(F) providing for the receipt and appropriation of \$116,000 in grant funding in FY 2021/2022.

**Originating Department:**

Police

**Ordinance/Resolution:**

RESOLUTION NO 268-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR A SPEED/AGGRESSIVE DRIVING SAFETY GRANT TO FUND THE WEST PALM BEACH POLICE DEPARTMENT SPEED AND AGGRESSIVE DRIVING CAMPAIGN; AUTHORIZING EXECUTION OF ALL NECESSARY DOCUMENTS; PROVIDING AN EFFECTIVE DATE; AND OTHER PURPOSES.

RESOLUTION NO. 267-21(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA,

AUTHORIZING THE APPROPRIATION OR TRANSFER OF CITY FUNDS IN THE 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 RECOGNIZE RECEIPT OF FUNDS FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR REIMBURSEMENT OF OVERTIME COSTS FOR TRAFFIC EDUCATION AND ENFORCEMENT OF AGGRESSIVE DRIVING LAWS AND TO PROVIDE APPROPRIATIONS FOR THE EXPENDITURES; PROVIDING AN EFFECTIVE; AND FOR OTHER PURPOSES.

**Background Information:**

In January 2021, the West Palm Beach Police Department submitted a concept paper to the Florida Department of Transportation (FDOT) regarding the proposed use of grant funds to be included in the State's Fiscal Year 2022 Highway Safety Plan. The paper used statistics on crash outcomes in the City of West Palm Beach and the rest of the State to help justify why this education and enforcement plan focused on aggressive driving should be funded in the City of West Palm Beach.

On September 10, 2021, Chief Adderley was notified that the FDOT agreed and has determined that the City of West Palm Beach's plan merited inclusion in the Highway Safety Plan in the amount of \$116,000 in overtime reimbursement, speed measuring laser devices, and information cards. The City must submit an electronic application to accept this subgrant and complete associated documents. The grant period began on October 1, 2021, but the program cannot be implemented until all documents are complete. This program supports the City's Vision Zero goal of zero traffic fatalities.

Funding allocations: \$100,000 overtime reimbursement (salary & benefits); \$11,000 purchasing of Moving/Directional Radar Devices; and \$5,000 purchasing of Speed Measuring Devices/Lasers.

Resolution No. 268-21 authorizes submittal of the documentation for the grant, and Resolution No. 267-21(F) accepts and appropriates the grant funds of \$116,000

**Fiscal Note:**

No Fiscal Impact

- 7.5. Resolution No. 270-21 authorizing the submission of an application to the Florida Department of Transportation for a grant in the amount of \$108,000 to fund the Police Department's Occupant Protection Program (seatbelts and child restraint device usage); and

Resolution No. 271-21(F) providing for the receipt and appropriation of

\$108,000 in grant funding in FY 2021/2022.

**Originating Department:**

Police

**Ordinance/Resolution:**

RESOLUTION NO. 270-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR AN OCCUPANT PROTECTION AND CHILD PASSENGER SAFETY GRANT TO FUND THE WEST PALM BEACH POLICE DEPARTMENT OCCUPANT PROTECTION PROGRAM; AUTHORIZING EXECUTION OF ALL NECESSARY DOCUMENTS; PROVIDING FOR AN EFFECTIVE DATE;AND OTHER PURPOSES.

RESOLUTION NO. 271-21(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 RECOGNIZE RECEIPT OF FUNDS FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR REIMBURSEMENT OF OVERTIME COSTS FOR TRAFFIC EDUCATION AND ENFORCEMENT OF OCCUPANT SAFETY LAWS AND TO PROVIDE APPROPRIATIONS FOR THE EXPENDITURES; PROVIDING AN EFFECTIVE; AND FOR OTHER PURPOSES.

**Background Information:**

In January 2021, the West Palm Beach Police Department submitted a concept paper to the Florida Department of Transportation (FDOT) regarding the proposed use of grant funds to be included in the State's Fiscal Year 2021 Highway Safety Plan. The paper used statistics on crash outcomes in the City of West Palm Beach and the rest of the State to help justify why this education and enforcement plan targeting occupant restraint usage, safety belts and child restraint devices, should be funded in the City of West Palm Beach.

On September 10, 2021, Chief Adderley was notified the FDOT agreed and has determined the City of West Palm Beach's plan merited inclusion in the Highway Safety Plan in the amount of \$100,000 in overtime reimbursement (salary & benefits) \$5,000 purchasing of Bluetooth citation printers; and \$3,000 purchasing of Traffic Safety Cones/Markers. The City must submit an electronic application to accept this subgrant and complete associated documents. The grant period began on October 1, 2021, but the program cannot be implemented until all documents are complete. This program supports the City's Vision Zero goal of zero

traffic fatalities.

Resolution No. 270-21 accepts the grant and authorizes execution of any necessary documents. Resolution No. 271-21(F) accepts and appropriates the grant funding of \$108,000.

**Fiscal Note:**

No Fiscal Impact

- 7.6. Resolution No. 285-21(F) authorizes appropriation of \$50,000 to commission an art installation at South Olive Park.

**Originating Department:**

Art Life WPB

**Ordinance/Resolution:**

RESOLUTION NO. 285-21(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OR TRANSFER OF PUBLIC ART 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 ARTLIFE WPB CAPITAL PROJECT FUND BUDGET TO PROVIDE APPROPRIATIONS TO COMMISSION A LARGE SCALE PUBLIC ARTWORK FOR SOUTH OLIVE PARK; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

On October 6, 2021, the ArtLife WPB Committee voted unanimously to recommend to City Commission the allocation of \$35,000 from the ArtLife WPB Capital Project fund balance to commission local artist Jill Hotchkiss to create a large-scale artwork for South Olive Park. An additional \$15,000 will be re-appropriated from Other Contractual Services for a total project budget of \$50,000.

**Location:**

South Olive Park - racquetball courts east facing wall.

**About the Artist:**

Local artist Jill Hotchkiss was born in Hollywood, Florida. She received her Master of Fine Arts in Sculpture from Pratt Institute and a Bachelor of Fine Arts in Graphic Design from the University of Florida. She has participated in artists residencies in Public Art at the School of Visual Arts in New York and at Oolite Arts in Miami. After working for the past 10 years in New York City as a practicing artist and teaching artist (instructing children and adults), she has recently returned back to her home state and has a working studio, open to the public, based in downtown Delray Beach, Florida. Her work has been included in numerous exhibitions, private and public collections throughout the United

States, South America, Japan, and Europe along with a variety of large-scale hospitality and architectural commissions.

Jill Hotchkiss embeds growth patterns into elemental substrates by emulating geological processes such as wind, rain, gravity, and erosion. The origin of each relief is derived by hand rendered drawings comprised of black ink on paper. The imagery resembles organized branch-like structures scientifically termed dendritic. She has observed that this recurring pattern is echoed throughout the natural world; within the architecture of trees, roots, oceanic forms, water tributaries, topography, cells, lightning, and vascular/ nervous systems- all of which inspire her work. These interconnected forms represent the bond between all biological systems.

The final concept will be presented at City Commission for final approval as Face of the City at a future date.

Commission District 5: Christina Lambert.

**Fiscal Note:**

Approval provides appropriations for South Olive East Wall Art Installation.

- 7.7. Resolution No. 286-21 approves a project funding interlocal agreement between the City and the CRA for the partial funding of a large-scale sculpture at the Heart and Soul Park for an amount not to exceed \$150,000.

Resolution No. 283-21(F) authorizes the appropriation of \$150,000 from the ArtLife WPB Capital Project carryforward fund balance to commission a public art sculpture for the Heart and Soul Park.

**Originating Department:**

Mayor's Office

**Ordinance/Resolution:**

RESOLUTION NO. 286-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A PROJECT FUNDING INTERLOCAL AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY FOR A LARGE-SCALE SCULPTURE BY ARTIST NEKISHA DURRETT TO BE INSTALLED AT THE HEART AND SOUL PARK FOR AN AMOUNT NOT TO EXCEED \$150,000; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

RESOLUTION NO. 283-21(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA,

AUTHORIZING THE APPROPRIATION OR TRANSFER OF PUBLIC ART 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 ARTLIFE WPB CAPITAL PROJECT FUND BUDGET TO PROVIDE APPROPRIATIONS TO COMMISSION A LARGE SCALE PUBLIC ARTWORK FOR HEART AND SOUL PARK; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

The City and the CRA are partnering to bring a nationally recognized black female artist to work with the community to design and create an iconic artwork for the Heart and Soul Park. The City and the CRA's partnership reaffirms the importance of building arts' participation in our community. Further, the partners understand the role of the arts in improving the quality of life. Lastly, by pooling our resources we aim to broaden, diversify and deepen the surrounding communities and visitors' experience.

**Location:**

The selected area for the artwork is in the northwest area of the park directly across from the Sunset Lounge. The addition of the iconic sculpture will be the final permanent public art piece for the Heart and Soul Park.

**About the Artist:**

Nekisha Durrett is a mixed-media artist who employs the visual language of mass media to bring forward histories that are not often celebrated. Her expansive practice includes public art, social practice, installation, murals, painting, sculpture, and design.

Durrett is invested in foregrounding issues of Black life while creating a space where fantasy, imagination, and history converge.

She earned her bachelor of fine arts at The Cooper Union in New York City and master of fine arts from the University of Michigan School of Art and Design as a Horace H. Rackham Fellow. Her work has been exhibited nationally and is included in numerous private collections and public institutions, including The Phillips Collection, Washington, DC. Durrett is a finalist in the National Portrait Gallery's prestigious Outwin Portrait Competition. The Outwin: American Portraiture Today organized by the National Portrait Gallery is currently on view at Kemper Museum of Contemporary Art in Kansas City, Missouri. A solo exhibition of her work, titled Magnolia, a series of leaves perforated by the artist with the names of women and girls murdered by law enforcement, was presented at the Cody Gallery at Marymount University in Arlington, VA in early 2021. Works from this series are currently on view at the Atlanta Biennial at Atlanta Contemporary.



Recent public installations include: Up 'til Now, a freestanding, solar powered sculpture that evokes the history of Washington, DC's landscape and architecture, in Washington's Golden Triangle neighborhood; Messages for the City in collaboration with For Freedoms in Times Square, New York; and a wall mounted public sculpture in the Liberty City community of Miami, Florida made in collaboration with conceptual artist Hank Willis Thomas; and a permanent installation on the glass-walled vestibule in the newly renovated Martin Luther King, Jr. Library in Washington. Durrett recently unveiled a public installation at The Phillips Collection in Washington, DC, titled Airshaft, inspired by a panel in Jacob Lawrence's Migration series.

Resolution No. 286-21 approves an interlocal funding agreement between the City and the CRA for the CRA's partial funding of the sculpture at the Heart and Soul Park.

**Funding:**

On October 6, 2021, the City's ArtLife WPB Committee unanimously recommended to the City Commission the allocation of \$150,000 from the ArtLife WPB Capital Project carryforward fund balance to match the CRA's budgeted \$150,000, to commission artist Nekisha Durrett to design and create a large scale sculpture for the Heart and Soul Park, for a total project cost of \$300,000.

Resolution No. 283-21 (F) approves the allocations of funds from the ArtLife WPB Capital Project carryforward fund balance to fund the remaining 50% of the costs to commission artist Nekisha Durrett for the creation and installation of the sculpture at the Heart and Soul Park.

The final concept design will be presented to the City Commission at a future date for the Face of the City/final approval of the design.

Commission District 3: Christy Fox.

**Fiscal Note:**

Approval provides appropriations for a large-scale sculpture at the Heart and Soul Park

## 8. PUBLIC HEARING

- 8.1. Public Hearing and Second 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 PROPOERTY LOCATED AT 1100 OKEECHOBEE ROAD; AUTHORIZING EXECUTION OF A SALE AND PURCHASE AGREEMENT AND ALL ANCHILLARY 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 Second Reading 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 Statues (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 use the site to expand Property Works, a minority-owned small business at a neighboring site, and intends to create 10 -15 local jobs to be offered to West Palm Beach residents. 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, On September 7, 2021 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.

On October 18, 2021, the Board provided approval for the first reading of Ordinance 4954-21 for the sale of City owned property at 1100 Okeechobee Road to Marto Rentals for an amount not to exceed \$775,000.00.

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 cause 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.

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

First Reading of Ordinance No. 4954-21 was approved on Monday, October 18, 2021, City Commission Meeting.

**Fiscal Note:**

Net sale proceeds must be deposited to Police State Law Enforcement Asset Forfeiture Revenue account.

- 8.2. Public Hearing and Second 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:**

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 at second reading.

**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

- 8.3. Public Hearing and First Reading of Ordinance No. 4982-21 amending the City of West Palm Beach Code of Ordinances at Chapter 2 and Chapter 66 to change the name of the Office of Equal Opportunity to the Office of Small and Minority Business Programs.

**Originating Department:**

City Attorney's Office

**Ordinance/Resolution:**

ORDINANCE NO. 4982-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES AT CHAPTER 2 (ADMINISTRATION), ARTICLE IV (OFFICES, DEPARTMENTS AND DIVISIONS), DIVISION 1 (MAYOR'S OFFICE), SECTION 2-135 (OFFICE OF EQUAL OPPORTUNITY) TO CHANGE THE TITLE OF THE OFFICE OF ECONOMIC OPPORTUNITY TO THE OFFICE OF SMALL AND MINORITY BUSINESS PROGRAMS AND AMENDING CHAPTER 66 (PROCUREMENT), ARTICLE IX (SMALL BUSINESS PROGRAM), SECTIONS 66-223, 66-224, 66-226, 66-227, 66-230, 66-233, 66-234, 66-236, 66-237 AND 66-238 AND ARTICLE XI (MINORITY/WOMEN BUSINESS ENTERPRISE), SECTIONS 66-258, 66-260, 66-262, 66-263, 66-265, AND 66-266-273 TO REFLECT THE DUTIES OF THE DIRECTOR OF THE OFFICE OF SMALL AND MINORITY BUSINESS

PROGRAMS TO BE CONSISTENT WITH AMENDMENTS TO CHAPTER 2, ARTICLE IV, DIVISION 1, SECTION 2-135; PROVIDING A CONFLICTS CLAUSE, A CODIFICAION CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Motion to approve Ordinance No. 4982-21 on first reading and schedule second reading for November 15, 2121.

**Background Information:**

On December 17, 2018, the City Commission adopted the Minority/Women Business Enterprise Ordinance, Ordinance No. 4679-18, to direct the administration of the City of West Palm Beach MWBE Program. On April 19, 2021, the City Commission adopted Ordinance No. 4937-21 creating the Office of Economic Opportunity to administer the Small Business and Minority/Women Business Enterprise Program.

The Office of Economic Opportunity would like to change its name to the Office of Small and Minority Business Programs. The current name is too similar, to the Economic Development area and does not accurately describe the services offered nor the target area.

Adoption of Ordinance No. 4982-21 will change the name of the Office of Economic Opportunity to the Office of Small and Minority Business Programs and edit both the Small Business and Minority/Women Business Enterprise Program to reflect the changes in the title.

- 8.4. 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:**

Approve Ordinance No. 4957-21 amending the code of ordinances of the City of West Palm Beach at Chapter 94 - Zoning and Land Development Regulations, Articles II, IV, V, VII, IX, XV, XIX and Appendix A.

**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 Official 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.

- 8.5. Public Hearing and First Reading of Ordinance No. 4975-21 establishing reapportioned commission district boundaries as required by the City Charter using the 2020 Census population data.

**Originating Department:**

Development Services

**Ordinance/Resolution:**

ORDINANCE NO. 4975-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA ESTABLISHING REAPPORTIONED COMMISSION DISTRICT BOUNDARIES AS REQUIRED BY THE CITY CHARTER BY ADOPTING THAT CERTAIN MAP KNOWN AS "2021 REAPPORTIONMENT MAP", TOGETHER WITH A CENSUS POPULATION REPORT INDICATING THE POPULATION BY DISTRICT; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Approve Ordinance No. 4975-21 adopting the 2021 Reapportionment Map and census population report indicating the population for each commission district on first reading and schedule second reading for November 15, 2021.

**Background Information:**

The City Charter at Article II, Section 2.01 provides that the City Commission's district boundaries shall be reapportioned every ten (10) years based upon the official Florida State and Federal Census and that the City Commission shall adopt an ordinance containing the reapportionment within six (6) months of the date of official publication of the most recent official Florida State and Federal Census (August 12, 2021).

The City Charter also indicates that district boundaries shall be reapportioned to create districts of nearly equal population, that Districts shall be arranged in a logical and compact geographic pattern and shall promote fair representation.

On October 12, 2021, the City held a workshop in which City Staff presented to the Mayor and City Commission five (5) redistricting map options which complied with the requirements of the City's Charter. At that meeting the City Commission directed staff to proceed with the adoption of what is now known as the 2021 Reapportionment Map.

Ordinance 4975-21 adopts the 2021 Reapportionment Map and the census population report indicating the population of each census block located in each of the five districts shown on the 2021 Reapportionment Map.

By adopting Ordinance 4975-21 the City Commission finds and determines that the 2021 Reapportionment Map meets the requirements of the City Charter as follows:

- a. The populations of the five districts are nearly equal as indicated by the table on the 2021 Reapportionment Map, showing a population deviation of 6.29% between the most and the least populated districts.
- b. The district boundaries are as logical and compact as feasible considering the unique configuration of the City's municipal boundaries and the location and large size of critically positioned census blocks.
- c. The district boundaries promote fair representation by creating districts where minority populations range from 49% to 76% of each district's population, with four of the five districts having minority populations that exceed 50%, and preserving neighborhood identity wherever possible.

Staff recommends Approval of Ordinance No. 4975-21 adopting the 2021 Reapportionment Map and census population report indicating the population for each commission district on First Reading.

**Fiscal Note:**

No Fiscal Impact

- 8.6. Public Hearing and First Reading of Ordinance No. 4978-21 approving an agreement with Micromobility Management LLC to allow use of portions of the City's rights-of-way for operation of a bicycle sharing system in partnership with Brightline.

**Originating Department:**

Mayor's Office

**Ordinance/Resolution:**

ORDINANCE NO. 4978-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AN AGREEMENT BETWEEN MICROMOBILITY MANAGEMENT LLC AND THE CITY OF WEST PALM BEACH REGARDING A BICYCLE SHARING SYSTEM; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Approve Ordinance No. 4978-21 on First Reading.

**Background Information:**

The City of West Palm Beach's mobility, sustainability, health, economic, and social goals support policies that will help bicycling become a more viable alternative mode of transportation, to connect to transit, and for recreation, including providing safe, convenient, and adequate short-term and long-term bicycle parking facilities and other bicycle amenities for employment, retail, multifamily housing, schools and colleges, and transit facility uses; providing bicycle facilities and amenities to help reduce the number of vehicle trips; and investigating the potential for bike sharing stations/programs in medium/higher density areas.

Bike sharing programs provide affordable access to bicycles for short-distance trips in urban areas, to provide an alternative to motorized public transportation or private vehicles, to help reduce traffic congestion, parking congestion, noise, and air pollution, to connect users to public transit networks, to address some of the primary disadvantages to bicycle ownership such as loss from theft or vandalism, lack of parking or storage, and maintenance, and are a favorable amenity for visitors.

In order to create a more seamlessly connected local and regional mobility system, Brightline Trains Florida LLC, the current operator of the high-speed rail system in West Palm Beach, presently seeks to extend the reach of its high-speed rail system through the implementation of a digital multimodal trip planning and booking experience that includes train service as well as local transit, ridesharing, and MICRO's bike sharing system to cover the first and last miles of each journey.

To provide such interconnectivity, Brightline's mobile app will include the ability to reserve local transit at each point of a trip, including the ability to reserve bicycles for MICRO's bicycle sharing system at the Brightline station. Such integration with MICRO's bicycle sharing system will make it easy for residents and visitors alike to book a complete journey that includes integrated regional high-speed rail ticketing and local access to bike sharing for the first-mile and last-mile legs of a journey.

In order to provide these digitally integrated active transportation connections between the Brightline station, the Downtown West Palm Beach area, Tri-Rail station, college campuses, and other key points of interest, Brightline presently seeks to sponsor MICRO's dock-based bikeshare system within the City of West Palm Beach at no cost to the City.

MICRO desires to provide a bike sharing system within the City of West Palm Beach based upon the following goals:

- Provide a transportation alternative to driving for West Palm Beach residents, commuters, and visitors;
- Integrate with Brightline's high-speed rail operations and other modes of alternative transportation to book rentals and identify availability of vehicles;
- Neat, orderly and secure bike share parking that does not inhibit pedestrians or ADA compliance;
- Facilitate an increase in transit use by providing a last-mile solution for commuters;
- Contribute in the reduction of vehicle trips and traffic;
- Make bicycle travel a viable option for people without bikes or place to store bikes;
- Encourage new bicycle commuters;
- Promote commerce in the City of West Palm Beach by enhancing access to business, shopping, dining and entertainment venues;
- Create an integrated system that can expand to other areas of the West Palm Beach region;
- Create an integrated system that can expand to other areas of the West Palm Beach region.

*Agreement:* Ordinance No. 4978-21 approves an agreement with Micromobility Management, LLC ("MICRO") allowing MICRO to operate its bicycle sharing system on the City's rights-of-way and to locate bicycle system docks on City sidewalk and right-of-way.

The agreement term will be five (5) years, with the ability to renew for 2 additional 5-year terms.

*Exclusivity:* The Agreement grants MICRO the exclusive right to be

designated and referred to as the "Official Bikeshare System in the City of West Palm Beach" and/or, "Official Bike Sharing System in the City of West Palm Beach". MICRO will be the sole entity permitted to install and maintain Bike sharing Stations (whether analog, electric or electric-assist) inside WPB's city limits on public property owned, controlled or managed by the City. The City agrees not to permit or authorize any other bike sharing service, company or organization to locate bike sharing docks or dockless bicycle sharing systems, or any other micromobility system for which MICRO has been granted an exclusive license, to operate on the City's rights-of-way to help ensure the sustainability of the bike sharing system, with the exception of hotels and tour ventures which provide bicycles only to their customers for trips which start and end at the same location.

*Docking Stations:* MICRO will locate its docking stations and bicycles at locations approved by the City. The docking stations are modular and may range from a capacity of 8 to 24 docks each, with 16 docks being typical. MICRO will have the ability expand each docking station as needed on a site by site basis without further approvals. MICRO will submit its proposed locations for approval by the City Commission.

*Advertising.* Each docking station may include a dedicated two-sided advertising/sponsorship panel with the specifications as shown to the City Commission. The advertising panel and advertising space on the Kiosk shall be used primarily for advertising purposes as MICRO may deem appropriate or advisable within all applicable and valid regulations. All advertising shall comply with the WPB advertising policy. The City will receive 10% of the advertising rotations to display public service announcements or other city-related public messaging.

*Web Site Presence.* The City agrees to provide information about the bike sharing system, including a link to MICRO's system web site on the WPB internet and intranet web sites throughout the duration of the Agreement.

*Outreach.* In the first sixty (60) days following the Effective Date of the Agreement the City may reasonably request that MICRO participate in public presentations, workshops, or community meetings, as needed for review and input from relevant stakeholder and community groups. MICRO shall summarize the public input MICRO receives and provide it to WPB with the proposed Implementation Plan.

*Equity Fee.* MICRO shall pay to the City an annual mobility equity fee which shall be utilized to provide additional transportation equity programs.

*Windfall Provision.* Should MICRO's bike membership and rental sales revenue exceed the threshold of \$4,380 per bike, per contract year on average for each deployed bike in operation (less any sales tax and credit

card processing fees), MICRO shall provide the City a revenue share payment equal to seven and one half percent (7.5%) of gross bike membership and rental sales exceeding that threshold, less any credit card processing fees and sales tax collected. Any Windfall Provision payments shall be due and payable within sixty (60) days of the closing of each contract year. MICRO shall provide documentation to the City directly relating to applicable revenues for the Windfall Provision.

*Repair Fee Deposit.* MICRO shall pay the public property repair endowment fee established by City resolution to ensure adequate funds are available for future repair and maintenance costs to public property that may be incurred due to damage caused by the bicycle share system or its users. Such repair fee shall be held as a deposit. Upon termination of this Agreement, in the event MICRO does not restore the right-of-way property upon removal of the Bicycle sharing stations, WPB may use such deposited funds to make the necessary repairs. Any deposit funds not needed for such repairs will be returned to MICRO.

**Fiscal Note:**

No cost to City.

- 8.7. Public Hearing and First Reading of Ordinance No. 4979-21 amending the Code of Ordinances regarding the use of micromobility devices on City streets and rights-of-way.

**Originating Department:**

Mayor's Office

**Ordinance/Resolution:**

ORDINANCE NO. 4979-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CITY OF WEST PALM BEACH CODE OF ORDINANCES AT CHAPTER 86, TRAFFIC, ARTICLE VII, MICROMOBILITY SYSTEM AND DEVICES; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Approve Ordinance No. 4979-21 on First Reading.

**Background Information:**

Section 316.008, Florida Statutes, authorizes local governments to control traffic movement, parking and the use of bicycles, motorized scooters and electric personal mobility devices within municipal boundaries. The City has a substantial interest in regulating how private operators of micromobility systems and devices operate on the public right-of-way to promote public health, safety and welfare and to ensure that public rights-of-way remain obstruction free. The City Commission



may grant the privilege of utilizing the public rights-of-way upon such conditions and limitations as may be deemed expedient and for the best interest of the City in order to permit the operation of micromobility systems within the City.

The City Commission adopted Ordinance No. 4861-19 creating regulations governing an operator of a micromobility system in the City. Ordinance No. 4861-19 was structured to provide that the City would issue competitive solicitations to select a micromobility system operator to operate a system for the City.

Due to COVID-19 and market forces there have been changes in the micromobility industry, and partnerships among various transportation providers, including Brightline and the MICRO bike share system operator, that have caused the City to desire to make certain amendments to its Ordinance regarding micromobility systems.

The significant revisions to the micromobility ordinance proposed by this by Ordinance No. 4979-21 will allow permits to be granted to system operators who obtain a permit or enter into an agreement with the City, but who were not necessarily competitively selected by the City to operate a system for the City.

This will allow the bike share system operator, MICRO, which has partnered with Brightline, to enter into an agreement with the City to operate on the City rights-of-way and to locate its docking stations on City sidewalk at locations approved by the City. This agenda will include a companion item approving the agreement with MICRO.

Ordinance No. 4979-21 also provides for waivers of the application fee, annual fee, device fee and right-of-way permit fees by the Commission where the permit or agreement with the City provides for revenue sharing with the City.

Ordinance No. 4979-21 provides an exception for the rental and use of micromobility devices, segways, bicycles or scooters which are used as part of an organized tour conducted by a tour director which departs and returns to the same location; and for the provision or rental of bicycles or micromobility devices by hotels for their hotel guests who depart and return to the same location. The Ordinance also provides for the issuance of a "limited" micromobility permit for operators with fleets of 20 or less devices and with no more than two locations, and waives certain fees for the limited permit operators.

Additional minor language clarifications have also been made with Ordinance No. 4979-21.

**Fiscal Note:**

No fiscal impact.

**9. PUBLIC HEARING - QUASI-JUDICIAL**

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

- 9.1. Public Hearing and Second 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 No. 257-21; and

Public Hearing 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 No. 257-21.

Approve 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. This motion is based upon the factual testimony presented, the application submitted, the staff report, the recommendation of the Planning Board, and the findings that the amendment is consistent with the Comprehensive Plan and complies with the standards found in Section 94-32 of the City's Zoning and Land Development Regulations.

**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.

- 9.2. 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.

Approve 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.

- 9.3. Public Hearing and First Reading of Ordinance No. 4963-21 a City-initiated request for a text amendment to the Zoning and Land Development Regulations, Chapter 94, Article VII, Section 94-209 (Mixed Use District), amending the definitions, height standards and design standards, and Section 94-215 (Currie Mixed-Use District) to delete building typologies, address inconsistencies, and incorporate new regulations related to increasing the maximum building height and the addition of a fourth sub-district within the Currie Mixed-Use District (CMUD); and

Public Hearing and First Reading of Ordinance No. 4964-21 a City-initiated request for a Zoning Map amendment to rezone certain properties from the Core sub-district into Core I/IA and Core II sub-districts; rezone the parcel zoned Professional Office Residential Planned Development to Core IA, rezone a portion of Joel Daves Park to Core II and reconfigure the boundaries for the Edge, Transition and Core sub-districts within the boundaries of the Currie Mixed Use District (CMUD).

**Originating Department:**

Development Services

**Ordinance/Resolution:**

ORDINANCE NO. 4963-21: 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 VII (SPECIAL DISTRICTS), SECTION 94-209 (MIXED USE DISTRICT) AMENDING THE DEFINITIONS, HEIGHT

STANDARDS AND DESIGN STANDARDS, AND SECTION 94-215 (CURRIE MIXED USE DISTRICT) TO DELETE BUILDING TYPOLOGIES, ADDRESS INCONSISTENCIES, AND INCORPORATE NEW REGULATIONS RELATED TO INCREASING THE MAXIMUM BUILDING HEIGHT AND THE INCORPORATION OF A FOURTH SUB-DISTRICT WITHIN THE CURRIE MIXED USE DISTRICT; 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.

ORDINANCE NO. 4964-21: 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 CERTAIN PROPERTIES WITHIN THE CURRIE MIXED USE DISTRICT, GENERALLY LOCATED BETWEEN FLAGLER DRIVE AND SOUTH DIXIE HIGHWAY TO THE EAST AND WEST, AND BETWEEN 27TH STREET AND PINE STREET TO THE NORTH AND SOUTH, AND CONSISTING OF APPROXIMATELY 65 ACRES, FROM THE CORE SUB-DISTRICT INTO CORE I/IA AND CORE II SUB-DISTRICTS, REZONE THE PARCEL ZONED PROFESSIONAL OFFICE RESIDENTIAL PLANNED DEVELOPMENT TO CORE IA, REZONE A PORTION OF JOEL DAVES PARK TO CORE II, AND RECONFIGURE THE BOUNDARIES OF THE EDGE, TRANSITION AND CORE SUB-DISTRICTS; 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. 4963-21** approving a text amendment to the Zoning and Land Development Regulations, amending Chapter 94, Article VII, Section 94-209 (Mixed-Use District), amending the definitions, height standards and design standards, and Section 94-215 (Currie Mixed Use District) to delete building typologies, address inconsistencies, and incorporate new regulations related to increasing the maximum building height and the addition of a fourth sub-district within the Currie Mixed Use District. This motion is based upon the application submitted, the staff report, factual testimony, the recommendation of the Planning Board and the findings that the request complies with the Comprehensive Plan and the standards in the City's Zoning and Land Development Regulations.

**APPROVE Ordinance No. 4964-21** rezoning certain properties within the Currie Mixed Use District from the Core Sub-district into Core I/IA and Core II Sub-districts, rezone the parcel zoned Professional Office Residential Planned Development to Core IA, rezone a portion of Joel Daves park to Core II, and reconfigure the boundaries of the Edge, Transition and Core Subdistricts of the Currie Mixed Use District. This motion is based upon the application submitted, the staff report, factual testimony, the recommendation of the Planning Board and the findings that the request complies with the Comprehensive Plan and the standards in the City's Zoning and Land Development Regulations.

**Background Information:**

(The information provided below is a general summary of the proposed text amendment

and Rezoning. A full analysis is included in the Staff Report).

The Currie Mixed Use District (CMUD) is a mixed-use redevelopment area comprised of approximately 65-acres, generally located between Flagler Drive and South Dixie Highway to the east and west, and between 27th Street and Pine Street to the north and south. The CMUD is also located within the Northwood/Pleasant City Community Redevelopment Agency (CRA) District.

In 2002, the CMUD was created to establish a transition area between the single-family residential use to the north, Northwood Village to the west and the professional offices to the south (Reference: Ordinance No. 3602-02). Under the 2002 CMUD regulations, a maximum building height of four (4) stories was permitted, with an additional two-stories of height for projects that developed residential under a temporary residential incentive program (expired in May 20, 2008).

In 2014, the CMUD regulations were amended to accommodate greater building height, as it became apparent that under the 2002 regulations and with the increasing cost of construction and high value of waterfront properties, the 4-story allowable building height was not financially feasible for development to occur within the CMUD. Additionally, the maximum build-out of 4,065 residential units and 2.3 million square feet of commercial in the CMUD, established in the City's Comprehensive Plan, could not be remotely achieved within the allowable 4-story building envelope. As a result, the 2002 CMUD regulations were amended in 2014 to increase the maximum allowable building height to 15-stories. As part of the 2014 amendment, building typologies, sub-districts, designated open space and urban greenways were also established to implement the new vision for the CMUD (Reference: Ordinance Nos. 4528-14 and 4529-14).

Under the current 2014 CMUD regulations, base heights in stories were established for each of the sub-districts and incentives provided to increase the building height as noted below:

<b><u>Sub-district:</u></b>	<b><u>Base Height:</u></b>	<b><u>Maximum Height with Incentive:</u></b>
Edge	3-4 stories	3-4 stories (36'-60')
Transition	6-8 stories	6-12 stories (85'-160')
Core	8 stories	8-15 stories (110'-195')

A height bonus was offered to developers provided they selected one or several incentives including requiring buildings obtain a Leadership in Energy and Environmental Design (LEED) certification, provide public parking for Currie Park, develop a food store or supermarket in excess of 15,000 square feet, provide green roofs, dedicate public open spaces with a minimum of 4,800 square feet or provide buildings at the end of a street vista. Despite the incentives, the City has seen very little development activity within the District since the adoption of the 2014 amendments.

In November 2019, City Staff was presented with a development proposal by developer Jeff Greene who had acquired approximately \$40 million of property in the CMUD between 2012 and 2016. The development proposal within the CMUD, designed by

Herzog & DeMeuron, was comprised of a series of buildings along Flagler Drive, ranging from 15-stories to 36-stories in height. Given the lack of development activity within the CMUD, Staff sought direction from the City Commission on the proposal to further increase the maximum allowable building height to stimulate development within the District. After a Mayor-Commission Workshop on February 16, 2021, Staff was directed to proceed with the amendment to the CMUD regulations and Zoning Map to increase the maximum building height.

At the aforementioned Mayor-Commission Workshop, the Commission expressed support for creating a new sub-district that would split the existing Core Sub-district into a Core I and a Core II. The proposed Core I and Core II sub-districts would provide for better height transition between the center Core I sub-district and the outer Core II, Transition and Edge sub-districts. The Commission also directed staff to utilize feet, as opposed to stories, to regulate height and to maintain the concept of a beginning height at a base figure and requiring the use of the incentives identified later in this report as a way for a developer to achieve any additional height beyond their base.

On April 14, 2021, amid the COVID-19 pandemic, City staff sent out notices to all properties within 500 feet of the CMUD advertising a public Zoom meeting to all interested parties. Staff went through a Powerpoint presentation although the meeting was not heavily attended.

On July 20, 2021, City staff presented a text amendment to the Planning Board that amended the Zoning and Land Development Regulations and included a rezoning of the Currie Mixed-Use District (CMUD). Numerous residents were in attendance voicing concerns about the proposed amendments and expressing concern about the proposed height particularly with the Core I sub-district. Staff suggested, and the Planning Board agreed, to continue the applications for an additional two months to allow for additional time to meet with the public, further discuss the height and proposed incentives and fine tune the proposed amendments.

A series of stakeholder meetings were then scheduled to solicit input from those persons directly impacted by proposed amendments to the CMUD. Live stakeholder meetings were held on August 31, 2021 and September 9, 2021 and a zoom meeting was held with board members of the Northwood Shores Homeowners Association on September 8, 2021. The following groups were represented at these meetings:

- Northwood Village merchants
- Northwood Coalition of Neighborhoods
- Northwood Shores Neighborhood Association
- Pleasant City Neighborhood
- Rob Samuels properties (2801 North Flagler)
- \* Old Northwood Neighborhood
- \* Portofino condominium
- \* Jeff Greene properties
- \* Arquitectonica Architecture
- \* Savanna properties

The focus of the discussions was centered around height, the proposed incentives, the impacts to the surrounding community and the extension of Northwood Road east of North Dixie Highway to the entrance of the newly, proposed Currie Park. Each of these will be discussed in more detail.

Height:

In light of the comments made at the last Planning Board meeting, staff reconsidered the proposed 397-foot height suggested for the Core I district and, following the stakeholder discussions, suggested further changes. Staff began by reviewing the building heights of several large residential towers recently built or approved as reflected in Table 1. They include the following:

**Table 1  
Existing Height of Recent Residential High-Rise Buildings**

<u>Development</u>	<u>Address</u>	<u>Height</u>	<u>Status</u>
• The Bristol	1110 S. Flagler Dr.	291' (to roof deck)	completed
• LaClara	1515 S. Flagler Dr.	293'3" (roof deck)	under construction
• Forte	1309 S. Flagler Dr.	300' (to roof slab)	in permitting
• Marina Village	4200 N. Flagler Dr.	247'8" (roof top pool deck)	under construction
	Average:	<b>283'0"</b>	

At the outset of the stakeholder meetings, staff began the discussions by dividing the existing Core sub-district into a Core I sub-district with a maximum height of 306' (reduced from 397') and a Core II sub-district with a maximum height of 202'.

Through the stakeholder discussions, these heights were further adjusted through discussions with the residents and developers. Of prime importance to the City was the extension of Northwood Road east of North Dixie Highway which is discussed below and impacts the final recommendation made regarding height which will be revisited in the ensuing section.

Northwood Road:

It has long been a desire of the City and Community Redevelopment Agency (CRA) to extend Northwood Road east of North Dixie Highway to tie into the future entrance of Currie Park. This would create a perfectly aligned vehicular roadway with widened sidewalks, pedestrian amenities that would serve to link the new development on the west to Currie Park and the Intracoastal Waterway. These enhancements would be very similar to Clematis Street and serve to make this a destination locale that would improve the restaurants and businesses within the Northwood Village corridors.

Table 2 below is a summary of the proposed maximum permitted height permitted in each of the CMUD sub-districts (Table VII-5 of the Text Amendment). Any developer will be permitted to achieve the base height as a starting point and can attain the maximum permitted height by meeting any of the incentives proposed in the following sections. The one exception will be those Core IA properties on either side of the extended Northwood Road which can go to a height of 350 feet if the roadway is constructed. As an example, a developer wishing to build a 180-foot tall building in the Core II sub-district would need to address the deficiency of 69 feet in height by addressing one or several of the incentives provided within this amendment.

**Table 2**



**Maximum Permitted Height in CMUD**

<b>TABLE VII-5: MAXIMUM PERMITTED HEIGHT (1)</b>		
<b>Area</b>	<b>Base Height</b>	<b>Maximum Permitted Height</b>
<u>Core IA Sub-district</u>	<u>111 feet</u>	<u>350 feet</u>
<u>Core I Sub-district</u>	<u>111 feet</u>	<u>306 feet</u>
<u>Core II Sub-district</u>	<u>111 feet</u>	<u>202 feet</u>
<u>Transition Sub-district</u>	<u>85 feet</u>	<u>163 feet</u>
<u>Edge Sub-district</u>	<u>36 feet</u>	<u>60 feet</u>

Utilizing feet provides a developer greater flexibility to alter the number of stories based upon the floor to ceiling height of each story. Presuming a Core I building desires to maximize their height at 306 feet and uses a 20 foot first floor, then a 13 foot floor to ceiling height would allow for 22 stories while a ten foot floor to ceiling height would allow for 28 stories.

**Incentives:**

Like the current code, incentives are in place that would allow a developer to increase their height. This increase in height would be in exchange for a public benefit that would improve the quality of life for residents in the immediate and surrounding areas. Staff has increased the total number of incentives from six to 12 to provide numerous options for any developer. Table 3 identifies the Height Bonus Incentives that are being made available to developers and each developer can select which incentives they would like to utilize to attain their desired height.

**Table 3  
Height Bonus Incentives in CMUD**

<b>TABLE VII-6 HEIGHT BONUS INCENTIVES</b>										
HEIGHT BONUS INCENTIVE		EDGE	TRANSITION		CORE II		CORE I		CORE IA	
Base Height :		36'	85' (6 stories)		111' (8 stories)		111' (8 stories)		111' (8 stories)	
Maximum Height		60'	163'		202'		306'		350'	
INCENTIVE			MIN.	MAX.	MIN.	MAX.	MIN.	MAX.	MIN.	MAX.
Extension of Northwood Road	a	n/a	na	na	na	na	na	na	239'	239'
Workforce Housing	b	n/a	40'	150'	40'	150'	40'	150'	40'	150'
Improvements to Currie Park	c	n/a	4'	100'	8'	125'	12'	150'	12'	150'
Food Store or Supermarket (min. 15,000 s.f.)	d	n/a	65'	65'	65'	65'	100'	100'	100'	100'
Food Store or Supermarket (min. 30,000 s.f.)	d	n/a	78'	78'	91'	91'	150'	150'	150'	150'
Public Parking for Currie Park	e	n/a	26'	50'	39'	75'	52'	100'	52'	100'
Public Parking Land Dedication/Construction	e	n/a	42'	78'	42'	84'	42'	84'	42'	84'
Payment for Mobility Options	f	n/a	13'	39'	13'	52'	13'	52'	13'	52'
LEED Certification (Platinum)	g	n/a	40'	40'	40'	40'	40'	40'	40'	40'
LEED Certification (Gold)	g	n/a	30'	30'	30'	30'	30'	30'	30'	30'
LEED Certification (Silver)	g	n/a	20'	20'	20'	20'	20'	20'	20'	20'
Public Open Spaces (min. 4,800 s.f.)	h	n/a	30'	60'	30'	60'	30'	60'	30'	60'

A summary of each of the incentives is reflected below:

**Extension of Northwood Road:**

As discussed above, this incentive would only be applicable to the two Core IA properties located on either side of the extended Northwood Road. The right-of-way/land swap would be required to be completed within three years of approval of this text amendment and the roadway construction must be completed within five years of approval of this text amendment.

**Workforce Housing:**

To provide workforce housing within the surrounding community, a developer would be granted additional height for the provision of workforce housing which is defined as 60% to 100% of Area Median Income. A similar program was recently adopted as part of the Downtown Master Plan. Given the importance of reasonably priced housing, this incentive was increased from a range of 25 to 100 feet to a range of 40 to 150 feet as shown below. If a developer is building a residential project and sets aside 20% of the total units for workforce housing, then a height incentive of 150 feet would be granted as reflected below:

- 20% of total units provided = 150 feet of height
- 15% of total units provided = 100 feet of height
- 10% of total units provided = 75 feet of height
- 5% of total units provided = 40 feet of height

Alternatively, a developer could buyout the required units provided the required payment is made to the City prior to the issuance of the first certificate of occupancy for the project. The specifics of the program will be detailed in a separate resolution that would be adopted by the City Commission that would allow for adjustments in the future. Currently, the buyout figure would be based upon the minimum average building size of 800 square feet multiplied by the actual construction cost as reflected in the International Code Council Building Valuation Table (\$160.09). This table is updated twice per year.

$$800 \text{ s.f. (min. average size)} \times \$195.11/\text{s.f. (const. cost)} = \$156,088$$

Lastly, a developer may provide the required workforce housing within a one-mile radius of the project seeking the incentive.

**Improvements to Currie Park:**

The City/CRA is currently in the process of redesigning Currie Park. A developer would be entitled to one foot of height for every \$25,000 contributed towards the construction of improvements to Currie Park. Any proposed improvement must be approved by the City/CRA prior to the commencement of the improvement.

**Food Store or Supermarket:**

Height incentives are being offered if a developer provides a 15,000 square foot food store or grocery store within the Transition, Core II or Core I sub-districts. This incentive increases if the size of the store is doubled to at least 30,000 square feet. Specific design requirements must also be met to utilize this incentive. At the stakeholder meetings, there was a concern raised among residents that the incentive was

insufficient to lure a grocery store to the area so staff re-evaluated our recommendation and increased the incentive in the Core I and Core IA subdistrict from 65 feet to 100 feet for a food store/grocery store less than 15,000 square feet and from 130 feet to 150 feet for one larger than 30,000 square feet. The maximum incentive is provided in the Core II and Transition sub-districts.

**Payment for Mobility Options:**

The City will create a Mobility Fund for the CMUD to develop Transportation Demand Management Strategies. A developer will be awarded one foot of height for every \$25,000 contributed to the fund that would promote the expansion of a trolley system to the CMUD, promotion of carpool/vanpool/car share programs, establishment of electric vehicle charging stations and bike sharing stations.

**Leadership in Energy and Environmental Design (LEED) Certification:**

To continue to promote sustainability throughout the City, an additional 40 feet in height will be awarded for any building achieving LEED Platinum Certification and 30 feet in height for LEED Gold Certification. A developer requested we consider an incentive for Silver LEED certification so an incentive of 20 feet is provided for such a designation.

**Public Open Spaces:**

A height incentive is being offered to a developer who provides a public open space of at least 4,800 square feet or 9,600 square feet to provide more green, open space throughout the CMUD area. As part of the stakeholder meetings, several developers requested an incentive for the 30 feet of open space required along Flagler Drive (Pine to 26th Street) so an incentive of 30 feet in height is offered to encourage a greenway along the west side of Flagler Drive.

Each of these height incentives contain a minimum and maximum height that can be attained. Certain standards and regulations are also contained that must be achieved to meet the incentive requirements.

As part of the proposed text amendment to the CMUD regulations to increase the maximum allowable building height, the amendment will also address the following changes to Section 94-215, Currie Mixed-Use District (CMUD), of the ZLDRs:

- Eliminate references to Building Typologies, Street Vistas and Urban Greenways to remove the complexities of such regulations in the current code.
- Create Sub-district Requirements (building height, building setbacks; minimum open space, active uses, liner depth and transparency requirements) in tabular format for each sub-district. The development regulations will emphasize the building envelope to provide greater flexibility for development and design.
- Amend the Permitted Use Table to address changes to the number of sub-districts in the CMUD.
- Modify Regulating Plans to address proposed changes to the Sub-districts and

inclusion of the Northwood Road Extension.

- Address general inconsistencies/conflicts and reorganization of the CMUD code section for better flow.

In addition to the changes mentioned above, the text amendment will also address minor changes to Section 94-309, Mixed-Use (MU) District, of the ZLDRs. This section of the ZLDRs provides the definitions and general requirements for all mixed-use districts within the City. Changes to the MU section of the ZLDRs will only apply to the following sections for consistency with the proposed changes to the CMUD regulations in Section 94-215:

- Definitions (as it relates to measuring height in CMUD).
- Height Standards (to exempt the CMUD from the building height limitation by stories).
- Building Configuration and Design (as it relates to the tower floor plate building setback in the CMUD).

The primary purpose of the changes to the CMUD regulations is to stimulate growth and development activity within the District by providing for additional building height in the Core 1A, Core I, Core II and Transition Sub-districts, and also to provide for greater development flexibility within the District itself. The amendment also includes changes that will simplify and reorganize the CMUD regulations for the purpose of creating a more user-friendly code. The proposed amendments continues to be consistent with the CRA's vision for the CMUD, the purpose and intent of the Mixed-Use (MU) Future Land Use designation and of the City's Comprehensive Plan, specifically Future Land Use Element Policy 1.7.2.3, which identifies the CMUD as a compact, pedestrian-oriented mixed-use district maintained by the setbacks, parking requirements and location, height limitation and permitted uses.

**Building Form and Massing Study:**

It was expressed at the July Planning Board and subsequent stakeholder's meetings that a massing study depicting the proposed building heights and mass are critical and necessary to depict how the CMUD would look under the proposed zoning regulations and the impact it would have within the District and to the surrounding area. Some of the main issues and concerns identified with the initial draft regulations included:

- How the building height and massing will impact the single-family residential north of CMUD.
- What zoning regulations are proposed to soften the building height and form in order to increase compatibility with adjacent areas outside of CMUD and what are the elements to help create welcoming and vibrant pedestrian streetscapes within the District.

The concerns raised at the meetings relating to the scale and massing of buildings with the increase height standards has been considered by Staff and a Massing Study was prepared and presented at September 21, 2021 Planning Board meeting. The following additional changes/modifications have been made to further address height compatibility, soften the building mass, and to enhance the urban streetscape to provide for improved, pedestrian-friendly spaces throughout the district:

- Reduce the building heights within the Core I Sub-district and shift the highest building heights further south within the District and away from the single-family residential areas north of CMUD.
- Reduce the maximum allowable horizontal building length from 300 ft. to 250 ft.
- Reduce the maximum allowable podium height of buildings fronting along the Northwood Road Extension from 6 stories/80 feet to 5 stories/68 feet.
- Establish maximum podium heights for buildings fronting on key streets (Northwood Road, 23rd Street and Ponce De Leon Avenue) to achieve visual consistency within the district and to enhance the pedestrian scale along these important street frontages.
- Require ground level and upper level active uses along the building facades fronting on Northwood Road and 23rd Street, which are the main active corridors within the District.
- Require wrap around active uses along Flagler Drive at Northwood Road and 23rd Street, and along Ponce De Leon Avenue at Northwood Road and 23rd Street to extend the active uses along these primary intersections.
- Improve the streetscape design requirements by requiring the installation of street trees at a maximum of 30 ft. on center along all streets at a minimum of 20 ft. in height.
- Encourage additional tower setbacks through design to improve view corridors and create variations in building form.

It is in Staff's opinion that the additional changes will improve the height and building massing compatibility issues and will provide for an urban environment with active pedestrian-oriented spaces throughout the district.

As noted in the Florida Department of Economic Opportunity's April 16, 2021 comments to staff regarding the CMUD comprehensive plan amendment, the state would like us to provide "meaningful and predictable standards for the use and development of land." Staff can accomplish this with the revised zoning provisions reflected in the proposed zoning map while also providing a certain level of flexibility for future construction. Planned developments, which offer a great deal of variation, are not permitted in any of the City's Mixed-Use Districts, including CMUD, and the current language in the Zoning and Land Development Regulations will be retained. Building height increases beyond

what is reflected in the proposed text amendment will not be permitted nor can variances be sought to increase the height. Variances from the dimensional requirements or waivers from any other criterion may be approved subject to meeting the standards for those requests.

If a developer can meet the requirements of the Zoning and Land Development Regulations and NOT trigger the threshold for a Development of Significant Impact (DSI – 100 residential units and/or 50,000 square feet of nonresidential development) then a project is approved administratively by city staff. Should a variance be required, a request can be made to the Zoning Board of Appeals.

**Public Notice:**

A summary of the many meetings for these proposed changes are reflected below:

- April 5, 2019 – Presentation by Herzog and deMeuron on behalf of Jeff Greene to Northwood residents
- February 16, 2021 – Mayor-Commission workshop to discuss proposed changes to CMUD
- April 14, 2021 – City staff meeting with residents via Zoom to discuss proposed amendments
- July 20, 2021 – Planning Board meeting to discuss proposed amendments (continued 60 days)
- August 31, 2021 – CMUD stakeholder meeting with residents, merchant and developers
- September 8, 2021 – CMUD stakeholder meeting with residents/board members of the Northwood Shores neighborhood
- September 9, 2021 – CMUD stakeholder meeting with residents, merchant and developers
- September 21, 2021 – Planning Board discussion of proposed amendments

For this meeting, notices were mailed to all property owners within the Currie Mixed-Use District and all property owners within 500 feet of the affected parcels proposed for rezoning. Additionally, a display ad for both ordinances was published in the Palm Beach Post on October 25.

**STANDARDS:** It is in Staff's professional opinion that the text amendment and rezoning has satisfied all the Amendment and Rezoning Standards in Section 94-32 of the City's Zoning and Land Development Regulations.

**PLANNING BOARD:** After a Public Hearing on September 21, 2021, the Planning Board voted unanimously to recommend approval (7-0) of the text amendment and rezoning.

- 9.4. Public Hearing of Resolution No. 269-21 regarding a request by Donna C. West of Pulice Land Surveyors, Inc., on behalf of Brandsmart USA of South Dade, Inc., for the approval of a Subdivision (Minor - Plat) to replat the BrandsMart Commercial Planned Development site located at 751

West Executive Center Drive into two development parcels.

**Originating Department:**

Development Services

**Ordinance/Resolution:**

RESOLUTION NO. 269-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A REPLAT OF REAL PROPERTY TO CREATE THE PLAT ENTITLED "BRANDSMART EXECUTIVE CENTER" CONSISTING OF TWO DEVELOPMENT TRACTS TOTALING APPROXIMATELY 17.66 ACRES LOCATED AT 751 WEST EXECUTIVE CENTER DRIVE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Approve Resolution No. 269-21 approving a re-plat and minor subdivision of the BrandsMart Commercial Planned Development site located at 751 West Executive Center Drive into two development parcels. This motion is based upon the factual testimony presented, the application submitted, and the findings that the plat is consistent with the Comprehensive Plan and complies with the subdivision design standards set forth in Section 94-342 of the City's Zoning and Land Development Regulations.

**Background Information:**

The BrandsMart Commercial Planned Development is proposing to add a BJ's Wholesale Club store to the existing development (under review on this agenda as Ordinance No. 4971-21 and Resolution No. 256-21). As part of the future development plan, the property owner wishes to subdivide the existing site into two parcels, one for the existing BrandsMart and one for the future BJ's.

PLANNING BOARD: As a minor subdivision, the subject plat was not required to be reviewed by the City's Planning Board.

NOTICE: Individual notices were mailed to all property owners within 500 feet of the BrandsMart site. Signs for this application were posted on the property in accordance with the Zoning and Land Development Regulations.

**Fiscal Note:**

No fiscal impact.

- 9.5. 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.

## **10. 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.

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

## **12. 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.