



401 Clematis Street
West Palm Beach, Florida 33401
(561) 822-2222 (TTY) 800-955-8771
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 29, 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. 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.

5.1. Minutes of the Regular City Commission Meeting of November 1, 2021.

Originating Department:

City Clerk's Office

- 5.2. Resolution No. 287-21 authorizing the City to join with the State of Florida and other local governments as a participant in the settlement of opioid litigation.

Originating Department:

City Attorney's Office

Ordinance/Resolution:

RESOLUTION NO. 287-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE CITY TO JOIN WITH THE STATE OF FLORIDA AND OTHER LOCAL GOVERNMENTAL UNITS AS A PARTICIPANT IN THE FORMAL AGREEMENTS IMPLEMENTING A PLAN RELATED TO THE SETTLEMENT OF OPIOID LITIGATION; AUTHORIZING THE MAYOR TO EXECUTE THE APPLICABLE SUBDIVISION SETTLEMENT PARTICIPATION FORM AND RELATED DOCUMENTS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

The people of the State of Florida, including the citizens and visitors of the City of West Palm Beach, have been harmed by the misfeasance, nonfeasance, and malfeasance committed by certain entities within the Pharmaceutical Supply Chain. This conduct has led to the "opioid crisis" that has plagued the United States of America, the State of Florida, and the City of West Palm Beach.

As a result, the State of Florida, and certain local governments throughout the state, are engaged in class action litigation seeking to hold Pharmaceutical Supply Chain Participants accountable for the damage caused by their misfeasance, nonfeasance, and malfeasance. This litigation has led to the settlement of various claims. For the City, to collect damages for those claims, it must execute a "Subdivision Settlement Participation Form" attached to two settlement agreements resolving class action claims against Pharmaceutical Supply Chain Participants. Those forms and the two applicable settlement agreements are attached to this ACM for review and approval by the City Commission. By executing the Form, the City is releasing any claims it may have against the applicable entities.

- 5.3. Resolution No. 293-21(F) accepting funds in the amount of \$250,000 from the the West Palm Beach Library Foundation to further support the Mandel Public Library's programs and operations.

Originating Department:

Library

Ordinance/Resolution:

RESOLUTION NO. 293-21(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OR TRANSFER OF CITY FUNDS IN FISCAL YEAR 2021/2022 IN ACCORDANCE WITH SECTION 4.03 OF THE CITY CHARTER OF THE CITY OF WEST PALM BEACH, FLORIDA, FOR THE PURPOSE OF AMENDING THE GRANT PROGRAMS SPECIAL REVENUE FUND BUDGET TO PROVIDE APPROPRIATIONS FOR A CONTRIBUTION FROM THE WEST PALM BEACH LIBRARY FOUNDATION TO FURTHER SUPPORT THE MANDEL PUBLIC LIBRARY'S PROGRAMS AND OPERATIONS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

Through Resolution No. 6-10 adopted on January 11, 2010, the City Commission authorized an agreement between the City of West Palm Beach and the West Palm Beach Library Foundation Inc. ("Foundation") allowing the Foundation to raise funds for the City of West Palm Beach Public Library ("Library") to enhance library programs and services in exchange for naming opportunities with certain conditions. Through Resolution No. 45-12 adopted on February 21, 2012, the City Commission ratified the acceptance of a \$5 million donation from the Mandel Foundation to the West Palm Beach Library Foundation Inc. in exchange for the naming rights to the Library and the garden east of the northern exterior entrance of the Library. In 2012, the Library was renamed the "Mandel Public Library of West Palm Beach."

On January 26, 2012, the Jack, Joseph and Morton Mandel Foundation, Mandel Supporting Foundations and the West Palm Beach Library Foundation executed a Capital Grant Term Sheet specifying the expenditure categories that includes a \$4 million endowment to support library programming in perpetuity. Additionally, on May 10, 2018, a First Amendment to the Mandel Foundation Capital Grant Term Sheet was executed to determine spending restrictions and revise terms relating to the management of the spendable income earned from the endowment. Pursuant to the Grant Term Sheet's First Amendment, endowments assets are distributed to the Mandel Public Library of West Palm Beach as a grant or contribution to support library programs and operations. Specifically, funding will cover the cost of the majority of the library's programming initiatives including but not limited to after-school homework centers, arts and cultural programs for all ages, outreach services and the purchase of digital collection resources.

For fiscal year 2021/2022, the Mandel Public Library of West Palm Beach will receive funding in the amount of \$250,000 from the West Palm Beach Library Foundation to support library programming and operations. Unspent funds from FY2022 will be carried forward into FY2023.

Fiscal Note:

Approval recognizes grant proceeds and provides appropriations.

- 5.4. Resolution No. 296-21 approving a Conditional Settlement Agreement totaling \$83,600 in the matter of Rosa Williams, Gary Frashaw, and Thomas Hyland v. City of West Palm Beach.

Originating Department:

City Attorney's Office

Ordinance/Resolution:

RESOLUTION NO. 296-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A CONDITIONAL SETTLEMENT AGREEMENT TOTALING \$83,600 IN THE MATTER OF ROSA WILLIAMS, GARY FRASHAW, AND THOMAS HYLAND v. CITY OF WEST PALM BEACH; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

Rosa Williams, Gary Frashaw, and Thomas Hyland (the "Plaintiffs") filed an action in the United States District Court for the Southern District of Florida (i.e., Williams, et al. v. City of West Palm Beach, Case No. 9:21-cv-81537-DMM (S.D. Fla.)) in which they contest the constitutional validity of portions of the City's panhandling Ordinances: sections 54-127(2), (3), & (5) and 54-147(a)(1) of the City's Code of Ordinances ("City Ordinances") and claim that the application of those City Ordinances has caused them damages. A Conditional Settlement Agreement was reached with the Plaintiffs in which the City agreed to repeal those sections of the City Code and pay the Plaintiffs' damages and attorneys' fees and costs in the amount of \$83,600 in exchange for a general release of all claims.

Section 2-268(g)(4) of the Code of Ordinances of the City of West Palm Beach, Florida, provides that the authority for settlement of all claims over \$30,000 shall require the approval of the City Commission by formal resolution. Resolution No. 296-21 approves the conditional settlement agreement.

- 5.5. Resolution No. 305-21 accepting the award of \$75,931 in grant funding from the U.S. Department of Justice Edward J. Byrne Formula Grant Program to be used for the purchase of equipment and for confidential funds necessary for combatting violent crime; and

Resolution 306-21(F) appropriating the funds.

Originating Department:

Police

Ordinance/Resolution:

RESOLUTION NO. 305-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, ACCEPTING A U.S. DEPARTMENT OF JUSTICE, EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE FORMULA GRANT IN THE AMOUNT OF \$75,931 TO BE USED BY THE POLICE DEPARTMENT TO PURCHASE SURVEILLANCE EQUIPMENT AND ALLOCATE FUND TO THE INVESTIGATIVE FUNDS EXPENDIURE ACCOUNT; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

RESOLUTION 306-21(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OR TRANSFER OF CITY FUNDS IN FISCAL YEAR 2021/2022 IN ACCORDANCE WITH SECTION 4.03 OF THE CITY CHARTER OF THE CITY OF WEST PALM BEACH, FLORIDA, FOR THE PURPOSE OF AMENDING THE GRANT PROGRAMS SPECIAL REVENUE FUND BUDGET TO PROVIDE APPROPRIATIONS FOR THE RECEIPT OF THE 2021 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE FORMULA GRANT (JAG) PROCEEDS FROM THE UNITED STATES DEPARTMENT OF JUSTICE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

On August 9, 2021, Resolution No. 182-21 was approved by the City Commission authorizing the City's application for the 2021 Edward Byrne Memorial Justice Assistance Grant (JAG) Program from the U.S. Department of Justice to purchase surveillance equipment and to allocate Investigative Funds (IFE) in the amount of \$75,931.

On October 27, 2021 the City was notified that the grant was awarded. Grant award number (15PBJA-21-GG-01360-JAGX) for the project titled Combatting Violent Crime.

Resolution No. 305-21 provides for acceptance of the grant.

Resolution No. 306-21(F) provides budget appropriations in the amount of \$75,931.

Fiscal Note:

No fiscal impact, fully funded by grant

- 5.6. Resolution No. 309-21(F) appropriating funds in an amount up to \$18,750 for on-water law enforcement for manatee protection, which costs will be reimbursed by Palm Beach County in accordance with an Interlocal Agreement.

Originating Department:

Police

Ordinance/Resolution:

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 GENERAL FUND BUDGET TO PROVIDE APPROPRIATIONS FOR THE RECEIPT OF A PALM BEACH COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCE MANAGEMENT GRANT FOR MANATEE PROTECTION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

Since 2007, the City of West Palm Beach has provided increased law enforcement presence in the County's waterways in partnership with the Board of County Commissioners of Palm Beach County, as approved in a Manatee Protection Plan and as one of the thirteen "key" manatee counties identified by the Florida Governor and Cabinet in October 1989. Studies by the Florida Fish and Wildlife Conservation Commission have demonstrated that increased law enforcement presence is the most effective means to gain compliance with boater speed zones and manatee protection speed zones, and reduce the risks to manatees and members of the public.

In accordance with the Interlocal Agreement for Law Enforcement Services for manatee protection between Palm Beach County and the City, dated August 22, 2018 the West Palm Beach Police Department will enforce State statutes, administrative rules, and local and County ordinances related to vessel control, marine resource protection, and manatee protection and assist in educating boaters in the Enforcement Area about manatee and boater safety issues.

The County will reimburse the City for all labor, supervision, equipment, insurance, and supplies at a rate of \$87.50 per hour, up to the awarded amount of \$18,750, for services provided from November 15, 2021, through March 31, 2022. in accordance with the Interlocal Agreement.

Resolution No. 309-21(F) provides the accounts for the expense and reimbursement of the funds in the amount of \$18,750.

Fiscal Note:

No fiscal impact

- 5.7. Resolution No. 311-21 authorizing submittal of an application to the United States Department of Homeland Security, Federal Emergency

Management Agency, for a Presidential Residence Protection Assistance Grant for the reimbursement of operational costs incurred in FY2021 while participating in the protection of the President of the United States of America while in Palm Beach County.

Originating Department:

Police

Ordinance/Resolution:

RESOLUTION NO. 311-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE APPLICATION TO THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, FEDERAL EMERGENCY MANAGEMENT AGENCY, FOR A PRESIDENTIAL RESIDENCE PROTECTION ASSISTANCE GRANT REQUESTING REIMBURSEMENT FOR EXPENDITURES INCURRED BY THE POLICE DEPARTMENT DURING FISCAL YEAR 2021 IN THE EFFORT TO PROTECT THE PRESIDENT OF THE UNITED STATES AND FIRST FAMILY WHILE IN PALM BEACH COUNTY; PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

Background Information:

The City of West Palm Beach, on behalf of its Police Department, wishes to submit an application to the United States Department of Homeland Security Federal Emergency Management Agency (FEMA) Presidential Residence Protection Assistance Grant (PPRAG) for the reimbursement of operational law enforcement overtime incurred in FY2021 while participating in the effort to protect the President of the United States of America. The City incurred law enforcement personnel overtime while working at the request of and in cooperation with the United States Secret Service while the President and First Family visited and traveled to and from their home on Palm Beach.

The City has previously received PPRAG grant funding reimbursement for expenses incurred in prior years.

The application is due by December 6, 2021. The City of West Palm Beach was advised to apply for reimbursement of overtime expenditures incurred between October 1, 2020 and January 20, 2021. The expenses are estimated at \$13,381.00.

Resolution No. 311-21 authorizes submittal of the grant application.

Fiscal Note:

Awarded funds will provide additional revenue to General Fund as a reimbursement of prior year expenditures.

- 5.8. Resolution No. 313-21(F) amending the Fiscal Year 2021/2022 Miscellaneous Trust Fund Budget to authorize appropriations of \$3,500

from the State Law Enforcement Forfeiture Receipts for donations; providing an Effective Date; and for other purposes.

Originating Department:

Police

Ordinance/Resolution:

RESOLUTION NO. 313-21(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 MISCELLANEOUS TRUST FUND BUDGET TO PROVIDE APPROPRIATIONS IN THE AMOUNT OF \$3,500 FROM THE STATE LAW ENFORCEMENT FORFEITURE RECEIPTS FOR DONATIONS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

Pursuant to the Florida Contraband Forfeiture Act, any local law enforcement agency that acquires at least \$15,000 within a fiscal year must expend or donate no less than 25 percent (25%) of such proceeds. These funds may be expended upon request by the Chief of Police to the City Commission, and upon appropriations to the police department's miscellaneous trust fund. Such funds may be used only for school resource officers, crime prevention, safe neighborhoods, drug abuse education, or drug prevention programs, or such other law enforcement purposes as the governing body of the municipality deems appropriate.

The State Law Enforcement Trust Fund expenditure of \$3,500, which the Chief of Police certifies is in compliance with section 932.7055(5)(c)3, Florida Statutes.

Donation:

1. Esperanza Community Center: The Esperanza Community Center is located at 3600 Broadway, Suite 20, in the historic Northwood community of West Palm Beach. The Esperanza Community Center was founded and is currently operated by Executive Director Maricela Torres. The center's mission focuses on outreach and assistance to the migrant community. The center is committed to providing crime prevention within the migrant community by providing educational workshops and educational opportunities including, but not limited to, wage theft, housing abuse, landlord-tenant abuse, and drug and alcohol referrals.

Fiscal Note:

No fiscal Impact

6. RESOLUTIONS

- 6.1. Resolution No. 65-21 approving the Local Housing Assistance Plan (LHAP) for Program Years 2021, 2022, and 2023.

Originating Department:

Housing and Community Development

Ordinance/Resolution:

RESOLUTION NO. 65-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA APPROVING THE LOCAL HOUSING ASSISTANCE PLAN (LHAP) FOR PROGRAM YEARS 2021-2022, 2022-2023, 2023-2024; AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS AND CERTIFICATIONS NECESSARY FOR SUBMISSION OF THE LHAP FOR REVIEW AND APPROVAL BY THE FLORIDA HOUSING FINANCE CORPORATION; AUTHORIZING THE MAYOR TO EXECUTE ALL AGREEMENTS AND RELATED DOCUMENTS NECESSARY TO RECEIVE THE GRANT FUNDS AND TO AWARD THE GRANT FUNDS TO SUBRECIPIENTS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Staff Recommended Motion:

Approve Resolution No. 65-21.

Background Information:

The State of Florida enacted the William E. Sadowski Affordable Housing Act, Chapter 92-317 of Florida Sessions Laws, allocating a portion of documentary stamp taxes on deeds to local governments for the development and maintenance of affordable housing. The State Housing Initiatives Partnership (SHIP) Program is a State of Florida entitlement grant program that provides these funds to local governments to produce and preserve housing opportunities to serve very low to moderate income families.

To be eligible for SHIP funds, pursuant to Secs. 420.9075, Florida Statutes, and Rule 67-37, Florida Administrative Code, entitlement communities must prepare a Local Housing Assistance Plan (LHAP) outlining its strategy for the use of the funds and submit the Plan to the Florida Housing Finance Corporation for review and approval.

The Housing and Community Development Department has prepared a three-year Local Housing Assistance Plan for program years 2021-2022, 2022-2023, 2023-2024 (Attached).

The strategies outlined in the proposed LHAP, along with the proposed funds allocation, include, but are not limited to:

- Housing Preservation Strategy - designed to assist owner-occupied residential properties. The strategy will to provide financial

assistance to homeowners to address repair/construction items that compromise the life, health, and/or safety of the household.

- Multi Family Rental Housing Strategy - designed to promote the production of affordable multi-family rental housing in the City.
- Home Purchase Assistance Strategy - created to assist eligible homebuyers with a deferred payment loan to be applied towards the costs of purchasing existing or newly constructed eligible affordable housing.
- Rapid Rehousing Strategy - created to assist individuals or families who require temporary rental assistance in order to avoid homelessness.

The LHAP further establishes an average area purchase price for new and existing housing benefiting from awards made pursuant to the Act.

Resolution No. 65-21 approves the proposed LHAP and authorizes the Mayor to execute all documents necessary for submission of the Plan, the receipt of the funds, and use of the funds.

Additionally, Section 420.9075(7), Fla. Stat. provides that only five percent of the local housing distribution plus five percent of program income may be used for administrative costs unless the governing body finds, by resolution, that such sum is insufficient to adequately pay the necessary costs of administering the plan; and in that event, eligible municipalities receiving a local housing distribution of up to \$350,000 may use up to ten percent of each fund for administrative costs.

Resolution No. 65-21 also finds that the necessary costs of administering the LHAP for the City of West Palm Beach exceeds five percent of the local housing distribution plus five percent of program income and provides for use of ten percent of each fund for administrative costs.

- 6.2. Resolution No. 221-21 authorizing the City Commission of the City of West Palm Beach to approve a neighborhood project participation agreement for Phase 2 to plant trees in the El Cid Neighborhood; and

Resolution No. 251-21(F) authorizing the City Commission of the City of West Palm Beach, Florida, to accept and appropriate funds in the amount of \$21,140 for Phase 2 of the EL Cid Neighborhood Association, tree planting project.

Originating Department:
Parks and Recreation

Ordinance/Resolution:

RESOLUTION NO. 221-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING PHASE 2 OF A NEIGHBORHOOD PROJECT PARTICIPATION AGREEMENT WITH THE EL CID HISTORIC NEIGHBORHOOD ASSOCIATION FOR THE PLANTING OF TREES; AND APPROVING THE LOCATION AND ABOVE GROUND CHANGES OF THE PROJECT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

RESOLUTION NO. 251-21(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 GENERAL FUND BUDGET TO RECOGNIZE A DONATION FROM EL CID HISTORIC NEIGHBORHOOD ASSOCIATION AND PROVIDE APPROPRIATIONS FOR PHASE II OF THE TREE PLANTING PROJECT IN THE EL CID NEIGHBORHOOD; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Staff Recommended Motion:

Approve Resolution No. 221-21 and Resolution No. 251-21(F).

Background Information:

The El Cid Historic Neighborhood Association, Inc. is a volunteer, non-profit corporation which is open to the public and organized for the purpose of providing benefits to the citizens within the historic El Cid Neighborhood and at the request of the Association, the City Parks Division, Landscape Planner and Engineering staff have been collaborating to accomplish the planting of trees in the City rights-of-way in the El Cid Historic Neighborhood (the "Project"). A pilot program was started to facilitate the process, Phase 1 was completed in year 2020 and Phase 2 is scheduled to be completed in 2021.

The total cost of Phase 2 of the tree planting "Project" is estimated at \$42,280. The cost will be shared 50% with the El Cid Historic Neighborhood Association contributing \$21,140 and the City funding the remaining 50% through the Reserves from the Landscape Management Division in the Development Services Department.

Appropriations for this project will be transferred to the Parks and Recreation Parks Maintenance Division General Fund budget for purchase and planting of the trees by a landscape contractor hired by the City. There will be one (1) Silver Buttonwood Trees, and Thirty-Five (35) Hurricane Palms.

The residents of the El Cid Historic Neighborhood Association have agreed to care for and maintain the trees. Each homeowner has signed a tree

maintenance covenant. However, the covenants will not be recorded and will not be a covenant running with the land.

Commission District 3: Commissioner Christy Fox.

Fiscal Note:

Approval will recognize a donation and utilize reserves to provide appropriations for the El Cid Tree Planting project in the amount of \$42,280.

7. PUBLIC HEARING

- 7.1. Public Hearing and Second Reading of Ordinance No. 4981-21 a declaration of zoning in progress to allow parklets established under the Temporary Outdoor Dining program to continue operation while revised parklet regulations are adopted.

Originating Department:

Development Services

Ordinance/Resolution:

ORDINANCE NO. 4981-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA DECLARING A ZONING IN PROGRESS FOR PARKLETS; PERMITTING CONTINUED OPERATION OF PARKLETS BY BUSINESSES WHO HAVE ESTABLISHED THEM UNDER THE TEMPORARY OUTDOOR DINING PROGRAM DURING THE EMERGENCY MEASURES OF THE COVID-19 PANDEMIC UNTIL NEW REGULATIONS ARE APPROVED; PROVIDING A CONFLICTS CLAUSE; A SEVERABILITY CLAUSE; A SUNSET CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Staff Recommended Motion:

Approve Ordinance No. 4981-21 declaring a zoning in progress to allow parklets established under the Temporary Outdoor Dining program to continue until revised parklet regulations are adopted or until November 15, 2022.

Background Information:

A Parklet is a seating platform that converts curbside parking spaces into vibrant community spaces that may provide amenities such as: seating, landscaping, bicycle parking, art, among others. Ordinance No. 4667-16 established Chapter 78, Article XVIII, of the Code of Ordinances which allowed the creation of parklets in compliance with the regulations.

In concert with the Governor's Executive Order, On May 19, 2020, the City of West Palm Beach issued a Declaration of Emergency which allowed expanded outdoor seating for restaurants under a Temporary Outdoor Dining (TOD) Program to ensure businesses had the greatest ability to operate successfully during the COVID-19 economic recovery. The TOD

program allowed expanded seating on sidewalks and for parklets. After the City's Declaration of Emergency expired, the TOD Program expired but many businesses desire to retain their expanded outdoor seating.

On March 22, 2021, by Ordinance No. 4936-21, the City updated the regulations for sidewalk cafe seating to reflect lessons learned from the pandemic and provide additional flexibility for business owners and comfort for pedestrians. However, in the case of the parklets, the regulations have not yet been updated. The City, in conjunction with the Downtown Development Authority, is currently working with a consultant on developing revised regulations to the City's code regarding the utilization of parklets for businesses within the City. While the revised parklet regulations are being drafted, staff desires to establish a Zoning in Progress for parklets. No new applications to create a parklet will be accepted until new parklet regulations are adopted, or until the zoning in progress expires in one year.

Existing parklets will be allowed to continue to operate under the Temporary Outdoor Dining Program regulations and the existing ordinances, with two additional conditions:

1. Businesses with parklets located in metered parking spaces shall be required to pay the parking space meter bagging fee, effective January 1, 2022; and
2. Parklets with tents shall be required to remove the tent. Umbrellas may be used in accordance with the existing regulations.

Ordinance No. 4981-21 establishes a zoning in progress for up to one year for the development of new regulations for parklets in the public right-of-way.

- 7.2. Public Hearing and Second Reading of Ordinance No. 4983-21 regarding the repeal of Sections 54-127(2), (3), & (5) and 54-147(a)(1) pertaining to panhandling or soliciting in certain public areas of the City.

Originating Department:

City Attorney's Office

Ordinance/Resolution:

ORDINANCE NO. 4983-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING CHAPTER 54, (OFFENSES) ARTICLE IV (OFFENSES AGAINST PUBLIC PLACES), DIVISION 2, (AGGRESSIVE SOLICITATION), TO REPEAL PROVISIONS WHICH MAKE CERTAIN INSTANCES OF PANHANDLING OR SOLICITING UNLAWFUL INCLUDING SECTIONS 54-127(2), (3), & (5) AND DIVISION 3 (PROHIBITED CONDUCT), SECTION 54-147(a)(1) OF THE CITY CODE

OF ORDINANCES; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING A CODIFICATION CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Staff Recommended Motion:

Approve Ordinance No. 4983-21

Background Information:

Rosa Williams, Gary Frashaw, and Thomas Hyland (the "Plaintiffs") filed an action in the United States District Court for the Southern District of Florida (i.e., Williams, et al. v. City of West Palm Beach, Case No. 9:21-cv-81537-DMM (S.D. Fla.)) in which they contested the constitutional validity of the City's panhandling Ordinances located in sections 54-127(2), (3), & (5) and 54-147(a)(1) of the City's Code of Ordinances ("City Ordinances"), and claimed damages caused by the application of those City Ordinances.

Sections 54-127(2), (3), & (5) of the Code of Ordinances for the City of West Palm Beach makes it unlawful to solicit money or other things of value in certain public areas, including public transportation vehicles, bus stations or stops, within 15 feet of any entrance or exit of any bank, automated teller machine, or check cashing business, and from any operator or passenger of a motor vehicle that is in traffic on a public street. In addition, section 54-147(a)(1) of the Code of Ordinances for the City of West Palm Beach makes it unlawful for any person to engage in an act of panhandling or soliciting in the public areas of the City's downtown and Northwood areas.

In 2015, the United States Supreme Court rendered its decision in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), in which it defined what constitutes a content-based regulation and declared that such regulations violate the First Amendment to the U.S. Constitution unless they pass strict scrutiny. Many courts have held that the application of strict scrutiny typically sounds the "death knell" of a law or regulation because it is "virtually impossible" for a law to survive its application, as the proponent of the regulation must prove that the regulatory scheme "furthers a compelling governmental interest and is narrowly tailored to that end."

In *Norton v. City of Springfield*, 806 F.3d 411 (7th Cir. 2015), the United States Court of Appeal for the Seventh Circuit applied *Reed* to a panhandling regulation similar to sections 54-127(2), (3), & (5) and 54-147(a)(1) of the City's Code of Ordinances. The Seventh Circuit concluded that the panhandling regulations were content-based regulations and, as such, applied strict scrutiny and deemed the regulations unconstitutional under the First Amendment to the U.S. Constitution. The City of West Palm Beach is in the Eleventh Circuit which has not opined on the constitutionality of panhandling regulations following the *Reed* case. However, in *Messina v. City of Fort Lauderdale*, 2021 WL 2567709 (S.D. Fla. June 23, 2021), the United States District Court for the Southern District of Florida (the District in which the City of West Palm Beach is located) recently held that a City of Fort Lauderdale panhandling ordinance

containing regulations similar to sections 54-127(2), (3), & (5) and 54-147(a)(1) of the City's Code of Ordinances was a content-based regulation that would not likely survive strict scrutiny and is likely unconstitutional under the First Amendment to the U.S. Constitution.

Given the aforementioned case law deeming ordinances similar to the City Ordinances unconstitutional under the First Amendment to the U.S. Constitution, the City has reached an agreement with the Plaintiffs to repeal the location specific sections of the City's panhandling regulations.

Ordinance No. 4983-21 repeals the sections of the code referred to above.

- 7.3. Public Hearing and First Reading of Ordinance No. 4976-21 regarding a City-initiated text amendment to the City Code of Ordinances at Chapter 78, Article VI, Special Events, and Chapter 94, Article XIII, Sign Regulations, Section 94-407(12), Temporary signs for special noncommercial events of public interest.

Originating Department:

Development Services

Ordinance/Resolution:

ORDINANCE NO. 4976-21: 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 78, STREETS, SIDEWALKS AND PUBLIC PLACES, TO AMEND AND REPLACE ARTICLE VI, SPECIAL EVENTS; REVISING THE REGULATIONS REGARDING SPECIAL EVENTS AND SPECIAL EVENT PERMITS; AMENDING CHAPTER 94, ZONING AND LAND DEVELOPMENT REGULATIONS, SECTION 94-407, SIGNS PERMITTED IN ALL DISTRICTS, TO AMEND THE REGULATIONS ADDRESSING TEMPORARY SIGNS FOR NONCOMMERCIAL EVENTS OF PUBLIC INTEREST; 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. 4976-21. 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 rezoning 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:

Over the past few years, the Mayor's Office and the City Commission have received complaints regarding the impact of various special events on both

public property and in residential zoning districts to the surrounding neighbors.

The Mayor directed staff to review the current Special Event regulations contained in Chapter 78 to incorporate language that would both permit successful events while protecting neighbors and the general public from potential negative effects of the event.

The Planning Division, Building Division, City Attorney's Office, Community Events Division, Community Redevelopment Agency, Engineering Services Department, Fire Department and Police Department all participated in the rewrite of the Special Event regulations.

On June 16, 2020, draft regulations were discussed with the Mayor's Executive Committee. On August 12, 2020, the El Cid Neighborhood Association provided comments on the proposed regulations. On August 31, 2020, the regulations were presented to the Mayor City Commission Work Session for input from the City Commissioners.

The regulations address events held on public property and events held on private property that have a potential impact on the public realm. The regulations codify the Special Event Permit process for all types of events, and provide enforcement provisions.

Although the majority of the text amendment deals with changes to Chapter 78, there is currently reference to Special Event signage in Chapter 94 that will no longer apply. The provision in Chapter 94 will now direct a reader to Chapter 78 for the Special Event signage requirements; and

The Planning Board recommended approval (7-0) of the amendment to Section 94-407(12) after a Public Hearing on February 16, 2021.

This item applies City-wide.

Fiscal Note:

No fiscal impact.

- 7.4. Ordinance No. 4984-21 amending the Downtown Master Plan Element of the Comprehensive Plan creating the new NoRA district.

Originating Department:

Development Services

Ordinance/Resolution:

ORDINANCE NO. 4984-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE COMPREHENSIVE PLAN AT THE DOWNTOWN MASTER PLAN ELEMENT POLICY 1.1.1, POLICY 2.3.2, AND POLICY

3.1.3 TO PROMOTE THE REDEVELOPMENT OF THE AREA BETWEEN QUADRILLE BOULEVARD, NORTH DIXIE HIGHWAY, PALM BEACH LAKES BOULEVARD, AND THE FEC RAILROAD, CREATING THE NEW NORTH RAILROAD AVENUE DISTRICT (NORA), REMOVING THE EXISTING INDUSTRIAL CHIC DISTRICT, MODIFYING THE EXISTING BRELSFORD PARK DISTRICT, DESIGNATING ADDITIONAL INCENTIVE AREAS WHICH ALLOW ADDITIONAL HEIGHT AND DEVELOPMENT CAPACITY WITHIN THE NORTH RAILROAD AVENUE DISTRICT, AND DESIGNATING TWO PROPERTIES AS URBAN OPEN SPACE; DECLARING THE PROPOSED AMENDMENTS TO BE CONSISTENT WITH ALL OTHER ELEMENTS OF THE COMPREHENSIVE PLAN; PROVIDING A CONFLICTS CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Staff Recommended Motion:

Approve Ordinance No. 4984-21 to amend the Downtown Master Plan Elements of the Comprehensive Plan, replacing the Industrial Chic District (ICD) with the newly established North Railroad Avenue (NoRA) District , modifying portions of the Brelsford Park District (BPD-R & BPD-5), and allowing for increased height and development capacity in newly designated TDR incentive areas of the NoRA District.

Background Information:

Currently located within the northern portion of the Downtown Master Plan (DMP) area is the intersection of two uniquely distinct districts of the City. The areas are currently designated as the Residential Enclave of Brelsford Park (BPD-5 & BPD-R zoning) and the Special District known as Industrial Chic (ICD-2 and ICD-5). These districts were established in 2009 and shared similar goals in promoting a vibrant and mixed-use neighborhood. The districts in question are generally bounded by the FEC railway corridor to the west, Palm Beach Lakes Boulevard to the north, North Quadrille Boulevard to the south, and North Dixie Avenue to the east, including some of the properties on the east side of Dixie Highway.

Despite the area's strategic location between the intensely urbanized Downtown to the south and the large employment hub of the Good Samaritan Hospital to the north, the area has seen limited investment and the intended development has not materialized. While the downtown core has seen unprecedented redevelopment in the last 15 years, the Brelsford Park and Industrial Chic districts have received very minimal investment, if any. A detailed account of the uses in the area reflect that 38.6% of the district land is vacant, and a large number of structures are boarded-up.

Throughout the last several years, the City has acknowledged the need to revitalize this portion of the DMP and bring development interest to the area's vacant properties. In 2019, as the City started considering changes to the zoning regulations to promote the redevelopment in the area, the City was approached by NDT Development and Place Projects with a

revitalization proposal. These two development groups had started acquiring property in the neighborhood and have recently agglomerated a large portion of the area (over 12 acres) becoming a prominent stakeholder. The City and CRA started discussions with NDT Development and Place Project, and the development group engaged the professional services of Plusurbia, a planning and urban design consulting firm, to work with the City on the preparation of a plan for the entire neighborhood.

Recognizing that the adequate redevelopment of the existing vacant parcels at the edges of the neighborhood is fundamental for the overall revitalization and economic vibrancy of the area, the City initiated a request for a text amendment to the Downtown Master Plan Element of the Comprehensive Plan. The amendment shall formally establish a new district, called North Railroad Avenue district - NoRA, and promote alternative, yet spatially compatible development opportunities. The new vision for the neighborhood will include increased development capacity (through the transfer of development rights), enhanced public spaces, and more opportunities for a mix of land uses.

The changes include:

1. Creation of the new NoRA District

The Industrial Chic District description included in Policy 1.1.1 will be removed and replaced by the description of the new NoRA District. The description for the Brelsford Park District will not be amended as the existing language still reflects the intended character of the district.

In addition, an amendment to Figure DMP-1. District Boundaries is proposed to reflect the boundaries of the new NoRA District and the changes of the boundaries of the Brelsford Park District.

2. Designation of the new NoRA Subdistricts

Figure DMP-2. Subdistrict Boundaries will be amended to indicate the new subdistricts, the Table DMP-1 Maximum development capacity will also be amended to reflect the new subdistrict and its corresponding development capacity by right and through incentives.

3. Designation of new incentive areas for the NoRA district

The additional development capacity will be allowed through the transfer of development rights program, respecting the maximum capacity established by the Traffic Concurrency Exemption Area (TCEA) for the downtown area, and therefore not increasing the overall development amount permitted for the downtown master plan area.

There are 4 new incentive areas proposed: NoRA 2-20, NoRA 2-15, NoRA 5-10, and NoRA 2-8. The proposed increases in development capacity and height achieved through the incentive program reflect the proposed contextual and transitional scale concept that protects the lower scale residential neighborhood and allows additional height and intensity at the edges of the neighborhood along the more intense thoroughfares. No changes in development capacity or scale are proposed for the core of the Brelsford Park neighborhood.

The amendment is also proposing the removal of the existing density limitations for the BPD-R and BPD-5. The total number of units will be regulated by the existing language in the Zoning and Land Development Regulations regarding minimum unit size and average unit size.

4. Additional changes

Update Figure DMP-2 Subdistrict Boundaries to reflect the existence of two Urban Open Spaces (UOS). The first is a new UOS parcel located west of Tamarind Avenue between Banyan Boulevard and 2nd Street along the original railway spur line. The first property is currently being developed as a linear park. The second UOS parcel is the existing Jose Marti Park located on the west side of Flagler Drive between 2nd Street and 3rd Street, east of St Ann's church and school.

Community Input:

Two community meetings have been conducted to share with the neighborhood the proposed vision and receive input. An initial meeting took place on September 16, 2020 during the initial outreach conducted in preparation for the adoption of a first phase of changes to the zoning code. An additional meeting was conducted on September 30, 2021 at City Hall, and over 20 people attended the meeting. Public hearings were also held with both the Downtown Action Committee and the Planning Board.

The proposed amendments to the Downtown Master Plan Element of the Comprehensive Plan were approved by the Downtown Action Committee (4-0) on October 13, 2021, and also approved by the Planning Board (7-0) on October 19, 2021.

COMMISSION DISTRICT: Commission District No. 3- Commissioner Christy Fox.

- 7.5. Resolution No. 289-21: A request to abandon a five (5) foot wide utility easement within the property located at 2501 South Flagler Drive; and

Resolution No. 290-21: A request to abandon a portion of an alley located west of South Flagler Drive, between Sunset Road and Pershing Way; and

Public Hearing of Resolution No. 291-21: A request for a Minor Subdivision to approve the plat entitled "Briggs Plat".

The above-referenced items are being requested by David Lawrence, of David Lawrence Architecture, on behalf of Sean Heyniger.

Originating Department:

Development Services

Ordinance/Resolution:

RESOLUTION NO. 289-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, VACATING AND ABANDONING A FIVE (5) FOOT WIDE UTILITY EASEMENT WITHIN THE PROPERTY LOCATED AT 2501 SOUTH FLAGLER DRIVE; AUTHORIZING EXECUTION AND RECORDING OF A DISCLAIMER OF INTEREST IN SUCH EASEMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

RESOLUTION NO. 290-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, VACATING AND ABANDONING AN APPROXIMATELY 0.017 ACRE (757 SQUARE FEET) PORTION OF A PLATTED ALLEY RIGHT-OF-WAY LOCATED WEST OF SOUTH FLAGLER DRIVE, BETWEEN SUNSET ROAD AND PERSHING WAY; AUTHORIZING EXECUTION OF A DISCLAIMER OF INTEREST IN THE AFORESAID RIGHT-OF-WAY; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

RESOLUTION NO. 291-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A MINOR SUBDIVISION AND REPLAT OF REAL PROPERTY TO CREATE THE PLAT ENTITLED "BRIGGS PLAT", CONSISTING OF THREE (3) LOTS TOTALING APPROXIMATELY 0.73 ACRES LOCATED ON THE WEST SIDE OF SOUTH FLAGLER DRIVE BETWEEN SUNSET ROAD AND PERSHING WAY; DEDICATING A PUBLIC UTILITY EASEMENT AND A SIDEWALK EASEMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Staff Recommended Motion:

Approve Resolution No. 289-21.

Approve Resolution No. 290-21.

Approve Resolution No. 291-21, creating the plat entitled "Briggs Plat". This motion is based upon the application submitted, the staff report, factual testimony, and the findings that the request complies with the Comprehensive Plan and the standards in Section 94-342 of the City's Zoning and Land Development Regulations.

Background Information:

The subject property, located on the west side of South Flagler Drive between Sunset Road and Pershing Way, consists of approximately 0.73 acres in total. On October 15, 2020, a request for a Minor Subdivision was submitted to the City's Planning Division by David Lawrence, of David Lawrence Architecture, on behalf of Sean Heyniger (the "Applicant") to replat the property and convert the existing two (2) lots into three (3) lots.

The Applicant is proposing to demolish the existing northernmost residence (2501 S. Flagler Dr.), construct two (2) new residences along S. Flagler Drive, and relocate the existing southernmost residence (2527 S. Flagler Dr.) a few feet to the east, while at the same time raising it to comply with the latest FEMA regulations. As the property is located within an historic district, all of the modifications are subject to the review of the City's Historic Preservation Board (HPB), and much of it has already been approved.

During the review of the proposed subdivision, it was identified that existing utilities within the area of the proposed plat would need to be relocated as they were underneath a portion of the existing building and would be in the middle of one of the future lots. The Applicant has worked with the City's Engineering Services and Public Utilities Departments to develop plans for the utility relocation and the Applicant has bonded the cost of the work. Resolution No. 289-21 will provide for the abandonment of the existing utility easement, and the proposed plat will dedicate the necessary easement for the new utility location.

At the time of submittal of the Minor Subdivision, a request for an alley abandonment was also submitted as the property was bisected by a six (6) foot wide east-west alley that was dedicated with the original plat in 1924; the alley is unimproved and not being utilized. Resolution No. 290-21 would vacate and abandon 757 square feet of the alley upon receipt of \$64,345 (\$85 per square foot) as compensation for the value of the alley, as estimated by an appraisal conducted by Anderson & Carr, Inc. Please note that the total compensation required is less than that identified in the appraisal as it accounted for abandonment of a larger segment of the alley. As such, the total compensation required was determined using the cost per square foot assigned by the appraisal and multiplying it by the actual square footage being abandoned.

Conclusion: It is Staff's professional opinion that the proposed easement is no longer needed with the bonded utility work, that the alley is not utilized as part of any broader circulation network, and that the proposed plat complies with the standards required by the City's Comprehensive Plan and the Subdivision General Design Standards required by Section 94-342 of the City's Zoning and Land Development Regulations.

Planning Board: Abandonments of the easement and alley are not required to be reviewed by the City's Planning Board. Additionally, as a Minor Subdivision, the subject plat was not required to be reviewed by the City's Planning Board.

Commission District 3: Commissioner Christy Fox.

8. 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.

9. COMMENTS BY THE MAYOR AND CITY COMMISSIONERS

10. 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.