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Mayor Keith A. James
Commission President Christy Fox (District 3)
Commissioner Cathleen Ward (District 1)
Commissioner Shalonda Warren (District 2)
Commissioner Joseph A. Peduzzi (District 4)
Commissioner Christina Lambert (District 5)

City Administrator Faye W. Johnson
City Attorney Kimberly Rothenburg
City Clerk (Interim) Jacqueline Mobley

**City of West Palm Beach
City Commission
DRAFT Agenda
Monday, September 19, 2022
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.

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 September 15, 2022 through October 15, 2022 as National Hispanic Heritage Month. Proclamation to be accepted by the Board of Directors of the Latin Quarter of West Palm Beach, which is comprised of the following: Dina Rubio, Gabriel Issasi Jr., Liz MacCall, Susy Burrowes, Mabel Melton, Yezenia R. Rivero, Mabel Datena, and Jose Tagle.

Originating Department:

Mayor's Office

7. APPOINTMENTS

- 7.1. City Commission approval is requested for the Mayor's reappointment of Mr. Everett C. Fennel and Mr. Larry B. Rowe to the Construction Board of Adjustments and Appeals for a term or three (3) years to expire on August 24, 2025. Mr. Fennel and Mr. Row have served over the maximum allowed number of terms (3), and it is required that the City Commission confirms their reappointments.

Originating Department:

Mayor's Office

Staff Recommended Motion:

Mr. Fennell's and Mr. Rowe's reappointments are supported, because both have professional expertise and excellent record of service on the Board.

- 7.2. City Commission approval is requested for the Mayor's reappointment of Mr. Richard E. Wade to the Watersheds Advisory Committee for a term of two years (2) to expire on June 2, 2024. Mr. Wade has served over the maximum allowed number of terms (3), and it is required that the City Commission confirms his reappointment.

Originating Department:

Mayor's Office

Staff Recommended Motion:

Mr. Wade's reappointment is supported because he is a resident of Pineapple Park, which is a neighborhood that has been subject to flooding.

8. 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.

- 8.1. Resolution No. 235-22 making findings, opposing, and discouraging conversion therapy on minors.

Originating Department:

Mayor's Office

Ordinance/Resolution:

RESOLUTION NO. 235-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, MAKING FINDINGS AND OPPOSING CONVERSION THERAPY ON MINORS; PROVIDIING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

The City remains committed to protecting minors from the harmful effects of conversion therapy and similar modalities designed to change sexual orientation or identity, as evidenced by its existing Ordinance No. 4666-16, codified at Article V, Chapter 54, Sections 54-171 through 54-174. Palm Beach County and the City of Boca Raton modeled their ordinances banning conversion therapy as to minors on the City of West Palm Beach's Ordinance No. 4666-16.

Due to a recent 11th Circuit Court decision opining that similar conversion therapy bans as to minors are, as a preliminary matter, unconstitutional as set forth in *Otto and Hamilton v. Palm Beach County and City of Boca Raton*, the City is by separate action today seeking to repeal Ordinance No. 4666-16 to be consistent with the court's preliminary ruling.

Resolution No. 235-22 is intended to make clear and set forth the City of West Palm Beach's firm commitment, notwithstanding its potential repeal of Ordinance No. 4666-16, to unequivocally support and affirm the well researched evidence that sexual orientation change efforts ("SOCE") can pose critical health risks to lesbian, gay, and bisexual people. These risks include confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources, all with "little or no potential for achieving changes as to orientation."

City Administration recommends passage of Resolution No. 235-22 to oppose and strongly discourage sexual orientation change efforts as to minors.

- 8.2. Resolution No. 213-22 approving submittal of an application to the Florida Department of State, Division of Library and Information Services for the State Aid to Libraries Grant to assist the Mandel Public Library of West

Palm Beach in maintaining and developing vital services during FY 2022-2023.

Originating Department:

Library

Ordinance/Resolution:

RESOLUTION NO. 213-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE MAYOR TO SUBMIT AN APPLICATION TO THE FLORIDA DEPARTMENT OF STATE FOR A STATE AID TO LIBRARIES GRANT FOR OPERATION AND MAINTENANCE OF THE MANDEL PUBLIC LIBRARY; AUTHORIZING EXECUTION OF A GRANT AGREEMENT AND OTHER DOCUMENTS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

Florida's State Aid to Libraries Program is administered by the Florida Department of State, Division of Library and Information Services. In 2003, the Legislature revised the law to allow independent municipal libraries to participate in the State Aid to Libraries Program. This was done in recognition that the provision of state aid to independent municipal libraries is a valuable contribution to the extension of the state's public library development plan. The State provides a match of up to 25 cents on each dollar of local funds expended centrally for the operation and maintenance of the library. The Mandel Public Library of West Palm Beach has received this state aid funding since 2003.

The Mandel Public Library meets the following requirements to receive the state aid to Libraries Grant:

- 1) Provides free library services;
- 2) Maintains an established interlocal agreement to jointly support each participating library;
- 3) Retains a single administrative head employed full-time to manage or coordinate the operations of the library;
- 4) Expends funds centrally;
- 5) Maintains a reciprocal borrowing agreement;
- 6) Provides access to materials, information and services for all residents of the area served;
- 7) Library is open 40 hours or more each week; and
- 8) Library has established a long-range plan, annual plan of service and annual budget.

Funding from the state will supplement the Mandel Public Library's operating costs for goods and services as defined by the Uniform Accounting System Manual for Local Governments, 2022 edition, prepared by the Florida Department of Financial Services, Bureau of Local Government.

The State will determine the amount of grant to be awarded to the City however, it is estimated the grant will be approximately \$92,786.

- 8.3. Resolution No. 223-22 authorizing the assessment of city liens in the total amount of \$14,793.64 for unpaid water service, sewer service and stormwater charges for the month of June 2022.

Originating Department:

City Attorney's Office

Ordinance/Resolution:

RESOLUTION NO. 223-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AND AUTHORIZING AN ASSESSMENT OF CITY LIENS FOR UNPAID WATER SERVICE, SEWER SERVICE, AND STORMWATER SERVICE FOR THE MONTH OF JUNE 2022; PROVIDING THAT SAID LIENS SHALL BE PRIOR IN DIGNITY TO ALL OTHER LIENS AGAINST THE ASSESSED PROPERTIES, SAVE AND EXCEPT A LIEN FOR TAXES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

In accordance with the Code of Ordinances of the City of West Palm Beach, Florida, 2003, Sections 90-4 and 90-5, the City imposes liens on private real property for delinquent payments due for utility services. The liens to be assessed by Resolution No. 223-22 are for unpaid water service, sewer service, and stormwater service charges for the month of June 2022. The list of properties to be assessed and the associated charges totaling \$14,793.64 are attached to Resolution No. 223-22 as EXHIBIT A – Utility Liens - June 2022.

Fiscal Note:

No fiscal impact.

- 8.4. Resolution No. 232-22 approves a Conditional Settlement Agreement totaling \$50,000 in the matter of Susan Russo v. City of West Palm Beach.

Originating Department:

City Attorney's Office

Ordinance/Resolution:

RESOLUTION NO. 232-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A CONDITIONAL SETTLEMENT AGREEMENT FOR \$50,000 IN THE MATTER OF SUSAN RUSSO v. CITY OF WEST PALM BEACH; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

Susan Russo has brought a claim by way of a complaint in the Fifteenth Judicial Circuit in Susan Russo v. City of West Palm Beach for an accident that occurred on December 23, 2020. The City has reached a settlement agreement with Ms. Russo and her attorney to resolve the matter for a total

of \$50,000. Ms. Russo has signed a general release that releases the City from all claims arising from this incident, which ends all of the claims for damages, including all attorneys' fees and costs, against the City of West Palm Beach.

Section 2-268(g)(4) of the Code of Ordinances of the City of West Palm Beach, Florida, provides that the authority for settlement of all claims over \$30,000 shall require the approval of the City Commission by formal resolution. Resolution No. 232-22 approves the conditional settlement agreement.

- 8.5. Resolution No. 239-22 approves a Conditional Settlement Agreement and Release totaling \$220,000 in the matter of Sharagay Esposito v. City of West Palm Beach.

Originating Department:

City Attorney's Office

Ordinance/Resolution:

RESOLUTION NO. 239-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A CONDITIONAL SETTLEMENT AGREEMENT TOTALING \$220,000 IN THE MATTER OF SHARAGAY ESPOSITO v. CITY OF WEST PALM BEACH; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

Plaintiff was a former employee who filed a lawsuit in March 2020, later amended, under Florida's Whistleblower Act and Florida's Civil Rights Act, asserting claims relating to her employment and separation from employment on October 4, 2019. The court-ordered, confidential mediation in this matter resulted in a conditional settlement agreement with Plaintiff providing a general release of all claims relating to her employment in exchange for consideration as set forth in more detail in the attached conditional agreement. The settlement monies will be drawn from FY22 funds.

- 8.6. Resolution No. 244-22 authorizing City's participation in the Medicaid Managed Care Organization Supplemental Payment Program and approving an agreement with the Agency for Health Care Administration for Public Emergency Medical Transport for FY 2023.

Originating Department:

Fire

Ordinance/Resolution:

RESOLUTION NO. 244-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, REAUTHORIZING PARTICIPATION IN THE MEDICAID MANAGED CARE ORGANIZATION SUPPLEMENTAL PAYMENT PROGRAM BY

THE CITY OF WEST PALM BEACH AND APPROVING THAT PUBLIC EMERGENCY MEDICAL TRANSPORTATION LETTER OF AGREEMENT FOR THE INTERGOVERNMENTAL TRANSFER OF FUNDS TO THE AGENCY FOR HEALTH CARE ADMINISTRATION FOR THE APPROXIMATE AMOUNT OF \$402,894.12 FOR ANTICIPATED REIMBURSEMENT OF APPROXIMATELY \$1,008,495.92 FOR A NET INCREASE IN REVENUE OF APPROXIMATELY \$605,601.80; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

This is the fourth year of this revenue source to supplement the current Medicaid reimbursements for medical transports. The current rate is approximately \$190 per transport. By Resolution 225-21, the City Commission previously approved the City's participation in the Medicaid Managed Care Organization Supplemental Payment Program. This program reimbursed approximately \$176 more per transport over the current rate in FY22. The projected FY23 revenue of \$605,601.80 is based on call volume projections.

Additional Information:

Medicaid payment rates do not recognize the actual costs incurred by EMS providers for the provision of EMS services. As a result, municipalities and counties have been required to use alternative funding sources to supplant the costs incurred through other funding mechanisms such as the allocation of taxes and fees. Despite the establishment of the Public Emergency Medical Transport Medicaid Fee for Service Program in 2016, the medically managed care reimbursement levels remained at inadequate levels.

In a previous legislative session, the Florida Fire Chief's Association championed a legislative effort that led to the approval of new funding. This effort established a Medicaid managed care supplemental payment while preserving the existing Public Emergency Medical Transport Medicaid Fee for Service Program. The new Medicaid Managed Care Payment Program increases Medicaid federal funding available to government-owned Fire and EMS communities.

The most recent legislative session increased the Federal share from \$54 million to \$75 million, which also increased the per-transport reimbursement by an additional \$119. The Federal government requires a cost share, and the State of Florida is requiring Palm Beach County and city governments interested in participating in the program to pay in advance.

When the Medicaid insurance providers pay approximately \$190 per transport, they will also pay an additional estimated \$295 per transport as

a result of this program as well as reimburse the City's cost share per transport.

The Agency for Health Care Administration [AHCA] implemented and monitored this program by determining the City's cost share and reconciling payments made by the Medicaid insurance providers. As done in FY 2022, participating providers must execute a Letter of Agreement with the AHCA agreeing to intergovernmental transfers of funds to AHCA for FY 2023.

Upon finalization of the distribution model, the listed transfer amount in the Letter of Agreement is subject to minor changes by AHCA. Due to the likelihood of minor adjustments to the listed amount, Resolution 244-22 approves a transfer amount of up to 10% above or below the currently listed amount of \$402,894.12.

By Resolution No. 244-22, the City Commission reauthorizes participation and approves the the Letter of Agreement for the approximate amount of \$402,894.12.

Fiscal Note:

The revenue and IGT are budgeted in FY23. Estimated net funds \$605,000.

- 8.7. Resolution No. 222-22 approving a Sponsorship Agreement between the City of West Palm Beach and the Friends of Veterans, Inc., for the Veterans' Day Parades on November 6, 2022, November 5, 2023 and November 10, 2024 and authorizing the waiver of certain fees in the total estimated amount of \$5,850.

Originating Department:

Parks and Recreation

Ordinance/Resolution:

RESOLUTION NO. 222-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A SPONSORSHIP AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND FRIENDS OF VETERANS, INC., FOR THE PALM BEACH COUNTY VETERANS' DAY PARADES; AUTHORIZING THE WAIVER OF CERTAIN FEES FOR THE EVENT IN THE TOTAL ESTIMATED AMOUNT OF \$5,850; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

Friends of Veterans, Inc. will host Veterans Day Parades on Sunday, November 6, 2022, November 5, 2023, and November 10, 2024 from 2:00 P.M to 4:00 P.M on Clematis Street. The City will receive certain sponsorship benefits in exchange for waiving the event permit fee valued at \$1,100 per year, Community Events Staff fee with an estimated value of \$350 per year, and the overtime for the MOT/road closure with an

estimated value of \$500 per year. The Friends of Veterans, Inc., will provide the City a sponsorship valued at \$5,000. Sponsorship benefits will include sponsor mention in all radio spots, press releases, public address (PA) announcements, and logo in all print advertisements and collateral materials. Prior to the event, Friends of Veterans, Inc. will pay the City a \$1,000 refundable Special Event security deposit. Friends of Veterans, Inc. will also be responsible for paying costs related to City services including Police, EMS, and Sanitation. The promoter will provide the City with a \$1 million general liability insurance policy naming the City as additionally insured.

Resolution No. 222-22 approves a Sponsorship Agreement between the City and Friends of Veterans, Inc., including the waiver fees associated with the Parades, and accepts the benefits accruing to the City and authorizes the Mayor to execute the Sponsorship Agreement attached to the Resolution.

Commission District 3: Commissioner Christy Fox.

Fiscal Note:

No fiscal impact.

- 8.8. Resolution No. 243-22 authorizes Amendment No. 2 to a revocable permit and license for City property adjacent to Lake Mangonia to allow Urban Youth Impact, Inc. for expansion of their fenced in area for the Urban Youth Impact Dream Center located at 2823 North Australian Avenue.

Originating Department:

Engineering

Ordinance/Resolution:

RESOLUTION NO. 243-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING AMENDMENT NO. 2 TO A REVOCABLE LICENSE TO USE PUBLIC PROPERTY BETWEEN THE CITY AND URBAN YOUTH IMPACT, INC. FOR THE USE OF SPACE LOCATED ADJACENT TO AND RUNNING PARALLEL TO THE EAST SIDE OF LAKE MANGONIA; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Background Information:

On June 10, 2013, the City Commission approved Resolution No. 168-13. This resolution authorized the execution of a Revocable License to Use Public Property with Urban Youth Impact, Inc. to allow Urban Youth Impact, Inc. to access, install, and maintain a fenced-in playground and community garden on City-owned property along Lake Mangonia and adjacent to their facility at 2823 North Australian Avenue.

Urban Youth Impact, Inc. is now seeking an expansion of their fenced in area to allow for additional playground and recreational facilities. The

additional fenced in area is approximately 9700 sq. ft. As provisions for the expansion were not included in the original revocable license, an amendment is required. Approval of Resolution No. 243-22 will authorize the execution of an amendment to the original Revocable License to Use Public Property with Urban Youth Impact, Inc. to allow for the expansion of the original permit area.

Commission District 1: Commissioner Cathleen Ward.

Fiscal Note:

No fiscal impact.

9. RESOLUTIONS

- 9.1. Resolution No. 87-22 amending the Comprehensive Fee Schedule for Sidewalk Café permits.

Originating Department:

Development Services

Ordinance/Resolution:

RESOLUTION NO. 87-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE COMPREHENSIVE FEE SCHEDULE FOR SIDEWALK CAFÉ PERMITS; PROVIDING FOR THE EXPIRATION OF EXISTING SIDEWALK CAFÉ PERMITS AND RENEWAL UNDER THE REVISED REGULATIONS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Staff Recommended Motion:

Approve Resolution No. 87-22.

Background Information:

On March 22, 2021, the City Commission approved Ordinance No. 4936-21 amending the regulations regarding sidewalk café permits. At the time, Staff proposed a uniform usage fee charge per square feet of right of way utilized for sidewalk café seating. The City Commission asked Planning Staff to revise the annual usage fees in consideration of the different market conditions between downtown businesses and Northwood Village businesses.

As such, Planning Staff had proposed the following revised fee schedule:

- An application fee: \$200
- An annual renewal fee: \$50
- An annual fee per square feet utilized:
 - \$5.00 per square foot of permitted area for sidewalk café seating for restaurants within the DMP.

- \$2.50 per square foot of permitted area for sidewalk café seating for restaurants within Northwood Village or other City-owned right-of-way.

The proposed fees are based on an evaluation of similar sidewalk café fees assessed by neighboring municipalities, as well as the difference in rental price per square foot of commercial space between areas along Clematis Street and Northwood Road.

Planning Staff had brought this item forward to City Commission on April 18, 2022 with the above proposal, City Commission had continued the item to request that Staff meet with both the Northwood and Downtown business owners to provide a comprehensive overview and discuss the fee schedule further.

On May 5, 2022, Planning Staff attended a Northwood merchant meeting providing details of Staff's original proposal and heard the merchant's and resident's proposals or alternatives which included: keeping the existing fees, deferred fees until further development of the Northwood area, seasonal fees, reduced first-time application fees, payment plans, and removing the usage fee from the proposal.

On May 11, 2022 Staff had attended a Downtown merchant meeting at the DDA office also providing details of Planning Staff's original proposal and heard the merchant's and resident's proposals or alternatives which included: a tiered fee system based either on restaurant size, number of seats, or number of tables.

Both meetings had expressed a desire for application fees collected to be reinvested or put toward city events programming, streetscape cleaning, washing, and maintenance.

On August 9, 2022, Planning Staff had held a Zoom meeting with the DDA requesting that the Downtown merchants provide additional detail into their tiered fee proposal, no merchants had attended the meeting despite invitations being sent out to several persons.

In the interest of simplicity in implementation and enforcement, Staff brings forward Resolution 87-22 with the original proposal of a per square foot usage fee. Staff feels this is the most effective and fair way to assess a fee for utilizing the City's property. According to the Downtown Development Authority, the average annual per seat revenue for a downtown establishment is approximately \$31,359 (\$86 per day). With a dozen seats, the total revenue generated would exceed \$376,300 while a typical sidewalk café fee would be a few thousand dollars annually.

As an alternative, Planning Staff presents the merchant's proposal of a tiered fee system based upon the number of seats. If the City Commission is to go with the merchant's alternative, the Resolution will have to be updated to reflect those changes.

The new fee schedule will be applicable to sidewalk cafes city-wide, but primarily those located within the Downtown and Northwood Village; District 3 and District 1.

Commission District 1: Commissioner Cathleen Ward.

Commission District 3: Commissioner Christy Fox.

- 9.2. Resolution No. 233-22 approving an amendment to the agreement between Micromobility Management LLC and the City of West Palm Beach regarding a bicycle sharing system which revises the allowed station area signage; providing an effective date; and for other purposes.

Originating Department:

Mayor's Office

Ordinance/Resolution:

RESOLUTION NO. 233-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AN AMENDMENT TO THE AGREEMENT BETWEEN MICROMOBILITY MANAGEMENT LLC AND THE CITY OF WEST PALM BEACH REGARDING A BICYCLE SHARING SYSTEM WHICH REVISES THE ALLOWED STATION AREA SIGNAGE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Staff Recommended Motion:

Approve Resolution No. 233-22.

Background Information:

The City Commission adopted Ordinance No. 4978-21 on November 15, 2021 approving an Agreement between Micromobility Management LLC (Micro) and the City of West Palm Beach Regarding a Bicycle Sharing System. The Agreement Regarding a Bike Sharing System was executed November 30, 2021 (Contract No. 27920) (the "Agreement").

Section 4.4 of the Agreement allows for a two-sided advertising/sponsorship panel at each Station Area meeting the specifications shown in Exhibit 4.4.

Currently available advertising panels have differing specifications. Micro has requested an amendment to Exhibit 4.4 to reflect its desired advertising panels and dimensions.

City staff has reviewed the proposed advertising panels and find them acceptable.

Resolution No. 233-22 will approve an Amendment to the Agreement to revise and replace Exhibit 4.4 to allow for revised dimensions for the advertising panels.

Fiscal Note:

No fiscal impact.

10. PUBLIC HEARING

- 10.1. Public Hearing and Second Reading of Ordinance No. 5018-22 amending Chapter 34, City of West Palm Beach Code of Ordinances, pertaining to noise.

Originating Department:

City Attorney's Office

Ordinance/Resolution:

ORDINANCE NO. 5018-22: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES AT CHAPTER 34 (ENVIRONMENT), ARTICLE II (NOISE CONTROL REGULATIONS), TO REVISE THE METHOD OF NOISE MEASUREMENT AND THE ENFORCEMENT OF NOISE VIOLATIONS; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Staff Recommended Motion:

Approve Ordinance No. 5018-22.

Background Information:

Pursuant to Article VIII, Section (2)(b) of the Florida Constitution and Chapter 166, Florida Statutes, the City of West Palm Beach has broad home rule powers to adopt ordinances to protect the health, safety, welfare, peace and quiet of the City's inhabitants and visitors through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of the City's inhabitants and visitors.

The City Commission has previously enacted Noise Control Regulations under Article II (Noise Control Regulations), Chapter 34 (Environment) of the City Code of Ordinances to regulate, control, and prevent unreasonably loud, excessive, unnecessary or unusual noise, loud and raucous noise, or any noise which unreasonably disturbs, injures or endangers the comfort, repose, health, peace, or safety of the City's inhabitants and visitors.

However, as the City has grown, so to have its noise issues. The City's current Noise Code Regulations do not adequately address the vast array of noise challenges the City now faces, including, for example, the misuse of amplified sound devices that disrupt citizens and visitors' use and enjoyment of the City. To help investigate the wide array of noise issues the City faces, the City hired a noise expert, who conducted a three-day investigation of the City's noise issues. A copy of his written findings is provided hereto and available upon request.

To rectify the new noise issues the City now faces, the City Commission desires to amend the City's Noise Code Regulations by further regulating sound volume within the City's limits according to the needs of both involuntary and voluntary listeners. In the same vein, the City Commission further desires to amend the City's Noise Code Regulations to protect the City's inhabitants and visitors from unwelcome noise and unreasonably annoying or disturbing projections of sound from sound devices. In so doing, the City Commission recognizes the rights of its citizens to free speech at public streets, sidewalks, parks, and other public fora, and has taken into account these rights when drafting the applicable legislation.

Adoption of Ordinance No. 5018-22 amend the City's Noise Control Regulations to address these concerns and to provide for noise control regulations that achieve the compelling government interest of protecting the City's inhabitants and visitors from unwelcome noise by employing narrowly tailored regulations that leave open ample alternative channels of communication.

Fiscal Note:

There is no fiscal impact.

- 10.2. Public Hearing and First Reading of Ordinance No. 5021-22, repealing in its entirety Article V of Chapter 54 (Offenses), at Sections 54-171 through 54-174 (Prohibition Of Conversion Therapy On Minors).

Originating Department:

City Attorney's Office

Ordinance/Resolution:

ORDINANCE NO. 5021-22: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, REPEALING IN ITS ENTIRETY ARTICLE V OF CHAPTER 54 (OFFENSES), AT SECTIONS 54-171 THROUGH 54-174 (PROHIBITION OF CONVERSION THERAPY ON MINORS), WHICH MAKES IT UNLAWFUL FOR ANY PROVIDER TO PRACTICE CONVERSION THERAPY EFFORTS ON ANY INDIVIDUAL WHO IS A MINOR REGARDLESS OF WHETHER THE PROVIDER RECEIVES MONETARY COMPENSATION IN EXCHANGE FOR SUCH SERVICES; DECLARING ANY SPECIFIC PROVISION OF ANY CITY OF WEST PALM BEACH

ORDINANCE, RESOLUTION, RULE OR POLICY IN CONFLICT WITH THIS ORDINANCE NULL, VOID, AND REPEALED TO THE EXTENT OF SUCH CONFLICT; 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. 5021-22 at First Reading and Schedule Second Reading for October 3, 2022.

Background Information:

In 2016, the City of West Palm Beach passed Ordinance No. 4666-16, in sum, prohibiting conversion therapy change efforts as to minors--efforts to change their sexual orientation and/or identity--due to the harmful effects of such efforts. Since that time, litigants have prevailed in convincing a reviewing court that similar bans crafted by the City of Boca Raton and Palm Beach County were, as a preliminary manner, unconstitutional. As such, the City of West Palm Beach seeks to repeal Ordinance No. 4666-16 (codified at Article V of Chapter 54, at Sections 54-171 through 54-174 of the City of West Palm Beach Code of Ordinances) relating to the City's conversion therapy ban as to minors, to be consistent with the written opinion issued by the 11th Circuit Court of Appeals on July 20, 2022 in the case of *Otto and Hamilton v. City of Boca Raton and Palm Beach County*, Case No. 19-10604.

The 11th Circuit Court in the *Otto* case remanded the case to the U.S. District Court for the Southern District of Florida for entry of a preliminary injunction against enforcement of the City of Boca Raton and Palm Beach County conversion therapy bans, which were modeled upon the City of West Palm Beach's conversion therapy bans.

By separate action today, the Mayor's office is recommending passage of Resolution No. 235-22, articulating the City's steadfast commitment in opposition to and discouragement of conversion therapy as to minors for reasons stated in Resolution No. 235-22.

Fiscal Note:

Not applicable.

11. PUBLIC HEARING - QUASI-JUDICIAL

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

- 11.1. Public Hearing and Second Reading of Ordinance No. 4994-22 regarding a voluntary annexation of approximately 1.57 acres;

Public Hearing and Second Reading of Ordinance No. 4995-22 regarding an amendment to the City's Future Land Use Map to assign a Future Land Use designation of Community Service to the annexed 1.57 acres;

Public Hearing and Second Reading of Ordinance No. 4996-22 regarding an amendment to the City's Zoning Map to assign a zoning designation of Community Service to the annexed 1.57 acres;

Public Hearing and Second Reading of Ordinance No. 4997-22 regarding a Major Planned Development Amendment to expand the boundaries of the Peggy Adams Animal Rescue League Community Service Planned Development (CSPD) to incorporate the annexed 1.57 acres; and

Public Hearing of Resolution No. 99-22 regarding a Major Planned Development Amendment to the Peggy Adams Animal Rescue League CSPD to update the site development plans and development regulations to reflect the expanded boundary of the CSPD, to amend the sign program, and related site changes.

The request was submitted by Collene Walter of Urban Design Studio, on behalf of the Peggy Adams Animal Rescue League, which is located at 3200 North Military Trail.

Originating Department:

Development Services

Ordinance/Resolution:

ORDINANCE NO. 4994-22: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A VOLUNTARY ANNEXATION OF APPROXIMATELY 1.57 ACRES OF LAND LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF 12TH STREET AND HIBISCUS CIRCLE; DECLARING THAT ALL LEGAL PREREQUISITES AND REQUIREMENTS HAVE BEEN MET; FINDING CONSISTENCY WITH THE COMPREHENSIVE PLAN; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

ORDINANCE NO. 4995-22: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN OF THE CITY OF WEST PALM BEACH, FLORIDA, BY ASSIGNING A FUTURE LAND USE DESIGNATION OF COMMUNITY SERVICE TO APPROXIMATELY 1.57 ACRES OF LAND ANNEXED INTO THE CITY, LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF 12TH STREET AND HIBISCUS CIRCLE; DECLARING THE PROPOSED AMENDMENT TO THE FUTURE LAND USE MAP TO BE CONSISTENT WITH ALL OTHER ELEMENTS OF THE COMPREHENSIVE PLAN OF THE CITY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

ORDINANCE NO. 4996-22: 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 BY ASSIGNING A ZONING DESIGNATION OF COMMUNITY SERVICE TO APPROXIMATELY 1.57 ACRES OF LAND ANNEXED INTO THE CITY, LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF 12TH STREET AND HIBISCUS CIRCLE; DECLARING THIS ZONING MAP AMENDMENT TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY; REVISING THE ZONING MAP OF THE CITY ACCORDINGLY; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

ORDINANCE NO. 4997-22: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE PRIOR ORDINANCES RELATING TO THE PEGGY ADAMS ANIMAL RESCUE LEAGUE COMMUNITY SERVICE PLANNED DEVELOPMENT, LOCATED AT 3200 NORTH MILITARY TRAIL; TO EXPAND THE PEGGY ADAMS ANIMAL RESCUE LEAGUE COMMUNITY SERVICE PLANNED DEVELOPMENT BY APPROXIMATELY 1.57 ACRES; DECLARING THIS AMENDMENT CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

RESOLUTION NO. 99-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A MAJOR AMENDMENT TO THE PEGGY ADAMS ANIMAL RESCUE LEAGUE COMMUNITY SERVICE PLANNED DEVELOPMENT, LOCATED AT 3200 NORTH MILITARY TRAIL, TO UPDATE THE SITE DEVELOPMENT PLANS AND DEVELOPMENT REGULATIONS TO REFLECT THE EXPANDED BOUNDARY OF THE PEGGY ADAMS ANIMAL RESCUE LEAGUE COMMUNITY SERVICE PLANNED DEVELOPMENT, TO AMEND THE SIGN PROGRAM, AND RELATED SITE CHANGES; 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. 4994-22 regarding the voluntary annexation of approximately 1.57 acres. 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 proposed annexation meets the criteria for voluntary annexation, pursuant to Chapter 171, Section 171.044, Florida Statutes.

Approve Ordinance No. 4995-22 regarding an amendment to the City's Future Land Use Map to assign a Future Land Use designation of Community Service to the 1.57 acres annexed by Ord. No. 4994-22. 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 proposed assignment of the Community Service Future Land Use designation meets at least one of the Future Land Use Amendment Standards found in Future Land Use Element Policy 1.1.5 of the City's Comprehensive Plan.

Approve Ordinance No. 4996-22 regarding an amendment to the City's Zoning Map to assign a zoning designation of Community Service to the 1.57 acres annexed by Ord. No. 4994-22. 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 proposed assignment of the Community Service zoning designation complies with all eight Rezoning Standards found in Section 94-32 of the City's Zoning and Land Development Regulations.

Approve Ordinance No. 4997-22 regarding a Major Planned Development Amendment to expand the boundary of the Peggy Adams Animal Rescue League Community Service Planned Development (CSPD) to incorporate the 1.57 acres annexed by Ord. No. 4994-22. 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 Major Planned Development Amendment to expand the CSPD boundary 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

Approve Resolution No. 99-22 regarding a Major Planned Development Amendment to the Peggy Adams Animal Rescue League CSPD to update the site development plans and development regulations to reflect the expanded boundary of the CSPD, to amend the sign program, and related site changes. 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 Major Planned Development Amendment to update the site development plans and development regulations to reflect the expanded boundary of the CSPD, to amend the sign program, and related site changes 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.

Background Information:

The Peggy Adams Animal Rescue League (PAARL) is a not-for-profit animal shelter, which provides shelter to lost, homeless and unwanted animals, as well as adoption and spay/neutering services. The entire campus was zoned as a Community Service Planned Development (CSPD) in 2008. Since that time, PAARL has been upgrading their campus with the construction of the Grace Pavilion animal care facility and a new adoption center as well as other site improvements to further their mission. This request covers additional expansion of and upgrades to the PAARL campus.

Over the past few years, the PAARL has acquired six parcels along 12th Street which are currently located in Palm Beach County. The PAARL is requesting to voluntarily annex the parcels into the City and incorporate them into the PAARL CSPD. Within the existing CSPD, the PAARL is continuing to upgrade its facilities and would like to modify its approved master sign plan to permit the installation of additional low freestanding signs along North Military Trail. A summary of each requests is included below, with the full analysis included in the attached Planning Board Report.

Ordinance No. 4994-22 - Annexation

The PAARL is requesting a voluntary annexation of six parcels, totaling approximately 1.57 acres. The six parcels are located on the north side of 12th Street and share their western boundary with the current PAARL CSPD. The property to the north, east and south will remain within unincorporated Palm Beach County.

Ordinance No. 4995-22- Future Land Use Map Designation Assignment

Upon annexation into the City, the property must be assigned a City Future Land Use (FLU) designation. The PAARL campus has a Community Service (CS) FLU. Since the plan is to incorporate the annexed parcels into the PAARL campus, the applicant is requesting a CS FLU designation for the annexed parcels, which is appropriate.

Pursuant to Chapter 163 of the Florida Statutes, each level of service (LOS) element (i.e. drainage, potable water, wastewater, solid waste, school and traffic) for any proposed FLU Map amendment shall be reviewed and analyzed by the City to determine if the new FLU designation, utilizing the maximum development potential, would cause any increase in impact, and if so, whether or not each public facility has the reserved capacity to accommodate the additional demand. While the proposed new FLU designation will increase the wastewater, solid waste and traffic based on the additional intensity from the proposed City FLU designation as compared to the existing Palm Beach County FLU designation, these increased will not exceed the service provider capacities.

Ordinance No. 4996-22 - Zoning Map Designation Assignment

Upon annexation into the City and the assignment of a City CS FLU designation, the property must be assigned a City zoning designation. Community Service (CS) is the appropriate zoning designation within a CS FLU designation as well as appropriate for the animal shelter use.

Ordinance No. 4997-22 - Major Planned Development Amendment - Boundary Expansion

The PAARL would like to incorporate the properties that are part of the annexation request into their existing CSPD. In accordance with Section 94-207(e)(1)(b) of the Zoning and Land Development Regulations, a change in the boundary of a planned development must be processed as a Major Planned Development Amendment. The applicant has not presented a use for the area that will be added to the CSPD. The final CSPD acreage will total approximately 14.7 acres.

Resolution No. 99-22 - Major Planned Development Amendment - Site Development Plans and Development Regulations

The site development plans will be updated to show the inclusion of the additional acreage in the CSPD. Additionally the plans will be updated to reflect changes to the eastern portion of the site, which includes the outdoor dog exercise areas. As part of the changes PAARL is including a new 340 square foot restroom building so that facilities are provided in proximity to the exercise areas. (Due to cost/funding issues, the original scope of work covered in the Planning Board Report has been reduced.)

The PAARL CSPD includes a Site Specific Sign Program which includes freestanding (monument) signs, wall signs on the adoption center and parking lot instructional signs. Currently, two freestanding signs are permitted on the campus, one along Military Trail and one along 12th Street. The PAARL is requesting two additional signs along North Military Trail.

Section 94-408(f)(2)(d) of the Zoning and Land Development Regulations states that within the Community Service zoning district, the maximum number of low freestanding signs is one sign for each individual business occupant on the lot to a maximum of three signs. Since the PAARL is the only business occupant on the lot, by code they are permitted only one sign. As stated, they were previously granted two signs, one on each street frontage. The PAARL is requesting a waiver to allow two additional signs (total of four on the lot) as part of an amended Site Specific Sign Program. The sign locations and sizes conform to the remainder of the Community Service sign standards.

Waiver – Section 94-408(f)(2)(d) Maximum number of all low freestanding signs on each lot – Maximum one sign for each individual business occupant on the lot to a maximum of three are permitted. Four signs are requested.

The PAARL campus has two street frontages; however, due to the size of the campus and the presence of a commercial businesses at the corner

where the two street frontages intersect, the actual PAARL campus does not have a corner presence. The campus is located along North Military Trail, a six-lane divided arterial roadway. This combination of factors has led to the PAARL requesting more signs so that passersby will note not only entrances to the site, but also the mission that PAARL provides, namely animal rescue. Staff does not object to this request.

STANDARDS:

Ordinance No. 4994-22: The proposed annexation meets the criteria for voluntary annexation, pursuant to Chapter 171, Section 171.044, Florida Statutes.

Ordinance No. 4995-22: The proposed assignment of the CS FLU designation meets at least one of the Future Land Use Amendment Standards found in Future Land Use Element Policy 1.1.5 of the City's Comprehensive Plan.

Ordinance No. 4996-22: The proposed assignment of the CS zoning designation complies with all eight Rezoning Standards found in Section 94-32 of the City's Zoning and Land Development Regulations.

Ordinance No. 4997-22: The Major Planned Development Amendment to expand the CSPD boundary 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.

Resolution No. 99-22: The Major Planned Development Amendment to the site development plans and development regulations 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 (5-0) of all of the requests to the City Commission after a Public Hearing on March 15, 2022.

PUBLIC NOTICE: Individual notices were mailed to all property owners within 500 feet of the Peggy Adams Animal Rescue League CSPD. Signs for the Major Amendment were posted on the property on February 28, 2022.

COUNTY ANNEXATION NOTICE: On February 16, 2022, the Palm Beach County Department of Planning, Zoning & Building issued a letter that did not identify any inconsistencies with Chapter 171, Florida Statutes.

FUTURE LAND USE AMENDMENT NOTICE: The Interlocal Plan Amendment Review Committee was notified of the Future Land Use Amendment on January 13, 2022, and to date, the City has not received any objection.

COMMISSION DISTRICT: The existing CSPD property is located within Commission District 2: Commissioner Shalonda Warren, and the annexed parcels will also be part of Commission District 2.

Fiscal Note:

No fiscal impact.

12. 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.

13. COMMENTS BY THE MAYOR AND CITY COMMISSIONERS

14. 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.