



401 Clematis Street  
West Palm Beach, Florida 33401  
(561) 822-2222 (TTY) 800-955-8771  
[www.wpb.org](http://www.wpb.org)

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

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

**City of West Palm Beach  
City Commission  
Agenda  
Monday, November 15, 2021  
5:00 PM**

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

**1. CALL TO ORDER**

**2. MOMENT OF SILENCE**

**3. PLEDGE OF ALLEGIANCE**

**4. CIVILITY AND DECORUM**

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

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

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

**6. PROCLAMATION**

- 6.1. Proclaiming November 13-21, 2021 as National Hunger and Homelessness Awareness Week.

Proclamation to be accepted by Paul Dumars, Jr., Board President of the Homeless Coalition of Palm Beach County.

**Originating Department:**  
Mayor's Office

## 7. RECEIVED / FILED

7.1. Submittal of the following report(s) from the Internal Auditor's Office:

1. Parking and IT Data Exchange Post Audit Report

**Originating Department:**  
Internal Audit

**Staff Recommended Motion:**  
Receive and File.

**Background Information:**  
The report was presented to the Audit Committee on November 9, 2021, where it was approved by the Audit Committee Members. Copies of the report have been provided to the Mayor and the City Commissioners.

**Fiscal Note:**  
No fiscal impact.

## 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. Minutes of the Regular City Commission Meeting of October 18, 2021

**Originating Department:**  
City Clerk's Office

8.2. Resolution No. 282-21 authorizing the assessment of city liens in the total amount of \$32,237.20 for unpaid water service, sewer service and storm water charges for the month of August 2021.

**Originating Department:**  
City Attorney's Office

**Ordinance/Resolution:**  
RESOLUTION NO. 282-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AND AUTHORIZING AN ASSESSMENT OF CITY LIENS FOR UNPAID WATER SERVICE, SEWER SERVICE, AND STORMWATER SERVICE FOR THE MONTH OF AUGUST 2021;

PROVIDING THAT SAID LIENS SHALL BE PRIOR IN DIGNITY TO ALL OTHER LIENS AGAINST THE ASSESSED PROPERTIES, SAVE AND EXCEPT A LIEN FOR TAXES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

In accordance with the Code of Ordinances of the City of West Palm Beach, Florida, 2003, Sections 90-4 and 90-5, the City imposes liens on private real property for delinquent payments due for utility services. The liens to be assessed by Resolution No. 282-21 are for unpaid water service, sewer service, and stormwater service charges for the month of August 2021. The list of properties to be assessed and the associated charges totaling \$32,237.20 are attached to Resolution No. 282-21 as EXHIBIT A - Utility Lien List - August 2021.

**Fiscal Note:**

No Fiscal Impact.

- 8.3. Resolution No. 295-21(F) approving the appropriation of Public Utilities funds for the purpose of purchasing \$200,000 in replacement automotive equipment and appropriating \$2.15 million for the Roosevelt Estates capital improvement project.

**Originating Department:**

Public Utilities

**Ordinance/Resolution:**

RESOLUTION NO. 295-21(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 WATER AND SEWER EQUIPMENT REPLACEMENT RESERVE FUND, WATER AND SEWER RENEWAL AND REPLACEMENT FUND, STORMWAER GENERAL RESERVE FUND AND STORMWATER RENEWAL AND REPLACEMENT FUND TO PROVIDE APPROPRIATIONS FOR CAPITAL PROJECTS AND CAPITAL EQUIPMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

Automotive Equipment: Public Utilities Customer Service and Field Customer Service divisions require the replacement of four pick up trucks for the total amount of \$200,000.

Roosevelt Estates: The cost for 7th Street will be shared between Public Utilities, \$2,150,000, and Engineering, \$450,000, from Gas Tax Fund 101.

The Master Plan for roadway and utility improvements in Roosevelt Estates North and South is currently underway and is expected to be finalized in late 2022. The City has received a grant from the FDOT through the Local Agency Program (LAP) to develop, design and construct traffic calming and American Disability Act (ADA) improvements throughout the Roosevelt Estates South neighborhood. The LAP Project includes roadway improvements on 7th Street from Palm Beach Lakes Boulevard to Australian Avenue. 7th street is a swale collector street with a 60-foot wide right of way, with existing traffic circles (roundabouts) and speed humps at various locations.

Within the LAP project limits on 7th Street, improvements of the City's existing infrastructure have been identified. The City utility improvements include rehabilitation of the existing sanitary sewer pipeline and services and point repairs; replacement of stormwater system (specifically at the traffic circles where LAP work is being proposed) and swale grading; incidental replacement of water services . The Utility work must be completed prior to the target LAP Project start date of April 2nd, 2022.

Sanitary Sewer: The proposed project is to rehabilitate the existing 8-inch VCP sanitary sewer pipe by Cured-in-Place Lining (CIPP) from 11th street to Australian Ave for approximately 3200 linear feet. The sanitary sewer is located near the roadway centerline and varies between 4-ft to 10-ft deep. The work also includes sanitary sewer manhole rehabilitation (approx. 10; depth varies from 4ft to 10ft), sanitary sewer lateral rehabilitation, Installation of about 111 clean-outs, and incidental sidewalk replacement as well as the following:

A. Rehab the existing sanitary sewer system within Lift Station 44 service boundary ( $\pm$  2060LF of 8" VCP): 7th Street (from 11th Street to Handy Avenue) that includes 11th Street to Clear Lake Avenue  $\pm$ 1290LF of 8" VCP and Golf Avenue to Clear Lake Avenue  $\pm$ 770LF of 8" VCP. Clear Lake Avenue (from Cross Street to 8th Street) that includes Cross Street to 7th Street  $\pm$ 270LF of 10" VCP (CCTV Only) and 7th Street to 8th Street  $\pm$ 280LF of 10" VCP (CCTV Only).

B. Rehab the existing sanitary sewer system within Lift Station 45 service boundary: Golf Avenue to Handy Avenue 1130FT of 8" VCP and Handy avenue to Australian Avenue 100LFT of 8" VCP.

C. The project also includes these alternate items: Perform point repair on 7th Street from Handy Avenue west for approximately 20FT. Replacement of existing 8" VCP from Handy Avenue for approximately 200LF including 2 sanitary laterals and construct a new sanitary manhole. Remove existing roundabout and perform temporary pavement patch.

Stormwater: A preliminary conceptual stormwater design for 7th street has been prepared by Craven Thompson and Associates to expand the

existing system. The improvements will be performed along the intersections of 11th street, Clear Lake Ave., Golf Ave., and Handy Ave with 7th Street including catch basins, manholes and connecting pipes throughout 7th street. The size of the proposed stormwater pipes varies from 15" RCP to 48" RCP. A preliminary cost estimate for the mention improvements was developed.

Water: The water work on this project is incidental. During the full depth reclamation, if a water service line is damaged, the service line repair/replacement must be addressed immediately to reestablish service to the customer and completed to allow the road work to continue.

Commission District: The 7th Street area within Roosevelt Estates falls within Commission District No. 3: Commissioner Christy Fox.

**Fiscal Note:**

The reserve for future projects balance in Fund 451 Water & Sewer Equipment Replacement Reserve Fund will be approximately \$300,000.

The reserve for future projects balance in Fund 454 Water & Sewer Renewal and Replacement Fund will be approximately \$4.5 million.

The Stormwater General Reserve Fund balance will be approximately \$19 million.

The Stormwater Renewal and Replacement Fund reserve for future projects balance is approximately \$250,000.

- 8.4. Resolution No. 292-21(F) for the purpose of amending the Stormwater Utility Renewal, Replacement and Improvement Fund to recognize a grant from the Department of Environmental Protection for the Stormwater Outfall Tidal Valve Project in the amount of \$105,000.

**Originating Department:**

Public Utilities

**Ordinance/Resolution:**

RESOLUTION NO. 292-21(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 AMENDING THE STORMWATER UTILITY RENEWAL, REPLACEMENT AND IMPROVEMENT FUND BUDGET TO RECOGNIZE A GRANT FROM THE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE STORMWATER OUTFALL TIDAL VALVE PROJECT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

On October 18, 2021, the City Commission approved Resolution 266-21 approving the Grant Agreement with Florida Department of Environmental Protection (FDEP) for up to \$105,000 in funding for tidal valve installations in the 2000-2800 blocks of Flagler Drive.

Resolution No. 292-21(F) amends the Stormwater Renewal, Replacement and Improvement Fund to recognize the FDEP Grant Revenue in the amount of \$105,000 and provide additional appropriation of \$105,000 to the existing Stormwater Outfall Tidal Valve Installation Project 92061859.

Commission District: Not district specific.

**Fiscal Note:**

The Stormwater Outfall Tidal Valve Installation Project 92061859 has a current balance of approximately \$701,714.

- 8.5. Resolution No. 294-21 authorizing execution of an agreement between the City of West Palm Beach and Mark Wellington Jones for the use, operation, maintenance and management of the Howard Park tennis facilities.

**Originating Department:**

Parks and Recreation

**Ordinance/Resolution:**

RESOLUTION NO. 294-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND MARK WELLINGTON JONES FOR THE USE, OPERATION AND MANAGEMENT OF THE HOWARD PARK TENNIS FACILITIES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Background Information:**

The Parks and Recreation Department is recommending that the City continues to retain the services of Mark Jones as the tennis professional in charge of the operation and management of the Howard Park Tennis Center (the "Center") while the facility is going through design and renovations. These renovations are being funded through the parks bond.

The term of this agreement will be for one (1) year with an opportunity to renew for an additional term.

The Howard Park Tennis Center has clay courts which were built back in the 1950's. These courts require special maintenance twice a day at a minimum. The City desires to continue to retain Mark Jones, the tennis professional at Howard Park at the rate of \$20,400/year or \$1,700/month for daily court (7 days a week) maintenance, repairs, yearly stripping,

materials and supplies. Having the tennis professional and his staff perform the on-going maintenance of the courts and the surrounding facility saves the City considerable money. If the City performed its own daily court and facility maintenance, staffing alone would cost \$38,308/year or \$3,192/month, not including benefits, supplies and equipment.

Mark Jones will pay the City for use of the tennis center \$100.00 per month and remit ten percent (10%) of annual membership fees monthly to the City. Contractually, Mark Jones is required to report all income derived from clinics, lessons, league play, special events and tournaments, and to report all expenses applicable to the operation and upkeep of the tennis center. This Agreement is being requested as the Center will be undergoing renovations in the near future. Staff is recommending postponing the issuance of a solicitation for tennis professional management and maintenance services until the facility has been renovated. During the final stages of renovations, the Parks and Recreation Department will work on a formal solicitation with the Procurement Division and Legal Department.

Commission District 5: Commissioner Christina Lambert

**Fiscal Note:**

Cost of 20,400 per year; representing an overall savings for the City as Provider will maintain related parks on behalf of City.

## 9. RESOLUTIONS

- 9.1. Resolution No. 299-21 amending the City's Salary Plan for fiscal year 2021-22 by adding the job classification of Grants and Special Projects Administrator; and

Resolution No. 300-21(F) amending the full time equivalent (F.T.E.) budget of the American Rescue Act Plan 2021 Grant Fund for fiscal year 2021/2022 adding the position of Grants and Special Projects Administrator.

**Originating Department:**

Finance

**Ordinance/Resolution:**

RESOLUTION NO. 299-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CITY'S SALARY PLAN AS PROVIDED IN RESOLUTION NO. 248-21, APPROVED ON SEPTEMBER 20, 2021, TO CREATE THE JOB CLASSIFICATION OF GRANTS AND SPECIAL PROJECTS ADMINISTRATOR; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

RESOLUTION NO. 300-21(F): A RESOLUTION OF THE CITY

COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, TO AMEND THE FY2021/2022 FULL TIME EQUIVALENT (F.T.E.) AMERICAN RESCUE PLAN ACT 2021 GRANT FUND TO ADD ONE (1) F.T.E. GRANTS AND SPECIAL PROJECTS ADMINISTRATOR POSITION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Approve Resolution No. 299-21 and Resolution No. 300-21(F).

**Background Information:**

Resolution No. 299-21 amends the City's Salary Plan as provided in Resolution No. 248-21, approved on September 20, 2021 for fiscal year 2021/22 by creating the job classification of Grants and Special Projects Administrator with the pay grade allocation of GM04 and providing a salary range of \$84,249 - \$130,164. This job classification is created to facilitate complex grant planning, budgeting, monitoring, reporting, procurement compliance and task management.

The Grants and Special Projects Administrator position will support administrations mission and strategic plan for use and fiscal accountability of grant funding and special projects. This position will serve to work with Department Directors, staff and Administration in planning, research, analysis, budgeting, and ensuring timely program reporting and fiscal compliance.

The individual in this position will be responsible for providing program management for grants and special projects, including the American Rescue Plan Act (ARPA). Performing highly responsible professional administrative work, including financial reconciliation, analysis, compliance reviews and oversight of reporting with ARPA and other grant funds. Essential tasks include audit responses, funding approvals for contracts and procurement related to the uses of ARPA and other grant funds. Work is performed with considerable initiative and independence under the general supervision of the Chief Financial Officer and in support of Administration.

The incumbent in this position will be working with the Department of Treasury, FEMA, other agencies and internal staff to insure that grant and special project funds are allocated and spent in compliance with the grant award(s) and approved budget(s).

Resolution No. 300-21(F) amends the full time equivalent (FTE) budget for fiscal year 2021/2022 for the American Rescue Act Plan 2021 Grant Fund.

The American Rescue Plan Act of 2021 provided the City with a budget award totaling \$24,530,823. At a Special Commission meeting on August 26, 2021, Resolution 242-21 was approved and identified the eligible categories for FY 2021/22 budget allocations for the first tranche of ARPA funds in the amount of \$12,265,411. Within this approved budget a total of



\$500,411 was allocated for costs associated with staffing and consulting services needed for the proper oversight, management and reporting of ARPA funds.

The requested changes and approval are required to add 1 Full Time Equivalent (FTE) and to create the new job classification. There is no impact on the total grant budget amount and changes are within the approved personnel services budget category of the American Rescue Act Plan funds.

**Fiscal Note:**

Funding is budgeted within the ARPA grant fund

- 9.2. Resolution No. 280-21(F) accepting and appropriating funds in the amount of \$77,900 from the West Palm Beach Library Foundation for the Mandel Public Library of West Palm Beach to fund a full-time Licensed Social Worker and "Be Well at Mandel" programming initiatives; and

Resolution No. 281-21(F) amending the FTE budget for the addition of one Licensed Social Worker.

**Originating Department:**

Human Resources

**Ordinance/Resolution:**

RESOLUTION NO. 280-21(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 WEST PALM BEACH LIBRARY FOUNDATION FOR HIRING A FULL-TIME LICENSED SOCIAL WORKER AND PROGRAMMING RELATED TO SOCIAL WORK SERVICES AT THE MANDEL PUBLIC LIBRARY OF WEST PALM BEACH; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

RESOLUTION NO. 281-21(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, FOR THE PURPOSE OF AMENDING THE FULL TIME EQUIVALENT (F.T.E.) PERSONNEL DETAIL OF THE SPECIAL REVENUE FUND FY 2021/2022 ADOPTED BUDGET FOR THE LIBRARY DEPARTMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Approve Resolution No. 280-21(F) and Resolution No. 281-21(F).

**Background Information:**

To assist in funding enhanced services at the Mandel Public Library of West Palm Beach, in Resolution No. 6-10 the Commission authorized the Mayor to execute an agreement between the City of West Palm Beach and the West Palm Beach Library Foundation Inc. ("Foundation") allowing the Foundation to solicit donations for the Mandel Public Library of West Palm Beach.

The Foundation has partnered with The Jim Moran Foundation to generously fund the library's new "Be Well at Mandel" programming initiative, which includes funding a full-time licensed social worker to exclusively work at the Mandel Public Library for two years. This will allow the library to provide mental health and well-being programming and services focused upon youth and families. While librarians regularly refer patrons to the City of West Palm Beach's Vickers House and other social service organizations, librarians have not traditionally been trained in trauma-informed service or given the tools to understand how Adverse Childhood Experiences (ACEs) affect youth and, when left unaddressed, the adults they become. Funding will also allow library staff to receive much needed training in these key areas. Library staff will continue to partner with Housing and Community Development and other neighboring organizations to provide a holistic approach in services for our patrons in need.

Funding of \$77,900 will cover Year 1 of services.

**Fiscal Note:**

Approval recognizes grant proceeds and provides appropriations Be Well at Mandel programming.

## 10. PUBLIC HEARING

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

**Originating Department:**

City Attorney's Office

**Ordinance/Resolution:**

ORDINANCE NO. 4982-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES AT CHAPTER 2 (ADMINISTRATION), ARTICLE IV (OFFICES, DEPARTMENTS AND DIVISIONS), DIVISION 1 (MAYOR'S OFFICE), SECTION 2-135 (OFFICE OF EQUAL OPPORTUNITY) TO CHANGE THE TITLE OF THE OFFICE OF ECONOMIC OPPORTUNITY TO THE OFFICE OF SMALL AND MINORITY BUSINESS PROGRAMS AND AMENDING CHAPTER 66

(PROCUREMENT), ARTICLE IX (SMALL BUSINESS PROGRAM), SECTIONS 66-223, 66-224, 66-226, 66-227, 66-230, 66-233, 66-234, 66-236, 66-237 AND 66-238 AND ARTICLE XI (MINORITY/WOMEN BUSINESS ENTERPRISE), SECTIONS 66-258, 66-260, 66-262, 66-263, 66-265, AND 66-266-273 TO REFLECT THE DUTIES OF THE DIRECTOR OF THE OFFICE OF SMALL AND MINORITY BUSINESS PROGRAMS TO BE CONSISTENT WITH AMENDMENTS TO CHAPTER 2, ARTICLE IV, DIVISION 1, SECTION 2-135; PROVIDING A CONFLICTS CLAUSE, A CODIFICATION CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

Motion to approve Ordinance No. 4982-21 on second reading.

**Background Information:**

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

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

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

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

**Originating Department:**

Development Services

**Ordinance/Resolution:**

ORDINANCE NO. 4957-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF WEST PALM BEACH, FLORIDA, AT CHAPTER 94 - ZONING AND LAND DEVELOPMENT REGULATIONS, ARTICLE II – ORGANIZATION, ADMINISTRATION AND ENFORCEMENT; ARTICLE IV – DOWNTOWN MASTER PLAN URBAN REGULATIONS; ARTICLE V - COMMERCIAL DISTRICTS; ARTICLE VII - SPECIAL DISTRICTS; ARTICLE IX – PERMITTED USES, USES PERMITTED WITH EXTRA REQUIREMENTS AND SPECIAL USES; ARTICLE XV - PARKING; ARTICLE XVI – REGULATIONS OF NONCONFORMITIES; ARTICLE XIX – DEFINITIONS AND APPENDIX A – MASTER USE LIST, TO BE CONSISTANT WITH TO PROVIDE REASONABLE ACCOMODATIONS THE FAIR HOUSING ACT REQUIRED FOR COMMUNITY RESIDENCES AND/OR RECOVERY COMMUNITIES AND GENERAL LAW; DECLARING THIS AMENDMENT TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY; PROVIDING A CONFLICTS CLAUSE, A CODIFICATION CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

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

**Background Information:**

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

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

- The functions and needs of community residences and the people with disabilities who live in them;
- Sound city planning and zoning principles and policies;

- The Fair Housing Amendments Act of 1988 (FHAA) and amended, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601–3619 (1982)
- Report No. 100–711 of the House Judiciary Committee interpreting the FHAA amendments (the legislative history);
- The HUD regulations implementing the amendments, 24 C.F.R. Sections 100–121 (January 23, 1989);
- Case law interpreting the 1988 Fair Housing Act amendments relative to community residences for people with disabilities;
- Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*(Nov. 10, 2016);
- Florida state statutes governing local zoning for different types of community residences: Title XXIX Public Health, chapters 393 (Developmental Disabilities), 394 (Mental Health), 397 (Substance Abuse Services), 419 (Community Residential Homes); Title XXX, chapters 429 (Assisted Care Communities — Part 1: Assisted Living Facilities, Part II: Adult Family–Care Homes); and Title XLIV, Chapter 760 (Discrimination in the Treatment of Persons; Minority Representation) (2016);
- Florida state statute establishing voluntary certification of recovery residences: Title XXIX Public Health, chapter 397 (Substance Abuse Services) §397.487 (2016);
- The actual Florida certification standards for recovery residences as promulgated and administered by the certifying entity, the Florida Association of Recovery Residences, based on standards established by the National Alliance of Recovery Residences; and
- The existing provisions of West Palm Beach’s Zoning and Land Development Regulations.

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

### **Analysis**

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

### **Family community residences**

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

### **Transitional community residences**

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

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

### **Recovery community**

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

Unlike a community residence with a maximum of 10 occupants whose essence is emulating a biological family, a recovery community can consist of dozen and even scores of people in recovery making it more akin to a mini-institution in nature and number of occupants. Recovery communities constitute a segregated setting that does not facilitate interaction with people without disabilities, quite contrary to the core nature of community residence where in residence interaction with people without disabilities is a fundamental characteristic.

### **Maximum number of occupants**

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

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

### **Proposed Amendment**

#### **Family community residences**

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

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



### **Transitional community residences**

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

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

### **Recovery community**

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

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

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

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

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



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

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

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

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

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

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

**Originating Department:**

Development Services

**Ordinance/Resolution:**

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

AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

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

**Background Information:**

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

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

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

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

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

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

populations that exceed 50%, and preserving neighborhood identity wherever possible.

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

**Fiscal Note:**

No Fiscal Impact

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

**Originating Department:**

Mayor's Office

**Ordinance/Resolution:**

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

**Staff Recommended Motion:**

Approve Ordinance No. 4978-21 on Second Reading.

**Background Information:**

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

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

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

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

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

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

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

Create an integrated system that can expand to other areas of the West Palm Beach region;

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

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

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

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

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

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

*Outreach.* In the first sixty (60) days following the Effective Date of the Agreement the City may reasonably request that MICRO participate in public presentations, workshops, or community meetings, as needed for review and input from relevant stakeholder and community groups.

MICRO shall summarize the public input MICRO receives and provide it to WPB with the proposed Implementation Plan.

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

*Windfall Provision.* Should MICRO's bike membership and rental sales revenue exceed the threshold of \$4,380 per bike, per contract year on average for each deployed bike in operation (less any sales tax and credit card processing fees), MICRO shall provide the City a revenue share payment equal to seven and one half percent (7.5%) of gross bike membership and rental sales exceeding that threshold, less any credit card processing fees and sales tax collected. Any Windfall Provision payments shall be due and payable within sixty (60) days of the closing of each contract year. MICRO shall provide documentation to the City directly relating to applicable revenues for the Windfall Provision.

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

**Fiscal Note:**

No cost to City.

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

**Originating Department:**

Mayor's Office

**Ordinance/Resolution:**

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

**Staff Recommended Motion:**

Approve Ordinance No. 4979-21 on Second Reading.

**Background Information:**

Section 316.008, Florida Statutes, authorizes local governments to control traffic movement, parking and the use of bicycles, motorized scooters and electric personal mobility devices within municipal boundaries. The City has a substantial interest in regulating how private operators of micromobility systems and devices operate on the public right-of-way to promote public health, safety and welfare and to ensure that public rights-of-way remain obstruction free. The City Commission may grant the privilege of utilizing the public rights-of-way upon such conditions and limitations as may be deemed expedient and for the best interest of the City in order to permit the operation of micromobility systems within the City.

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

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

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

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

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

Ordinance No. 4979-21 provides an exception for the rental and use of micromobility devices, segways, bicycles or scooters which are used as part of an organized tour conducted by a tour director which departs and returns to the same location; and for the provision or rental of bicycles or micromobility devices by hotels for their hotel guests who depart and return

to the same location. The Ordinance also provides for the issuance of a "limited" micromobility permit for operators with fleets of 20 or less devices and with no more than two locations, and waives certain fees for the limited permit operators.

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

**Fiscal Note:**

No fiscal impact.

- 10.6. Public Hearing and First 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.

- 10.7. Public Hearing and First 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 and Schedule a Second Reading for November 29, 2021.

**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 City Ordinances.

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

- 10.8. 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.

**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.

**Fiscal Note:**

No fiscal impact.

## 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. 4971-21 regarding the transfer of the current BrandsMart USA CPD site development plans and development regulations to Resolution 256-21; and

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

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

**Originating Department:**

Development Services

**Ordinance/Resolution:**

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

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

**Staff Recommended Motion:**

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

Approve Resolution No. 256-21 regarding the Major Planned Development Amendment to the BrandsMart USA CPD to permit the construction of an approximately 103,611 square foot BJ's Wholesale Club store, with motor vehicle fuel sales, and site and landscape upgrades, including waivers. This motion is based upon the factual testimony presented, the application submitted, the staff report, the recommendation of the Planning Board, and the findings that the amendment is consistent with the Comprehensive Plan and complies with the standards found in Section 94-32 of the City's Zoning and Land Development Regulations.

**Background Information:**

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

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

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

#### *Site Plan*

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

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

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

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

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

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

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

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

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

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

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

#### *Waivers*

Planned developments are permitted to relax or waive provisions of the ZLDR in order to create more desirable and attractive development in the



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Fiscal Note:**

No fiscal impact.

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

**Originating Department:**

Development Services

**Ordinance/Resolution:**

RESOLUTION NO. 269-21: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A REPLAT OF REAL PROPERTY TO CREATE THE PLAT ENTITLED "BRANDSMART EXECUTIVE CENTER" CONSISTING OF TWO DEVELOPMENT TRACTS TOTALING APPROXIMATELY 17.66

ACRES LOCATED AT 751 WEST EXECUTIVE CENTER DRIVE;  
PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

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

**Background Information:**

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

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

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

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

**Fiscal Note:**

No fiscal impact.

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

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

**Originating Department:**

Development Services

**Ordinance/Resolution:**

ORDINANCE NO. 4963-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF WEST PALM BEACH, FLORIDA, AT CHAPTER 94, ZONING AND LAND DEVELOPMENT REGULATIONS, ARTICLE VII (SPECIAL DISTRICTS), SECTION 94-209 (MIXED USE DISTRICT) AMENDING THE DEFINITIONS, HEIGHT STANDARDS AND DESIGN STANDARDS, AND SECTION 94-215 (CURRIE MIXED USE DISTRICT) TO DELETE BUILDING TYPOLOGIES, ADDRESS INCONSISTENCIES, AND INCORPORATE NEW REGULATIONS RELATED TO INCREASING THE MAXIMUM BUILDING HEIGHT AND THE INCORPORATION OF A FOURTH SUB-DISTRICT WITHIN THE CURRIE MIXED USE DISTRICT; DECLARING THIS AMENDMENT TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY; PROVIDING A CONFLICTS CLAUSE, A CODIFICATION CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

ORDINANCE NO. 4964-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE ZONING MAP OF THE CITY OF WEST PALM BEACH, FLORIDA, BY REZONING CERTAIN PROPERTIES WITHIN THE CURRIE MIXED USE DISTRICT, GENERALLY LOCATED BETWEEN FLAGLER DRIVE AND SOUTH DIXIE HIGHWAY TO THE EAST AND WEST, AND BETWEEN 27TH STREET AND PINE STREET TO THE NORTH AND SOUTH, AND CONSISTING OF APPROXIMATELY 65 ACRES, FROM THE CORE SUB-DISTRICT INTO CORE I/IA AND CORE II SUB-DISTRICTS, REZONE THE PARCEL ZONED PROFESSIONAL OFFICE RESIDENTIAL PLANNED DEVELOPMENT TO CORE IA, REZONE A PORTION OF JOEL DAVES PARK TO CORE II, AND RECONFIGURE THE BOUNDARIES OF THE EDGE, TRANSITION AND CORE SUB-DISTRICTS; DECLARING THIS ZONING MAP AMENDMENT TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY; PROVIDING A CONFLICTS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Staff Recommended Motion:**

**APPROVE Ordinance No. 4963-21** approving a text amendment to the Zoning and Land Development Regulations, amending Chapter 94, Article VII, Section 94-209 (Mixed-Use District), amending the definitions, height standards and design standards, and Section 94-215 (Currie Mixed Use District) to delete building typologies, address inconsistencies, and incorporate new regulations related to increasing the maximum building height and the addition of a fourth sub-district within the Currie Mixed Use District. This motion is based upon the application submitted, the staff report, factual testimony, the recommendation of the Planning Board and the findings that the request complies with the Comprehensive Plan and the standards in the City's Zoning and Land Development Regulations.

**APPROVE Ordinance No. 4964-21** rezoning certain properties within the Currie Mixed Use District from the Core Sub-district into Core I/IA and Core II Sub-districts, rezone

the parcel zoned Professional Office Residential Planned Development to Core IA, rezone a portion of Joel Daves park to Core II, and reconfigure the boundaries of the Edge, Transition and Core Subdistricts of the Currie Mixed Use District. This motion is based upon the application submitted, the staff report, factual testimony, the recommendation of the Planning Board and the findings that the request complies with the Comprehensive Plan and the standards in the City's Zoning and Land Development Regulations.

**Background Information:**

(The information provided below is a general summary of the proposed text amendment and Rezoning. A full analysis is included in the Staff Report).

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

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

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

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

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

A height bonus was offered to developers provided they selected one or several incentives including requiring buildings obtain a Leadership in Energy and Environmental

Design (LEED) certification, provide public parking for Currie Park, develop a food store or supermarket in excess of 15,000 square feet, provide green roofs, dedicate public open spaces with a minimum of 4,800 square feet or provide buildings at the end of a street vista. Despite the incentives, the City has seen very little development activity within the District since the adoption of the 2014 amendments.

In November 2019, City Staff was presented with a development proposal by developer Jeff Greene who had acquired approximately \$40 million of property in the CMUD between 2012 and 2016. The development proposal within the CMUD, designed by Herzog & DeMeuron, was comprised of a series of buildings along Flagler Drive, ranging from 15-stories to 36-stories in height. Given the lack of development activity within the CMUD, Staff sought direction from the City Commission on the proposal to further increase the maximum allowable building height to stimulate development within the District. After a Mayor-Commission Workshop on February 16, 2021, Staff was directed to proceed with the amendment to the CMUD regulations and Zoning Map to increase the maximum building height.

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

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

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

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

- Northwood Village merchants
- \* Old Northwood Neighborhood

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

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

Height:

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

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

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

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

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

Northwood Road:

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



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

**Table 2  
Maximum Permitted Height in CMUD**

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

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

**Incentives:**

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

**Table 3  
Height Bonus Incentives in CMUD**

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

A summary of each of the incentives is reflected below:

**Extension of Northwood Road:**

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

**Workforce Housing:**

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

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

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

800 s.f. (min. average size) x \$195.11/s.f. (const. cost) = \$156,088

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

**Improvements to Currie Park:**

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

**Food Store or Supermarket:**

Height incentives are being offered if a developer provides a 15,000 square foot food store or grocery store within the Transition, Core II or Core I sub-districts. This incentive increases if the size of the store is doubled to at least 30,000 square feet. Specific design requirements must also be met to utilize this incentive. At the stakeholder meetings, there was a concern raised among residents that the incentive was insufficient to lure a grocery store to the area so staff re-evaluated our recommendation and increased the incentive in the Core I and Core IA subdistrict from 65 feet to 100 feet for a food store/grocery store less than 15,000 square feet and from 130 feet to 150 feet for one larger than 30,000 square feet. The maximum incentive is provided in the Core II and Transition sub-districts.

**Payment for Mobility Options:**

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

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

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

**Public Open Spaces:**

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

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

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

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

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

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

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

district maintained by the setbacks, parking requirements and location, height limitation and permitted uses.

**Building Form and Massing Study:**

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

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

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

- Reduce the building heights within the Core I Sub-district and shift the highest building heights further south within the District and away from the single-family residential areas north of CMUD.
- Reduce the maximum allowable horizontal building length from 300 ft. to 250 ft.
- Reduce the maximum allowable podium height of buildings fronting along the Northwood Road Extension from 6 stories/80 feet to 5 stories/68 feet.
- Establish maximum podium heights for buildings fronting on key streets (Northwood Road, 23rd Street and Ponce De Leon Avenue) to achieve visual consistency within the district and to enhance the pedestrian scale along these important street frontages.
- Require ground level and upper level active uses along the building facades fronting on Northwood Road and 23rd Street, which are the main active corridors within the District.
- Require wrap around active uses along Flagler Drive at Northwood Road and 23rd Street, and along Ponce De Leon Avenue at Northwood Road and 23rd Street to extend the active uses along these primary intersections.

- Improve the streetscape design requirements by requiring the installation of street trees at a maximum of 30 ft. on center along all streets at a minimum of 20 ft. in height.
- Encourage additional tower setbacks through design to improve view corridors and create variations in building form.

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

As noted in the Florida Department of Economic Opportunity's April 16, 2021 comments to staff regarding the CMUD comprehensive plan amendment, the state would like us to provide "meaningful and predictable standards for the use and development of land." Staff can accomplish this with the revised zoning provisions reflected in the proposed zoning map while also providing a certain level of flexibility for future construction. Planned developments, which offer a great deal of variation, are not permitted in any of the City's Mixed-Use Districts, including CMUD, and the current language in the Zoning and Land Development Regulations will be retained. Building height increases beyond what is reflected in the proposed text amendment will not be permitted nor can variances be sought to increase the height. Variances from the dimensional requirements or waivers from any other criterion may be approved subject to meeting the standards for those requests.

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

**Public Notice:**

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

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

- September 21, 2021 – Planning Board discussion of proposed amendments

For this meeting, notices were mailed to all property owners within the Currie Mixed-Use District and all property owners within 500 feet of the affected parcels proposed for rezoning. Additionally, a display ad for both ordinances was published in the Palm Beach Post on October 25th for First Reading and on November 5th for Second Reading.

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

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

Commission District 1: Commissioner Kelly Shoaf.

## 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.