A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Mayor Nelson S. McDuffie in the Commission Chambers at City Hall at 6:00 p.m., Tuesday, October 16, 2012.

1. Roll call showed:

Present - Commissioner Thomas F. Carney, Jr.
Commissioner Alson Jacquet
Commissioner Adam Frankel
Commissioner Angeleta E. Gray
Mayor Nelson S. McDuffie

Absent - None

Also present were - David T. Harden, City Manager
Brian Shutt, City Attorney
Lanelda D. Gaskins, Acting City Clerk

2. The opening prayer was delivered by Reverend Ron Arflin, Director of Pastoral Services with Abbey Delray South.

3. The Pledge of Allegiance to the flag of the United States of America was given.

4. AGENDA APPROVAL.

Mrs. Gray requested that Item 8.J., Amendment No. 4 to the Agreement/Match Point, Inc., be removed from the Consent Agenda and moved to the Regular Agenda as Item 10.A.A.

Mr. Carney requested that Item 8.H., Amendment No. 1 to Agreement with Commerce Bank, N.A. be removed from the Consent Agenda and moved to the Regular Agenda as Item 10.A.A.A, Item 8.I., Amendment No. 2 to the Players International Management, Inc. (PIM) Agreement, be moved from the Consent Agenda as Item 10.A.A.A.A and Item 8.L., Amendments between CareHere, LLC. of the Consent Agenda be removed from the Regular Agenda as Item 10.A.A.A.A. and moved to the Regular Agenda as Item 10.A.A.A.A.A.A. and Item 8.P.6., Purchase Award to Specialty Vehicles be removed from the Consent Agenda and moved to the Regular Agenda as Item 10.A.A.A.A.A.A.A.

Mr. Frankel moved to approve the Agenda as amended, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes. Said motion passed with a 5 to 0 vote.
Mr. Frankel moved to approve the Agenda as amended, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes. Said motion passed with a 5 to 0 vote.

5. APPROVAL OF MINUTES:

Mr. Frankel moved to approve the Minutes of the Regular Meeting of September 20, 2012, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

Mrs. Gray moved to approve the Minutes of the Workshop Meeting of September 24, 2012, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

6. PROCLAMATIONS:

6.A. Breast Cancer Awareness Month – October 2012

Mayor McDuffie read and presented a proclamation hereby proclaiming the month of October 2012 as Breast Cancer Awareness Month. Bruce Koeser and Patricia Lewandowski came forward to accept this proclamation.


Mayor McDuffie read and presented a proclamation hereby proclaiming November 8, 2012 as Delray Reads Day. Janet Meeks, Education Coordinator, came forward to accept the proclamation and stated over the past 11 years the City of Delray Beach has hosted “Principal for a Day” and have actually sunset that program. This year the City is doing “Delray Reads Day” which aligns itself with the City’s campaign for grade level reading.

Mrs. Meeks introduced Rich Pollack, volunteer, who is heading the initiative which came out of our Mayor’s Collaborative Implementation Team as an Initiative to provide awareness to our community about what we are doing for grade level reading.

Rich Pollack with “Delray Reads Day” they are asking the community to solve a problem. Mr. Pollack stated in 4 of 7 public elementary schools 30% of the third graders are reading at grade level which means 70% are not. He stated this is an economic development issue because they cannot compete with other cities if we do not have schools. Mr. Pollack stated on “Delray Reads Day” there will be 250 volunteers one in every elementary school classroom reading to children between 9:30 a.m. – 10:30 a.m. He stated that people can join by going to delrayreads.org.
Mrs. Meeks stated there are bookmarks that have all the information on the back of them if anyone is interested in taking one.

Mr. Jacquet stated he signed up to read at Banyan Creek Elementary School where he attended and his niece currently goes.

Mayor McDuffie stated he has signed up to read at S.D. Spady Elementary School.

Mrs. Gray stated she signed up to read at Village Academy.

Mr. Carney stated he sign up to read at Pine Grove Elementary School.

Mayor McDuffie stated at the All American City Awards in Denver they found how crucial third grade reading is to the success of every child in our school systems and it sheds some light on why children drop out of our education programs when 87.5% have passing grades when they drop. He stated reading is the key to this and we need to engage this community to get this done and hopes that surrounding communities will do the same.

7. PRESENTATIONS:

7.A. Presentation by the Delray Beach Youth Council recognizing Florida City Government Month – October 2012

Mayor McDuffie read and presented a proclamation hereby proclaiming the month of October as Florida City Government Month.

Janet Meeks, Education Coordinator, stated this year the Delray Beach Youth Council is also have an exciting week planned for Florida City Government Month. Mrs. Meeks stated the Delray Beach Fire-Rescue Department has come in and given a presentation to them and at the Carver Morning Program they have also asked them to do some community service hours and the students with the most community service hours will get a trip to the fire station. Mrs. Meeks stated she will be working with Rich Reade, Public Information Officer, to get into an elementary school to do a presentation and is also working with Atlantic High School and their Government Services Academy to provide a program there. Mrs. Meeks stated they have two interactive programs; one is a jeopardy game that talks about vocabulary and fun facts and a mock City Commission meeting. Mrs. Meeks stated the Delray Beach Youth Council was established in 1995.

Kacey Carr, Co-President of the Delray Beach Youth Council (DBYC), stated the Delray Beach Youth Council is a group of middle aged to high school teenagers who meet every other Tuesday at the 505 Teen Center at 6:30 p.m. The Delray Beach Youth Council is a non-denominational youth group that services students that attend Carver and Village Academy Middle Schools, Pope, Atlantic, Boca, North
Broward, American Heritage, and Village High School. The DBYC plan events for the future and discuss how they can improve events they have hosted in order to make them better for next year.

**Jack Digney, Co-President of the Delray Beach Youth Council (DBYC)** stated the DBYC hosts a wide variety of events that range from activities for younger children to providing meals for families in need. They have participated in coastal clean-ups and plan to volunteer their time at the local Caring Kitchen. He stated their most successful events are their Annual Turkey Drive where they raise money in order to buy turkeys to give away to families for Thanksgiving that use the 505 Teen Center. He stated last year the DBYC gave away 60 turkeys and the year before they gave away over 100 turkeys. The DBYC also works in conjunction with many other organizations such as the Boy Scouts, the Women’s Club, Toys for Tots, and the City of Delray Beach. For the past two years the DBYC has stuffed over 10,000 eggs for the annual Easter Egg Hunt.

Kacey Carr stated the DBYC obtains most of their revenue from car washes and soda sales. She stated last year they had a coke booth at the Tree Lighting Festival, Kids Day at the Tree, First Night, and at skateboarding events they host at the 505 Teen Center. She stated all the revenue goes back into the events that they host. She announced that the next car wash is November 10, 2012.

Jack Digney announced that the next Delray Beach Youth Council meeting will be on Tuesday, October 30, 2012 at 6:30 p.m. and noted they meet every other Tuesday. He stated they communicates via Facebook (their page is called the Delray Beach Youth Council).

**7.B. Recognizing and commending Delray 21 for their contributions and outstanding work at Atlantic Community High School**

Mr. Jacquet moved to postpone to the next regular meeting of November 6, 2012, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

**8. CONSENT AGENDA:** City Manager Recommends Approval.

**8.A. FINAL SUBDIVISION PLAT APPROVAL/10TH AND 10TH CENTER:** Approve a final subdivision plat for 10th and 10th Center, for a new neighborhood commercial development located at the southeast corner of S.W. 10th Street and S.W. 10th Avenue.

**8.B. ACCEPTANCE OF A WATER EASEMENT DEED/ROSEAIRE RETREAT:** Approve and accept an exclusive water easement deed for Roseaire Retreat located at 14281 Gallagher Road.
8.C. ACCEPTANCE OF A HOLD HARMLESS AGREEMENT/622-A
S.E. 5TH STREET: Approve a Hold Harmless Agreement with Marc Julien Homes to install pervious pavers in the right-of-way on S.E. 5th Street for property at 622-A S.E. 5th Street.

8.D. ACCEPTANCE OF A HOLD HARMLESS AGREEMENT/622-B
S.E. 5TH STREET: Approve a Hold Harmless Agreement with Marc Julien Homes to install pervious pavers in the right-of-way on S.E. 5th Street for property at 622-B S.E. 5th Street.

8.E. INTERLOCAL AGREEMENT/COMMUNITY REDEVELOPMENT AGENCY FOR FUNDING OF CONSTRUCTION/PROFESSIONAL SERVICES: Approve an Interlocal Agreement with the Community Redevelopment Agency (CRA) for the funding of construction costs and professional services for certain projects as listed on Exhibit “A” attached to the Agreement for FY 2012-2013.

8.F. ACCEPT GRANT AWARD/ALTERNATIVE WATER SUPPLY GRANT/SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD): Approve accepting an award in the amount of $170,000.00 for a SFWMD Alternative Water Supply grant to provide supplementary funding for the Area 12A-Phase 1 Reclaimed Water System expansion project.

8.G. LANDSCAPE MAINTENANCE AGREEMENT/605 ANDREWS AVENUE: Approve a landscape maintenance agreement with Audrey Flannery to install and maintain landscaping within the public right-of-way for the property located at 605 Andrews Avenue.

8.H. THIS ITEM HAS BEEN MOVED TO THE REGULAR AGENDA AS ITEM 10.A.A.A.

8.I. THIS ITEM HAS BEEN MOVED TO THE REGULAR AGENDA AS ITEM 10.A.A.A.A.

8.J. THIS ITEM HAS BEEN MOVED TO THE REGULAR AGENDA AS ITEM 10.A.A.

8.K. RATIFICATION TO THE PARKING MANAGEMENT ADVISORY BOARD: Approve and ratify the appointment of Mr. Gerald Franciosa as the regular representative on the Planning & Zoning Board to the Parking Management Advisory Board for an unexpired term ending July 31, 2013.

8.L. THIS ITEM HAS BEEN MOVED TO THE REGULAR AGENDA AS ITEM 10.A.A.A.A.A.

8.M. SPECIAL EVENT REQUEST/5TH ANNUAL DOWNTOWN DELRAY BEACH CRAFT FESTIVAL: Approve a special event request for the 5th Annual Downtown Delray Beach Craft Festival sponsored by Howard Alan Events, Ltd.
to be held on December 29-30, 2012 from 10:00 a.m. to 5:00 p.m., granting a temporary use permit per LDR Section 2.4.6(F) for use of N.E./S.E. 4th Avenue, two blocks north/south of Atlantic Avenue as well as use of the north end of Hand’s parking lot for vendor parking; authorize staff support for security and traffic control, fire inspection services, and permit an event sign to be erected on Atlantic Avenue just east of I-95 fourteen (14) days prior to the event with the sponsor responsible for 100% of City costs, plus a 5% administrative fee for an estimated total of $3,433.50.

8.N. SPECIAL EVENT REQUEST/TWILIGHT BICYCLE RACE AND FESTIVAL: Approve a special event request for the Delray Beach Twilight Bicycle Race, sponsored by RAC Event Productions to be held on March 22, 2013 from 10:00 a.m. to 10:00 p.m., and March 23, 2013 from 6:00 a.m. to 10:00 p.m.; grant a temporary use permit per LDR Section 2.4.6(F) for closure and use of the bike race route noted in the staff report from approximately 4:00 p.m. to 10:00 p.m. on Saturday, March 23, 2013 and use of Old School Square Park and Worthing Park; and authorize staff support for traffic control and security, EMS assistance, barricade assistance, fire inspection services, and event signage; contingent upon the conditions of approval listed in the staff report. The event sponsor is responsible for 100% of City costs, plus 5% administrative fee for an estimated total of $16,840.00.

8.O. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period October 1, 2012 through October 12, 2012.

8.P. AWARD OF BIDS AND CONTRACTS:

1. Bid award to Midnight Sun Tours, Inc./Horizon Coach Lines in an estimated annual cost of $53,320.00 for bus rental and driver service for the Parks and Recreation Department for the Youth Football Program, Summer Day Camp, Holiday Day Camp, Special Events, Sports & Dance Competition and Overnight/Weekend Trips. Funding is available from multiple Parks and Recreation Department accounts.

2. Contract award to Special Products Group (SPG) in the annual estimated amount of $68,850.00 for uniform procurement for Fire-Rescue Department personnel. Funding is available from 001-2315-526-52.22 (General Fund: Operating Supplies/Uniforms/Linen Service), 001-2311-522-52.22 (General Funds: Operating Supplies/Uniforms/Linen Service) 001-2313-522-52.22 (General Fund: Operating Supplies/Uniforms/Linen Service) and 001-2317-522-52.22 (General Fund: Operating Supplies/Uniforms/Linen Service).

3. Contract award to Zoll Medical Corporation to renew the extended warranty and semi-annual preventive maintenance contract and provide guaranteed repair coverage for seventeen (17) 12 Lead EKG Monitor/Defibrillators in the amount of $24,195.25 and
seven (7) Auto Pulse units in the amount of $3,150.00. Funding is available from 001-2315-526-46.20 (General Fund: Repair & Maintenance Services/Equipment Maintenance) and 001-2313-522-46.20 (General Fund: Repair & Maintenance Services/Equipment Maintenance).

4. Purchase award to the Dumont Company, Inc. in the amount of $49,000.00 for the purchase and delivery of Sodium Hypochlorite on an “as needed” basis to remote booster station locations. Funding is available from 441-5123-536.52-21 (Water and Sewer Fund: Operating Supplies/Chemicals).

5. Purchase award to Line Tec, Inc., in the amount of $55,000.00 for the Water Service Relocations Project and Fire Hydrant Flow Testing. Funding is available from 442-5178-536-49.33 (Water and Sewer Renewal & Replacement Fund: Other Current Charges/OB/Water Service Relocation) and 441-5123-536-34.90 (Water and Sewer Fund: Other Contractual Services).

6. **THIS ITEM HAS BEEN MOVED TO THE REGULAR AGENDA AS ITEM 10.A.A.A.A.**

7. Purchase award to Otto Waste Systems, as a sole source provider, in the amount of $50,000.00 for purchase of hot stamped garbage carts, lids and wheels to be ordered “as needed”. Funding is available from 433-3711-534-49.35 (Sanitation Fund: Other Current Charges/Cart Renewal & Replacement).

8. Purchase award to Specialty Vehicles in an amount not to exceed $462,210.00, for three (3) trolley style vehicle to be used to operate the City’s transportation service. Funding is available from 334-6111-545-64.20 (General Construction Fund: Machinery/Equipment/Automobile).

Mr. Frankel moved to approve the Agenda as amended, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

At this point, the City Commission moved to Item 9, Comments and Inquiries on Non-Agenda Items from the Public-Immediately following the Consent Agenda.

9. **COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS FROM THE PUBLIC-IMMEDIATELY FOLLOWING CONSENT AGENDA.**

9.A. City Manager’s response to prior public comments and inquiries.

The City Manager had no comments or inquiries on non-agenda items.
9.B. From the Public.

9.B.1. Michael Weiner, Weiner, Lynne & Thompson, P.A., 10 S.E. 1st Avenue, Delray Beach, FL 33444, stated he would like to reinforce the seriousness of the offer that has been made by K&P and noted they brought 70 jobs to Pineapple Grove and occupy the building that was once occupied by Mr. Pugliese. Mr. Weiner stated K&P is looking to expand and almost double their size. Mr. Weiner stated he would like to do whatever they can do to move this along and make this into a real estate contract so that it can be hammered out and finished with speed.

9.B.2. Steve Blum, Antilles Homeowners’ Association, 115 Venetian Drive Unit “C”, Delray Beach, FL 33483, stated he attended the Planning and Zoning Board meeting and he was extremely impressed because one of the items on their agenda was the building at Linton and Federal. He stated the Board listened for 2½ hours to all the people that had a voice in that then they talked among themselves for another hour or so back and forth with the Board. Mr. Blum stated it was an excellent meeting and feels the Commission should take that as an example when the public is not allowed to speak on regular agenda items. He urged the Commission to look at how the Planning and Zoning Board meeting was run and suggested that that they come up with a change where people from the community can speak on regular agenda items. Mr. Blum stated then the Commission can talk back and forth about it, ask questions to the people in the audience, and then come up with a solution that is beneficial to everyone.

9.B.3. Chuck Ridley, 210 N.W. 2nd Avenue, Delray Beach, FL 33444, expressed concern around the property that is owned by the Auburn Group and stated he has heard several comments from residents both who live there and do not because they have moved out. Mr. Ridley stated the residents brought this before the Commission that they would be concerned about the density and the concentration of persons with under resourced houses. He stated it is not the neighbors who have under resourced households but they want to make sure that the property is appropriately and well managed. Mr. Ridley stated he is not sure that is the case now. Mr. Ridley asked that the Commission work with the residents in getting actively involved and stated he still would like to work with Mr. Hinners in finding a resolution. He urged the Commission to take a leadership role and bring all of these parties together to find a resolution.

9.B.4. Brian Hinners, CEO of the Auburn Group, stated he would like to point out some of the facts and mis-statements that were made in some of the articles that were printed in the Sun-Sentinel. Mr. Hinners distributed photos of the development that were taken yesterday as evidence of the integrity of the property, and maintenance and management of the property. Mr. Hinners stated Village of Delray is 100% occupied and that speaks to the success of the property and the great demand for this development. He stated their rents are $300-$500 a month below market rate and there is a tremendous need for this rental housing. Mr. Hinners stated Village at Delray hosts the Milagro Center providing arts, music, tutoring, mentoring, and teen programs for Delray’s at risk youth. He stated the Village at Delray supports the Roots Festival, the Spady Museum, and other local community groups. Mr. Hinners stated they host homebuyers, seminars, swimming lessons, financial counseling, and help programs and have 24 hour security
and the City of Delray Beach CPTED approved their security plan in 2009 and they make periodic inspections and noted that they are extremely pleased with the property. Mr. Hinners stated he is puzzled by the crime statistics that are being stated as they are not accurate. He stated they pay $70,000 annually for a professional guard service company to man the guardhouse and patrol when management is not on the premises. Mr. Hinners stated according to multi-housing news the industry average move-out rate is 58%; Village at Delray’s move-out rate is at 25%; 75% of their residents renewed their leases; 4% of the residents that moved out left because they were generally unhappy with the property. He stated the majority either had monetary issues or were relocated due to a job. Mr. Hinners stated they have no association to Carver Estates that is compared to Village at Delray. He commended the City and the Commission for their approval and support of the Village at Delray.

9.B.5. Pauline Moody, 609 S.W. 8th Avenue, Delray Beach, FL 33444, stated the rehab people are destroying property on Atlantic Avenue and throughout the city. Ms. Moody stated the people from the rehabs are putting their cigarettes out on people’s cars and the benches at the library are covered with cigarettes ashes and vomit so she cannot sit down on them. She stated taxpayers should not be paying for the damage that people from the rehabs caused but nobody from the rehabs is taking responsibility. She urged the City to do something about this soon.

9.B.6. Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach and Member of the Alliance), disagrees with comments expressed by Steve Blum regarding the agenda and stated with regard to Ms. Moody’s comments he does not understand any of that.

9.B.7. John Bennett, 137 Seabreeze Avenue, Delray Beach, FL 33483, stated he was here over a month ago and raised an issue and did not hear anything about it. Mr. Bennett asked if we have a hurricane that requires evacuation of the barrier island this year or next year will information about when the island is back opened up allowing people back on the island be available to the people at the non-emergency dispatch center.

Secondly, Mr. Bennett stated at Andrews Avenue at the Florida Inland Navigation District site (south of the Landings) someone has placed “No Parking Car Will be Towed” signs in between the road and the sidewalk in the right-of-way. He stated he believes these signs were erected without official city permission because the police department number is not filled out and suggested that these signs be removed because the signs are unofficial.

Lastly, Mr. Bennett stated when the Reclaimed Water Project was put in on the barrier island someone figured out in a lot of places if they put the new meter box in close to the original water meter to avoid having to put a separate transmitter on the new box. He stated other than the cost savings they did not seal the hole where the meter goes so there are all these boxes with a whole. Mr. Bennett stated this could be an issue
if someone walks up there in the dark and sticks their heel in the hole they will fall over and since it is on the City right-of-way then it is a potential City liability.

At this point, the time being 7:00 p.m., the Commission moved to the Regular Agenda.

10. **REGULAR AGENDA:**

10.A.A. **AMENDMENT NO. 4 TO THE AGREEMENT /MATCH POINT, INC.:** Approve Amendment No. 4 to the Agreement between the City and Match Point Inc. to reduce the number of players required for the Champions Tour Event from eight (8) to six (6).

The City Attorney stated this is Amendment No. 4 to the Match Point Agreement and there is a change in the number of required players for the Champions Tour Event. Currently, there is a requirement that there be eight (8) players and the proposal is to go to six (6) players.

Mrs. Gray stated she would like to know the reason why they are going from eight (8) players to six (6).

Mark Baron, Tournament Director for Players International, stated it is not reducing the tournament to six (6); it is reducing the amount of players to six (6) because the ATP Champions Tour has created different formats thus allowing them to go after marque players that will only play in a six (6) man format. Mr. Baron stated instead of an eight (8) man round robin there will be single elimination draw and a six (6) man elimination draw; and there will also be a four (4) man round robin with a four (4) man elimination draw.

Mrs. Gray asked Mr. Baron that if we have six (6) players they can actually pay them more money. Mr. Baron stated they are spending over $25,000 more for six (6) players this year than they did last year for eight (8) in appearance fees. Mr. Baron stated they have the one and two ranked players on the ATP Champions Tour.

Mr. Jacquet stated by reducing the requirement for the number of championship players from six (6) to eight (8) will the City will get higher quality players. Mr. Baron stated that the City will get higher quality players and last year they had two players that were around the $15,000-$20,000 range and they are not being brought back. Mr. Baron stated they are now bringing in players at $35,000, one at $125,000, and one at $30,000. Mr. Baron stated the greater the name the more expensive the player and the bigger the crowd.

Mr. Carney stated when the City recently extended this agreement there was controversy with the decision and part of his analysis was the economic benefit that the Commission thought this tournament would bring to the City. He expressed concern that when you reduce the number of players by having less players you may have less
competition. Mr. Carney stated he is concerned about the financial awards for the City and asked why he would agree to reduce the number of players which gives more opportunity for people to see different players. Mr. Baron stated the biggest thing in any event is the name of the player. Mr. Baron stated they are still making it a ten day event (i.e. Friday night, Saturday day, Saturday night, and finals on Sunday) which gives a two weekend event. He stated last year the attendance decreased over the year before. Mr. Baron stated they financially made an additional expenditure to bring the quality and attendance up to fill the hotels, etc.

Brief discussion between the Commission and Mr. Baron continued.

Mr. Carney asked if the Commission agrees to allow for amendment to be effective for one year.

Mrs. Gray concurs with comments expressed by Commissioner Carney.

Mr. Baron stated 70% of all funds on player/appearance fees and it increases every year.

Mayor McDuffie stated he agrees that quality is better than quantity.

Mr. Jacquet concurs with comments expressed by Commissioner Gray and supports a decision for a year and then come back and if we need to change the contract then it can be amended then. He understands that if we cannot find eight (8) quality players then we want to have six (6) quality players instead of having six (6) quality and two (2) amateurs. Mr. Jacquet stated he agrees that quality is better than quantity.

Mr. Baron stated the eight (8) man draw only brought players in Monday and Tuesday and the key thing for anything for the Champions Tour for Delray Beach is do the opening weekend as big as they can and as previously done in the past.

Mayor McDuffie agrees to do the contract for one year and renew it in the future.

Mr. Frankel moved to approve the agreement between the City of Delray Beach and Match Point Inc. but limit it to as a one year waiver to reduce the number of players required for the Champions Tour Event from eight (8) to six (6), seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

10.A.A.A. AMENDMENT NO. 1 TO AGREEMENT WITH COMMERCE BANK, N.A.: Approve Amendment No. 1 to our Agreement with Commerce Bank for ControlPay Advanced (CPA), an accounts payable solution that replaces paper checks with electronic payments through the Visa Network, to increases the percentage used in calculating the monthly revenue share for the City.
Mr. Jacquet moved to approve Item 10.A.A.A. (formerly Item 8.J.), seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes. Said motion passed with a 5 to 0 vote.

10.A.A.A.A. AMENDMENT NO. 2 TO THE PLAYERS INTERNATIONAL MANAGEMENT, INC. (PIM) AGREEMENT: Approve Amendment No. 2 to the Agreement between the City and Players International Management, Inc. (PIM) to provide for a change of the time periods when the events may be held and a clarification on the type of events required and the penalty if they fail to televise or hold an event.

The City Attorney stated this is Amendment No. 2 to the Agreement between the City and Players and this amendment provides that in the current agreement they talked events in certain months and this agreement would modify that to talk about the events as either USTA or ITF governed and it would also modify the amount of money the City would get back if there is a failure to hold one or more of the events especially on the televised events then the City would get 37.5% deduction in the amount of payments we would make versus the way it was currently worded it was 25 but that also affects the other deduct amounts for two remaining events. The City Attorney stated staff has also modified Exhibit “A” to clarify the examples of certain events that may be held.

Mr. Carney asked what impact does this have on the public’s use of the courts.

Mark Baron, Tournament Director for the Junior Events, stated in the agreement it states that the courts have to be approved as far as usage by the City. Mr. Baron stated when this agreement was first written it was on four specific events that they would be holding and those consisted of eight tournaments. Mr. Baron stated they are now bringing nine (9) events consisting of twenty (20) tournaments which is thousands of people coming in. He stated the ITF event brought in thirty (30) players last year from around the world. Mr. Baron stated the contract is saying that the two specific events that 7 years ago was specified to be televised the City is giving PIM (Players International Management, Inc.) to televise the best.

Brief discussion between the Commission and Mr. Baron followed.

Mr. Baron noted that the first priority is with the court availability.

Mr. Jacquet made reference to Section 27 of the amendment and stated it used to state “Failure to hold the April Event there would be a 25% deduction per event.” and now it is amended to state “Failure to hold a televised Event - 37.5% deduction per event.” However, Mr. Jacquet stated in Section 3(c) it states that “PIM will secure, at a minimum, regional television coverage for two Events…” Mr. Baron clarified that it should state “Failure to hold two televised Events – 37.5% deduction per event.”
The City Attorney stated if he fails to hold one of the televised events it is a 37.5% deduction; he must hold two of those events and if he does not hold either one of them it is a 75% deduction and if it one event that is not televised the City gets 37.5%.

Mr. Jacquet moved to approve Item 10.A.A.A. (formerly Item 8.I.), seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes. Said motion passed with a 5 to 0 vote.

10.A.A.A.A.A AGREEMENTS BETWEEN CAREHERE, LLC., THE TOWN OF HIGHLAND BEACH AND THE CITY OF DELRAY BEACH/EMPLOYEE HEALTH AND WELLNESS CENTER: Approve Agreements between CareHere, LLC., the City of Delray Beach and the Town of Highland Beach to allow full-time Highland Beach police officers shared limited medical services at the Employee Health and Wellness Center.

Mr. Carney stated in determining what we charge City employees of another city is that at a higher per capita rate than we would charging for our own people.

Bruce Koeser, Human Resources Director, stated for Highland Beach is $500/$600 depending on the level of service. Mr. Koeser stated the costs from Care Here, LLC, will be $30.00 plus labs and hourly rates for medical personnel. Mr. Koeser anticipates $200.00 to be the City’s cost and there will be only 2-5 officers because this is optional for them. He stated there will be no additional costs from the City’s side.

Mr. Jacquet moved to approve Item 10.A.A.A.A.A (formerly Item 8.L.), seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

10.A.A.A.A.A.A AWARD OF BIDS AND CONTRACTS: Purchase award to Martin Fence Company in the amount of $50,000.00 to remove existing 4' fence and replace with 6' green chain link fence on Pompey Park Fields #1, 2 and 3, and installation of an 8' wide x 90' long canopy over the backstop at Field #1. Funding is available from 334-4127-572-46.15 (General Construction Fund: Repair & Maintenance Services/Improvements- Other Repair & Maintenance).

Mrs. Gray stated the City received $92,000.00 from the County Commission to regulate the field at Pompey Park and part of that regulation was the size of the fence. She stated there is currently a 4 inch fence that extends from the dugout around the field. Mrs. Gray stated they are proposing a 6 foot green chain link fence which is not in regulation. She stated the fence at Miller Field their fence is 8 foot and then it goes down to 6 feet.

The City Manager stated he will look into this but he thought 6 feet was regulation. He stated at Miller Park field there is 8 feet along the railroad to make it
harder for kids to get over on the railroad from Miller field. Mrs. Gray stated they were measured today and noted they are 8 feet from the dugout.

Mr. Frankel moved to postpone this item to the next regular meeting of November 6, 2012, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

10.A. WAIVER REQUEST/290 S.E. 6TH AVENUE: Consider a waiver request to Land Development Regulations (LDR) Section 4.4.13(F)(7)(a), “Rear Setbacks”, to reduce the required rear setback to zero feet (0’) from the required ten feet (10’), in association with the installation of a wing wall for 290 S.E. 6th Avenue. (Quasi-Judicial Hearing)

Mayor McDuffie read the City of Delray Beach Quasi-Judicial Hearing rules into the record for this item and all subsequent Quasi-Judicial items.

Lanelda D. Gaskins, Acting City Clerk, swore in those individuals who wished to give testimony on this item.

Mayor McDuffie asked the Commission to disclose their ex parte communications. The Commission had no ex parte communications to disclose.

Paul Dorling, AICP, Director of Planning and Zoning, stated this is a request for approval of a waiver to LDR Section 4.4.13(F)(7)(a) to reduce the required rear setback from 10 feet to zero feet in association with the installation of a wing wall for a project at 290 S.E. 6th Avenue. Mr. Dorling stated this building has recently been designated and it is to be redeveloped; it was an old auto repair facility and will be converted into an office facility. He stated the actual waiver request is for a small improvement for a wing wall that will match additional wing walls that will be along the southern facade.

At its meeting of September 19, 2012, the Historic Preservation Board (HPB) considered and approved with conditions as part of a Class I Site Plan modification associated with elevation changes to the historically designated building. The HPB considered this waiver request concurrently with the Site Plan Modification request and recommended approval with a 4 to 0 vote (McDonald absent). Mr. Dorling stated required findings are identified in the City Commission documentation and are made as it relates to the waiver requirements of LDR Section 2.4.7(B)(5). Staff recommends approval.

Mayor McDuffie stated if anyone from the public would like to speak in favor or opposition, to please come forward at this time.

Richard Jones, Richard Jones Architecture, urged the Commission to approve the waiver request for the property on S.E. 6th Avenue and stated a waiver
request came before the Commission approximately two months ago and this was one last waiver that slipped through the cracks at that time. Mr. Jones stated it was at a time where they were going through SPRAB and subsequently they decided to go for historic designation. He stated they are going down through two paths of site plan approval and they are both converging currently at this point of which this waiver

Mr. Jones stated they took some direction from the Planning and Zoning staff and cut the wall back to maintain the safe site triangle and they feel it is an important part of the design because it is a structural support.

Christina Morrison, 2809 Florida Boulevard #207, Delray Beach, FL 33483, applauds the developer for making this historic and stated the wing wall will make the view from these beautiful townhomes better.

There being no one else from the public who wished to address the Commission regarding the waiver request, the public hearing was closed.

There was no rebuttal.

Mr. Jacquet stated he understands there were two different routes being taken and wished this was before the Commission when they handled the other three waivers. He asked what the applicant is requesting is on S.E. 3rd or Federal Highway. Mr. Dorling stated it is S.E. 3rd and the alley.

Mr. Jones stated they maintain the clear site triangle as required.

The City Attorney briefly reviewed the Board Order with the Commission who made findings according to their consensus (attached hereto is a copy and made an official part of the minutes).

Mr. Frankel moved to approve the Board Order approving the waiver request, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

10.B.  RELOCATION OF THE CHAMBER OF COMMERCE: Provide direction regarding the relocation of the Chamber of Commerce.

The City Attorney stated the last Workshop meeting the Commission gave direction; however, the Commission asked if the City would be able to sell the 6,000 square foot space to a developer if they so wish. At that time, the City Attorney stated he felt it would be a violation of the City’s bond proceeds. Subsequent to the meeting he checked with the outside bond counsel and it is not a violation of our bond conveyance if we would wish to do that because the area is so small and the amount is small compared to the total cost of the garage. The City Attorney informed the Commission that if the City did want to sell that space to a private developer there were no restrictions under a
bond conveyance to do that and to confirm the direction that the Commission gave staff at that meeting to proceed forward with the relocation of the Chamber of Commerce to that space.

Mayor McDuffie stated there is some desire to include the 10,000 foot piece as well and the firm who made the offer wanted to clear a few things up. The City Attorney stated that is a separate item; however, he can discuss the asking price under his comments because this is not on the agenda.

Mr. Jacquet asked how much can the City get for it if sold to a private entity. The City Manager stated the realtors are better equipped to answer this but the City could probably get a little over $1 million. The City Attorney stated the other space appraised at $200 a square foot and believes this space will appraise just as well.

Scott Porten, Vice Chairman of the Board of Directors for the Delray Beach Chamber of Commerce, stated there is an appraisal at $200 a foot and the City may even get an offer at $250 a foot. Mr. Porten stated it is in everyone’s best interest to relocate the Chamber so that they can recognize the $1.7 million and the ground that we currently occupy as well as the parking. Mr. Porten stated if you just take the 40% that the Chamber occupies that is approximately $750,000 and add that to $1,080,000 that the Chamber is giving the City for the other location, the City is getting $1.7 million versus $1.2 million or $1.5 million. He stated the tax that the City is going to generate will be on an ultimate project that is going to be $10-$20 million in the Chamber location versus $1.5 million if the City sells the space at $250 a foot or $1.2 million if sold at $200 a foot.

Mr. Jacquet asked if the Old School Square Garage the best place for the Chamber to go or is there someplace else. Mr. Porten stated the Chamber has to either fix the space they are in or relocate. He stated if the City has another location for them they will take it if it is comparable. Mr. Porten stated they do not know of another location and they have to do this now.

Mr. Jacquet clarified that the City does not have any other location that we know of that we can give to the Chamber except for the garage.

Mr. Carney stated he understands the need for the Chamber wanting to have a comparable visible site and it is economically good for the CRA, the City, and the Chamber of Commerce. Mr. Carney stated he is in support of the relocation.

Mrs. Gray stated she too is in support of the relocation.

Mr. Carney stated he knows that the CRA is planning to pay for the land over a period of time and he suggested shortening the period for the payment of that land to the City so the City could enjoy the funds sooner rather than later. Mr. Porten stated the intent would be that the net proceeds would go to pay off the City.

Mr. Jacquet applauds Mr. Porten for his work.
Mayor McDuffie supports the relocation.

It was the consensus of the Commission to relocate the Chamber of Commerce.

**10.C. MODIFICATION TO PARKING LICENSE AGREEMENTS:**
Consider a request by the Parking Management Advisory Board (PMAB) to modify the valet parking license agreements to mandate licensees to validate 50% of the parking fee for customers patronizing their establishments.

Scott Aronson, Parking Management Specialist, stated at its meeting of July 24, 2012, the Parking Management Advisory Board (PMAB) requested that the Board to modify the Valet Parking License Agreements that the valet license owner holder would mandate that they validate 50% of the fee for customers patronizing their establishments. He stated this was tabled at the first meeting that it was suggested and they directed staff to do a survey to see which of the existing valets were doing any validation programs. Mr. Aronson stated out of the eight (8) existing queues all but one were validating for their customers and it was the valet queue located on the south side of Atlantic Avenue between 2nd Avenue and the railroad tracks. The contention with the valet license agreements that predicated the changes earlier in the year were not that valet parking was $10.00 but that valet parking in a couple of the queues was $10.00 on weekdays and went up to $20.00 on the weekends. Staff understood the damage it can do with that expensive of parking and supported the $10.00 maximum fee for the valets. Mr. Aronson stated staff does not agree that the mandate would be appropriate because it could cause some hardships for neighboring restaurants who might not be doing so well if the valets are mandated to do so that they would have to validate and join those programs which could be a burden for them if they are not as successful as a neighboring restaurant.

Mr. Aronson stated at the Parking Management Advisory Board meeting the made a slight adjustment. He stated noting that Max’s Harvest is on the 100 block of Pineapple Grove Way they charge $5.00 to all people and if they were mandated to the 50% validation for patrons of their customers the end result would be a raise to the $10.00 charge; $5.00 validation for customers of Max’s and the rest of the users of that valet queue would be stuck with the tab so the Board took a limit to the order of this mandate to go on Atlantic Avenue or within one block north and south of Atlantic Avenue. Mr. Aronson stated it would have the same effect on the GOL taste of Brazil who currently charges $7.00 and they would increase their rate to $10.00 and validate for the GOL customers and result in the $10.00 parking fee for the remaining customers. Staff recommends to not approve this mandate and leave it to the customers to choose where they want to park.

Mr. Carney inquired about what they are charging. Mr. Aronson stated $10.00 is the maximum fee that any valet queue can charge. Mr. Carney stated it was his understanding that the whole idea behind these programs was to create validations for one and all.
Mr. Frankel suggested limiting it to Atlantic Avenue valets.

Mayor McDuffie stated is a mess.

Brief discussion by the Commission followed.

Mr. Frankel moved to approve Item 10.C., seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Jacquet – Yes; Mr. Frankel – No; Mrs. Gray – No; Mayor McDuffie – No; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

10.D. VISIONS 2020 PROCESS APPOINTMENTS AND RATIFICATION OF THE STEERING COMMITTEE/VISIONS 2020: Consider approval of the recommended list of appointments as submitted by the Commission to serve as the Visions 2020 Steering Committee and appoint the City Commission representative.

Lula Butler, Director of Community Improvement, stated this item is a recommended list of appointments as submitted by the Commission to serve on Visions 2020 Steering Committee and to appoint the City Commission representative. Ms. Butler stated at the regular meeting of October 2, 2012 the City Commission elected to establish the Steering Committee by having each Commissioner and Mayor submit three names for appointment. Staff recommends approval.

Mayor McDuffie suggested that the following two business types be represented: (1) retail and (2) restaurateur.

Mr. Carney suggested adding David Cook as a retailer and Hand’s is a retailer. Mr. Frankel suggested adding Butch Johnson as a restaurateur.

Mrs. Gray asked how many members should be on the Committee. Mrs. Butler stated the Steering Committees have ranged from 13 up to 19.

Mr. Jacquet stated the last time the Commission discussed this he had mentioned that he wanted to move Commissioner Carney’s name.

Mrs. Gray moved to approve the people listed as well as add Butch Johnson and David Cook with a Commission representative of Commissioner Carney, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes. Said motion passed with a 5 to 0 vote.

10.E. STATE LOBBYING SERVICES: Consider the selection of a firm for State Lobbying Services.

Doug Smith, Assistant City Manager, stated Rich Reade, Public Information Officer, helped to contact and get proposals from several firms and many of
those were coming from contacts he had through a City Manager’s Statewide Committee.
Mr. Smith briefly discussed the six (6) additional proposals and highlighted them: (1) Capitol Alliance Group, (2) Ericks Consultants, Inc., (3) Florida Strategic Group, (4) Greenberg Traurig, (5) Ronald Book, and (6) Weiss, Handler & Cornwell.

Mr. Frankel stated he supports Option #1 (to represent the City regarding transient housing legislation at a fee of $15,000 for the 2013 legislative session) because time is of the essence and for further lobbying especially on the Federal level; the Commission has more of an opportunity to go through the various proposals. He is concerned about missing out on the number one issue that affects our city by not acting on that one single issue but then acting on the six (6) other proposals for lobbying on other issues while important to him he does not want to miss out on the one opportunity. Mr. Frankel stated he is looking at selecting the single issue for Ballard Partners to discuss further at a Workshop meeting the other proposals as to what issues need to be lobbied on behalf of the City.

Mr. Smith stated several of these forms mentioned federal contact relationships they might have but he does not believe those would be the same services the City would get from a full federal lobbyist. Mr. Smith suggested if the Commission is interested in pursuing something for federal issues specifically the Beach Re-nourishment that they put out something separate to get proposals on those services.

Mrs. Gray concurs with Commissioner Frankel that the Commission needs to go ahead and move forward with the single item for the state issue. Mrs. Gray stated she would like to have this added to the next Workshop agenda for the federal level.

Mr. Carney stated the City of Boca Raton’s attorney and our attorneys were working on a piece of legislation that could be introduced in Tallahassee. Mr. Carney stated they have a lobbyist already working on that same bill on their behalf and it made sense cost wise to have one voice to the lobbying because when there are several lobbyist on the same issue it can distract legislators. He is favor of the Option #1 as it relates to this issue because time is of the essence. Mr. Carney suggested that the City look into having both State and Federal lobbying services.

Mr. Jacquet thanked Mr. Smith, Mr. Reade, and the City Attorney’s office for their hard work and the quickest turnaround in getting this information about the six (6) lobbying firms back to the Commission. He stated he believes when you have multiple lobbyists lobbying one issue that it actually helps your cause and not hurt it. Mr. Jacquet stated he spent over three years in Tallahassee and realized that when a legislator is making a decision on a bill and one lobbyist comes to them on that issue it does not speak as loud as if Ronald Book or Brian Ballard show up. Mr. Jacquet disagrees in going with the same lobbying firm that Boca Raton has and stated he would go with a different firm because he thinks two heads are better than one. Mr. Jacquet asked if our focus is on the State level or on the Federal level. The City Attorney stated our focus is on the State level.
Mayor McDuffie concurs with comments expressed by Commissioner Carney that the Commission needs to move on this. Mayor McDuffie stated he would like to come right back and go through this list because they have already presented to the Commission and work out their choice for a full-time Florida lobbyist. Mayor McDuffie reiterated that the Commission is talking about a firm Ballard Partners for this one issue for this one time because of time restraints and other issues. He suggested that the Commission come back and get additional information on this group of lobbying firms and decide who the City wants to give its lobbying business to for the State. Mayor McDuffie stated then over the next few meetings then decide who the Commission wants to give our lobbying business to for the State; and then move on to Federal after that. Mayor McDuffie stated the Commission has a list of qualified lobbyists but he does not want to see the Commission award a single contract for one issue for one time to a lobbyist without going back and picking someone from this list for full time.

Mrs. Gray asked staff if he can provide recommendations for the issues that the City is facing. Mr. Smith stated staff can bring back their list of issues at the November Workshop meeting.

It was the consensus of the Commission to direct staff to award this to one firm for State lobbying services and provide additional information on Federal lobbying services at the next Workshop meeting.

10.F. **APPOINTMENT TO THE POLICE ADVISORY BOARD:** Appoint one (1) regular member to the Police Advisory Board to serve an unexpired term ending July 31, 2013. Based upon the rotation system, the appointment will be made by Commissioner Frankel (Seat #3).

Mr. Frankel moved to appoint Marc Muscarella as a regular member to the Police Advisory Board (PAB) to serve an unexpired term ending July 31, 2013, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

10.G. **APPOINTMENTS TO THE NEIGHBORHOOD ADVISORY COUNCIL:** Appoint two (2) student members to the Neighborhood Advisory Council to serve unexpired terms ending July 31, 2013. Based on the rotation system, the appointments will be made by Mayor McDuffie (Seat #5) and Commissioner Carney (Seat #1).

Mayor McDuffie stated he would like to appoint Elisha Porter as a student member to the Neighborhood Advisory Council to serve an unexpired term ending July 31, 2013. Mr. Frankel so moved, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

Mr. Carney moved to appoint Nathaniel Ellis as a student member to the Neighborhood Advisory Council to serve an unexpired term ending July 13, 2013,
seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 7:07 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

11. PUBLIC HEARINGS:

11.A. ORDINANCE NO. 40-12 (FIRST READING/FIRST PUBLIC HEARING): Consider a city-initiated amendment to the Land Development Regulations (LDR) Section 4.3.3 (ZZZ), “Transient Residential Use”, in order to clarify prohibitions, exemptions/exceptions, waivers, and penalties; and amend Appendix “A”, “Definitions”, the definition of “Transient Residential Use”. If passed, a public hearing will be held on November 6, 2012.

The caption of Ordinance No. 40-12 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING SECTION 4.3.3, “SPECIFIC REQUIREMENTS FOR SPECIFIC USES”, BY AMENDING SUBSECTION 4.3.3(ZZZ), “TRANSIENT RESIDENTIAL USE”, IN ORDER TO CLARIFY PROHIBITIONS, EXCEPTIONS, WAIVERS, AND PENALTIES FOR SAME; AMENDING APPENDIX “A”, “DEFINITIONS”, IN ORDER TO AMEND THE DEFINITION OF “TRANSIENT RESIDENTIAL USE”; AMENDING SUBSECTION 4.4.6(B), “PRINCIPAL USES AND STRUCTURES PERMITTED”, TO REMOVE TRANSIENT RESIDENTIAL USE AS A PRINCIPAL USE; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 40-12 is on file in the City Clerk’s office.)

The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Paul Dorling, AICP, Director of Planning and Zoning, stated this is a city-initiated amendment and amend the definition also for transient residential uses. Mr. Dorling stated the modifications clarify that the single-family residential zone district category includes the (RR) Rural Residential zoning designation and that the reference to
Medium Density Residential zoning districts category includes the (RL) Low Density Residential zoning designation. The ordinance modifications also include procedural standards for undue economic hardship requests and the amendment also removes the reference to transient residential use as a principal use in the RM (Medium Density Residential District).

At its meeting of September 24, 2012, the Planning and Zoning Board reviewed the item and recommended approval with a 7 to 0 vote. Staff recommends approval on first reading.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission, the public hearing was closed.

Mr. Frankel moved to adopt Ordinance No. 40-12 on First Reading/First Public Hearing, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes. Said motion passed with a 5 to 0 vote.

**11.B. ORDINANCE NO. 29-12:** Consider a request for historic designation of an individual site known as the “Waters-Wellenbrink Residence”, located at 1108 Vista Del Mar Drive North to be listed in the Local Register of Historic Places.

The caption of Ordinance No. 29-12 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, DESIGNATING WATERS-WELLENBRINK RESIDENCE, LOCATED AT 1108 VISTA DEL MAR DRIVE NORTH, AS MORE PARTICULARLY DESCRIBED HEREIN, AS A LOCAL HISTORIC SITE; PROVIDING FOR THE AMENDMENT OF THE “ZONING MAP OF DELRAY BEACH, FLORIDA, JANUARY 2012” PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 29-12 is on file in the City Clerk’s office.)

The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Paul Dorling, AICP, Director of Planning and Zoning, stated this is a request for approval to individually designate the property located at 1108 Vista Del Mar Drive North as Waters-Wellenbrink residence. Mr. Dorling stated this was built in 1938
and it does meet and fulfill the requirements set-forth in Section 4.5.1.(B)(2) and Section 4.5.1(B)(3).

At its meeting of September 19, 2012, the Planning and Zoning Board recommended approval. Staff recommends approval.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission, the public hearing was closed.

Mr. Jacquet asked if the Historic Preservation Board (HPB) was a unanimous decision. Mr. Dorling stated HPB was unanimous on their decision.

Mr. Carney moved to adopt Ordinance No. 29-12 on Second and FINAL Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

11.C. ORDINANCE NO. 33-12: Consider an amendment to Chapter 37, “Delray Beach Code Enforcement”, by amending Section 37.42, “Administrative Fines; Costs of Repair, Liens”, to increase the fines for noise violations as defined in Section 99.03.

The caption of Ordinance No. 33-12 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 37, “DELRAY BEACH CODE ENFORCEMENT”, OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTION 37.42 “ADMINISTRATIVE FINES; COSTS OF REPAIR, LIENS” TO INCREASE THE FINES FOR NOISE VIOLATIONS AS DEFINED IN SECTION 99.03; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 33-12 is on file in the City Clerk’s office.)

A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

The City Attorney read the caption of the ordinance and stated this ordinance deals with increasing the fines and if it is a $1,000 fine per day per violation for first violation and going up to $5,000 per day per violation for a repeat violation and this is in accordance with State Statute.
Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission, the public hearing was closed.

Mayor McDuffie stated we are not really doing anything to the beginning level fines but we are opening up the windows so that if something continues that we can make it to the point where we actually get someone’s attention. The City Attorney stated most of the City’s noise ordinance violations are given citations and there is a maximum number the does not apply and cannot go up to this number on a citation because if you want to get up the numbers that we are talking about here someone would have to be cited and then they would have to go in front of the Code Enforcement Board be found guilty before that same entity could be found guilty of a repeat violation. The City Attorney stated this is more to allow in certain extreme examples if we cannot seem to get compliance. The City Attorney stated it opens up the process so that we can have the higher violation if and when we need to go through that process.

Mr. Carney stated he first raised this issue primarily after some conversations with people who lived in Osceola Park who informed him that on a Saturday night at 11:00 p.m. it sounded like the music was in their front yards. Mr. Carney stated he went there and found the noise bad. He stated there is really no mechanism and there has to be a monetary price; if it is cheaper to stay loud and pay $500 as opposed to not doing that it was the residents that were being affected. Mr. Carney stated the thought was that the City could provide for stiffer penalties but those could only be imposed after a hearing with a public board so if there were mitigating circumstances it would be an opportunity for that person who was cited to explain their point of view and come to some kind of accommodation where it would not happen again.

Mr. Jacquet clarified that as it is now we could get to this level of fines but they would have to go to the Code Enforcement Board and be found guilty. The City Attorney stated the City cannot get to that level yet because their fines are capped at a certain amount. Mr. Jacquet asked how this affects someone in a vehicle who is blasting music in the neighborhood. The City Attorney stated it affects everybody because it is applied equally across the board so whether it is a business, single family house, or sitting in the front yard, if someone is found guilty of violating the noise ordinance the fines could be big. Mr. Jacquet asked about the City’s enforcement and whether or not the City is stiffening it up because we cannot get people to comply. The City Attorney stated when the City had the case where the noise ordinance was struck down by the Court then the City revamped its noise ordinance and came up with a new noise ordinance. At that point in time based on direction from the Commission and other things that staff was seeing out there especially the ordinance that the City copied it off of (City of Miami Beach) they had something similar to this in their ordinance.

Mr. Jacquet stated we have had a number of issues with people living in nearby communities with excessive noise and feels we are attacking the problem. Mr. Jacquet stated he has a problem supporting this; however, he does understand in what direction we are moving.
Mayor McDuffie expressed concern over the enforcement of this and asked if we still need to have a reading on a decibel meter and how do we quantify what is objectionable. The City Attorney stated it is basically a distance requirement.

Mr. Carney moved to adopt Ordinance No. 33-12 on Second and FINAL Reading, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – No; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 4 to 1 vote, Commissioner Jacquet dissenting.


The caption of Ordinance No. 34-12 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 99 “NOISE CONTROL”, OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTION 99.02 “DEFINITIONS” TO DEFINE “STRUCTURE”; BY AMENDING 99.03 “LOUD AND UNNECESSARY NOISES PROHIBITED” TO CLARIFY SAME; BY AMENDING SECTION 99.08 “PENALTY” TO INCREASE THE FINES FOR NOISE VIOLATIONS; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 34-12 is on file in the City Clerk’s office.)

A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

The City Attorney read the caption of the ordinance and stated when the City revamped the noise ordinance there were some comments made on the second reading when the Commission adopted that ordinance that talked about some of the language they had with loud speakers and public address systems and how it may have conflicted with one of the other provisions that was in the ordinance. The City Attorney stated staff has since removed that section and have added that into the first section to remove any conflict and prevent any issues of inconsistent enforcement.

Mr. Jacquet stated this is the clarification between the two sections. The City Attorney stated also under the penalty section whereas under Chapter 37 they had to allow us to go up to that certain level and in this particular case we are defining whether or not on second offense you can go up to $1,000; on the third offense you can go up to
$3,000; on the third or more after that then a $5,000 fine may be imposed. The City Attorney stated this talks about when we can go up to those fine levels if the enforcement was warranted and if the Code Enforcement Board also imposed those fines.

Mayor McDuffie declared the public hearing open.

**Steve Blum, Antilles Homeowners’ Association, 115 Venetian Drive Unit “C”, Delray Beach, FL 33483,** stated he lives several blocks from a church on Gleason Street and especially during the holidays they play music on the hour. Mr. Blum stated this is fine with him; however, if someone down the street calls the police and says to stop it because it is a noise violation, how is that issue going to be addressed in this area.

There being no one else from the public who wished to address the Commission, the public hearing was closed.

Mr. Jacquet asked if there is any differential treatment in the City’s ordinance with regard to the churches. The City Attorney stated there is no difference and noise is treated the same for everyone.

Mr. Carney moved to adopt Ordinance No. 34-12 on Second and FINAL Reading, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Mr. Jacquet – No; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 4 to 1 vote, Commissioner Jacquet dissenting.


The caption of Ordinance No. 35-12 is as follows:

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PROVIDING FOR CHARTER REVISIONS BY AMENDING SECTION 3.04, “ASSUMPTION OF OFFICE; ORGANIZATIONAL MEETING”; SECTION 3.05, “OATH OF OFFICE”; SECTION 3.08,**
“VACANCIES; FILLING OF VACANCIES”, SUBSECTION (B), “VACANCY IN OFFICE OF MAYOR”; SECTION 4.02, “APPOINTMENT; REMOVAL; COMPENSATION”, SUBSECTION (C), “REPLACEMENT”; SECTION 4.05, “BUDGET PROCEDURE”, SUBSECTION (D), “PUBLIC HEARING”, SUBSECTION (E), “BUDGET ADOPTION/APPROPRIATIONS”, SUBSECTION I, “AUDIT”; SECTION 5.04, “ELECTIONS GENERALLY”, SUBSECTION (B), “HIGHEST NUMBER OF VOTES TO ELECT IN FIRST NONPARTISAN ELECTION”, SUBSECTION (D), “IF NO PERSON QUALIFIES”; SECTION 6.05, “PROCEDURE FOR FILING”, SUBSECTION (A), “CERTIFICATE OF CITY CLERK; AMENDMENT”; TO CLARIFY, CORRECT GRAMMATICAL ERRORS, AND TO ENHANCE THE CHARTER'S READABILITY; PROVIDING FOR A REFERENDUM ON MARCH 12, 2013; PROVIDING FOR A REPEALER CLAUSE; PROVIDING A SAVING CLAUSE; PROVIDING AN EFFECTIVE DATE.

(The official copy of Ordinance No. 35-12 is on file in the City Clerk’s office.)

A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

The City Attorney read the caption of the ordinance and stated this item will be going to referendum that provides minor changes to the Charter hoping to clarify a few things in the Charter. He stated there is also an issue where approximately a year or so ago where West Palm Beach had an issue with a Commissioner who was elected but then passed away before he assumed office and staff has tried to also tried provide language in the ordinance to clarify that so that is not an issue.

Mayor McDuffie declared the public hearing open.

Steve Blum, Antilles Homeowners’ Association, 115 Venetian Drive Unit “C”, Delray Beach, FL 33483, addressed a comment expressed by Commissioner Frankel two weeks where he stated he wanted to get input from the public before making a decision. Mr. Blum stated he believes that was an excellent decision on his part and the question is if he is going to carry out the will of the people or impose his will on the people. Mr. Blum reiterated to the Commission to let the people vote and express the will of the people and to not impose their will on the people.
Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach and Member of the Alliance), stated there are less than 25 people in this room; 2 or 3 people are going to speak. Dr. Kirson stated people are not coming out like last night for this item and stated when these are put on the referendum and the Commission sees the length of the referendum everybody will check “no” because he feels it is too long to read.

There being no one else from the public who wished to address the Commission, the public hearing was closed.

Mr. Carney moved to adopt Ordinance No. 35-12 on Second and FINAL Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

F. ORDINANCE NO. 36-12: Consider calling for a referendum on proposed revisions to the Charter of the City of Delray Beach to amend Section 3.02, “City Commission: Composition, Eligibility, Election, and Terms”; amending Section 5.02, “Types of Elections”; to provide for a change in the length of a term from a two-year term to a three-year term, but not extending the maximum number of consecutive years a Commissioner or Mayor is allowed to serve; providing for a referendum on March 12, 2013.

The caption of Ordinance No. 36-12 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PROVIDING FOR CHARTER REVISIONS BY AMENDING SECTION 3.02, “CITY COMMISSION: COMPOSITION, ELIGIBILITY, ELECTION, AND TERMS”; AMENDING SECTION 5.02, “TYPES OF ELECTIONS”; TO PROVIDE FOR A CHANGE IN THE LENGTH OF A TERM FROM A TWO YEAR TERM TO A THREE YEAR TERM, BUT NOT EXTENDING THE MAXIMUM NUMBER OF CONSECUTIVE YEARS A COMMISSIONER OR MAYOR IS ALLOWED TO SERVE; PROVIDING FOR A REFERENDUM ON MARCH 12, 2013; PROVIDING A GENERAL REPEALER CLAUSE; PROVIDING A SAVING CLAUSE; PROVIDING AN EFFECTIVE DATE.

(The official copy of Ordinance No. 36-12 is on file in the City Clerk’s office.)
The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Mayor McDuffie declared the public hearing open.

**Steve Blum, Antilles Homeowners’ Association, 115 Venetian Drive Unit “C”, Delray Beach, FL 33483,** suggested that the Commission should take the recommendations of the 11 people on the Charter Review Committee and take these five ordinances (Item 11.E thru 11.I. Ordinance No. 35-12 thru 39-12) to a referendum on March 12, 2013. Mr. Blum stated it would be a dis-service to the Charter Review Committee for the Commission to pick and choose what they feel is the best to do and not look for what is the best will of the people to do.

**John Bennett, 137 Seabreeze Avenue, Delray Beach, FL 33483,** disagrees with comments expressed by Mr. Blum and stated the last time there was a Charter Review Committee they deliberated at many longer meetings and came up with three (3) recommendations; one which was adopted by the Commission and the others were not.

Mr. Frankel stated he agrees we appointed members of this panel that looked at the Charter who he considers very wise and who have served our community. Mr. Frankel stated he does believe it should go to the people; however, he finds it interesting that when this Board wanted to put an item on the ballot regarding the change in the length of the term of office and the Commission was heavily criticized yet there were some members of the panel who now want to place this on the ballot.

Mr. Carney stated to be consistent with his position before this needs to be placed on the ballot and let the citizens decide do they want to have two 3 year terms or retain the three 2 year terms as is.

Mrs. Gray stated she was in support of this the last time and is in support of this going to the public.

There being no one from the public who wished to address the Commission, the public hearing was closed.

Mrs. Gray moved to adopt Ordinance No. 36-12 on Second and FINAL Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – No. Said motion passed with a 4 to 1 vote, Mr. Jacquet dissenting.

**G. ORDINANCE NO. 37-12:** Consider calling for a referendum on proposed revisions to the Charter of the City of Delray Beach to amend Section 4.02, “Appointment; Removal; Compensation”, by amending Subsection (B), “Removal” ; to provide that the removal of the City Manager shall only require a majority vote;
providing for a referendum on March 12, 2013.

The caption of Ordinance No. 37-12 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF
THE CITY OF DELRAY BEACH, FLORIDA,
PROVIDING FOR CHARTER REVISIONS BY
AMENDING SECTION 4.02, “APPOINTMENT;
REMOVAL; COMPENSATION”, BY AMENDING
SUBSECTION (B), “REMOVAL”; TO PROVIDE THAT
THE REMOVAL OF THE CITY MANAGER SHALL
ONLY REQUIRE A MAJORITY VOTE; PROVIDING
FOR A REFERENDUM ON MARCH 12, 2013,
PROVIDING A GENERAL REPEALER CLAUSE;
PROVIDING A SAVING CLAUSE; PROVIDING AN
EFFECTIVE DATE.

(The official copy of Ordinance No. 37-12 is on file in the City Clerk’s
office.)

A public hearing was held having been legally advertised in compliance
with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

The City Attorney read the caption of the ordinance and stated this
provides a change to the Charter that will allow for the removal of the City Manager upon
a majority vote and not by four affirmative votes.

Mayor McDuffie declared the public hearing open.

Tom Lynch, 820 N.E. 6th Avenue, Delray Beach, FL 33444, stated in
the 1980’s Delray Beach had 9 or 10 interim City Manager’s and in the 1990’s they put
into action the super majority. Mr. Lynch stated in hindsight it was probably a mistake
because the Commission at the time was out of a reaction instead of the right reason.
However, Mr. Lynch stated now as he looks back he sees Mr. Harden after 22 years
getting ready to retire it did work because they had stability for 22 years which they did
not have in Delray Beach. Mr. Lynch strongly believes the saying that “if it ain’t broke
don’t fix it.”

Steve Blum, Antilles Homeowners’ Association, 115 Venetian Drive
Unit “C”, Delray Beach, FL 33483, stated this should not be about 3/2 versus 4/1 at all
but should be about giving the people the right to vote.

John Bennett, 137 Seabreeze Avenue, Delray Beach, FL 33483, stated
he concurs with comments expressed by Mr. Lynch.
Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach and Member of the Alliance), stated there is no need for this to go on the ballot and urged the Commission to make a decision.

Michael Weiner, Weiner & Lynne, P.A., 10 S.E. 1st Avenue, Delray Beach, FL 33444, concurs with comments expressed by Mr. Lynch, Mr. Bennett, and Dr. Victor Kirson. Mr. Weiner stated over the years he has seen the City Manager make decisions which unfortunately he did not agree with but when he looks around at all the municipalities that he practices in the stability that has been in this city over the last two decades has been wonderful for the town. He encouraged the Commission to make their own decision about this particular amendment.

Christina Morrison, 2809 Florida Boulevard #207, Delray Beach, FL 33483, stated the City of Delray Beach went through some rough waters a few years ago and the City Manager was heavily criticized. Ms. Morrison stated if this 3/2 vote would have been in affect back then she does not believe the City Manager would be sitting on the dais right now which she feels would have been unfortunate for the City. She stated when she looks around the city she feels those 22 years of strong leadership put us in this position. Ms. Morrison stated it would be a shame to change the City Manager’s job to a political job if the vote were to go to a 3/2 majority and feels that 4/1 is a harder majority to get and thanked the City Manager for everything he has done.

Jay Alperin, 3130 Lowson Boulevard, Delray Beach, FL 33445, thanked the City Manager for his dedication and hard work for 22 years. Dr. Alperin stated he and Mr. Lynch were on a previous Commission that hired Mr. Harden. Dr. Alperin stated he was also appointed Chair of the Charter Revision Committee and before they knew about the City Manager’s retirement they were going to recommend having the ordinance written in such a way that it would not have any impact on him because everyone believes that he has done an excellent job. However, Dr. Alperin stated there was a 10 to 1 vote to recommend that this go to the public to have it confirmed or changed. He stated the Committee also reviewed the ordinance removing the salary control out of the Charter so that should you have a City Manager that you are disappointed with and do not want to fire, the Commission can reduce their salary.

There being no one else from the public who wished to address the Commission, the public hearing was closed.

Mr. Jacquet stated there were many good comments were made this evening about this issue. Mr. Jacquet stated he opposes this item because this is an attempt to make the position of the City Manager a political position which will hurt the City in the long run. He encouraged the rest of the Commission to vote against placing this on the ballot. Mr. Jacquet stated when people elect the City Commissioners they are elected to make certain decisions.
Mr. Carney stated there is a caveat to the statement that “the highest form of democracy is a citizen referendum” and that is if your elected body truly believes that what could be put on a referendum is not in the best interest of the city. Mr. Carney stated he cannot make that argument here. Mr. Carney stated he is in favor of putting this ordinance to referendum.

Mrs. Gray concurs with Commissioner Jacquet that this should not be placed on the ballot. She stated the stability in this city has been awesome and she supports the super majority and does not support this ordinance.

Mr. Frankel stated it is hard for him to say we should not put this on the ballot when there were 10 people out of 11 who felt it necessary and agreed to put it on the ballot.

Mr. Jacquet stated in speaking the Charter Review Committee members they wanted to present the Commission with some options and the City Commission would make the final decision of which ordinances should pass and which ones should not. He agrees that 10 to 1 is a large majority but at the same time that does not and should not determine the way that the Commission votes on any other board or committee.

Mayor McDuffie stated without continuity of vision or a consistent flow of institutional knowledge every time you change the Commission the entire dynamic of the city changes. Mayor McDuffie stated he cannot support something that would allow this Commission or any other Commission to have the emotions of three people take someone of this caliber out of office. Mayor McDuffie reiterated that he knows that the continuity and the consistency of vision here pretty much passed on by Mr. Harden is a great deal of the reason why we have been able to change the other five people that sit on the dais and keep the course and vision. He stated the knowledge and leadership has been there. Mayor McDuffie stated he has he highest regard for the committee that made these decisions but he is adamantly opposed to this.

Mr. Jacquet moved to adopt Ordinance No. 37-12 on Second and FINAL Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mrs. Gray – No; Mayor McDuffie – No; Mr. Carney – Yes; Mr. Jacquet – No; Mr. Frankel – Yes. Said motion to adopt Ordinance No. 37-12 was DENIED with a 3 to 2 vote, Commissioner Jacquet, Commissioner Gray, and Mayor McDuffie dissenting.

H. **ORDINANCE NO. 38-12:** Consider calling for a referendum on proposed revisions to the Charter of the City of Delray Beach to amend Section 3.09, “Term Limits”, Subsection (A), “Term Limit”; to provide that the maximum time period allowed to hold office, six (6) years, shall not apply in the case of a Commissioner who assumes the office of Mayor, in that case the time spent holding office as a Commissioner shall not count toward the six (6) year maximum time limit; providing for a referendum on March 12, 2013.
The caption of Ordinance No. 38-12 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PROVIDING FOR CHARTER REVISIONS BY AMENDING SECTION 3.09, “TERM LIMITS”, SUBSECTION (A), “TERM LIMIT”; TO PROVIDE THAT THE MAXIMUM TIME PERIOD ALLOWED TO HOLD OFFICE, SIX YEARS, SHALL NOT APPLY IN THE CASE OF A COMMISSIONER WHO ASSUMES THE OFFICE OF MAYOR, IN THAT CASE THE TIME SPENT HOLDING OFFICE AS A COMMISSIONER SHALL NOT COUNT TOWARD THE SIX YEAR MAXIMUM TIME LIMIT; PROVIDING FOR A REFERENDUM ON MARCH 12, 2013; PROVIDING A GENERAL REPEALER CLAUSE; PROVIDING A SAVING CLAUSE; PROVIDING AN EFFECTIVE DATE.

(The official copy of Ordinance No. 38-12 is on file in the City Clerk’s office.)

A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

The City Attorney read the caption of the ordinance and stated this proposed amendment to the Charter would allow a sitting Commissioner who assumes the Office of Mayor where the six (6) year consecutive years would not apply to the time that person has spent as a Commissioner and they could be in the Office of Mayor for a term of six (6) years if re-elected, etc.

Mayor McDuffie declared the public hearing open.

Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach and Member of the Alliance), thanked Commissioner Jacquet, Commissioner Gray and Mayor McDuffie for the comments on the previous item and he agrees with all their points.

Steve Blum, Antilles Homeowners’ Association, 115 Venetian Drive Unit “C”, Delray Beach, FL 33483, stated he is thankful for all the comments from the Commission and Mayor McDuffie but he disagrees because he feels it is rare that the public has an opportunity to vote on issues that affect them greatly and for the Commission to take away the right of the people to vote is an abomination. Mr. Blum stated more and more he is seeing decisions made in the last year by this Commission that have eroded the public trust. He stated the Commission should allow his vote.
There being no one else from the public who wished to address the Commission, the public hearing was closed.

Mr. Jacquet stated he understands that Mr. Blum is saying that he wants this decision to be made by the voters but unfortunately this is not a decision that is guaranteed to go to the voters because the process does not work that way. Mr. Jacquet stated this was by referendum, a committee was put together and they come up with ideas and recommendations and the Commission is charged with the responsibility of deciding out of those recommendations which ones should go to the ballot. He stated the residents get to vote every two years for their Commissioners and encouraged everyone to find out more who is running for office and find out where they stand on certain issues so that when you vote for your Commissioners you know that you voted for someone who represents you and who will make certain decisions in line with you want for example these Charter amendments.

Mr. Frankel moved to adopt Ordinance No. 38-12 on Second and FINAL Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mrs. Gray – No; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Jacquet – No; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

I. **ORDINANCE NO. 39-12:** Consider calling for a referendum on proposed revisions to the Charter of the City of Delray Beach to amend Section 4.02, “Appointment; Removal; Compensation”, by amending Subsection (D), “Compensation”; to provide for the removal of the Charter prohibition on reducing the City Manager’s Salary; providing for a referendum on March 12, 2013.

The caption of Ordinance No. 39-12 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PROVIDING FOR CHARTER REVISIONS BY AMENDING SECTION 4.02, “APPOINTMENT; REMOVAL; COMPENSATION”, BY AMENDING SUBSECTION (D), “COMPENSATION”; TO PROVIDE FOR THE REMOVAL OF THE CHARTER PROHIBITION ON REDUCING THE CITY MANAGER’S SALARY; PROVIDING FOR A REFERENDUM ON MARCH 12, 2013, PROVIDING A GENERAL REPEALER CLAUSE; PROVIDING A SAVING CLAUSE; PROVIDING AN EFFECTIVE DATE.

(The official copy of Ordinance No. 39-12 is on file in the City Clerk’s office.)
A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

The City Attorney read the caption of the ordinance and stated there is a prohibition in the Charter that does not allow or prohibits the Commission from reducing the City Manager’s salary so this would remove that prohibition.

Mayor McDuffie declared the public hearing open.

**John Bennett, 137 Seabreeze Avenue, Delray Beach, FL 33483,** stated the three of the Commissioners that did not support the previous item should also oppose this because if 3 but not 4 fail to boot the City Manager they can accomplish the same affect by diminishing his/her salary to the point to where the person cannot live on it or that they are insulted by it. Mr. Bennett stated as to sending a message when you are displeased or you have an annual performance review you can make comments there and not give an increase or bonus.

There being no one from the public who wished to address the Commission, the public hearing was closed.

Mr. Carney stated he does not feel that matters of compensation should be left up to a Charter so that anytime you want to make a compensation change you have to have a Charter Review and put something on the ballot. He feels that the policy makers should have the right to determine compensation and whether it should be raised or lowered and he is in support of making this change.

Mr. Jacquet concurs with Commissioner Carney on this ordinance and stated it is the Commissions job to determine the hiring, firing, and pay of the City Manager. He stated he supported placing this on the ballot for referendum before and he will support it again.

Mrs. Gray stated if a potential City Manager is looking at the contract and the fact that the salary could be lowered at any given point then that person might not consider the job. Mrs. Gray stated she is still not in support of this ordinance.

Mr. Frankel thanked the Committee for the time they spent on this and stated he does not support this ordinance.

Mayor McDuffie stated if the City has a City Manager that is out of control and needs to be dismissed the vote is going to be 5 to 0. He stated he does not support this ordinance.

Mr. Frankel moved to adopt Ordinance No. 39-12 on Second and FINAL Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mayor McDuffie – No; Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – No. Said motion was approved with a 5 to 0 vote, Mayor McDuffie and
Commissioner Gray dissenting.

At this point, Mrs. Gray requested to pull Item 8.P.6., Purchase Award to Martin Fence Company from the Consent Agenda.

Mr. Carney moved to reconsider the approval of the Consent Agenda, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

Mr. Frankel moved to remove Item 8.P.6., Purchase Award to Martin Fence Company to the Regular Agenda as Item 10.A.A.A.A.A.A. and reapprove the Consent Agenda as amended, seconded Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Jacquet – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

12. FIRST READINGS:

A. None

13. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.

13.A. City Manager

The City Manager stated last Friday he attended the Florida League of Cities Legislative Committee meetings in Orlando. He stated he is on the Urban Administration Committee and there are several people from Palm Beach County on the Committee and they were successful in getting sober house legislation as one of the two priorities. The City Manager stated that should go forward with the League of Cities to be one of their top priorities. He stated the other one is regulation of synthetic drugs. The City Manager stated their next meeting is in November in Orlando.

Secondly, the City Manager stated Mr. Jacquet had asked about the process used for naming things such as a building or park. The City Manager stated in the past the Commission has assumed the responsibility of handling all naming opportunities. He stated generally the suggestion has come from a community member or leader or an organized group and the Commission has either rejected or ratified the recommendation. Staff has begun to work on a written policy and procedure for the public to use when the naming opportunity becomes available. The City Manager stated staff will try to have some minimum criteria as well as the types of things that can be named for the Commission’s consideration.

The City Manager stated Mrs. Gray had asked about creating a historic district on 5th Avenue. Mrs. Gray stated she mis-spoke and clarified that what she was really inquiring about is whether or not the City has a district named the Historical Business District and whether we are still calling it this. The City Manager stated north of Atlantic Avenue is in the West Settlers’ District but south of Atlantic Avenue is not in
a historic district. The City Manager stated although we look at 5th Avenue from South 1st to North 2nd as the Historic Light Business District it has never been officially designated as such. The City Manager stated if Mrs. Gray has a suggestion for a way to formalize that then staff can work on it.

Lastly, the City Manager stated he appreciates the Commission’s comments on updating the website and there is training scheduled for all the departments on how to do the updates.

13.B. City Attorney

The City Attorney had no comments or inquiries on non-agenda items.

13.C. City Commission

13.C.1. Mr. Jacquet

Mr. Jacquet had no comments or inquiries on non-agenda items.

13.C.2. Mrs. Gray

Mrs. Gray inquired about the contracts that Commissioner Carney previously requested from Parks and Recreation. The City Manager stated these were provided to Commissioner Carney.

Secondly, Mrs. Gray stated she went to the Delray Swim and Tennis Club today to see the conditions of the pool after the closure and she was disappointed to see how the conditions of the pool were left. The City Manager stated he will get that addressed.

Mrs. Gray stated the tennis center membership numbers have increased and they are doing a great job. However, she stated inside the clubhouse there are maintenance issues such as the carpet and the bathroom that need to be addressed.

Lastly, Mrs. Gray expressed concern over the collapse of the restroom roof at Hilltopper Stadium and asked that staff look into this.

13.C.3. Mr. Frankel

Mr. Frankel concurred with comments expressed by Ms. Moody about the debris and conditions at the library. He stated the front of the library is disgusting.

Secondly, Mr. Frankel stated the City Manager will receive a prestigious award from the Historic Preservation Society in early November (November 2, 2012).
13.C.4. **Mr. Carney**

Mr. Carney stated he had a meeting this afternoon with TJ with Prep and Sports about the conditions of the bathrooms at Hilltopper Stadium and this needs to be addressed.

13.C.5. **Mayor McDuffie**

Mayor McDuffie stated next week the City will mount the first four devices at S.D. Spady, Atlantic High School, Village Academy, and the Police tower. He stated in the following two weeks the City will mount the rest of them. Mayor McDuffie stated by the GIS counts and running this against the School Board the City expects to serve 302 families out of Atlantic High School, 68 families out of S.D. Spady, 168 families out of Carver Middle School, and 204 families out of Village Academy. He stated there will be a kick-off meeting to invite all the stakeholders to discuss this.

There being no further business, Mayor McDuffie declared the meeting adjourned at 10:15 p.m.

______________________________
City Clerk

ATTEST:

______________________________
M A Y O R

The undersigned is the City Clerk of the City of Delray Beach, Florida, and the information provided herein is the Minutes of the Regular City Commission Meeting held on October 16, 2012, which Minutes were formally approved and adopted by the City Commission on ________________________.

______________________________
City Clerk
NOTE TO READER:
If the Minutes you have received are not completed as indicated above, this means they are not the official Minutes of the City Commission. They will become the official Minutes only after review and approval which may involve some amendments, additions or deletions as set forth above.