

RESOLUTION NO. 28-15

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, EXPRESSING CONCERN WHETHER ALL ABOARD FLORIDA WILL HAVE AN ADVERSE IMPACT ON THE CITY; STATING THAT THE CITY WITHHOLDS ITS SUPPORT FOR THE ALL ABOARD FLORIDA PROJECT UNTIL CERTAIN REQUIREMENTS ARE MET; ENCOURAGING THE FEDERAL RAILROAD ADMINISTRATION AND ANY OTHER FEDERAL, STATE OR LOCAL AGENCY TO REQUIRE ALL ABOARD FLORIDA TO PAY FOR THE COST OF CONSTRUCTING QUIET ZONES AND OTHER IMPROVEMENTS TO THE FLORIDA EAST COAST RAILWAY AT-GRADE RAILROAD CROSSINGS LOCATED WITHIN THE CITY; PROVIDING A SAVING CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, All Aboard Florida – Operations, LLC (“All Aboard Florida”), a subsidiary of Florida East Coast Industries (“FEC”) , is developing an express intercity passenger rail service from Miami to Orlando with four stations: Miami, Fort Lauderdale, West Palm Beach, and Orlando International Airport; and

WHEREAS, the All Aboard Florida project proposes to add 32 trains daily to the existing FEC rail corridor, with no proposed stops in Delray Beach, and trains with proposed travel speeds of up to 79 miles per hour through Delray Beach; and

WHEREAS, the City of Delray Beach has questions regarding the impact of All Aboard Florida as there are twelve at-grade railroad crossings along the FEC tracks within the city limits, and the City may be required to bear certain construction costs of upgrading railroad crossings and the costs of installing and maintaining the tracks and any quiet zones; and

WHEREAS, based on information found in the Environmental Impact Statement prepared by the U.S. Department of Transportation Federal Railroad Administration (“FRA”), typical at-grade railroad crossings would be closed an average of 54 times per day (2.25 times per hour), with cumulative closure times averaging 1.7 minutes (for passenger trains ) to 2.8 minutes (for freight trains). The total hourly closure would range from 4.2 minutes per hour to 4.5 minutes per hour; and

WHEREAS, emerging information about All Aboard Florida has led to concerns that Delray Beach residents and businesses are being asked to accept adverse impacts with limited, if any, benefit to the community; and

WHEREAS, additional grade crossing closures and blockages will hinder the City of Delray Beach Fire Department from being able to make timely responses to emergency calls or transport medical patients located on either side of the FEC railroad corridors, compromising the health, safety and welfare of the residents of the City of Delray Beach and all those who rely on the City of Delray Beach Fire Department services; and

WHEREAS, All Aboard Florida would increase railroad traffic and railroad noise in the City of Delray Beach affecting thousands of people in the City residing near these crossings; and

WHEREAS, it is estimated that the potential total cost to upgrade each of the City's crossings to meet Federal Quiet Zone requirements would exceed \$1 million dollars, and that these improvements are proposed to be paid by the Palm Beach MPO ; and

WHEREAS, although the project is being developed by a private entity, FEC has applied for a "Railroad Rehabilitation Improvement Financing" ("RRIF") loan of potentially \$1.5 billion which makes the project subject to Federal Guidelines and a diagnostic safety review conducted by the FRA; and

WHEREAS, All Aboard Florida recently announced that they intend to pursue municipal bond financing through the state-run Florida Development Finance Corp. to finance a portion of the project and, if authorized, would withdraw or reduce their RRIF loan application, All Aboard Florida should address claims that a significant portion of the financial burden of this passenger rail service may be borne by the taxpayers through assistance from the federal, state and local governments but is not required to receive approval from local or state governments; and

WHEREAS, as a result of the All Aboard Florida RRIF loan application, the FRA issued an Environmental Impact Statement on September 19, 2014 evaluating the potential environmental and related impacts of constructing and operating the proposed All Aboard Florida project. The public comment period ended on December 3, 2014; and

WHEREAS, the Environmental Impact Statement found that there are several recreational resources in the City of Delray Beach within 100 or 300 feet of the FEC corridor that may be impacted by the All Aboard Florida project, including Worthing Park, Currie Commons Park, Miller Park and Leon M. Weekes Environmental Preserve; and

WHEREAS, even though All Aboard Florida has stated that they will pay for 100% of the costs of safety improvements, the City of Delray Beach City Commission urges the United States Department of Transportation and the State of Florida and its agencies to require All Aboard Florida to pay for the costs of the All Aboard Florida project, including improvements to rail crossings, the construction of quiet zones and corridor improvements; and

WHEREAS, the City of Delray Beach Commission urges the United States Department of Transportation and the State of Florida to require that there shall be no government assistance provided to FEC or All Aboard Florida in the form of loans, infrastructure or right-of-way, other in-kind benefits at less than market rates/cost, and that any loans or other debt incurred by FEC or All Aboard Florida for All Aboard Florida shall be senior to all other debt, and without rights of future subordination, encumbering FEC and All Aboard property, equipment and rail lines, such that FEC and/or All Aboard Florida shall be solely responsible for the repayment of all loans/debt and there will be no taxpayer exposure/liabilities of any kind for default by FEC or All Aboard Florida; and

WHEREAS, the City of Delray Beach City Commission expects FECCI to continue coordinating efforts with the Florida DOT and SFTRA to establish commuter rail service on its tracks, linking South Florida coastal cities, including appropriately upgrading and improvements to accommodate both commuter and freight trains; and

WHEREAS, the City of Delray Beach City Commission expects FEC to promptly undertake efforts to reach agreements(s) among FDOT, South Florida Regional Transportation Authority (SFRTA), South Florida Commuter Services (SFCS) and the Dade, Broward, and Palm Beach County Metropolitan Planning Organizations (MPOs) to permit Tri-Rail Coastal Link to begin tri-county commuter rail service on the FEC railroad, and

WHEREAS, the City of Delray Beach City Commission expects FEC to work with municipal, county state, and federal agencies to move freight off the current FEC rail lines, and

WHEREAS, the City of Delray Beach desires to bring these issues to the attention of neighboring local governments as well as Palm Beach County, state and federal officials, and urge those officials to take steps to mitigate these risks; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the City Commission incorporates the "Whereas" clauses set forth above as if fully set forth herein.

Section 2. That the City Commission of the City of Delray Beach cannot support the All Aboard Florida project unless the following concerns are adequately addressed:

A. Financial Impact

- a. The City of Delray Beach City Commission requests that All Aboard Florida adhere to its prior commitments and agree to fund all costs related to:
  - i. Installation of safety equipment necessary to meet maximum Federal Rail Administration safety guidelines along the FEC line and at all grade crossings;
  - ii. Construction and maintenance of quiet zones for all at-grade railroad crossings within the boundaries of the City of Delray Beach;
  - iii. Required inspections of all high speed rail crossings;

- iv. Reimbursement of local governments for any costs incurred relocating utility lines due to construction of the All Aboard Florida project.
  - v. Any government loans or other principal debt incurred by FEC or All Aboard Florida shall be at market rate and shall be senior to all other debt, and without rights of future subordination, encumbering FEC and All Aboard property, equipment and rail lines, such that FEC and/or All Aboard Florida shall be solely responsible for the repayment of all loans/debt and there will be no taxpayer exposure/liabilities of any kind for default by FEC or All Aboard Florida.
- b. The City of Delray Beach City Commission requests that All Aboard Florida be required to provide written agreement that current municipal leases with FEC for such uses as parking, rights-of-way, sidewalks and landscaping will not be negatively impacted nor will lease payments be increased due to the enhanced crossings or other All Aboard Florida requirements.
- B. Public Safety and Welfare – The City Commission of the City of Delray Beach requests that All Aboard Florida be required to comply with the following at its sole cost:
- a. Structure proposed All Aboard Florida train schedules to minimize impacts to motorists and minimize delay to emergency vehicles; and
  - b. Provide all 12 at-grade railroad crossings located within the City of Delray Beach with Pedestrian Crossings and other necessary safety measures in accordance with applicable Federal, State or industry requirements; and
  - c. Endeavor to expeditiously undertake efforts to provide commuter rail service on the FEC tracks, including upgrades and improvements necessary to accommodate commuter rail service.
  - d. Endeavor to expeditiously undertake efforts to reach agreement(s) among FDOT, South Florida Regional Transportation Authority (SFRTA), South Florida Commuter Services SFCS), and the tri-county MPOs to permit Tri-Rail Coastal Link to begin tri-county commuter rail service on the FEC railroad, including the appropriate upgrades and improvements to accommodate both commuter and freight trains.; and
  - e. Work with municipal, county, state, and federal agencies to determine means and methods to move freight off the current FEC rail lines.
- C. Environment – The City Commission of the City of Delray Beach requests that All Aboard Florida be required to:
- a. Provide protection from any negative impacts caused as a result of the All Aboard Florida project to the endangered species and ecosystem in the City of Delray Beach; and
  - b. Provide protection from any negative impacts caused as a result of the All Aboard Florida project to the recreational resources located in the City of Delray Beach that are within 300 feet of the FEC corridor.


Section 3. That the City Commission of the City of Delray Beach encourages any participating agency, including the Federal Rail Administration and any other federal agency and the State of Florida and its agencies to require All Aboard Florida to pay for the costs of All Aboard Florida including quiet zones and corridor improvements.

Section 4. That the City Commission of the City of Delray Beach shares the concerns of its neighboring local governments regarding the negative impacts of All Aboard Florida's proposed rail passenger and increased freight services and supports these governments' efforts to mitigate the impacts of All Aboard Florida on their communities and residents.

Section 5. That copies of this Resolution shall be sent to the Federal Railroad Administration, the Governor of the State of Florida, all state legislators representing Palm Beach County, all members of Congress representing residents of Palm Beach County, and representatives of All Aboard Florida.

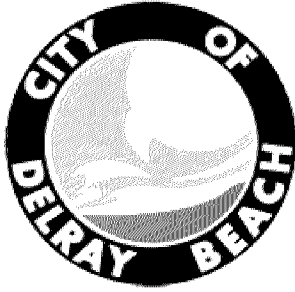
Section 6. That this resolution shall become effective immediately upon passage.

PASSED AND ADOPTED this 5th day of May, 2015.

  
\_\_\_\_\_  
CARY D. GLICKSTEIN, M A Y O R

ATTEST:

  
\_\_\_\_\_  
City Clerk



## MEMORANDUM

TO: Mayor and City Commissioners

FROM: Noel Pfeffer, City Attorney

DATE: April 29, 2015

SUBJECT: **AGENDA ITEM 9.A. - MEETING OF MAY 5, 2015**  
**RESOLUTION NO. 28-15/ALL ABOARD FLORIDA**

### **BACKGROUND**

The Commission recently asked the City Attorney to prepare a Resolution expressing the City's position with respect to "All Aboard Florida" (AAF). As the Commission is already aware, AAF is proposing to construct a privately owned and operated intercity passenger railroad system that will connect Orlando and Miami, with intermediate stops in Fort Lauderdale and West Palm Beach.

The initial direction from the City Commission was to include in the Resolution issues of local concern to the City that need to be addressed as a condition of City support. Among the local issues preliminarily raised by members of the Commission were; the creation and funding of quiet zones, mitigating local environmental impacts, the City's financial costs for improvements and maintenance, commitment for future commuter rail service, double tracking, minimizing delays for emergency and life safety vehicles, and market rate project financing secured by FEC property and equipment.

The attached Resolution was prepared by the City Attorney as an initial draft to generate discussion and identify the wide range of potential issues raised by the AAF project. I expect Commission feedback and direction to refine and narrow the final Commission position with respect to this project.

### **RECOMMENDATION**

Commission discretion.