ORDINANCE NO. 2023-025

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCES, BY AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE," ARTICLE III, "ZONING REGULATIONS," DIVISION 3, "ZONING DISTRICT REGULATIONS AND TABLES," TO CREATE SECTION 13-363, "QUALIFYING DEVELOPMENT PURSUANT TO SECTION 166.04151(7), FLORIDA STATUTES, UNDER THE LIVE LOCAL ACT," AND AMENDING DIVISION 5, "SITE PLAN REVIEW REQUIREMENTS," BY AMENDING SECTION 13-546, "APPROVAL REQUIRED," AND CREATING SECTION 13-551, "SITE PLAN REVIEW PROCEDURES FOR APPLICATIONS PURSUANT TO SECTION 166.04151(7), FLORIDA STATUTES," TO PROVIDE FOR DEVELOPMENT REGULATIONS AND ADMINISTRATIVE REVIEW OF CERTAIN AFFORDABLE HOUSING PROJECTS PURSUANT TO STATE LAW; AND BY AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE," ARTICLE I, "ADMINISTRATION, REGULATIONS AND PROCEDURES," DIVISION 3, "IMPLEMENTATION PROCEDURES," SECTION 13-34, "APPEALS," TO PROVIDE FOR CITY COMMISSION REVIEW OF ADMINISTRATIVE DECISIONS; PROVIDING FOR ZONING IN PROGRESS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida adopted Chapter 2023-17, Laws of Florida, effective July 1, 2023, known as the Live Local Act (the "Act"), which among other things, is designed to streamline and incentivize affordable housing within the State of Florida; and

WHEREAS, the Act preempts certain use, density, and height regulations and imposes various obligations, including the requirement for a municipality to permit mixed-use residential development as an allowable use in any area zoned for commercial, industrial, or mixed-use if at least forty percent (40%) of the residential units are affordable, as defined in Section 420.0004, Florida Statutes, for a period of at least thirty (30) years; and

WHEREAS, the benefits afforded by the Act are only available to developments that provide certain threshold levels of affordable multi-family housing, which housing units are further required to remain affordable for at least thirty (30) years, but the Act is silent on issues related to compliance reporting, monitoring, and enforcement of the mandatory affordability requirements applicable to these developments; and

WHEREAS, the City Commission has determined that it is appropriate and in the public interest to provide that projects proposed under the Act on commercial or industrial zoned properties are subject to the development regulations in the RM-10, Residential multiple-family district, and as applicable within the Regional Activity Center (RAC), the MainStreet Design Standards; and

WHEREAS, the Act provides that, if a municipality has designated less than twenty percent (20%) of the land area within its jurisdiction for commercial or industrial use, it is only required to allow multi-family development pursuant to the Act as part of a mixed-use residential development; and

WHEREAS, given that less than twenty percent (20%) of the land area of the City is designated for commercial and industrial use, any development of land approved pursuant to the Act must consist of a mixed-use project; and

WHEREAS, to qualify as a mixed-use development, a meaningful non-residential component in the project is appropriate, particularly acknowledging the state's legislative recognition of the importance of attaining at least twenty percent (20%) of the City's land area for commercial or industrial use; and

WHEREAS, the City is committed to providing a sustainable community for its residents and future generations, and ensuring an adequate tax base to support public services is an essential component of developing and maintaining such a sustainable community; and

WHEREAS, the City Commission has determined thirty-five percent (35%) of the total square footage of a project proposed under the Act as a non-residential component is both meaningful and appropriate in order to support required services and maintain residential affordability for City residents; and

WHEREAS, the Act requires that an affordable housing project proposed under the Act must be administratively approved, without further action by the governing body, if the development satisfies the City's land development regulations and is consistent with the City's Comprehensive Plan, with the exception of provisions establishing allowable densities, height, and land use (which are established in, and preempted by, the Act), and complies with all other applicable requirements of state and local law; and

WHEREAS, the Act provides that the City must consider the possibility of reducing parking requirements for projects developed under the Act if the project is located within one-half mile of a major transit stop, as defined in the City's Land Development Code, if the major transit stop is accessible from the development. The City does not currently have a definition of major transit stop and wishes to adopt one and provide related parking incentives; and

WHEREAS, the City Commission supports affordable housing and finds it necessary to revise the City Code in order to establish equitable regulations for the development of mixed-income mixed-use residential developments in order to implement the provisions of the Act; and

WHEREAS, the City is adopting the regulations contained within this ordinance to provide for implementation of the Act, which was effective as of July 1, 2023, and has determined it is appropriate for all applications for projects under the Act to be processed in accordance with the regulations contained within this ordinance, and to apply these regulations to any application or submission for an application under the Act; and

WHEREAS, pursuant to the pending ordinance doctrine, set forth in *Smith v. City*

of Clearwater, 383 So. 2d 681 (Fla. 2d DCA 1980), the City declares and implements the pending ordinance doctrine concerning the zoning and land development regulations governing the development of affordable housing projects proposed on properties located in commercial, industrial, PUD, PCD, or PMDD zoning districts; and

WHEREAS, working under the zoning in progress principals consistent with the pending ordinance doctrine, the City administration has developed this ordinance and all property owners and developers should be aware that provisions of this pending ordinance not yet adopted by the City Commission may be applied to any proposed development applications and any development applications may be delayed until the adoption and effectiveness of this ordinance; thus, property owners and developers should not rely on existing land development regulations in making investment and development-related decisions; and

WHEREAS, the City Commission finds and determines that updating the City's Code of Ordinances to implement the Live Local Act is in the best interest of the residents of Coconut Creek.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF COCONUT CREEK HEREBY ORDAINS:

Section 1: Ratification. That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance.

Section 2: Amendment. That the Code of Ordinances of the City of Coconut Creek, Florida, shall be amended by amending Chapter 13, "Land Development Code," Article III, "Zoning Regulations," Division 3, "Zoning District Regulations and Tables," to create Section 13-363, "Qualifying Development Pursuant to Section 166.04151(7), Florida Statutes, Under the Live Local Act," to read as follows:

Sec. 13-363. – Qualifying Development Pursuant to Section 166.04151(7), Florida Statutes, Under the Live Local Act.

(a) *Intent and Purpose.*

The purpose of this section is to establish procedures and regulations for the development of mixed-use affordable housing developments pursuant to the provisions of Section 166.04151(7), Florida Statutes, as created by Chapter 2023-17, Laws of Florida, the "Live Local Act" (the "Act"), which development involves a combination of residential and non-residential components, and a combination of dwelling units, at least forty percent (40%) of which must qualify as affordable housing units, as defined in Section 420.0004, Florida Statutes, to accomplish the following purposes:

(1) Protect and promote the public health, safety, and general welfare of the residents of the City;

(2) Facilitate the orderly and efficient development of affordable multi-family housing in the City pursuant to the Act;

(3) Confirm that qualifying developments proposed pursuant to the Act are mixed-use residential developments, as required by the Act, given that less than twenty percent (20%) of the City's land area is designated for commercial or industrial use;

(4) Specify the City zoning districts to which this section is applicable and within which qualifying developments proposed pursuant to the Act are authorized and may be approved administratively pursuant to the Act;

(5) Confirm the land development regulations applicable to proposed qualifying developments under the Act, including acknowledgment of the statutory mandates regarding use, height, and density;

(6) Provide the minimum non-residential floor area for qualifying developments proposed under the Act in order to ensure a meaningful mixed-use development to support community sustainability and to reduce vehicle trips and vehicle miles traveled; and

(7) Establish an administrative approval process for qualifying developments under the Act.

(b) *Applicability.*

Applications for a qualifying development pursuant to this section must be deemed complete prior to October 1, 2033. No applications for qualifying developments shall be accepted after October 1, 2033 unless the legislature extends or reenacts Section 166.04151(7), Florida Statutes, and the city commission extends these deadlines accordingly.

(c) *Definitions.*

Major transit stop shall mean a passenger rail or intercity bus station or a transit hub where two (2) or more transit routes converge.

Qualifying development shall mean a multiple-family mixed-use development proposed pursuant to Section 166.04151(7), Florida Statutes, with sixty-five percent (65%) of the total square footage used for residential purposes, at least forty percent (40%) of which are affordable, as defined in Section 420.0004, Florida Statutes, for a period of at least thirty (30) years, with the remaining thirty-five percent (35%) of the total square footage dedicated to non-residential uses, as provided in the applicable zoning district.

Unified control means all land included for purpose of development within a Planned Unit Development (PUD) district shall be under the control of the applicant (an individual, partnership, or corporation, or group of individuals, partnerships, or corporations). The applicant shall present satisfactory legal documents to constitute evidence of the unified control of the entire area, which shall be approved by the city attorney. Upon application for rezoning, the applicant shall agree as follows:

(1) To proceed with the qualifying development according to the provisions of this division and the affordability requirements as established by state law and covenant;

(2) To provide agreements, contracts, covenants, deed restrictions, and sureties acceptable to the city for completion of the development according to the plans approved at the time of site plan approval and for continuing operations and maintenance of such areas, functions, and facilities, which are not proposed to be provided, operated, or maintained at public expense; and

(3) To bind their successors in title to any commitments made under the above. All agreements and evidence of unified control shall be reviewed by the city attorney and no site plan for a qualifying development shall be approved without verification by the city attorney that such agreements and evidence of unified control meet the requirements of this section.

(d) *Zoning Districts permitting qualifying developments.*

Based on the requirements of Florida law, qualifying developments shall be permitted in the following zoning districts:

(1) B-2, Convenience shopping district.

(2) B-3, Community shopping district.

(3) B-4, Regional shopping district.

(4) IO-1, Industrial office district.

(5) IM-1, Industrial manufacturing district.

(6) PCD, Planned commerce district.

(7) Within any commercial, industrial, or mixed-use land use module of a PUD, Planned unit development district.

(8) Within any commercial, industrial, or mixed-use land use module of a PMDD, Planned mainstreet development district.

(e) *Applicable development regulations*.

(1) *Unified lot.* All land included for purposes of a qualifying development, including all residential and non-residential components shall be under unified control.

(2) *Required residential use.*

a. Sixty-five percent (65%) of the total square footage of a qualifying development shall be used for residential purposes.

b. *Equivalency of affordable dwelling units.*

1. Affordable dwelling units and market rate units within a qualifying development shall be located within the same structure or shall be proportionately distributed between multiple structures, if such are proposed, such that every qualifying development structure contains both affordable and market rate units in equal proportions; in no event shall a qualifying development structure consist entirely of market rate units.

2. All common areas and amenities within a qualifying development shall be accessible and available to all residents (both affordable and market rate units).

3. Access to the required affordable dwelling units in a qualifying development shall be provided through the same principal entrance(s) utilized by all other dwelling units in the development, provided that for townhouse-style affordable dwelling units, each unit shall have its own entrance.

4. The sizes and number of bedrooms in the affordable dwelling units shall be proportional to the sizes and number of bedrooms in the market rate units (e.g., for number of bedrooms, if twenty-five percent (25%) of the market rate units consist of two (2) bedrooms, then twenty-five percent (25%) of the affordable units shall also have two (2) bedrooms, etc., maintaining a proportional distribution across unit types and within each structure within the qualifying development).

5. Affordable dwelling units shall be developed simultaneously with, or prior to, the development of the market rate units.

6. If the development is phased, the phasing plan shall provide for the construction of affordable units proportionately and concurrently with the market rate units.

7. The exterior appearance of affordable units shall be the same as the market rate units and shall provide exterior building materials and finishings of the same type and quality.

8. The interior building materials and finishes of the affordable units shall be the same type and quality as the market rate units, including but not limited to all electrical and plumbing fixtures, flooring, cabinetry, counter tops, and decorative finishes.

c. *Affordability commitment.*

1. Pursuant to Section 166.04151(7), Florida Statutes, at least forty percent (40%) of the multi-family residential units shall remain affordable, as defined in Section 420.0004, Florida Statutes, for a period of at least thirty (30) years. The property owner shall execute and deliver to the City for recordation in the public records, on a form approved by the city attorney, a covenant, declaration of restriction, or other deed restriction in favor of the city ensuring compliance with this affordability requirement.

2. Any violation of the affordability requirement shall result in a monetary penalty to be deposited into the Affordable Housing Trust Fund. Such monetary penalty shall be assessed as a daily fine of two hundred fifty dollars ($250.00) per day per violation until proof of compliance has been provided to the city. The monetary penalty shall not be subject to mitigation or otherwise modified by any body or board, including but not limited to the code enforcement special magistrate.

(3) *Required non-residential use.*

a. Thirty-five percent (35%) of the total square footage of the qualifying development shall be devoted to principal non-residential uses that are not dedicated to, or exclusively accessible by, the on-site residential uses. Residential community amenities, or non-residential uses open only to residents of the qualifying development are not considered non-residential uses.

b. Non-residential uses shall be limited to those uses permitted in the zoning district or land use module regulations applicable to the land on which the qualified project is located.

c. The developer of a qualifying development shall be entitled to count the affordable housing units within the development to support a request for deferred payment of the housing linkage fee for the non-residential

development pursuant to Section 13-114, "Alternatives to payment of affordable housing linkage fee," of this Code.

1. The fees shall be considered waived in full thirty (30) years after issuance of the final affordable housing unit in the qualifying development.

2. The fees shall be considered deferred and shall become due and payable in full by the then-current owner of the development if and when the development does not comply with the affordable housing requirements of this section after notice and ninety (90) days to cure. Subject to applicable notice and cure provisions, such payment shall be made in full within thirty (30) days following the date on which the development no longer qualifies as a qualified development under this section. Late payments shall accrue interest at the maximum rate permitted by law until fully paid. This is in addition to any other enforcement action pursuant to code or agreement.

3. The terms of the developer's agreement required by Section 13-114, "Alternatives to payment of affordable housing linkage fee," may be incorporated into the covenant required by this section on qualifying development.

(4) *Allocation of shared space square footage.*

a. Lobby, service areas, and amenity areas exclusively serving the residential uses of a qualifying development shall be considered residential square footage.

b. Common ground floor lobby, service areas, and amenity areas within a structure housing both residential and non-residential uses shall be proportionately allocated to the residential and non-residential square footage requirements.

(5) *Site Design.*

a. Qualifying developments must locate all non-residential uses on the same (or unified) plot.

b. Qualifying developments located on land zoned industrial must locate all non-residential uses in a structure separate from any residential uses. Structures used for industrial purposes need to be buffered and setback from the residential structures in the same manner, applying setbacks, landscape buffers, and other applicable regulations as if the residential structures were on a separate site, to ensure compatibility between residential and industrial uses.

(6) *Development standards.*

a. The following standards are applicable to all qualifying developments regardless of the zoning district they are located in:

1. Maximum density and height

(i) With respect to the residential component of a qualifying development, the maximum density shall be the highest allowed density on any land in the city where residential development is allowed by right, without incorporation of any bonus density.

(ii) The maximum height shall be the highest currently allowed for a commercial or residential development within the city and within one (1) mile of the proposed development, or three (3) stories, whichever is higher.

2. Minimum air conditioned dwelling unit size:

(i) Studio or One (1) bedroom: Eight hundred and fifty (850) square feet;

(ii) Two (2) bedrooms: One thousand two hundred (1,200) square feet;

(iii) Three (3) or more bedrooms: One thousand four hundred (1,400) square feet for the first three (3) bedrooms, plus one hundred fifty (150) square feet for each additional bedroom/den.

3. All other applicable land development code development standards unless specifically regulated in this section or the MainStreet Design Standards if applicable.

b. Qualifying development within the MainStreet Regional Activity Center (RAC) shall comply with the MainStreet Design Standards, as applicable.

c. Qualifying development outside but within one (1) mile of the RAC shall comply with the MainStreet Design Standards, as applicable or as provided in Table 13-363-1.

d. Qualifying development located more than one (1) mile from the RAC shall comply with the development regulations provided in Table 13-363-1,

TABLE 13-363-1
Development Regulations
for Qualifying Development within
Commercial, Industrial, PCD, PUD,
or PMDD Zoning Districts

	LOCATION	
DEVELOPMENT REGULATION	**Qualifying Development located outside but within one (1) mile of the RAC**	**Qualifying Development more than one (1) mile from the RAC**
Required setbacks and yards*:		
Minimum front yard setback	MainStreet Design Standards	Twenty five (25) ft. for buildings up to twenty (20) feet or one (1) story in height. For increased height above twenty (20) feet, each yard shall be increased to an amount equal to one-half (1/2) the height of the building, whichever is greater.
Abutting all public road rights-of-way within or adjacent to the development	25 ft	Twenty five (25) ft. for buildings up to twenty (20) feet or one (1) story in height. For increased height above twenty (20) feet, each yard shall be increased to an amount equal to one-half (1/2) the height of the building, whichever is greater.
Adjacent to development perimeter	25 ft	Twenty five (25) ft. for buildings up to twenty (20) feet or one (1) story in height. For increased height above twenty (20) feet, each yard shall be increased to an amount equal to one-half (1/2) the height of the building, whichever is greater.
Adjacent to perimeter that borders 100' canal*	15 ft	15 ft
Roadway buffer along roads classified as minor collectors and greater	15 ft*	15 ft*
Fence or wall	MainStreet Design Standards	No fence or wall closer than 15 ft to right of way
Minimum building separation	MainStreet Design Standards	10 ft per story
Landscape area between buildings, parking and vehicular use areas	MainStreet Design Standards	10 ft
Minimum open space	35% of gross area	35% of gross area
Maximum building length	300 ft	300 ft

* No portion of any required setback may be used for buildings, parking, or other vehicular use area except for accessways.

(7) *Parking.* Parking shall be provided as required by the city code, or if the qualifying development is located within the RAC, the MainStreet Design Standards.

a. Parking garages, if used, must be screened and shall not be located along roadway frontages.

b. A qualifying development that is not located within the RAC, but that is located within a one-half mile (1/2) of a major transit stop, as determined by the city, may request up to a five percent (5%) reduction in the total parking requirements, and such request shall be evaluated based on site conditions and the following criteria:

1. There is a continuous public sidewalk or multi-use path from the proposed qualifying development to the major transit stop (or the proposed qualifying development will provide such continuous path); and

2. The proposed qualifying development provides onsite and offsite enhancements to pathways and sidewalks to support pedestrian comfort and other improvements/techniques to achieve the same goal, including, but not limited to: incorporating canopy trees; distinctive pavement; identity, wayfinding, and directional signage; transit infrastructure; and shaded rest areas furnished with appropriate street furniture.

(8) *Regulatory Compliance.*

a. In addition to the provisions set forth herein, qualifying developments shall comply with all other land development regulations applicable to multi-family developments.

b. All aspects of the qualifying development shall be consistent with the City's Comprehensive Plan, with the exception of provisions establishing allowable use, height, and density.

c. *Compliance with applicable laws and regulations.* In addition to the provisions set forth herein, qualifying developments shall comply with all other applicable state and local laws and regulations.

(9) *Expiration or loss of qualifying development status.*

a. *Loss for failure to meet affordability requirements.*

1. An approved qualifying development project which fails to maintain the required number of affordable dwelling units and does not comply with the affordable housing requirements of this section after notice and ninety (90) days to cure, shall be considered non-conforming as to all portions of the development that do not comply with use and development regulations applicable based on the assigned zoning designation.

2. All deferred housing linkage fees shall be due and payable in full upon a determination of non-conforming status for failure to meet the affordable housing requirements of this section.

3. Subject to applicable notice and cure provisions, such payment shall be made in full within thirty (30) days following the date on which the development no longer qualifies as a qualifying development under this section. Late payments shall accrue interest at the maximum rate permitted by law until fully paid. This is in addition to any other enforcement action pursuant to code or agreement.

b. *Expiration of covenant.* A qualifying development, for which a covenant guaranteeing affordable housing has expired, shall be considered:

1. A legal conforming use, so long as the development maintains the same levels and standards of affordable housing.

2. A legal non-conforming use, if the number of required affordable dwelling units originally required under the covenant are not maintained as affordable.

3. Subject to Chapter 13, "Land Development Code," Division 6, "Nonconforming uses and structures."

Section 3: Amendment. That the Code of Ordinances of the City of Coconut Creek, Florida, shall be amended by amending Chapter 13, "Land Development Code," Article III, "Zoning Regulations," Division 5, "Site Plan Review Requirements," Section 13-546, "Approval Required," to read as follows:

Sec. 13-546. - Approval required.

(a) ~~Construction~~ Except as provided in subsection 13-546(2) below regarding certain qualifying development projects, construction or improvement on any site may commence only following approval of a site plan by the city commission. All construction and improvements shall conform to such approved site plan.

(b) Qualifying development projects developed pursuant to Section 166.04151(7), Florida Statutes, shall be processed administratively under Section 13-551, "Site Plan Review Procedures for Applications Pursuant to Section 166.04151(7), Florida Statutes."

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Section 4: Amendment. That the Code of Ordinances of the City of Coconut Creek, Florida, shall be amended by amending Chapter 13, "Land Development Code," Article III, "Zoning Regulations," Division 5, "Site Plan Review Requirements," to create Section 13-551, "Site Plan Review Procedures for Applications Pursuant to Section 166.04151(7), Florida Statutes," to read as follows:

Sec. 13-551. - Site plan review procedures for applications pursuant to Section 166.04151(7), Florida Statutes.

(a) *Preplan review*. The applicant shall review the proposed site plan with the director of sustainable development, or designee, to confirm general compliance with the requirements of Section 13-363, "Development pursuant to Section 166.04151(7), Florida Statutes, under the Live Local Act," the land use designation, zoning and application provisions of the city code and Section 166.04151(7), Florida Statutes, as amended from time to time.

(b) *Filing*.

(1) *Application.* The applicant shall submit the proposed site plan to the director of sustainable development, or designee. The application shall include:

a. All information and be in the form as provided in Section 13-548, "Required form and information on site plan."

b. Dwelling unit breakdown, including number of bedrooms and unit sizes.

c. Color renderings of all building elevations.

d. An affidavit of Commitment. The applicant must file an Affidavit of Commitment, in a form provided by the city, to record a covenant detailing the affordable housing restrictions (and to comply with the monitoring and compliance requirements of the city). The covenant will detail income mix and required affordability, with a release provision ensuring that the covenant is in place for thirty (30) years from temporary certificate of occupancy (TCO) or certificate of occupancy (CO) and may only be released earlier by bringing the project info full compliance with all zoning and land use provisions applicable to the site at the time of the release. The city will provide the form covenant and monitoring and compliance forms upon submittal of the application.

e. Legal documents demonstrating unified control of the proposed development site and providing for maintenance and cross-access as applicable.

f. A specific purpose survey demonstrating the one (1) mile distance for the proposed height determination (unless the comparator site is so obviously close to render this unnecessary) with a brief analysis of the comparator site.

g. A brief analysis of the comparator site for the proposed density determination.

h. Easily visible notes on the site plan legend or data sheet, indicating the project is a Live Local Act, Section 166.04151(7), Florida Statutes, project.

i. A table, or tables, indicating the ratio of residential and non-residential square footage and affordable and market rate residential units.

(2) *Fees.* The director of sustainable development, or designee, will compute the required filing and review fees. Such fees are due upon the date of submittal and are established in accordance with Division 4, "Fee Schedules," of Article I of this Chapter 13, “Land Development Code.” The applicant shall also digitally submit eight (8) identical copies of a proposed preliminary engineering plan for the site that complies with the requirements of Section 13-167, "Preliminary engineering plan."

(c) *Review and recommendation by the development review committee.*

(1) Committee members and departments responsible for development application review shall submit written recommendations to the director of sustainable development, or designee, according to a review schedule established by the city manager, as amended from time to time.

(2) The applicant will be notified in writing of comments concerning the site plan submission. Revisions, additions, or corrections will be reviewed together by the director of sustainable development, or designee, the development review committee, and the applicant. Required revisions and any other information required by the director of sustainable development, or designee, and the development review committee shall be resubmitted by the applicant within thirty (30) days of the review. Failure of any applicant to submit information or revised plans as required above shall result in cancellation of the application unless an extension is agreed to by the applicant and the director of sustainable development, or designee. The applicant may also submit a waiver on a form provided by the city. Further, the applicant will be required to resubmit an application, including review fees according to Division 4, "Fee Schedules," of Article I of this Chapter 13, “Land Development Code.” Applicants may withdraw an application at any time.

(3) Any fees collected in conjunction with development review are nonrefundable.

(d) *Administrative review.*

(1) The director of sustainable development, or designee, shall review the development review committee comments, applicant responses, and final proposed plans and façade renderings, and based on compliance with the city’s land development regulations, comprehensive plan, and applicable state laws, shall approve, approve with conditions, or deny the final site plan and issue a written development order, including findings supporting the decision. The decision of the director of sustainable development, or designee, may be appealed to the city commission pursuant to Section 13-34, “Appeals.”

(2) If the proposed project does not meet the city's land development regulations, excepting use, height, or density as preempted by state law, the applicant may apply for a variance or other procedure and shall follow those procedures as provided in the code, including review by the development review committee, planning and zoning board, and city commission.

(e) *Modifications to approved site plan.* Modifications to a site plan approved under this section may be permitted by the administrative approval of the director of sustainable development, or designee. Proposed modifications shall be reviewed by the development review committee, as provided in subsection 13-551(3) above if the director of sustainable development, or designee, determines the modification:

(1) Substantially alters the intent and character of an approved site plan;

(2) Proposes any additional structures other than a structure clearly accessory to a principal use or structure;

(3) Generates additional off-street parking or intrudes into approved off-street parking areas;

(4) Substantially alters approved on- or off-site schematic engineering; or

(5) Substantially alters the intent and character of an approved landscape plan.

(f) *Expiration or extension of site plan approval.* A site plan approval shall expire eighteen (18) months following the date of approval unless a building permit for a principal building as required by the applicable Florida Building Code has been issued to the applicant and kept in force. One (1) twelve (12) month extension of the site plan approval may be granted by the director of sustainable development, or designee, if all applicable planning, building, zoning, and engineering regulations in effect at the time of the original site plan approval remain unchanged. An extension shall only be granted when an applicant has applied for an extension during the original effective period of the site plan and a determination that the project development is proceeding with due diligence has been made by the director of sustainable development, or designee. Upon expiration of a project under this section, the property will be governed by the entitlements allowed under the property's zoning without the benefit of the preemptive provisions of Section 166.04151(7), Florida Statutes.

(g) *Denial.* Denial of an application shall preclude the applicant from refiling the same application for twelve (12) months from the date of denial.

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Section 5: Amendment. That the Code of Ordinances of the City of Coconut Creek, Florida, shall be amended by amending Chapter 13, "Land Development Code,"

Article I, “Administration, Regulations and Procedures,” Division 3, “Implementation Procedures,” Section 13-34, “Appeals,” to read as follows:

Sec. 13-34. - Appeals.

An appeal is a process for review and modification of any action, which, if not appealed, would be final. An appeal shall be conducted as a new evidentiary hearing via de novo review in accordance with the city's quasi-judicial procedures and shall not be limited to the record below.

(1) Rule: An appeal may be made of an administrative interpretation; or of any finding made by an approving body; or, of a decision made by an approving body. The appeal of an administrative official's interpretation, ~~or~~ application of the land development code, ~~shall first be presented to the planning and zoning board and may subsequently be appealed to the city commission; an appeal of the planning and zoning board's action~~ or decision on a development application shall be made to the city commission. All such actions or decisions are appealable unless an appeal is expressly prohibited. An appeal may be made by an aggrieved party. For purposes of this section, an aggrieved party is defined as any owner or tenant of land situated within five hundred (500) feet of land subject to the proposed action under the city's land development code that has been or will be adversely affected by the decision under the city's land development code; or any person who can show that they have a substantial interest in property that has been or will be adversely affected by a decision on the proposed action.

(2) Required information: An appeal by an aggrieved party must be made in writing, directed to the city clerk, and must provide the following information including the appropriate processing fee as specified in section 13-81:

(a) Identification of the action which is being appealed;

(b) Identification of who or what board took the action and the date it was made;

(c) The basis of the appeal;

(d) The relief being sought; and

(e) The name of the aggrieved party, the aggrieved party's substantial interest in the matter and how the decision has adversely affected the aggrieved party.

(3) Procedure: The following procedures shall be adhered to in the processing of any appeal:

(a) The city clerk or designee must receive the letter of appeal with the required information set forth above from the aggrieved party within ten (10) working days of the date of the action being appealed.

(b) Upon receipt of a timely filed and sufficient letter of appeal, the city clerk or designee shall place the appeal on the agenda for consideration of the appeal at the next regular meeting of the ~~body who is to act upon it~~ city commission, provided that the appeal was received in time for proper placement on that agenda. In any event, a properly filed letter of appeal shall be scheduled for hearing no later than ninety (90) working days from the date it was received by the city clerk.

(c) The director of sustainable development shall ensure compliance with any necessary public notification procedures required under the original action or application. Costs for such public notification will be assessed to the aggrieved party in the same manner as the applicant under the original action or application.

(d) The aggrieved party shall present the appeal at the public hearing for which the appeal hearing is scheduled. The appellee may present reasons or documentation in support of the initial decision.

(e) The ~~reviewing body~~ city commission must consider the appeal at which time the appeal may be granted, denied, or set for further consideration upon a majority vote.

(4) Conditions:

(a) The granting of an appeal pertaining to an administrative official's interpretation or application of the city's land development code is not subject to conditions.

(b) The granting of an appeal pertaining to a decision on a development application may be conditioned in the same manner as the development application may have originally been conditioned.

(5) Findings:

(a) The granting of an appeal pertaining to an administrative official's interpretation or application of the city's land development code requires only a finding that the administrative officer was incorrect in the application of the regulation.

(b) The granting of an appeal pertaining to a decision on a development application must consider those items upon which a finding is required and the reviewing body must make findings on those items.

(6) Stay of previous action:

(a) General: Whenever an appeal is pending, the action being appealed shall be stayed, i.e. the development application or appealed part thereof shall be considered neither approved nor denied.

(b) Proceeding at risk: If an appeal is initiated for an action that is precedent for another action (e.g. site plan approval preceding plat approval), the applicant may proceed

with the submittal and processing of further development applications but only at his or her own risk.

(7) Decision: ~~A reviewing body~~ The city commission, sitting in its appellate capacity, hearing an appeal shall file its written findings and decision with the city clerk or designee within thirty (30) days of the appellate hearing. An appeal from a decision made by ~~a reviewing body of last resort~~ the city commission pursuant to this section shall be handled exclusively by judicial review in the Seventeenth Judicial Circuit Court, in and for Broward County, Florida, and shall be filed within thirty (30) days from the date of the filing of the final reviewing body's written order with the city clerk or designee.

Section 6: Zoning in progress. That pursuant to the pending ordinance doctrine, set forth in *Smith v. City of Clearwater*, 383 So. 2d 681 (Fla. 2d DCA 1980), the City declares and implements the pending ordinance doctrine and declares zoning in progress concerning the zoning and land development regulations governing the development of affordable housing projects proposed on properties located in commercial, industrial, PUD, PCD, or PMDD zoning districts. All property owners and developers should be aware that provisions of the pending ordinance not yet adopted by the City Commission may be applied to any proposed development applications and any development applications may be delayed until the adoption and effectiveness of this ordinance; thus, property owners and developers should not rely on existing land development regulations in making investment and development related decisions.

Section 7: Conflicts. That all ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 8: Severability. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, clause or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

Section 9: Codification. That the provisions of this ordinance shall be codified within the Code of Ordinances of the City of Coconut Creek, Florida, and any paragraph or section may be renumbered to conform with the Code of Ordinances.

Section 10: Effective Date. That this ordinance shall become effective upon its passage on second and final reading.

PASSED FIRST READING THIS 14TH DAY OF SEPTEMBER, 2023.

PASSED SECOND READING THIS 28TH DAY OF SEPTEMBER, 2023.

Joshua Rydell, Mayor

Attest:

Joseph J. Kavanagh, City Clerk

	1st	2nd
Rydell	Aye	Aye
Welch	Aye	Aye
Railey	Aye	Aye
Brodie	Aye	Aye
Wasserman	Aye	Aye