

ORDINANCE NO. 2021-007

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 I, "ADMINISTRATION, REGULATIONS AND PROCEDURES," DIVISION 3, "IMPLEMENTATION PROCEDURES," BY REPEALING SECTIONS 13-36.1 AND 13-36.2, CONTAINING OUTDATED PROCEDURES FOR TRANSFERRING RIGHTS-OF-WAY AND EASEMENTS TO AND FROM THE CITY, AND ENACTING A NEW SECTION 13-42, "TRANSACTIONS INVOLVING THE CITY'S INTERESTS IN REAL PROPERTY," TO PROVIDE CONSISTENCY WITH THE CITY'S NEWLY AMENDED CHARTER SECTION 310, "ACTION REQUIRING AN ORDINANCE," AND PROVIDE UPDATED PROCEDURES FOR PROPERTY TRANSACTION SITE ASSESSMENTS; AND BY AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE," ARTICLE II, "SUBDIVISION REGULATIONS," DIVISION 2, "SUBDIVISION PLAT REQUIREMENTS," SECTION 13-165, "FINAL PLAT SUBMISSION," TO PROVIDE FOR PROPERTY TRANSACTION SITE ASSESSMENTS FOR CERTAIN PROPERTY DEDICATIONS GIVEN BY PLAT; AND BY AMENDING ARTICLE IV, "ENVIRONMENTAL REGULATIONS," BY REPEALING IN ITS ENTIRETY DIVISION 2, "PROPERTY TRANSACTION SITE ASSESSMENT," TO REMOVE OUTDATED PROCEDURES THEREIN; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City's Charter Section 310, "Action Requiring an Ordinance," was recently amended pursuant to recommendations of the City's 2020 Charter Review Board, adopted by City Ordinance 2020-015 and approved by the voters on November 3, 2020; and

WHEREAS, the change to Charter Section 310 clarifies when the City needs to use an ordinance to manage day to day affairs, and specifically, the manner of acceptance or divestment of its interest in real property; and

WHEREAS, the new Charter Section 310 states that to the extent that the City transacts business involving its current or proposed fee simple ownership interests in land, it must do so via an ordinance; and

WHEREAS, correspondingly, to transact business involving a non-fee simple ownership interest in real property, such as an easement or landscape buffer, that action needs only a resolution to accomplish; and

WHEREAS, the City desires to delete outdated procedures and create this new section to provide procedures to acquire or transfer fee simple ownership interests by ordinance, and general non-fee simple possessory interests by resolution consistent with the Charter revisions approved by the voters; and

WHEREAS, the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that this proposed ordinance is consistent with and furthers the goals, objectives, and policies of the City's Comprehensive Plan; and

WHEREAS, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on February 10, 2021, and voted to recommend approval of the changes; and

WHEREAS, after reviewing the Local Planning Agency's recommendations, the recommendations of City staff, and comments from the public, the City Commission finds that the proposed amendments to its Code of Ordinances and Land Development Regulations are in compliance and consistent with Florida law and its adopted Comprehensive Plan; and

WHEREAS, the City Commission finds and determines that this ordinance is in the best interest of the public, provides consistency with the voter's referendum of the 2020 City Charter Amendments, and provides more efficient procedures for the City's day to day operations.

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: Repeal. That the Code of Ordinances of the City of Coconut Creek, Florida, is amended by amending Chapter 13, “Land Development Code,” Article 1, “Administration, Regulations and Procedures,” Division 3, “Implementation procedures,” by repealing Sections 13-36.1, “Procedures for acceptance or conveyance/vacation/abandonment of streets, alleyways, roads, or public rights-of-way,” and 13-36.2, “Procedures for acceptance or conveyance/vacation/abandonment of specific purpose easements,” in their entirety as provided in Exhibit “A.”

Section 3: Code Amendment. That the Code of Ordinances of the City of Coconut Creek, Florida, is amended by amending Chapter 13, “Land Development Code,” Article 1, “Administration, Regulations and Procedures,” Division 3, “Implementation procedures,” by creating Section 13-42, “Transactions involving the City’s interests in real property,” to read as follows:

Sec. 13-42. - Transactions involving the City’s interests in real property.

(a) Purposes and methods. The purpose of this section is to establish uniform procedures for processing land transactions in which the City is vested with or divested of legal interests in real property. Subject to certain exceptions set forth herein, all land transactions to which the City is a party and that involve fee simple title to real property must be approved by the City Commission in the form of an ordinance, and all non-fee simple possessory interests must be approved by the City Commission in the form of a resolution. All legal interests in real property acquired or conveyed by the City approved by such ordinances and resolutions, must be recorded in the official records books of Broward County, Florida.

(b) Real Property Transactions involving City’s Fee Simple Title. All land transactions in which the City acquires or conveys fee simple title to real property must be approved by ordinance, after recommendation by the City Manager, unless otherwise provided in this Section.

(1) Exceptions. This subsection (b) does not apply to the City's acquisition of real property interests pursuant to:

a. Dedications made as part of a plat, plat amendment, or replat, that are processed pursuant to Division 2, "Subdivision Plat Requirements," within Chapter 13, "Land Development Code," hereof, that create or vacate streets, alleyways, roads, or public rights-of-way;

- b. Liens imposed by the City upon real property; and
- c. Dedications or gifts of real property to the City, pursuant to Sections 95.36 or 95.361, Fla. Stat., as amended from time to time.

(2) Acquisition of Real Property. The City Commission may, upon completion and review of a Property Transaction Site Assessment pursuant to subsection (5), "Property Transaction Site Assessments," unless such site assessment is waived in writing by the City Manager or his/her designee, acquire fee simple title to real property by:

- a. Purchase. Acquisitions by purchase must comply with Section 166.045, Fla. Stat., as amended from time to time.
- b. Dedication. The City Commission may approve acceptance of a dedication of fee simple title to land given to the City by way of a written developer's agreement or such other written instrument as the City Attorney deems legally sufficient for such purpose. Prior to entering into, amending, or revoking any such agreement, the City must provide notice and public hearings consistent with the requirements contained within Section 163.3225, Fla. Stat., as amended.
- c. Condemnation. The City may acquire fee simple title to all real property through condemnation.
- d. Eminent domain. The City may acquire fee simple title by resolution pursuant Section 166.401, Fla. Stat., as amended from time to time.
- e. Property exchange. The City may acquire fee simple title pursuant to subsection (4), "Exchange of Interests in Real Property," below.

(3) Conveyance/Divestment of Real Property. The City Commission may sell land the City holds fee simple title to pursuant to the following procedures:

- a. Appraisal; Highest and Best Offer Obtainable. The City Commission must obtain at least one (1) appraisal by a state certified appraiser, for each parcel for sale that is valued at not more than \$500,000. For each parcel offered for sale in an amount in excess of \$500,000, the City Commission must obtain at least two (2) appraisals by state certified appraisers. If the agreed purchase price is less than the average appraised price of the two (2) appraisals, the City Commission is required to approve the sale by an extraordinary vote. The City Commission may, by ordinary vote, exempt a sale in an amount of \$100,000 or less from the requirement for an appraisal.
- b. Properties offered for sale to adjacent property owners. Notwithstanding the above, if it is determined by the City Manager or his/her designee that a parcel

of land intended to be offered for sale by the City Commission is of use only to one (1) or more adjacent properties, the City Commission may authorize the City Manager to offer to sell the parcel to the owner(s) of all adjacent property by approving a motion authorizing such action. For the purpose of this subsection, the term "adjacent property" means property that abuts the parcel being offered for sale by the City. Prior to accepting an offer to sell the subject parcel, the City Manager, or his/her designee, must send a notice of intention to sell the parcel, including any applicable procedures for submission of an offer to purchase, to all adjacent property owner(s) by certified mail and must publish on the City website a notice of the City's intent to sell the parcel. No less than fourteen (14) days after publication of said notice on the City's website, the City Commission may: 1) approve by ordinance a contract to sell the parcel to an owner of an adjacent property, if there is only a single interested adjacent property owner, 2) accept sealed bids and sell the parcel to the highest and best bidder, if there are two (2) or more interested owners of adjacent property, or 3) reject all offers.

(4) *Exchange of Interests in Real Property.* The City Commission may exchange lands owned by the City for other land(s), or interests/rights in lands, within the City or adjacent to the municipal boundaries of the City owned by any person. The City Commission will fix the terms and conditions of any such exchange and may pay or receive any sum of money that the City Commission considers necessary to equalize the values of the exchanged land(s), or interests/rights in lands.

(5) *Property Transaction Site Assessments.*

a. *Requirement.* Consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), and 40 CFR Part 312, "Innocent Landowners, Standards for Conducting all Appropriate Inquiries and Practices for All Appropriate Inquiries," effective November 1, 2006, as amended, a property transaction site assessment (PTSA) will be submitted to the City Engineer for review and approval as required by this Section prior to purchase or acceptance of fee simple title to land or the dedication of land by plat to the City for recreational use, right-of-way, or other purposes unless waived by the City Engineer. The PTSA will require up to three (3) phases of work, as determined by the City Engineer, based on the condition of the property and current and past history of contamination at the site. The PTSA will be performed by an independent licensed professional in the State of Florida and approved by the City Engineer. The level of effort involved in each of these three (3) phases will consist of but will not be limited to the following: a phase I assessment, a phase II assessment or a phase III assessment as provided in the following sections.

- b. Definitions. The following words, terms and phrases, when used in this Section, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Disposal or spill site means any structure, well, pit, pond, lagoon, impoundment, ditch landfill or other place or area, excluding ambient air or surface water, where uncontrolled oil or hazardous material has come to be located as a result of any spilling, leaking, pouring, abandoning, emitting, emptying, discharging, injecting, escaping, leaching, dumping, discarding or otherwise disposing of such oil or hazardous materials.

Hazardous substances means any substance which is defined as a hazardous substance in the United States Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Remedial response action means the cleanup or removal of released oil or hazardous materials from the environment, such actions as may be necessarily taken in the event of the threat of release of oil or hazardous materials into the environment, the disposal of removed oil or hazardous material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health, safety, welfare or the environment, which may result from a release or threat of release.

- c. Phase I assessment. The phase I assessment is a preliminary environmental survey and is mandatory for all land dedicated to the city. It must be conducted in accordance with ASTM E1527 standards, as amended, applicable at the time of assessment. This phase consists of, but not be limited to, the following:

1. Site visit to inspect the general condition of the property and surrounding areas to make a preliminary hazardous materials assessment.
2. A review of appropriate files to investigate past or current activities at the site and surrounding properties with respect to wastewater discharge, site drainage, air emissions, and toxic substance and hazardous material handling and storage, hazardous waste treatment, disposal and spill incidents. Information sources consist of, but are not limited to, the following:
 - i. A title search.
 - ii. Property records.
 - iii. Regulatory permits and environmental agency files.
 - iv. Other records including environmental agency records for operations on surrounding properties if necessary.
3. Interviews of representatives of the past and present owners and operators.

4. A review of available current and historic aerial photographs of the site and surrounding properties to identify past activities in the area and associated significant topographic changes.
 5. If necessary, inspection of the site and surrounding properties, including the interiors of any onsite buildings to determine the general condition of the property and surrounding area and identify evidence of contaminant releases to the property's soil, surface water, and ground water from spills, dumping, or burial of hazardous materials or wastes.
 6. A written report that summarizes the observations and findings made and a recommendation for any additional investigation, including site sampling and analysis (Phase II), needed to fully describe site conditions.
 7. After reviewing the phase I report and any other information currently available, the City Engineer will determine that:
 - i. The property is not a disposal or spill site, and, therefore, is suitable for acceptance by the City Commission;
 - ii. The property is a disposal or spill site which has been remediated and no further remedial response action is necessary, and, therefore, is suitable for acceptance by the City Commission;
 - iii. The property is a disposal or spill site and further remedial response action is necessary, and, therefore, is not recommended for acceptance by the City Commission; or
 - iv. It is unclear whether the property is a disposal or spill site, and, therefore, a Phase II investigation is required before the suitability of the property for acceptance by the City Commission can be determined.
- d. *Phase II assessment.* The Phase II assessment is a thorough, qualitative review of the site, based on field observations and soil and water sampling. This phase may be required, as determined by the City Engineer, after review of the Phase I assessment. The purpose of a Phase II Environmental Site Assessment Report is to evaluate the presence, or absence of, petroleum products or hazardous substances in the subsurface of the site. A trained, licensed, experienced staff of geologists and engineers that possess expertise in Phase II Environmental project design performs these assessments and such assessments must be performed consistent with the ASTM E1903, Standard Guide, as amended. This phase consists of, but is not limited to the following:
1. Preparation of and submittal for approval by the City Engineer of a sampling plan based on the findings of the Phase I report prior to proceeding with the Phase II study.

2. Sampling of air, soil, surface water, and/or ground water for appropriate chemical characterization in accordance with the approved Phase II sampling plan and quality assurance project plan.
 3. Analysis of air, soil, surface water, and/or ground water samples by a laboratory approved by the Florida Department of Environmental Protection (FDEP).
 4. A written report that consists of, but is not limited to, the following:
 - i. Descriptions of all sampling procedures.
 - ii. Testing protocols.
 - iii. Analytical results identifying contamination including delineation.
 - iv. Conclusions and recommendations.
 - v. Scope of remedial actions, if significant environmental contamination is identified at the site.
 5. After reviewing the Phase II report and any other information currently available, the City Engineer will determine that:
 - i. The property is not a disposal or spill site, and, therefore, is suitable for acceptance by the City Commission;
 - ii. The property is a disposal or spill site which has been remediated and no further remedial response action is necessary, and, therefore, is suitable for acceptance by the City Commission; or
 - iii. The property is a disposal or spill site and further remedial response action is necessary, and, therefore, is not recommended for acceptance by the City Commission.
- e. Phase III assessment. A Phase III Site Assessment is called for only when contamination has been identified. A Phase III Assessment determines the extent of the contamination, both horizontally and vertically, and forms the basis for preparing a remediation plan, and estimation of the cost for remediation if the City Commission wishes to consider or proceed with the land purchase after Phase II contaminants findings.

(c) Other Real Property Transactions (Platted Right-of-Way Interests; Easements/buffers). When the City Commission accepts or disposes of its legal interest in land that amounts to less than fee simple title, it may do so by resolution unless otherwise required herein.

(1) Plat Exception. Dedications made as part of a plat, plat amendment, or replat, that are processed pursuant to Division 2, "Subdivision Plat Requirements," within Chapter 13, "Land Development Code," hereof that create streets, alleyways, roads, or public rights-of-way are not subject to a concurrent application pursuant to this section.

(2) Easements/Buffers. An application to dedicate or vacate an easement or buffer in favor of the City must be submitted by the owner of the property then subject to the easement or buffer, or owner of the property proposed to be dedicated, or their designated agent, or may be initiated by the City. The application must be accompanied by a legal description of the property which is the subject of the proposed dedication or vacation with a signed and sealed land survey prepared by a registered land surveyor in the State of Florida. The application must also include a detailed description of and justification for the proposed dedication or vacation. Upon receipt of an application, together with payment of the application fees established by the City, the Department of Utilities and Engineering or Sustainable Development, as determined by the nature of the application, must review same for completeness. If the application is deemed incomplete by the designated City Department, such Department will forward a Notice of Incompleteness to the applicant specifying the deficiencies or data missing from the application. The applicant will thereafter have a period of thirty (30) days from the date of the Notice of Incompleteness within which to submit the required information to the Department which will then review the amended application for completeness. If the amended application is not received within thirty (30) days or the additional information submitted does not complete the application, the reviewing Department will forward a Second Notice of Incompleteness to the applicant specifying the data missing from the application and refund the initial application fee to the applicant and the application will be deemed withdrawn; or, City at its option, may elect to retain the application fees and provide the applicant with an additional period of time within which to submit any required information. Once deemed complete, the designated City Department will forward said application for action as follows:

- a. For only those applications involving the vacation of easements or buffers, the designated City Department will forward copies of the application and supporting materials to the Department of Sustainable Development which will forward such materials and applicable reports to the members of the DRC for review and comment. Upon completion of DRC review, the Department of Sustainable Development will prepare a report and recommendation for consideration by the City Commission.
- b. For all other applications, the designated City Department will forward the application to the City Commission.
- c. Upon receipt of the application, the City Commission will schedule and conduct a public hearing, and will either approve, approve with modifications, or deny the application in accordance with the best interests of the public welfare.

(3) Vacation of Platted Public Right-of-Way. The City Commission may vacate platted public rights-of-way by approving a resolution authorizing such vacation.

- a. Application. All applications to the City for vacation of streets, alleyways, roads, or public land, together with payment of all application fees established by the City, must be submitted to the Department of Sustainable Development. All owners of property abutting or adjacent to the area to be vacated must join in the application. The application must be accompanied by a legal description of the property proposed for vacation and a signed and sealed land survey prepared by a registered land surveyor in the State of Florida. The application must also include a detailed description of and justification for the proposed vacation. The Department of Sustainable Development will review the application for completeness. If the application is deemed incomplete by the Department, it will forward a Notice of Incompleteness to the applicant specifying the deficiencies or data missing from the application. The applicant will thereafter have a period of thirty (30) days from the date of the Notice of Incompleteness within which to submit the required information to the Department which will then review the amended application for completeness. If the amended application is not received within thirty (30) days or the additional information submitted does not complete the application, the Department will forward a Second Notice of Incompleteness to the applicant specifying the data missing from the application and refund the initial application fee to the applicant and the application will be deemed withdrawn; or City at its option, may elect to retain the application fees and provide the applicant with an additional period of time within which to submit any required information.
- b. Additional application requirements. Applicants must post a four-foot by four-foot (4' x 4') sign identifying the property proposed for vacation no less than fourteen (14) days prior to the City Commission public hearing. The sign must be placed on an applicant's property adjacent to and facing the right-of-way to be vacated and setback five (5) feet from the applicant's property line. A dated photograph of all signs must be submitted to the Sustainable Development Department by the applicant the day the sign is posted. The applicant must obtain a list with addresses of all property owners within five hundred (500) feet of the boundary lines of the property under consideration. The list must be certified by the County Property Appraiser, an abstract or title company, or a Florida licensed attorney. Commercial tenants occupying properties within a commercial property or plaza adjacent to the property to be vacated must be included in the notice requirements. Proof of notice to a commercial tenant must be done by posting notice on the main public entrance to the commercial property or plaza. A dated photograph of all postings must be submitted to the Sustainable Development Department by the applicant the day the notice was posted.
- c. Review. Once the application is deemed complete, the application will proceed as follows:

1. The application and supporting materials will be forwarded to members of the DRC for review and comment.
 2. After any DRC comments have been addressed, the Planning and Zoning Board will hold a public hearing and will evaluate the request based on the criteria herein and will make appropriate recommendations regarding access, public interest, and general obligations or release of such obligations to the City Commission.
 3. The City Commission will consider the reports and recommendations pursuant to this section, and after a quasi-judicial public hearing, either approve, approve with modifications, or deny the application.
- d. Criteria. The Planning and Zoning Board and City Commission will evaluate the vacation request from the standpoint of the need of the community as a whole, and must consider:
1. Access and whether the vacation will affect the ownership or right of convenient access of persons owning other properties in the subdivision or community, including, but not limited to, traffic circulation, delivery of emergency and municipal services, and pedestrian and bicycle safety;
 2. Public interest and general public benefits of the right-of-way as part of the City's roadway system now or in the future; and
 3. General reasons and benefits presented by the applicant, including cost-savings to the City, if any, as a result of the vacation and any mitigation plan proposed by the applicant to offset any potential impacts.

(4) Leases.

- a. Leases of any lands owned by the City for an initial term of ten (10) years or more must be authorized or approved by ordinance.
- b. Leases or other grants of interest in any lands owned by the City for an initial term of less than ten (10) years must be authorized or approved by resolution.

(d) Recording and Notice by City Clerk. Upon City Commission approval of an action taken pursuant to this section, the City Clerk will record the resolution or ordinance, as applicable, along with the documents relating to the City's legal interest in real property in the official public records books of Broward County, Florida, and forward a copy of such recording to the designated City department, if applicable.

Section 4: Code Amendment. That the Code of Ordinances of the City of Coconut Creek, Florida, is amended by amending Chapter 13, "Land Development

Code,” Article II, “Subdivision Regulations,” Division 2, “Subdivision Plat Requirements,” Section 13-165, “Final Plat Submission,” to read as follows:

Sec. 13-165. - Final plat submission.

(b) A property transaction site assessment (PTSA), conducted pursuant to Section 13-42(b)(5), “Property Transaction Site Assessments,” must be submitted to the City Engineer for review and approval prior to submission of any final plat that includes a dedication of land to the public or to the City for conservation, park or recreational purposes, unless waived by the City Engineer. The City Engineer may require a PTSA for any other dedications of land to the public or to the City by Plat, if needed, to protect the interests of the public health, safety and welfare. The recommendations of the City Engineer pursuant to the PTSA must be included as part of the Plat review and any applicable dedication or acceptance procedures.

Section 5: Repeal. That the Code of Ordinances of the City of Coconut Creek, Florida, is amended by amending Chapter 13, “Land Development Code,” Article IV, “Environmental Regulations,” by repealing Division 2, “Property Transaction Site Assessment,” in its entirety as provided in Exhibit “B.”

Section 6: 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 7: 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 will not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

Section 8: Codification. That the provisions of this ordinance will 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 9: Effective Date. That this ordinance will become effective upon its passage on second and final reading.

PASSED FIRST READING THIS 25TH DAY OF FEBRUARY, 2021.

PASSED SECOND READING THIS 11TH DAY OF MARCH, 2021.

Louis Sarbone, Mayor

Attest:

Leslie Wallace May, City Clerk

| | <u>1st</u> | <u>2nd</u> |
|-----------|-----------------------|-----------------------|
| Sarbone | <u>Aye</u> | <u>Aye</u> |
| Rydell | <u>Aye</u> | <u>Aye</u> |
| Tooley | <u>Aye</u> | <u>Aye</u> |
| Belvedere | <u>Aye</u> | <u>Aye</u> |
| Welch | <u>Aye</u> | <u>Aye</u> |

File Path:O:\Documents\AGREEMENTS\UTILITIES & ENGINEERING\Water-Wastewater\TEMPLATES FOR STANDARD WATER-WASTEWATER AGREEMENTS\FINAL\2021 Final Versions\Ordinance updating Procedures for Land Interests (FINAL 2.8.21) (UPLOAD FOR AGENDA).docx

Initials: Legal

Date: 2/8/21

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