

ORDINANCE NO. 30-22

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING CHAPTER 2, "ADMINISTRATIVE PROVISIONS", ARTICLE 2.4, "GENERAL PROCEDURES," SECTION 2.4.3, "SUBMISSION REQUIREMENTS", SUBSECTION (A), "STANDARD APPLICATION ITEMS" AND SUBSECTION (B), "STANDARD PLAN ITEMS", TO CLARIFY THE REQUIREMENTS FOR APPLICATION AND PLAN SUBMISSION FOR GREEN BUILDING CERTIFICATION; AMENDING SECTION 2.4.6, "PROCEDURES FOR OBTAINING PERMITS AND APPROVALS", SUBSECTION (B), "BUILDING PERMITS", TO INCLUDE GREEN CERTIFICATION AS A REQUIREMENT TO OBTAIN A BUILDING PERMIT; BY AMENDING CHAPTER 3, "PERFORMANCE STANDARDS," ARTICLE 3.2, "PERFORMANCE STANDARDS," SECTION 3.2.3, "STANDARDS FOR SITE PLAN AND/OR PLAT ACTIONS", TO ADD A NEW SUBSECTION (L) REFERENCING SUSTAINABILITY GOALS AND REGULATIONS FOR DEVELOPMENT OF SITE PLANS; BY AMENDING CHAPTER 4, "ZONING REGULATIONS", ARTICLE 4.4, "BASE ZONING DISTRICT", SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT", SUBSECTION (F), "ARCHITECTURAL STANDARDS", TO CLARIFY SUBSECTION (9), "REDUCTION OF URBAN HEAT ISLANDS", PROVIDING SPECIFICATIONS FOR ROOFED AND NON-ROOFED AREAS AND TO DELETE SUBSECTION (10), "GREEN BUILDING PRACTICES," IN ITS ENTIRETY; BY AMENDING CHAPTER 7, "BUILDING REGULATIONS", TO ENACT A NEW ARTICLE 7.11, "SUSTAINABLE DESIGN AND CONSTRUCTION PRACTICES", TO PROVIDE GREEN BUILDING CERTIFICATION REQUIREMENTS, APPLICATION PROCEDURES, AND BOND REQUIREMENTS FOR CITY AND PRIVATE DEVELOPMENT; AND BY AMENDING APPENDIX A, "DEFINITIONS" TO ADD A NEW DEFINITION FOR SUSTAINABILITY AND RESILIENCE FUND; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is concerned about and dedicated to protecting the environment and has a long-standing history of promoting sustainability; and

WHEREAS, a green building, also known as a sustainable building, is a structure that is designed, built, renovated, operated, or reused in an environmentally sensible resource-efficient manner; and

WHEREAS, there are multiple green building rating systems such as Florida Green Building Coalition (FGBC), National Green Building Standard (NGBS), Green Globes, and Leadership in Energy and Environmental Design (LEED) which provide standards for environmentally sustainable construction; and

WHEREAS, on November 21, 2019, the Green Implementation Advancement Board (“GIAB”) made a recommendation to the City Commission to amend the Land Development Regulations (“LDR”) to require all new development over 5,000 square feet within the incorporated Delray Beach city limits to obtain LEED Certification of minimum Gold level or the equivalent from another recognized certification standard; and

WHEREAS, on December 10, 2019, in a public meeting, the City Commission agreed with the recommendation from the GIAB and desired to pursue more sustainable and efficient green building requirements for new private and public developments as well as City developments; and

WHEREAS, on February 4, 2020, the City Commission adopted the Always Delray Comprehensive Plan that includes the Conservation, Sustainability, and Resiliency (CSR) Element, which includes the City of Delray Beach’s approach for expanding its environmental stewardship by focusing on preparation for climate change and sea level rise; and

WHEREAS, the proposed amendments were reviewed by the GIAB on February 18, 2021; the Downtown Development Authority on April 12, 2021; the Pineapple Grove Main Street on April 14, 2021; the Site Plan Review and Appearance Board on April 28, 2021; and, the Historic Preservation Board on May 5, 2021, with recommendations for approval resulting from all these, except the Downtown Development Authority; and

WHEREAS, pursuant to Florida Statutes 163.3174(4)(c), the Planning and Zoning Board for the City of Delray Beach, sitting as the Local Planning Agency, reviewed the proposed text amendment to the Land Development Regulations at a public hearing on May 17, 2021 and voted 7 to 0 to recommend that the proposed text amendments be approved, with amendments, finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations; and

WHEREAS, at second reading before the City Commission on August 10, 2021, direction was given to further engage with the public to ensure the ordinance would be workable and help achieve Comprehensive Plan goals related to sustainability; and

WHEREAS, City staff has continued to engage with the public regarding the green building ordinance, including outreach meetings which were held on October 14, 2021 and March 31, 2022; and

WHEREAS, the City Commission received update presentations on December 14, 2021 and July 19, 2022, and continued to support development of a green building ordinance; and

WHEREAS, the City Commission deems approval of this Ordinance to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large; and

WHEREAS, the City Commission of the City of Delray Beach finds the Ordinance is consistent with the Comprehensive Plan.

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

Section 1. The recitations set forth above are incorporated herein.

Section 2. Chapter 2, “Administrative Provisions,” Article 2.4, “General Procedures,” Section 2.4.3, “Submission requirements,” Subsection (A), “Standard application items,” and Subsection (B), “Standard plan items,” of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended as follows:

- (A) ***Standard application items.*** Every application for a development approval shall contain the following items, unless otherwise stated:
- (1) A complete application. ~~form, appropriate for the development approval which is sought, as provided by the Director.~~
 - (2) A copy of the latest recorded warranty deed, ~~as recorded with the County Clerk,~~ for all the property ~~under consideration associated with the development request,~~ and a certificate from an attorney-at-law or a title insurance company certifying who the current fee simple title holders of record of the subject property are, and the nature and extent of their interest therein.
 - (3) – (9) (These subsections shall remain in full force and effect as previously adopted)
 - (10) A draft rating checklist from a green building certification entity, demonstrating compliance with minimum certification pursuant to Section 7.11.1., if required.
- (B) ***Standard plan items.*** The following items, unless otherwise stated, shall be included as a part of any ~~plan application submittal submission which that~~ requires formal action by a Board or that may be approved by the Development Services Director or designee. These include but are not limited to: a site and development plan, landscaping plan, preliminary engineering plans, or master (concept) plan.
- (1) (This subsection shall remain in full force and effect as previously adopted)
 - (2) A title block ~~which that~~ shows: the project name, the scale, the date of the drawing, revision numbers and revision dates (revised drawings which do not have revision

numbers and dates shall not be accepted), page numbers, name of what is being presented (e.g. landscaping, paving and drainage, etc.), and ~~the~~ name of the firm or individual who prepared the drawing.

(3)–(24) (These subsections shall remain in full force and effect as previously adopted)

Section 3. Chapter 2, “Administrative Provisions,” Article 2.4, “General Procedures,” Section 2.4.6, “Procedures for obtaining permits and approvals,” Subsection (B), “Building Permits,” of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended as follows:

- (B) ***Building permits.*** A building permit is required for all items as set forth in the 2001 Florida Building Code and Chapter 7 of these Land Development Regulations, as amended. A building permit shall be sought via application through the Building Development Services Department on an application form as promulgated by the Chief Building Official. ~~Prior to issuance of a building permit, the Chief Building Official shall certify that the provisions of concurrency as set forth in the City’s Comprehensive Plan and by Section 3.1.1(B) is, or will be, appropriately met.~~

(1) Drawings and specifications. [Amd. Ord. 5-03 4/15/03]

- (a) All drawings and specifications shall bear the appropriate seal of engineer or architect as required by State Statute Chapter 471 for engineers and State Statute Chapter 481 for architects and Chapter 553 for threshold buildings. [Amd. Ord. 5-03 4/15/03]

(b) Green building certification documents, if required by Section 7.11.1.

(2)–(5) (These subsections shall remain in full force and effect as previously adopted)

Section 4. Chapter 3, “Performance Standards,” Article 3.2, “Performance Standards,” Section 3.2.3, “Standards for site plan and/or plat actions,” of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended as follows:

Sec. 3.2.3. - Standards for site plan and/or plat actions.

(A) – (K) (These subsections shall remain in full force and effect as previously adopted)

- (L) Development shall meet the intent of CSR 5, Energy Efficiency and Diverse Energy Mix and, where applicable, the requirements of LDR Section 7.11.1., Green Building Regulations.

Section 5. Chapter 4, “Zoning Regulations,” Article 4.4, “Base Zoning District,” Section 4.4.13, “Central Business (CBD) District,” Subsection (F), “Architectural standards,” of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended as follows:

- (F) **Architectural standards.** To ensure high quality architecture in the downtown area, the following architectural standards apply to all buildings in the Central Business District Sub-districts and in the OSSHAD with CBD Overlay. In addition to the standards in Section 4.6.18, the following standards apply in all CBD Sub-districts.

(1)–(8) (These subsections shall remain in full force and effect as previously adopted)

- (9) **Reduction of Urban Heat Islands.** ~~In order to~~ To reduce urban heat islands for both roofed and non-roofed areas, the following standards shall apply to building and site design:

- (a) **Non-roofed:** Provide landscaped or vegetated shade (within five years of planting) on at least 30 percent of non-roofed ~~impervious~~ surfaces on the site, including parking lots, walkways, plazas, etc.; or use light-colored/high-albedo materials (reflectance of at least 0.3) for 30 percent of the site's non-roofed impervious surfaces; or, use open-grid pavement system (net impervious area of less than 50 percent) for a minimum of 50 percent of the parking lot area.
- (b) **Roofed:** Use Energy Star roof-compliant, high-reflectance and high emissivity roofing based on the specifications for Low-Sloped Roofs (pitch: up to 2:12) and Steep Sloped Roofs (pitch: greater than 2:12) ~~(initial reflectance of at least 0.65 and three year aged reflectance of at least 0.5 when tested in accordance with ASTM E903 and emissivity of at least 0.9 when tested in accordance with ASTM 4080 for a minimum of 75 percent of the roof surface; or install a "green" (vegetated) roof for at least 50 percent of the roof area.~~
- (c) **Parking garage on roofs:** Provide landscaped or vegetated shade ~~on to cover~~ at least 30 percent (within five years of planting) of any exposed parking on the roof.

- ~~(10) **Green building practices.** Cross ventilation, energy efficiency, and other green building design shall be considered for all projects. All development which proposes to build 50,000 square feet or more, in one or more buildings, shall be at a minimum certified as Silver by the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) standards or equivalent standards adopted or approved by the City.~~

- ~~(a) At the time of Building Permit application, the owner shall submit:~~

1. ~~Proof of registration with the Green Building Certification Institute, or equivalent agency;~~
2. ~~A signed and sealed affidavit from a LEED Accredited Professional, or applicable designation, stating that the proposed Building is designed to achieve the required certification; and~~
3. ~~A LEED Scorecard, or equivalent document, identifying anticipated credits to be achieved.~~

(b) ~~Prior to the issuance of a Certificate of Occupancy, the owner shall submit~~

1. ~~Proof of certification by the Green Building Certification Institute, or equivalent agency;~~
2. ~~A bond posted in a form acceptable to the City, in the amount indicated below;~~
 - a. ~~Four percent of the total cost of construction for a building up to 100,000 square feet;~~
 - b. ~~Five percent of the total cost of construction for a building 100,001 to 200,000 square feet;~~
 - c. ~~Six percent of the total cost of construction for any building greater than 200,000 square feet; or~~
3. ~~Proof of partial compliance from the Green Building Certification Institute, or applicable agency, which demonstrates the credits presently achieved. In addition, a prorated portion of the full bond amount, as indicated in subsection 2(b) above, shall be posted based on the number of remaining credits needed to meet minimum certification requirements. The bond amount to be posted shall be calculated as follows:~~

$$\frac{(\text{credits remaining for certification} / \text{credits required for certification})}{x \text{ full bond amount}} = \text{prorated bond amount}$$

(c) ~~Forfeiture of bond. The bond required under this Section 4.4.13(H)(2)(c) shall be forfeited to the City in the event that the building does not meet the for LEED Silver certification or applicable certification. The City will draw down on the bond funds upon failure of the owner to submit proof of LEED Silver certification in a form acceptable to the City within one year of the City's issuance of the Certificate of Occupancy for the building. If~~

~~required certification is not achieved but a majority of the credits have been verified, the owner shall forfeit a portion of the bond based on any outstanding credits which shall be calculated as follows:~~

~~(credits remaining for certification / credits required for certification) x full bond amount = bond amount forfeited~~

~~If the amount to be forfeited is greater than 50 percent of the full bond amount, the bond shall be forfeited in its entirety. Funds that become available to the City from the forfeiture of the bond shall be placed in the In-Lieu Parking Fee Fund and earmarked for bicycle and pedestrian infrastructure purposes.~~

Section 6. Chapter 7, “Building Regulations,” of the Land Development Regulations of the City of Delray Beach, Florida shall be amended by enacting a new Article 7.11., “Sustainable Design and Construction Practices,” to read as follows:

7.11. – SUSTAINABLE DESIGN AND CONSTRUCTION PRACTICES

7.11.1. - Green Building Regulations

(A) **Purpose.** To promote sustainable development within the City of Delray Beach through efficient design and construction practices for new construction and addition(s) to achieve the following objectives:

- (1) increase energy efficiency in buildings;
- (2) encourage conservation and protection of water and other resources;
- (3) reduce waste generated by construction projects;
- (4) reduce long-term building operating and maintenance costs;
- (5) improve indoor air quality and occupant health;
- (6) increase use of solar, renewable, and alternative energy sources;
- (7) contribute to meeting state and local commitments to reduce greenhouse gas emissions;
- (8) encourage sound urban planning principles; and
- (9) encourage use of native and Florida Friendly landscaping, and habitat restoration.

(B) **Green Building Certification Entities.** The City recognizes the rating systems of green building certification entities, including but not limited to: the Florida Green Building Coalition (FGBC), National Green Building Standard (NGBS), Green Globes, or Leadership in Energy and Environmental Design (LEED).

(C) **Green Building Certification Required.** Certification is required through a green building certification entity as follows:

- (1) New construction or addition(s) consisting of 15,000 square feet of Gross Floor Area that is conditioned space, up to 50,000 square feet in one or more buildings on a single parcel or as a part of a unified development shall achieve at least the minimum level of certification from a green building certification entity.
- (2) New construction or addition(s) consisting of more than 50,000 square feet of Gross Floor Area that is conditioned space in one or more buildings on a single parcel or as a part of a unified development shall achieve at least a certification level of LEED Silver or equivalent.
- (3) The following development is excluded from the green certification requirement:
 - (a) Historic Buildings and Sites
 - (b) Substantial Improvements, as defined in Appendix “A,” “Definitions,” provided the existing exterior walls and roof deck remain.

(D) Procedure.

- (1) At the time of Building Permit application, the following shall be submitted:
 - (a) Proof of registration with a green building certification entity;
 - (b) A signed and sealed affidavit from a professional, who holds accreditation with the green building certification entity, stating the proposed building is designed to achieve the required certification; and
 - (c) A rating checklist from the green building certification entity, identifying anticipated credits to be achieved.
- (2) Prior to the issuance of a Certificate of Occupancy, the following shall be submitted:
 - (a) Proof of attainment of the required green building certification; or
 - (b) For private development, a bond posted in a form acceptable to the City, in the amount indicated below:
 - 1. Three percent of the total cost of construction for building(s) 15,000 to 25,000 square feet;
 - 2. Four percent of the total cost of construction for building(s) 25,001 up to 75,000 square feet;
 - 3. Five percent of the total cost of construction for building(s) 75,001 to 150,000 square feet;
 - 4. Six percent of the total cost of construction for building(s) greater than 150,000 square feet; or,
 - 5. A prorated portion of the full bond amount, as indicated above,

shall be posted if proof of partial compliance from the green building certification entity is submitted, which demonstrates the credits already accepted by the certification entity. The prorated bond amount to be posted shall be calculated as follows:

(credits remaining for certification/total credits required for certification) x full bond amount = prorated bond amount

- (c) Public development. The City, any agency of the City, and other units of government including the housing authority are not required to post a bond. If a public building does not achieve the required certification within one year of the issuance of a Certificate of Occupancy, a report stating the reasons why certification was not achieved and a plan to obtain the required certification shall be submitted to the City Manager and City Commission.

- (3) Forfeiture of bond. The bond required under this section shall be forfeited to the City if the building does not obtain the required green building certification. The City will draw upon the bond funds upon failure of the owner to submit proof of certification or proof of partial compliance, in a form acceptable to the City, within one year of the City's issuance of the Certificate of Occupancy for the building. Any forfeited bond funds shall be placed in the Sustainability and Resilience Fund.

- (a) If required certification is not achieved, but a majority of the credits have been verified, the owner shall forfeit a portion of the bond based on any outstanding credits which shall be calculated as follows:

(credits remaining for certification / total credits required for certification) x full bond amount = bond amount forfeited

- (b) If the amount to be forfeited is greater than 50 percent of the full bond amount, the bond shall be forfeited in its entirety.

(E) Regulation Reevaluation.

The provisions of this section shall be reevaluated within four years of adoption for effectiveness in achieving the desired result of increasing sustainable development throughout the City.

Section 7. That Appendix “A,” “Definitions”, of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended as follows:

SUSTAINABILITY AND RESILIENCE FUND. A fund dedicated for green initiatives including but not limited to the following: education and training of City staff; education

and outreach for the public; energy efficient improvements to municipally owned properties including weatherization, lighting upgrades, heating, ventilation and air conditioning upgrades; open space/green space improvements such as right-of-way tree plantings; pollution mitigation; drainage and sanitary sewer improvements; and other additional green initiatives as deemed appropriate by the Office of the City Manager.

Section 8. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, 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 thereof other than the part declared to be invalid.

Section 9. All ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 10. Specific authority is hereby given to codify this Ordinance.

Section 11. This Ordinance shall become effective one calendar year after its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the____day of _____, 2022.

ATTEST

Shelly Petrolia, Mayor

Katerri Johnson, City Clerk

First Reading_____

Second Reading_____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney