

ORDINANCE NO. 14-24

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES BY AMENDING CHAPTER 2, "ADMINISTRATIVE PROVISIONS," ARTICLE 2.4, "DEVELOPMENT APPLICATION REQUIREMENTS," SECTION 2.4.11, "RELIEF," TO ELIMINATE THE PUBLIC PARKING FEE PROVISIONS AND TO MODIFY THE REQUIRED FINDINGS AND PROCEDURES FOR APPROVING AN IN-LIEU OF PARKING FEE REQUEST; AMENDING CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.4, "BASE ZONING DISTRICT," SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT," TO CORRECT CROSS-REFERENCES AND IMPROVE READABILITY; AMENDING ARTICLE 4.6, "SUPPLEMENTAL DISTRICT REGULATIONS," SECTION 4.6.9, "OFF-STREET PARKING REGULATIONS," TO ELIMINATE THE PUBLIC PARKING FEE PROVISIONS, MODIFY PROVISIONS ALLOWING FOR ALTERNATE METHODS OF PROVIDING OFF-STREET PARKING, AND ADOPTING STANDARDS FOR AN IN-LIEU OF PARKING FEE PROGRAM; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations ("LDR") of the City of Delray Beach ("City") Code of Ordinances provide authority for the City Commission to amend, change, supplement, or repeal the LDR from time to time; and

WHEREAS, the LDR establish an in-lieu of parking program, allowing applicants and developers to pay a fee in-lieu of providing required off-street parking; and

WHEREAS, the City Commission determined that a review and update of existing regulations for in-lieu of parking requests should be commenced by the City; and

WHEREAS, the City adopted Resolution No. 102-23 on May 2, 2023, Resolution No. 196-23 on October 17, 2023, and Resolution No. 82-24 on April 9, 2024, adopting the pending ordinance doctrine and Florida law as applied to City's review of its zoning regulations relating to in-lieu of parking requests; and

WHEREAS, during the zoning in progress period, the City is deferring the acceptance and processing of development applications that request in-lieu of parking approval, to allow for the preparation and review of proposed amendments to the in-lieu of parking program in the City's LDR; and

WHEREAS, this Ordinance modifies the in-lieu of parking requests provisions of the LDR; and

WHEREAS, on July 3, 2024, the Historic Preservation Board voted 6 to 0 to recommend approval; and

WHEREAS, pursuant to Florida Statutes 163.3174(4), the Planning and Zoning Board for the City of Delray Beach, sitting as Local Planning Agency, considered Ordinance No. 14-24 at a public hearing on July 15, 2024, and voted 7 to 0 to recommend that the proposed text amendment be approved, finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations.

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. The City Commission of the City of Delray Beach finds this Ordinance is consistent with the Comprehensive Plan, meets the criteria set forth in the Land Development Regulations, and is in the best interests of the City.

Section 3. Chapter 2, “Administrative Provisions,” Article 2.4, “Development Application Requirements,” Section 2.4.11, “Relief,” of the Land Development Regulations of the City of Delray Beach, Florida is amended as follows:

Sec. 2.4.11. - Relief.

(A) - (E) (These subsections shall remain in full force and effect as adopted.)

(F) ~~***In-Lieu of parking and public parking fee request.***~~ An in-lieu of parking fee is a payment to the City’s Parking In-Lieu Fund as an alternative to providing required on-site parking. Fees shall be used for parking or pedestrian/bicycle infrastructure.

(1) ~~***General Purpose.***~~ An in-lieu of parking or public parking fee request must be approved by the City Commission with recommendations from the Parking Management Advisory Board and other Boards as deemed appropriate, prior to site plan consideration. The in-lieu of parking fee is an incentive to promote historic preservation, to maintain the moderate scale of the downtown, and to encourage revitalization and adaptive reuse by providing an alternative method to meet off-street parking requirements.

(2) ~~***Required information.***~~ The following information must be submitted for an in-lieu of parking fee In-Lieu of Parking or Public Parking Fee request:

- (a) Sketch Plan including current and proposed building square footage.
 - (b) ~~Scope of work~~ Description of the proposed project (i.e. expansion of use, change of use, new construction, etc.).
 - (c) ~~Current parking required and provided.~~ Calculations for the required on-site parking and the amount provided on-site and/or on-street.
 - (d) ~~Parking required and parking provided to facilitate proposal.~~
 - (e) ~~For public parking fee requests: Adjacent rights-of-way and proposed parking to be constructed.~~
 - (fd) Additional information necessary to support the required findings of this Subsection 2.4.11(G)(F)(5).
- (3) ***Procedure.*** ~~The applicant must file an~~ An application for in-lieu of parking or public parking fee request must be filed with the Development Services Department and shall be processed in the following manner:
- (a) Determination of sufficiency, followed by technical review of the complete application.
 - (b) ~~Request must comply with Sections 4.6.9(E)(3) or 4.6.9(E)(4).~~
 - (eb) Consideration and recommendation by Parking Management Advisory Board and other Boards, as applicable deemed appropriate.
 - (ec) Consideration and action by City Commission, prior to site plan consideration or Zoning Certificate of Use approval.
 - (d) ***Payment of in-lieu of parking fees.*** In-lieu of parking fees shall be based upon location and historic classification of eligible properties and shall be established by the City Commission through Resolution.
 1. Arrangements for payment shall be approved by the City Commission as part of the in-lieu of parking fee request.
 2. The in-lieu of parking fee may be paid in a single payment or in installments.

- a. **Single Payment.** Applications approved for a single payment of the fees must provide payment concurrent with the issuance of a building permit or approval of a Zoning Certificate of Use.
 - b. **Payment in installments.** Applications approved to pay fees in installments must execute an In-Lieu of Parking Fee Agreement with the City prior to issuance of a building permit or approval of a Zoning Certificate of Use.
 - i. In-Lieu of Parking Fee Agreements shall only be made between the City and the Owner(s) of the subject property and shall be recorded in the Public Records Office of Palm Beach County, Florida. The obligations imposed by such In-Lieu of Parking Fee Agreement constitute a covenant upon the property and shall bind successors, heirs, and assigns.
 - ii. Payments shall be made in three installments. A three percent administration fee shall be added to the in-lieu of parking fee.
 - a. The first installment shall be 50 percent of the total fee and is to be paid upon execution of the agreement.
 - b. The second installment shall be 25 percent of the total fee and is to be paid one year from the date of the execution of the agreement.
 - c. The third and final payment of 25 percent of the total fee is to be paid two years from the date of the execution of the agreement.
 - iii. The covenant shall be released upon full payment of the total fee.
- (4) **Conditions.** Conditions may be imposed pursuant to, but not limited to, Sections 4.6.9(E)(3) and/or 4.6.9(E)(4). Conditions may be imposed upon the granting of an in-lieu of parking fee request to the extent that they are directly related to encouraging other mobility options or mitigating any adverse effect that may be created by granting the in-lieu of parking fee request.
- (5) **Findings.** The City Commission must find that the request is consistent with the Land Development Regulations, City Comprehensive Plan, and all currently adopted City policies and/or studies. For In-lieu requests, an additional finding must be made that adequate public parking options are available. For Public Parking Fee requests, an additional finding must be made that adequate public parking will be available pursuant to the requirements of Section 4.6.9(E)(4). Prior to approving an in-lieu of parking fee request, the approving body shall make the following findings:

- (a) Adequate public parking is available within 750 feet of the subject site, based on the availability of on-street parking, public parking lots, and public parking garages within the last year. Utilization rates higher than 80% for public parking options are not considered to be available. Historic properties, as defined in Section 4.6.9(G)(2)(b) are exempt from this finding.
 - (b) The in-lieu of parking fee request supports at least one of the following City policy-driven goals:
 - 1. Preservation of a historic structure by allowing for its use, adaptive reuse, or expansion and to maintain the character of a historic district by avoiding excessive use of historic properties and/or properties located in historic districts for parking; or
 - 2. Investment in the West Atlantic Neighborhood Sub-district consistent with the West Atlantic Master Plan; or
 - 3. Adaptive reuse of an existing building.
 - (c) The in-lieu of parking fee request does not facilitate development that will demolish a contributing historic structure, a non-contributing structure that is at least 35 years old, or any structure that has been identified for potential designation through a resource survey.
- (6) ***Expiration of approval.*** ~~In-lieu of parking requests must be tied to a site plan and shall become void upon the expiration of the associated site plan. Any in-leu payments made will be returned to the applicant should the site plan expire.~~
- (a) ***Not Associated with a Concurrent Site Plan Approval.*** In-lieu of parking fee requests not associated with a concurrent site plan review shall become void 12 months following the date of the approval unless a valid building permit has been issued and development has commenced as defined in this Chapter. Prior to the expiration of this period, the applicant may request, in writing, a one-time six-month extension subject to City Commission approval. Further extensions of time shall require a new application.
 - (b) ***Associated with a Concurrent Site Plan Approval.*** In-lieu of parking fee requests associated with a site plan or Zoning Certificate of Use application shall become void upon the expiration of the associated approval.
 - (c) Any in-lieu of parking payments made will be returned to the applicant should the associated approval expire.

- (d) If over 50% of the original square footage associated with the in lieu of parking fee approval is demolished, the in-lieu of parking fee approval becomes void and no in lieu of parking fee credits shall apply to the redevelopment.

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

Sec. 4.4.13. - Central Business (CBD) District.

(A) – (H) (These subsections shall remain in full force and effect as adopted.)

(I) ***CBD parking standards.***

(1) This subsection shall remain in full force and effect as adopted).

(2) ***Minimum number of off-street parking spaces.***

(a) – (f) (These subsections shall remain in full force and effect as adopted.)

(g) Properties located within 750 feet of a public parking garage or the Planned Tri-Rail Coastal Link Station (See Figure 4.4.13-B-1) may opt to use the in-lieu of parking fee option provided in Section 4.6.9(E)(3)(G) for up to 50 percent of the required off-street parking amount, except that restaurant and lounge uses are limited to 30 percent. The distance shall be measured along the closest pedestrian route between nearest building entrances/the planned station location.

(h) – (j) (These subsections shall remain in full force and effect as adopted).

(3) ***Location and Access to Off-Street Parking.*** Parking and service areas shall be accessed and located at the rear or side of the building(s) whenever possible.

(a) ***Location.***

1. - 4. (These subsections shall remain in full force and effect as adopted.)

5. Offsite parking arrangements may be provided in-lieu instead of providing on-site parking as ~~set forth in~~ provided in Section 4.6.9(E)(~~5~~)(3), except that the other property must be located within 750 feet, measured along the closest pedestrian route between nearest building entrance and nearest pedestrian garage entrance.

6. If the required parking is not or cannot be provided on-site or off-site, the in-lieu of parking fee option provided in Section 4.6.9(E)(3)(G) may be applied for certain developments that advance City policy-driven goals.

7. (This subsection shall remain in full force and effect as adopted.)

(b) (This subsection shall remain in full force and effect as adopted.)

(4) (This subsection shall remain in full force and effect as adopted.)

(J) – (K) (These subsections shall remain in full force and effect as adopted.)

Section 5. Chapter 4, “Zoning regulations,” Article 4.6, “Supplemental District Regulations,” Section 4.6.9, “Off-street Parking Regulations,” of the Land Development Regulations of the City of Delray Beach, Florida is amended as follows:

Sec. 4.6.9. - Off-street parking regulations.

(A) ***Purpose and intent.*** The purpose of this Section is to ensure that adequate off-street parking is provided and maintained to meet the needs of users of structures and usage of land. All parking areas shall be designed and situated ~~so as to ensure their usefulness, to protect the public safety, and where appropriate,~~ to mitigate potential adverse impacts on adjacent uses or properties. It is the responsibility of the developer of property to provide and maintain adequate off-street parking.

(B) – (D) (These subsections shall remain in full force and effect as adopted.)

(E) ***Location of parking spaces.*** Required off-street parking shall generally be provided on the same lot or parcel as the building and uses for which it is required.

(1) Street parking, parking located in the public right-of-way, or parking located in public parking facilities shall not be used to satisfy on-site parking requirements, except as provided for herein. The terms "on-site parking" and "off-street parking" are synonymous. ~~However, pursuant to the requirements of Section 4.6.9(E)(3)(e) and Section 4.6.9(E)(4)(d), the construction of additional on-street public parking may reduce the number of in-lieu and public parking fee spaces required.~~

(2) ~~Required off-street parking shall be provided on the same lot, or parcel, as the building and uses for which it is required, except as provided for within this Subsection (E). When the provisions of Sections 4.6.9(E)(3) or 4.6.9(E)(4) cannot be applied and where adequate right-of-way exists, e-~~Construction of additional new on-street public parking spaces directly and wholly abutting the lot, or parcel, ~~may~~ shall be counted credited towards the off-street parking requirement of the lot or parcel it is intended to serve on a one-to-one basis, ~~provided that:~~

- (a) ~~The adjacent right of way has not been previously utilized for parking or, in cases where the adjacent right of way has been used for parking only those spaces in addition to the number of existing spaces shall be counted;~~
- (~~a~~b) ~~Such~~ The parking spaces are clearly marked identified on the site plan and designed in accordance with appropriate applicable City, County or State standards, as applicable; and,
- (~~b~~e) ~~Such~~ The parking spaces shall be publicly accessible and cannot be reserved or restricted by the owner(s) or tenant(s) of the lot or parcel, unless approved by the City Commission for special events or valet parking.

~~One parking space credit shall be given for each additional full space constructed abutting a lot or parcel. No part of an on-street parking space shall extend past a side property line of the lot it serves. On-street parking located on the opposite side of the right of way, and within the property lines, as extended to the opposite side of the right of way, may be counted toward fulfilling the off-street parking requirement when the adjacent lot is a railroad or waterway, and it does not warrant parking. In the event the City, County or State removes the parking spaces at any time for a public purpose, the property shall be considered lawfully nonconforming with respect to parking.~~

- (c) The parking spaces shall not extend past a side property line of the lot it serves.
- (d) Parking spaces located on the opposite side of the right-of-way, and within the property lines, as extended to the opposite side of the right-of-way, may be counted toward fulfilling the off-street parking requirement when the adjacent lot is a railroad or waterway, and does not warrant parking.
- (e) In the event the City, County, or State removes the parking spaces at any time for a public purpose, the property shall be considered legally nonconforming with respect to parking.

- (3) ~~In Lieu fee. Subject to the limitations of this Section, new development, use conversion to existing buildings, building additions and/or renovations, that result in the requirement to provide new parking or additional parking, have the option of requesting some of the parking spaces to be approved by the City Commission through the payment in lieu of parking program. Required parking for exclusively residential development or residential components of mixed use developments are not eligible for this in lieu option. A maximum limit of 30 percent of eligible required parking can be provided under this option, except for use conversions for which there is no maximum. Before granting such approvals, the City Commission must find that adequate public parking options are available and that the request~~

~~is consistent with the Land Development Regulations, City Comprehensive Plan, and all currently adopted City policies and/or studies.~~

~~Payment of a fee in lieu of required parking shall be pursuant to the following provisions:~~

- ~~(a) The in lieu fee is authorized only in the CBD and OSSHAD Zoning Districts, in compliance with the Supplemental District Regulations provisions therein, and shall be established by the City Commission through a resolution.~~
- ~~(b) Arrangements for payment shall be approved by the City Commission at the time of the approval of the in lieu fee. The fee amount shall be based upon the location of the property for which in lieu fees are being sought. Area descriptions are hereby established as follows: (See corresponding map, "In Lieu Fee Areas").~~
 - ~~(1) **Area 1:** Parcels located east of the Intracoastal Waterway which are zoned CBD and parcels located west of the Intracoastal Waterway which are zoned CBD and which front East Atlantic Avenue (as illustrated in the "In Lieu Fee Areas" map).~~
 - ~~(2) **Area 2:** Parcels located within the OSSHAD zoning district, except for those parcels which front East Atlantic Avenue (as illustrated in the "In Lieu Fee Areas" map), and parcels located within the Pineapple Grove Main Street area which are zoned CBD.~~
 - ~~(3) **Area 3:** Parcels located within the West Atlantic Neighborhood which are zoned CBD.~~
 - ~~(4) **Area 4:** Parcels located south of NE 4th Street, east of the north/ south alley between NE 2nd and NE 3rd Avenues, north of NE 3rd Street, and west of the FEC Railroad that are zoned CBD.~~
 - ~~(5) **Area 5:** Parcels located south of SE 2nd Street, east of Swinton Avenue, north of SE 7th Street and west of SE 3rd Avenue that are zoned CBD. [Amd. Ord. 09-15 05/20/2015] (Ord. No. 15-17, § 2, 5-2-17)~~
- ~~(c) All proceeds from such a fee shall be used for parking or pedestrian/bicycle infrastructure purposes.~~
- ~~(d) For property owners opting to pay in full, or lessees of properties, payment of the in lieu fee is due upon issuance of a building permit.~~

~~The in lieu fee may be paid in full upon issuance of a building permit or in installments. Applicants for an in lieu fee which is not paid in full at time of permit,~~

~~must enter into an In Lieu of Parking Fee Agreement with the City prior to or upon issuance of a building permit. Such agreement shall be recorded with the Public Records Office of Palm Beach County, Florida. The obligations imposed by such an In Lieu of Parking Fee Agreement constitute a restrictive covenant upon a property, and shall bind successors, heirs and assigns. The restrictive covenant shall be released upon full payment of the in-lieu parking fees including attorneys' fees and costs. In-Lieu of Parking Fee Agreements shall only be made between the City and the Owner(s) of the subject property. If an In Lieu of Parking Fee Agreement is entered into, installment payments shall be made over a three-year time period in three installments. The first installment shall be 50 percent of the total fee and is to be paid upon signing the agreement. The second installment shall be 25 percent of the total fee and is due on the second anniversary date of the signing of the agreement. The third and final payment of 25 percent of the total fee is due on the third anniversary date of the signing of the agreement. There shall be no interest due under this payment schedule.~~

- ~~(e) In addition to in-lieu fees due, where adequate right-of-way exists adjacent to a proposed project for which an in-lieu parking fee has been approved, the applicant must construct additional on-street parking, not to exceed the total amount of spaces subject to in-lieu fees unless authorized by the City Commission. The applicant will be credited up to one-half of a parking space for each full parking space constructed within public right-of-way. (For example, the applicant requests to pay the in-lieu fee on four spaces; the applicant constructs four spaces in the right-of-way; the applicant must only pay the in-lieu fee for two spaces). Crediting of spaces constructed in the right-of-way resulting in a fraction shall be rounded down. Credit may not be taken for those parking spaces constructed in the public right-of-way which are required to meet the performance standards for new developments.~~
 - ~~(f) Requests to allow in-lieu fee payments that are not associated with a site plan or a site plan modification shall expire two years after such request is approved. The fee charged shall be the fee that is set forth in the Land Development Regulations at the time payment is made for spaces required to accommodate the associated site plan or site plan modification.~~
- (4) ***Public parking fee.*** ~~When parking requirements are applied to new development, in-fill development, which has been vacant for five years or longer, from a change of use, or adding floor space to an existing building; the City Commission may approve the payment of a fee towards the construction of a public parking structure in lieu of providing such required parking on-site. This option cannot be utilized in conjunction with the In-Lieu Fee provisions of subsection 4.6.9(E)(3) or Section 4.6.9(B)(4), where private land is acquired by a governmental entity for parking or park purposes.~~

- (a) ~~For properties located within 750 feet of a programmed public parking facility, excluding property zoned CBD an alternative to providing all the required parking on-site is to contribute towards the construction of the parking facility. The cost per space shall be based upon the location of the property for which the public parking fee is being sought. Area descriptions and corresponding fee amounts are hereby established as follows: If for whatever reason the public parking does not get built the City shall retain the fee to provide parking or parking maintenance in the quadrant of the City where the development is located.~~
- (1) ~~*Area 1:* Parcels located east of Swinton Avenue and South Dixie Highway — \$23,400.00 per space.~~
- (2) ~~*Area 2:* Parcels located west of the Swinton Avenue and South Dixie Highway — \$18,400.00 per space.~~
- (b) ~~The Public Parking Fee is limited to no more than 25 percent of the total required parking of a development not to exceed ten percent of the total number of parking spaces associated with the Programmed Public Parking Facility. Within a Programmed Public Parking Facility, a maximum of 25 percent of the total number of parking spaces provided within the Facility are available to the Public Parking Fee Program.~~
- (c) ~~When a programmed public parking facility is not anticipated to be constructed within three years of site plan approval of the proposed development, a building permit will not be issued unless the proposed development constructs additional on-street parking within the right-of-way adjacent to the development equating to 75 percent of the total number of spaces subject to the Public Parking Fee.~~
- (d) ~~Where adequate right-of-way exists adjacent to the proposed project for which the fee has been approved, the applicant must construct additional on-street parking, not to exceed the total amount of spaces subject to the fee unless authorized by the City Commission. The applicant will be credited up to one-half of a parking space for each full parking space constructed within public right-of-way. (For example, the applicant requests to pay the public parking fee on four spaces; the applicant constructs four spaces in the right-of-way; the applicant must only pay the public parking fee for four spaces). Crediting of spaces constructed in the right-of-way resulting in a fraction shall be rounded down.~~
- (e) ~~All required residential and guest parking spaces associated with a development and required guest room parking for hotels, motels, residential type inns, bed and breakfasts, and similar uses must be provided on-site.~~
- (f) ~~The public parking fee must be paid in full upon issuance of a building permit.~~

- ~~(g)~~ The Director of Planning and Zoning or designee shall maintain a record of the developments that utilize the Public Parking Fee Program and the number of spaces allocated to the program for each Programmed Public Parking Facility.
 - ~~(h)~~ The operating hours of the Programmed Public Parking Facility are at the sole discretion of the governmental entity that owns the facility, and shall not be affected by parking spaces intended for commercial tenants of the development.
 - ~~(i)~~ The Public Parking Fee amount shall be reviewed at a minimum every two years and the fee adjusted as warranted.
 - ~~(j)~~ Requests to allow public parking fee payments that are not associated with a site plan or a site plan modification shall expire two years after such request is approved. The fee charged shall be the fee that is set forth in the Land Development Regulations at the time payment is made for spaces required to accommodate the associated site plan or site plan modification.
- ~~(35)~~ ***Off-site parking.*** In instances where uses do not have sufficient space to accommodate customer and employee parking demands on-site, required parking requirements may be provided off-site in accordance with the following:
- (a) ***Normal operations.*** Parking for day-to-day operation may be provided on other property within 300 feet provided that both properties are of the same general type of zone designation (i.e. commercial, industrial, office, etc.) or when the off-site parking site is zoned CF and a conditional use approval for use as a parking lot has been approved, and when in compliance with, and pursuant to, the following:
 - ~~(1.)~~ The 300-foot distance shall be measured along an acceptable pedestrian route;
 - ~~(2.)~~ Approval of such off-site parking may be granted by the body which has approval authority of the related site and development plan;
 - ~~(3.)~~ An agreement providing an easement for such use is prepared pursuant to Subsection (E)~~(5)~~(3)(c) and is recorded prior to certification of the site and development plan;
 - ~~(4.)~~ The provision of the parking easement shall not diminish the ability of the property upon which it is placed, to accommodate its required parking.
 - (b) ***Special events/facilities.*** In instances where uses and/or facilities have large parking demands/requirements and ~~which~~ are otherwise subject to conditional use approval

(e.g. stadiums, places of assembly, community and civic centers, recreational areas, etc.), such parking may be provided off-site in accordance with the following:-

~~(1.) Approval of such off-site parking may be granted by the body with which has approval authority of the related conditional use.~~

~~(2.) A parking and transportation plan must be provided, presented in order to obtain such approval. ~~The plan must~~ identifying parking areas and ~~demonstrate~~ demonstrating the manner in which transportation to the use site, security, maintenance, and related matters will be accommodated.~~

~~(3.) Easements, agreements, or other appropriate legal documents which assure assuring continued availability of such parking shall be required as a part of the parking and transportation plan.~~

~~(c)(6)~~ ***Off-site parking agreement.*** The owner of the alternate off-street parking area, and the owner of the principal use or building (including the land on which it is situated), shall enter into a written agreement with the City (in such form as may be approved by the City Attorney), ~~with enforcement running to the City,~~ providing that the ~~land comprising the~~ alternate off-street parking area shall never be disposed of except in conjunction with the transfer or sale of the building which the parking area is intended to serve, so long as the parking facilities are required. ~~The owner agrees that such agreement shall be in recordable form, the expense of recording to be borne by the owner, and that the~~ The agreement shall constitute a covenant running with the land binding upon the owners, heirs, administrators, successors, and assigns, and shall be enforceable by the City. The agreement shall be recorded by the City Clerk, with the owner of the principal use or building bearing the costs of recordation. The agreement shall be released by the Commission at such time as the alternate off-street parking facilities are no longer required or when the owner provides other lawful off-street parking facilities. The owner of the principal use or building shall bear the expense of recording the release of the agreement.

~~(47)~~ ***Location and Spacing Requirements for Bicycle Parking.*** Bicycle parking shall be placed in a manner to avoid conflicts between vehicles, buildings, and pedestrian clear zones or sidewalks. Bicycles are considered for site planning purposes to be six feet long by two feet wide.

(a) – (d) (these subsections shall remain in full force and effect as adopted.)

(F) (This subsection shall remain in full force and effect as adopted.)

(G) **In-Lieu of Parking Fee.**

- (1) **Purpose.** The in-lieu of parking fee is an incentive to promote historic preservation, to maintain the moderate scale of the downtown, and to encourage revitalization and adaptive reuse by providing an alternative method to meet off-street parking requirements.
- (2) **Eligible Requests.** The in-lieu of parking fee is available in the following areas, subject to limitations and exceptions in Subsection (3) below.
 - (a) **Central Business (CBD) District Zoning District.**
 1. Within the West Atlantic Neighborhood Sub-district (Figure 4.4.13-B-2, Regulating Plan).
 2. Within the Railroad Corridor Sub-district (Figure 4.4.13-B-3), except for the area located south of SE 2nd Street and west of the FEC Railway.
 3. Within the Central Core Sub-district that is west of NE 6th Avenue and south of NE 4th Street and north of SE 2nd Street.
 - (b) **Historic Sites and Districts.** Individually designated properties or structures, contributing structures, or non-contributing structures at least 35 years in age located within a historic district with Central Business (CBD) District or Old School Square Historic Arts District (OSSHAD) zoning.
- (3) **Limitations and exceptions.** In-lieu of parking fees may be approved subject to the findings in Section 2.4.11(F) with the following limitations and exceptions:
 - (a) Required parking for residential development or residential components of mixed-use developments, including required guest parking, are not eligible for the in-lieu of parking fee option.
 - (b) All nonresidential parking required due to a change in commercial use of a building existing as of September 16, 2024, or associated outdoor use area, can be provided by in-lieu of parking fees.
 - (c) Non-historic properties. A maximum of 30 percent of nonresidential required parking can be provided by in-lieu of parking fees for additions and/or new development resulting in buildings no more than two stories in height or for the expansion of outdoor use areas.

(d) Historic sites and districts. As defined in Subsection (G)(2)(b) above, all nonresidential required parking can be provided by in-lieu of parking fees for use conversions, expansion of outdoor use areas, and additions resulting in buildings that are no more than three stories in height.

(e) Where adequate right-of-way, as determined by the City, exists adjacent to a proposed project for which an in-lieu of parking fee has been requested, the applicant must construct additional on-street parking, not to exceed the total number of spaces subject to in-lieu of parking fees. The number of on-street parking spaces provided shall offset the in-lieu of parking fee on a one-to-one basis.

(4) Approved in-lieu of parking fee requests shall credit subsequent occupants of the building with the same number of spaces toward required parking.

Section 6. All ordinances or parts thereof in conflict or inconsistent herewith be and the same are hereby repealed.

Section 7. 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 8. Specific authority is hereby given to the City Clerk to codify this Ordinance.

Section 9. This Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this ____ day of _____, 2024.

ATTEST:

Katteri Johnson, City Clerk

Thomas F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

First Reading _____

Second Reading _____