



# City of Delray Beach

100 N.W. 1st Avenue  
Delray Beach, FL 33444

## Cover Memorandum/Staff Report

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File #: 22-1453

Agenda Date: 11/1/2022

Item #: 8.A.

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**TO:** Mayor and Commissioners  
**FROM:** Kent Edwards, Sustainability Officer  
**THROUGH:** Terrence R. Moore, ICMA-CM  
**DATE:** November 1, 2022

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. (SECOND READING/PUBLIC HEARING).

**Recommended Action:**

Motion to approve Ordinance No. 30-22 on Second Reading to amend the Land Development Regulations for the purpose of requiring that all new construction over 15,000 square feet, whether public or private, obtain green building certification from one of the specified green building certification programs.

**Background:**

The provisions of the revised draft ordinance include the following:

- Acceptable certification programs include: Florida Green Building Coalition, National Green

Building Standard, Green Globes, or Leadership in Energy and Environmental Design (LEED)

- Buildings of 15,000 - 50,000 square feet required to obtain minimum level green building certification
- Buildings larger than 50,000 square feet required to obtain Silver or equivalent level green building certification

In 2009, a group of concerned citizens joined together, researched, and wrote the Green Task Force report, which was submitted to the City Commission. This report included recommendations that would improve the City's level of sustainability and resilience. Implementing a green building ordinance was one of the recommendations made in the report.

In 2015, Ordinance 02-15 was passed, implementing green building requirements in the Central Business District only. The ordinance applied to construction of buildings 50,000 square feet or more and required achieving a LEED Silver certification or equivalent.

Many other municipalities have adopted green building ordinances, but the design of the ordinances varies greatly. Most ordinances are voluntary in nature, requiring documentation that green features were considered in the design, or simply recommending that green features be incorporated. Several ordinances offer an incentive for attaining green building certification. The incentives offered include expedited permitting, fee refunds, tax rebates, site development or zoning bonuses, and others.

There are only a few jurisdictions in south Florida that have adopted an ordinance which requires achieving green building certification. The City of Miami Beach's ordinance has a threshold of 7000 - 10,000 square feet, and a LEED Gold or equivalent certification requirement in order to obtain full bond or fee refund. The City of Coconut Creek's ordinance has a 5000 square feet threshold, and LEED certified level requirement; and the City of Coral Gables' ordinance has a 20,000 square feet threshold, and LEED Silver level requirement.

In November 2019, the Green Implementation Advancement Board (GIAB) made a recommendation to the City Commission that the green building ordinance be revised. The GIAB recommended that the revised ordinance apply throughout the City, for buildings of 5000 square feet or more to achieve a LEED Gold level certification or equivalent. At the December 10, 2019, meeting the City Commission unanimously agreed, giving direction that a green building ordinance be developed as recommended by the GIAB.

A draft ordinance was written and taken to 7 public meetings between February and May 2021. Though there was general support for revising the existing green building ordinance (Section 4.4.13 (F)(10) LDR), multiple suggestions were made for changes to the draft ordinance.

At the May 17, 2021, Planning and Zoning Board meeting, the green building ordinance was considered. The attached Planning and Zoning Board Staff Report includes an analysis of the original draft ordinance amendments, including comments received at previous public meetings. The Planning and Zoning Board voted 7 to 0 to approve the ordinance with amendments. Recommended amendments included raising the threshold to 15,000 square feet, using incentives to encourage other new construction to obtain green building certification, and tiering certification levels.

At second reading before the City Commission on August 10, 2021, concerns consistent with those heard in other public meetings were raised about certain provisions of the ordinance, and direction

was given to hold an additional outreach meeting and report back to the Commission.

On October 14, 2021, a public outreach meeting was held, which was well-attended by the development community. As was the case in prior public meetings, there was general support for revising the existing LDR in ways that would encourage more green buildings. Significant concerns were also voiced for some aspects of the draft ordinance, including:

- Gold level certification too high
- 5000 square feet threshold too low
- Lead time needed before the ordinance takes effect
- The ordinance should not apply to Historic Buildings
- Potential for additional permit processing time due to the ordinance

The question of additional cost was raised in multiple public and small group meetings. Many studies have compared the costs for green certified buildings versus conventional non-green certified buildings. The results of these studies vary, but there are general trends. The difference in construction cost between green buildings versus conventional buildings has decreased over the past decade, with many instances where costs are the same. This is due to the construction industry becoming more efficient at including green features into designs, and sustainable materials becoming more widely available and competitively priced. There is virtually no difference in construction cost when comparing the minimum level of certification to conventional construction, because compliance with many Florida Building Code requirements qualifies for a significant number of points toward green building certification. Higher levels of green building certification can be associated with a larger cost differential compared to conventional construction. Considering the life-cycle cost though, the operation and maintenance of green buildings is consistently less expensive than that for conventional construction.

Some concerns were also voiced which indicated clarification of the ordinance was needed. Several comments and questions arose regarding whether City projects would be subject to the ordinance. The original draft ordinance amendments, as written, did apply to City projects. Another frequent concern was that the LEED certification program is one of the most difficult green building programs, and that it should not be required. The certification requirement in the draft ordinance stated that, "... LEED standards or an equivalent certification..." was required.

On December 14, 2021, an update presentation was given to the Commission. The presentation detailed the concerns that had been voiced, and direction was given to continue discussions with the community and return to the Commission with an update.

A public outreach meeting was held on March 31, 2022, with presentations made by representatives from the Florida Green Building Coalition, and the National Green Building Standard, two alternative green building certifications that are proposed in the draft ordinance. The representatives explained how the process for obtaining their program certifications was more streamlined and less costly than LEED, but still results in a documented sustainable outcome.

On July 19, 2022, an update presentation was provided to the Commission, and there was further discussion of the major design features of the ordinance. The Commission also indicated that provisions for electric vehicle (EV)-readiness and solar-readiness should be developed.

Staff researched EV and solar issues, talked with local counterparts, and reviewed other municipality's ordinances. Ordinances from other cities that specifically address EV-readiness mainly apply only to multifamily and commercial development. Generally, ordinances take effect at a threshold number of total parking spaces, and the number of EV-ready parking spaces required is a percentage of the total parking spaces. The type of charger (Level 1, 2, or 3) must also be set, and different Levels use different design and materials. Also, ordinances require different levels of readiness, e.g. EV-capable, or EV-Ready, which entail different amounts of the complete EV system.

Solar-readiness requires installation of the electrical components that connect to the photovoltaic (PV) system, which should include consideration of where solar panels will be installed so that conduit and wiring are run to these areas. This is not always a straightforward decision, and can require modeling of sun exposure. Literature indicates other factors that should be considered include site orientation, shading, roof construction specifications, electrical panel specifications, etc. Other considerations include capability for battery backup, or use of electricity generated by the PV system when the grid is down.

In addition to the above-described considerations, the development of ordinance language by other municipalities incorporated input from staff involved in building permitting and planning staff, and community outreach. For all the existing ordinances reviewed, additional permitting review was necessary, to review the design, and to apply the correct requirements for the type of construction.

For the reasons described above, there is not language regarding EV- or solar-readiness in the attached draft ordinance amendments. With further research and outreach, ordinance language could be developed.

The attached draft ordinance amendments include the following significant revisions:

- Multiple green building certification programs are specifically listed
- The minimum level of green building certification is required for buildings 15,000 to 50,000 square feet
- The Silver or equivalent level green building certification is required for buildings larger than 50,000 square feet
- The effective date is one year after approval at second reading
- Historic buildings and many renovations are not subject to the ordinance

The proposed ordinance would broaden the application of green building requirements, increasing the number of green buildings in the City, consistent with performance measures for Comprehensive Plan Goal CSR 5, Energy Efficiency and Diverse Energy Mix.

Pursuant to LDR Section 2.4.5(M)(5), Findings, in addition to LDR Section 1.1.6(A), *the City Commission must make a finding that the text amendment is consistent with and furthers the Goals, Objectives and Policies (GOPs) of the Comprehensive Plan.*

A complete review of the applicable Goals, Objectives, and Policies from the Always Delray Comprehensive Plan are provided in the attached Planning and Zoning Board Staff Report from their

May 17, 2021 meeting. Note that some of the details in the report are no longer accurate, due to revisions of the draft ordinance described in this Agenda Cover Report.

**City Attorney Review:**

Approved as to form and legal sufficiency.

**Funding Source/Financial Impact:**

The Development Services Department has a position for a Green Building/Flood Plain Manager whose primary responsibility would be to review the application upon submittal and prior to the issuance of the Certificate of Occupancy, as well as monitor the bond requirements.

**Timing of Request:**

None