

ORDINANCE NO. 12-18

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES AT SECTION 4.5.1 "HISTORIC PRESERVATION: DESIGNATED DISTRICTS, SITES, AND BUILDINGS" OF ARTICLE 4.5. BY ADOPTING AN ENTIRELY NEW SUBSECTION WITH ENTIRELY NEW REGULATIONS AND A NEW TITLE REGARDING HISTORIC SITE AND BUILDINGS MAINTENANCE REGULATIONS ALONG WITH REVISED OR EXPANDED PENALTIES FOR FAILURE TO CONFORM TO THESE REQUIREMENTS; FURTHER AMENDING SUBSECTION 4.5.1 BY REPEALING SUB-SECTION 4.5.1.(H) AND READOPTING IT TO PROVIDE FOR REVISED PROCEDURES FOR REQUESTS OF CERTIFICATES OF ECONOMIC HARDSHIP; FINALLY, AMENDING SUBPARAGRAPH 4.5.1.(J)(10) BY REPEALING AND READOPTING IT TO PROVIDE FOR REVISED REGULATIONS CONCERNING TAX EXEMPTION REVOCATION PROCEEDINGS; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to LDR Section 2.2.6, the Historic Preservation Board reviewed these amendments at a public hearing held on June 13, 2018, and voted 7 to 0 to recommend approval of the amendments to the Planning and Zoning Board; and,

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on July 16, 2018 and voted 5 to 0 to recommend that the changes be approved; and,

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and,

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Board Staff Report; and,

WHEREAS, the City Commission of the City of Delray Beach finds the ordinance is consistent with the Comprehensive Plan; and,

WHEREAS, The City Commission of the City of Delray Beach, Florida, recognizes the need to research and develop a plan for the continued preservation of historic structures and sites through educational materials and incentives and to designate additional structures and districts located within the City of Delray Beach; and,

WHEREAS, recognizing this need, the Historic Preservation Task Force was commissioned by the City Manager; and,

WHEREAS, the Historic Preservation Task Force was comprised of members from diverse educational and professional backgrounds representing residents of the City of Delray Beach, community organizations, historic preservation societies, and City of Delray Beach staff; and,

WHEREAS, based on the recommendations of the Historic Preservation Task Force, the City Commission desires to clarify its language in the Land Development Regulations concerning the maintenance and perpetuation of historic structures and districts; and,

WHEREAS, the City Commission desires to impose affirmative maintenance requirements for the owners of structures or buildings located within historic districts in order to avoid the degradation and neglect, whether willful or inadvertent, of historic structures located within the City of Delray Beach; and,

WHEREAS, the City Commission finds it necessary and appropriate to impose penalties for certain egregious acts or continued neglect affecting historic structures or buildings in order to protect and preserve said structures.

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

Section 1. The above recitals are true and correct and are hereby incorporated into this Ordinance as if fully restated herein.

Section 2. Article 4.5. “Overlay and Environmental Management Districts” of the Land Development Regulations of the City of Delray Beach, Florida, is amended by adopting an entirely new Subparagraph 4.5.1.(E)(9) to be newly titled and to read as follows:

(9) Maintenance Requirements for Historic Sites and Buildings; Penalties

- (a) Every owner of historic and archeological sites or owner of buildings, structures, improvements and appurtenances within historic districts shall keep in good repair and shall properly maintain both the exterior and site. The owner of a building or structure located within a historic district through the exercise of sufficient and reasonable care shall provide for the maintenance and upkeep of these sites and buildings to prevent destruction and decay as caused by either deterioration or other hazards.
- (b) In addition to the general standards and guidelines set forth at Sub-paragraph 4.5.1.(E)(5) above, the owner shall preserve a historic structure against decay and deterioration through the correction of the following deficiencies:
 - 1. Facades which may fall and injure the subject or adjoining structure or building, or members of the public.

2. Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports.
 3. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.
 4. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors.
 5. Presence or signs that would indicate rotting wood or termite infestation.
 6. Any fault or defect in the structure or building which renders it structurally unsafe, insufficiently protected from weathering, or not properly watertight.
- (c) In the sole discretion of the City, a violation of any of the provisions of sub-paragraph 4.5.1.(E)(9) may be penalized either as set forth in the City of Delray Beach Operating Guidelines Manual for the Neighborhood and Community Services Department, as may be amended from time to time, or additionally by imposing the penalties provided for in Sec. 37.36 of the City Code of Ordinances which have been authorized pursuant to state law at Chapter 162, F.S.
- (d) Notwithstanding the penalties set forth at above sub-paragraph (c), and in addition to the penalties authorized by this section and the Code of Ordinances, a violation of these maintenance regulations which are determined by the City to be a either a repeat violation, or a serious threat to the public health, safety and welfare; or if the violation is irreparable or irreversible in nature, then in any of these circumstances, the owner may also be subject to the following provisions:
1. Following the determination by the City of violations under one or more of the circumstances set forth above, no permit will be issued for any alteration or new construction affecting such property for a period of five (5) years, other than permits necessary to correct the violation. However, upon presentation of evidence satisfactory to the Historic Preservation Board that the violation has been corrected, any remaining portion of the five-year prohibition on issuance of a permit may be waived. Notwithstanding this waiver, no other provision or penalty of Sub-paragraph 4.5.1.(E)(9) may be waived by the Historic Preservation Board.
 2. As a condition for any new land use approval, the owner may be required to rebuild, reconstruct, restore or replicate the structure or object on the property in accordance with applicable standards and development procedures as set forth in Section 4.5.1.
 3. The ad valorem tax exemption provided for historic structures or properties under Section 4.5.1 and all historic preservation incentives will not apply to historically designated buildings, structures, landscape features, improvements or sites that are damaged, destroyed, or demolished through either action or inaction of the owner concerning maintenance regulation violations identified in sub-paragraph 4.5.1.(E)(9)(b) herein.

Section 3. Sub-section 4.5.1(H) "Undue economic hardship" at Article 4.5. "Overlay and Environmental Management Districts" of the Land Development Regulations of the City of Delray Beach, Florida, is amended by repealing Sub-section 4.5.1.(H) and readopting it to read as follows:

(H) Undue economic hardship.

(1) A property owner(s) experiencing undue economic hardship may file an application for a Certificate of Economic Hardship. A Certificate of Economic Hardship application must be submitted within thirty (30) days of the issuance of a violation notice. The violation notice shall state the defects observed as well as the various incentive programs and preservation organizations that may be available for repair.

(a) The Historic Preservation Board shall schedule a public hearing within sixty (60) days from the receipt of the application and shall provide notice of such hearing to the appropriate entities including the Special Magistrate and the Neighborhood and Community Services Department. A copy of the application for Certificate of Economic Hardship shall be provided to the Code Enforcement Board.

(b) During the period between receipt of the Certificate of Economic Hardship application and the hearing before the Board, it is the sole responsibility of the applicant to discuss the proposed violation(s) with various local preservation organizations to consider alternatives that will avoid an economic hardship and have the least adverse effect to the property and the districts. Proof of the applicant's efforts will be a factor considered by the Historic Preservation Board in determining whether to issue a Certificate of Economic Hardship.

(2) In all instances where there is a claim of undue economic hardship, the property owner shall submit with the application for Certificate of Economic Hardship, within a reasonable period of time, prior to a meeting with the Historic Preservation Board, the following documentation:

(a) For All Property:

1. The amount paid for the property, the date of purchase, and the party from whom purchased;
2. The assessed value of the land and improvements thereon, according to the two most recent assessments;
3. Real estate taxes for the previous two years;
4. Annual debt service or mortgage payments, if any, for the previous two years;
5. All appraisals, if any, obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
6. Any listing of the property for sale or rent, price asked, and offers received, if any; and
7. Any consideration by the owner as to profitable adaptive uses for the property, including but not limited to possible fair market rents for the property if it were rented or leased in its current condition.

(b) **For Income Property (Actual or Potential):**

1. The annual gross income from the property for the previous two years, if any;
2. The annual cash flow, if any, for the previous two years; and
3. The status of leases, rentals, or sales for the previous two years.

(3) An applicant may submit and the Board may require that an applicant furnish additional information relevant to the Board's determination of any alleged undue economic hardship. The Board may also require, in appropriate circumstances, that information be furnished under oath.

(4) In the event that any of the required information is not reasonably available to the property owner and cannot be obtained by the property owner, the property owner shall file statement of the information which cannot be obtained and the reasons why such information cannot be reasonably obtained. Where such unobtainable information concerns required financial information, the property owner will submit a statement describing estimates which will be as accurate as are feasible.

Section 4. Sub-section 4.5.1(J) "Tax exemption for historic properties" at Article 4.5. "Overlay and Environmental Management Districts" of the Land Development Regulations of the City of Delray Beach, Florida, is amended by repealing Subparagraph 4.5.1.(J)(10) and readopting it to read as follows:

(10) Revocation Proceedings:

(a) The Historic Preservation Board may initiate proceedings to revoke the ad valorem tax exemption provided herein, in the event the applicant, or subsequent owner or successors in interest to the property, fails to maintain the property according to the terms, conditions and standards as set forth at Sections 4.5.1(E)(5) and 4.5.1(E)(9) or violates the terms of the Historic Preservation Exemption Covenant.

(b) ~~The Historic Preservation Planner~~ The Director of Development Services, or designee, shall provide notice to the current owner of record of the property and the Historic Preservation Board shall hold a revocation hearing and make a recommendation to the City Commission.

(c) The City Commission shall review the recommendation of the Historic Preservation Board and make a determination as to whether the tax exemption shall be revoked, a written resolution revoking the exemption and notice of penalties as provided in Paragraph 8 of the covenant ~~shall~~ will be provided to the owner, the Palm Beach County Property Appraiser, and filed in the official records of Palm Beach County.

(d) Upon receipt of the resolution revoking the tax exemption, the Palm Beach County Property Appraiser shall discontinue the tax exemption on the property as of January 1st of the year following receipt of the notice of revocation.

Section 5. 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 6. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 7. Specific authority is hereby given to codify this Ordinance.

Section 8. 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 the _____ day of _____, 2018.

ATTEST:

M A Y O R

City Clerk
First Reading_____

Second Reading_____

Approved as to form and legal sufficiency:

R. Max Lohman, City Attorney