

ORDINANCE NO. XX-21

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 “GENERAL PROCEDURES,” SECTION 2.4.3 “SUBMISSION REQUIREMENTS”, SUBSECTION (A), “STANDARD APPLICATION ITEMS” AND SUBSECTION (B), “STANDARD PLAN ITEMS”, TO ADD REQUIRED APPLICATION ITEMS AND MAKE GRAMMATTICAL CHANGES TO PLAN ITEMS; BY AMENDING CHAPTER 3, “PERFORMANCE STANDARDS,” ARTICLE 3.2, “PERFORMANCE STANDARDS,” SECTION 3.2.3, “STANDARDS FOR SITE PLAN AND/OR PLAT ACTIONS”, TO REQUIRE LEED CERTIFICATION FOR NEW CONSTRUCTION OR ADDITIONS OVER 5,000 SQUARE FEET; 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 AMEND GREEN BUILDING PRACTICES AND REFER TO ARTICLE 7.11 FOR REGULATIONS; BY AMENDING CHAPTER 7, “BUILDING REGULATIONS,” BY ENACTING A NEW ARTICLE 7.11, “RESILIENT DESIGN AND CONSTRUCTION PRACTICES”, TO OUTLINE CERTIFICATION REQUIREMENTS FOR NEW PRIVATE AND PUBLIC DEVELOPMENT, PROVIDING APPLICATION PROCEDURES, BOND REQUIREMENTS, AND ESTABLISHING A GREEN BUILDING FUND, 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 seeks to promote 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, the Leadership in Energy and Environmental Design (“LEED”) green building rating system, developed by the US Green Building Council (“USGBC”) provides 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 of a nationally 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 Downtown Development Authority on Month XX, 2021, Site Plan Review and Appearance Board on Month XX, 2021, Historic Preservation Board on Month XX, 2021, and Green Implementation Advancement Board on Month XX, 2021; 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 Month XX, 2021 and voted X to X to recommend that the proposed text amendments 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; 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. That the recitations set forth above are incorporated herein.

Section 2. That 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, be and the same 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 completed application form; appropriate for the development approval ~~which is sought, as provided by the Director~~ being requested.
- (2) A copy of the latest 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)

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

(10) Draft rating checklist from Green Building certification entity pursuant to Section 7.11 of the Land Development Regulations of the City of Delray Beach, Florida.

(11) A digital copy of the application on CD or flash-drive including all plan exhibits, photographs that show existing conditions and proposed changes, color samples, exhibits and other documentation, is required with the submittal of the application and each subsequent re-submittal. The digital copy must be in a PDF format, not to exceed 10 MB in size.

(12) Physical hardcopies of plans shall be prepared at a size of 8½” x 11” or 11”x 17”, depending upon legibility.

(B) *Standard plan items.* The following items, unless otherwise specified, 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 their appointee. 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. That Section 3.2.3, “Standards for site plan and/or plat actions,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same 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, whether new construction or addition(s), consisting of 5,000 square feet gross floor area or more in one or more buildings on a single parcel or as a part of a unified development, shall meet the intent of Goal CSR 5, Energy Efficiency and Diverse Energy Mix and the requirements of LDR Section 7.11, Resilient Design and Construction Practices.

Section 4. That Section 4.4.13, “Central Business (CBD) District,” Subsection (F), “Architectural Standards,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read 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)–(9) (These subsections shall remain in full force and effect as previously adopted)

- (10) *Green building practices.* Cross-ventilation, energy efficiency, and 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.~~ Projects constructing 5,000 square feet gross floor area or more in one or more buildings on a single parcel or as a part of a unified development are required to meet the requirements of Section 7.11.1, Green Building Regulations.

~~(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:~~

~~$$\frac{\text{credits remaining for certification}}{\text{credits required for certification}} \times \text{full bond amount} = \text{prorated bond amount}$$~~

~~(e) 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:~~

~~$$\frac{\text{credits remaining for certification}}{\text{credits required for certification}} \times \text{full bond amount} = \text{bond amount forfeited}$$~~

~~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 5. That Chapter 7, "Building Regulations", of the Land Development Regulations of the City of Delray Beach, Florida shall be amended by enacting a new Section 7.11 "Resilient Design and Construction Practices", as follows:

7.11. - RESILIENT DESIGN AND CONSTRUCTION PRACTICES

7.11.1. - Green Building Regulations

(A) Purpose. The purpose of this section shall be to promote sustainable development within the City of Delray Beach by mandating efficient design and construction practices for all new construction

and addition(s) which propose to build 5,000 square feet gross floor area or more in one or more buildings on a single parcel or as a part of a unified development.

(1) This section is designed to achieve the following objectives:

- (a) increase energy efficiency in buildings;
- (b) encourage conservation and protection of water and other resources;
- (c) reduce waste generated by construction projects;
- (d) reduce long-term building operating and maintenance costs;
- (e) improve indoor air quality and occupant health;
- (f) increase use of solar, renewable, and alternative energy sources;
- (g) contribute to meeting state and local commitments to reduce greenhouse gas emissions;
- (h) encourage sound urban planning principles; and
- (i) encourage use of native and Florida Friendly landscaping, and habitat restoration.

(2) The provisions of this section shall be re-evaluated within three years of adoption for their effectiveness in achieving the desired result of sustainable development throughout the City.

(B) Certification Required. All public and private new construction and addition(s) consisting of 5,000 square feet gross floor area or more in one or more buildings on a single parcel or as part of a unified development, shall be at a minimum certified as Gold by the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) standards or an equivalent certification approved by the City.

(1) Qualified City Development.

- (a) Contracts. Contracts for the design and construction of new qualified City development shall include:
 - 1. The requirement to appoint a qualified person to serve as the LEED facilitator and administrator who shall be responsible for submitting the project for review and certification to USGBC. The LEED facilitator and administrator must be a LEED accredited professional or equivalent.
 - 2. The obligation to provide the City the following documentation in accordance with a schedule established by the City:
 - a. A completed LEED checklist demonstrating the qualified City building is designed to obtain certification;
 - b. A written explanation of how the qualified City building will achieve LEED Gold certification;
 - c. Design plans that demonstrate how the qualified City building will achieve LEED Gold certification;

- d. Any other documentation or information necessary to indicate how the qualified City building will achieve LEED Gold certification; and
 - e. Documentation evidencing the consideration of City priorities in the process of selecting features for the qualified City building.
- (b) Solicitation of contracts. The applicable requirements of this section shall be included in the solicitation documents for the design and construction of any qualified City new development or addition.

(2) Qualified Public and Private Development.

- (a) At the time of Building Permit application, the following shall be submitted:
- 1. Proof of registration with the USGBC, or equivalent agency;
 - 2. A signed and sealed affidavit from a LEED Accredited Professional, or equivalent 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 following shall be submitted:
- 1. Proof of complete required LEED Gold level certification, or equivalent certification; OR
 - 2. A bond posted in a form acceptable to the City, in the amount indicated below:
 - a. Three percent of the total cost of construction for building(s) 5,000 to 25,000 square feet;
 - b. Four percent of the total cost of construction for building(s) 25,001 up to 75,000 square feet;
 - c. Five percent of the total cost of construction for building(s) 75,001 to 150,000 square feet;
 - d. Six percent of the total cost of construction for building(s) greater than 150,000 square feet; or,
 - e. Proof of partial compliance from Green Building Certification Inc. or applicable agency, which demonstrates the credits presently achieved. In addition, a prorated portion of the full bond amount, as indicated 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:

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

3. Forfeiture of bond. The bond required under this section shall be forfeited to the City in the event that the building does not meet the requirements for LEED Gold certification or equivalent certification. The City will draw upon the bond funds upon failure of the owner to submit proof of LEED Gold certification or equivalent certification in a form acceptable to the City within one year of the City's issuance of the Certificate of Occupancy for the building.
 - 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. Funds that become available to the City from the forfeiture of the bond shall be placed in the Sustainability and Resilience Fund.
4. In lieu of the required bond, the City shall place the equivalent of the bond amount into the Sustainability and Resilience Fund, in the event that a building does not meet the requirements for LEED Gold certification or equivalent certification.

Section 6. That Appendix “A,” “Definitions”, of the Land Development Regulations of the City of Delray Beach, Florida, be and the same, is hereby amended as follows:

SUSTAINABILITY AND RESILIENCE FUND. Funds that become available to the City from the forfeiture of performance bonds described in Section 7.11 shall be deposited in the Sustainability and Resilience Fund established by the City. The City shall use the funds for any of the following related to green initiatives: 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 rights-of-way tree plantings, traffic calming, pollution mitigation, low impact drainage and sanitary sewer improvements; and any other additional improvements consistent with green initiatives as deemed appropriate by the Office of Sustainability and Resilience.

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

Section 9. Specific authority is hereby given to codify this Ordinance.

Section 10. 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 _____, 2021.

ATTEST

Shelly Petrolia, Mayor

Katerri Johnson, City Clerk

First Reading _____

Second Reading _____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney