

ORDINANCE NO. 2024-02

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AMENDING CHAPTER 30, SECTION 30-10.3 OF THE CODE OF ORDINANCES STYLED: “APPLICABILITY AND VESTED RIGHTS”, REGARDING APPLICATION EXPIRATION; AMENDING CHAPTER 30, SECTION 30-30.3 OF THE CODE STYLED “ADMINISTRATIVE DEVELOPMENT APPROVALS”, BY CREATING LIVE LOCAL ACT COMPLIANCE AND APPLICATION REQUIREMENTS, AND PROVIDING AN EFFECTIVE DATE. *(Sponsored by Mayor Karyn Cunningham)*

WHEREAS, the Village Council has identified “accessible, efficient and transparent government energized by engaged and informed residents” as a focus area; and

WHEREAS, the Village Council continuously reviews its services to residents and business owners; and

WHEREAS, the Village Council desires to update Chapter 30 of the Land Development Regulations of the Code of Ordinances to address development applications; and

WHEREAS, the Florida Legislature passed Senate Bill 102, known as the Live Local Act, during the 2023 legislative session; and

WHEREAS, the Live Local Act states that all affordable housing projects that fall under the Act must be reviewed administratively; and

WHEREAS, the Live Local Act further preempts some provisions of local comprehensive plans, zoning and land development regulation provisions for certain development projects that contain at least 40 percent affordable housing units, with the project being affordable housing units for at least a 30-year period; and

WHEREAS, the Live Local Act does not provide specific definitions to key terms within the Act; and

WHEREAS, the Live Local Act does not specify how a proposed development is intended to evidence compliance with the affordable housing requirements necessary to benefit from the preemptions afforded under the Act during the application phase or during the 30 year tax exemption period of the development; nor does the Act set forth any penalties for non-compliance; and

WHEREAS, the Live Local Act does not specify how a proposed development is intended to evidence compliance with the affordable housing requirements necessary to benefit from the preemptions afforded under the Act during the application phase or during the 30 year tax exemption period of the development; nor does the Act set forth any penalties for non-compliance; and

WHEREAS, the Community and Economic Development Department staff has consulted with other municipalities and municipal representatives who have similar concerns; and

WHEREAS, the Village Council deems it necessary for the general welfare of the Village to amend the Village of Palmetto Bay Land Development Regulations in order to provide certification standards and implementation criteria for development proposed in conformance with the Live Local Act; and

WHEREAS, the proposed amendments to Chapter 30 of the Code of Ordinances allows the Village to require proof of compliance with the affordable requirements necessary to benefit from the Live Local Act; and

WHEREAS, the proposed amendments further clarify the responsibility of all development applications to the Village to respond in a reasonable timeframe.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE OF PALMETTO BAY, FLORIDA, THAT:

Section 1. The above recitals are true, correct and incorporated herein by this reference.

Section 2. Chapter 30 "Zoning" of the Code of Ordinances is hereby amended to read as follows:

(Additional text is shown as underlined; deleted text is shown as ~~strikethrough~~)

Section 30-10.3 Applicability and vested rights

(g) *Application approval.* Development applications requiring ~~either a public hearing or administrative approval~~ shall expire after 180 days if the applicant has not scheduled a community workshop and public hearing. Development applications seeking administrative approval shall become null and void after 120 days if the applicant has not provided a complete response to a determination of non-compliance consistent with Section 30-30.3. A new application and fee shall be required and the submission shall conform to all the requirements of Chapter 30 at the time of resubmission. ~~or received an administrative determination after the community planning and development department determines the application is complete. If a public hearing is required, upon receipt of an official staff recommendation to the village council, development applications will expire 180 days after the application can be scheduled and after meeting notice and public workshop requirements~~ The above time frames shall be extended once only for a maximum of thirty days, unless an extension is requested by the village.

Sec. 30-30.3. Administrative development approvals.

(d) *Live Local Act Compliance.* Projects that seek administrative approval consistent with Section 166.04151(7) Florida Statutes, shall demonstrate a commitment to affordable housing at the time of administrative site plan review submission.

- (1) Definitions. For the purposes of this subsection, the following definitions are provided for terminology not defined in Florida Statutes with respect to implementation consistent with the Village of Palmetto Bay Land Development Regulations:

Allowed as used in Fla Stat. 166.04151 shall mean as allowed under the provisions of the Village land development regulations at the time of a proposal is submitted for development subject to Fla Stat. 166.04151.

Commercial as used in Fla. Stat. 166.04151 shall mean only the commercial zoning districts of the Village which are only properties zoned B-1 Limited Business District, B-2 Business District, and Old Cutler Neighborhood Commercial District and no other zoning district.

Height within one mile as used in Fla Stat. 166.04151 shall mean one mile as can be traveled by human beings along the public streets of the Village within the normal permitted lanes of travel from the center point of the proposed development site and shall not mean a straight-line distance as a bird might be able to travel.

Highest allowed density as used in Fla Stat. 166.04151 shall mean 54 units per acre as this is the highest residential density currently allowed and is expressed in units per gross acre and shall not mean density as used elsewhere in Chapter 166 Fla Stat. when referring to intensity terminology applied to floor area ratio.

Highest currently allowed height as used in Fla Stat. 166.04151 shall only mean such height allowed by right within the Village and not heights allowed if such height would require special approval under the Village land development regulations of the proposed project under the Live Local Act.

Industrial as used in Fla Stat 166.04151 shall not apply in the Village, as no industrial zoning district exists within the Village.

Mixed Use as used in Fla Sta. 166,04151 shall mean only the mixed use zoning districts of the Village which are only properties zoned Downtown and Village Mixed Use and no other zoning district.

- (2) Process for Approval. The approval process for a qualifying development located within an eligible zoning district, shall include payment of a fee, and if application is not made by the owner of record, then a contract or agreement to purchase (that permits black-out of the financial purchase details) but is clear as to dates of effectiveness and due diligence periods, an application on a form provided by the Village, site development plans, and affidavit of commitment to Miami-Dade County's Affordable Housing standards for income qualification, monitoring, and inspection during the full minimum 30 years of operation including acknowledgement of the auditing requirements for eligibility of all tenants living within the designated affordable housing units in order to establish compliance with the provisions of the Live Local Act and penalties for non-compliance as further outlined below. Upon application, the Village shall complete a sufficiency review of the materials submitted and provide a response that the application is complete or specifically what items are still required at a date sixty (60) days after submittal. The applicant shall then provide the items that are required for the sufficiency

review which shall then begin another sufficiency review period that shall be completed at a date sixty (60) days following re-submittal and so on until a complete application is provided. A contract to purchase must be in full force and effect during the sufficiency and review periods established within this Section. If any due diligence period or other contract matter expires within such time periods, then the Village shall not begin or complete the sufficiency review or application review.

(3) Minimum Requirements. The minimum requirements for certification of compliance with the Live Local Act are as follows:

a. Site Development Plan that meets the requires of Section 30-30.2. - General application requirements.

b. An affidavit confirming a 30-year commitment to provide affordable housing and monetary cap on all rent charges including any and all other fees as may be assessed to the occupants of units deemed to be affordable consistent with Fla Stat. 420.0004; an affidavit attesting to agreement and acceptance as to the annual audit requirements by a certified public accounting firm selected from a list provided by the Village and paid for by the petitioners, or its successors, attesting to satisfaction of the such income and total rental fees and affidavit attesting to agreement and understanding that violations of such commitments shall be subject to a fine of no less than \$5,000.00 per day for each violation determined by the annual audit and for each day the annual audit is not received by the Village after March 1st of every year and affidavit agreement that any such fines shall constitute a lien on said property if not paid to the Village within 60 days of receipt of the audit by the Village by March 1st of every year and

agreement to reimburse the Village for any legal expenses in the enforcement of these provisions.

- c. An affidavit indicating the petitioners' commitment to comply with specific chapters of the Village Code applicable to the project (i.e., tree and landscaping, green building standards, public art, etc.) at the time of permitting.
- d. Compliance with all land development regulations applicable to the zoning district in which the project is proposed, except only as otherwise preempted by the Live Local Act with respect to height and density.
- e. Project Narrative. The application shall contain a narrative which demonstrates compliance with section 166.04151(7)(a)- (g), Florida Statutes.
- f. Affidavit of Commitment and Restrictive Covenants. As a condition of approval and prior to any site or building permits for the project being requested or obtained, the applicant (and the property owner, if different from the applicant) must execute and have recorded in the public records of Miami-Dade County, Florida, an Affidavit of Commitment and Restrictive Covenants, first approved by the Village Attorney to ensure compliance with all code requirements. Such Affidavit of Commitment and Restrictive Covenants shall: (i) have terms acceptable to the Village, (ii) run with and be binding upon the land for no less than thirty (30) years from the issuance of a certificate of occupancy for the last principal structure of the project (iii) be enforceable by the Village; (iv) detail the affordable housing and project conditions and restrictions required by this section, the Live Local Act and on the approval of the project; (v) provide for monitoring, and compliance requirements; and (vi) provide for the Village's enforcement remedies. Mortgage holders will be required to execute and record a

subordination of their lien interest to such Affidavit of Commitment and Restrictive Covenants prior to or simultaneously with the recording of the Affidavit of Commitment and Restrictive Covenants. The Village will provide the monitoring and compliance forms upon submittal of the application, deemed complete and sufficient.

g. Agent Authorization. An affidavit with the property owner's notarized authorization.

- (4) Timeframe for Review and Issuance of Approval: Upon receipt of a complete application, the Village will complete its review and provide a response sixty (60) days from receipt of such materials as required by this subsection.
- (5) Fee: The fee for a qualifying development will be \$2,500 plus: \$750 per acre or portion thereof and \$250 per 10 units or portion thereof and \$225 per 5,000 sq. ft. or portion thereof or as otherwise amended within the adopted Fee Schedule from time to time by the Village Council at public hearing.
- (6) Duration of Approval: An approval received through this process shall have three (3) months from the date of approval to apply for a building permit with the Village. The application process and certification of compliance with the Live Local Act shall begin again if a building permit has not been issued by the Village within six (6) months of submittal of a building permit. This approval may be extended for an additional three (3) months at the discretion of the Community and Economic Development Director for one time based on building permit application sufficiency.

~~(d)~~ (e) Administrative (de minimus) variances.

~~(e)~~ (f) Scrivener's errors.

Section 3. Severability. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause, or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses, or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Codification. It is the intent of the Village Council and is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the Village of Palmetto Bay, Florida, that sections of this Ordinance may be numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflicting Provisions. The provisions of the Code of Ordinances of the Village of Palmetto Bay, Florida and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 6. Effective Date. This Ordinance shall take effect immediately upon enactment.

PASSED ON FIRST READING this 18th day of September, 2023.

PASSED AND ADOPTED ON SECOND READING this 26th day of February, 2024.

Attest: _____
Missy Arocha
Village Clerk

Karyn Cunningham
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

John C. Dellagloria
Village Attorney

VOTE ON FIRST READING:

Mayor Karyn Cunningham	<u>YES</u>
Council Member Steven Cody	<u>YES</u>
Council Member Marsha Matson	<u>NO</u>
Vice-Mayor Leanne Tellam	<u>YES</u>
Council Member Patrick Fiore	<u>NO</u>

FINAL VOTE AT ADOPTION ON SECOND READING:

Mayor Karyn Cunningham	<u>YES</u>
Council Member Steven Cody	<u>YES</u>
Council Member Marsha Matson	<u>NO</u>
Vice-Mayor Leanne Tellam	<u>YES</u>
Council Member Patrick Fiore	<u>NO</u>