

ORDINANCE NO. 2016-017

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA, TO AMEND CHAPTER 28 OF THE “LAND DEVELOPMENT CODE”, OF THE CITY’S CODE OF ORDINANCES BY AMENDING ARTICLE 305 “INCENTIVES,” TO MODIFY THE APPLICABILITY OF INCENTIVES AND RELOCATE INCENTIVES FOR PUBLIC PARKS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, provide municipalities the authority to exercise any power for municipal purposes, except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

WHEREAS, Objective V of the Future Land Use Element of the City of Dania Beach Comprehensive Plan provides that the City of Dania Beach will maintain land development regulations and zoning regulations to implement the City’s Comprehensive Plan; and

WHEREAS, the City Commission of the City of Dania Beach (“City Commission”) finds it periodically necessary to amend its Code of Ordinances and Land Development Code (“Code”) in order to update regulations and procedures to implement municipal goals and objectives; and

WHEREAS, City staff recommends approval of the proposed changes; and

WHEREAS, the Planning and Zoning Board, sitting as the City’s Local Planning Agency, has reviewed this Ordinance, and has determined that it is consistent with the City’s Comprehensive Plan; and

WHEREAS, pursuant to Section 166.041 (c)(2), Florida Statutes, notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed Ordinance and of the time and dates of the public hearings; and

WHEREAS, two (2) public hearings were held before the City Commission pursuant to the published notice described above; and

WHEREAS, the City Commission finds that adoption of this Ordinance through its police powers will protect the public health, safety, and welfare of the residents of the City, and furthers the purpose, goals, objectives, and policies of the City’s Comprehensive Plan.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE

CITY OF DANIA BEACH, FLORIDA¹:

Section 1. That the preceding “Whereas” clauses are ratified and incorporated as a record of the legislative intent of this Ordinance.

Section 2. That Article 305 “Incentives” of the City of Dania Beach Land Development Code is amended to read as follows:

ARTICLE 305. – INCENTIVES

Sec. 305-10. - Applicability.

The incentive program is a voluntary program that developers may choose to participate in, for which incentives outlined in this Article may be awarded. Height, density and lot coverage bonuses may be awarded when a developer provides one or more of attainable housing, public parking, environmentally sustainable development (green building practices), or open space. The incentive program established in this Article is a discretionary program in which development incentives may be granted by the City Commission if the impact of the proposed incentive would be compatible with existing and planned land uses. Compatibility shall be evaluated with consideration to the existing and zoned uses on contiguous properties in the general area, and in the zoning district where the use is to be located, and the general character of the area, considering population density, design, scale and orientation of structures to the area, property values and existing similar uses or zoning. This Article does not to create any enforceable property right(s).

Sec. 305-20. - Schedule of incentives.

The table below shows the amenities that may qualify for height, density and impervious area incentives within the different districts. The amount of the bonuses are delineated below the table. The developer may propose ~~can determine~~ the type and extent of amenities desired for the City’s consideration. ~~to provide in order to reach the maximum permissible height shown on the height maps.~~

Y = Incentive credit available N = Incentive credit not available	Districts					
List of amenities that <u>may</u> qualify for development incentives	CC	EDBB-MU	SFED-MU	NBHD-MU	GTWY-MU	NBHD RES
Provide public open space or paseo [see section 305-30]	Y	N	N	Y	N	N

¹ Additions to the text are shown in underline. Deletions to the text are shown in ~~strikethrough~~.

Provide attainable housing [see section 305-40]	Y	Y	Y	N	N	N
Use sustainable building practices [section 305-50]	Y	Y	Y	Y	Y	N
Provide public parking [section 305-60]	Y	Y	Y	Y	Y	N
Provide public parks [section 305-70]	Y	N	N	N	Y	N

- ~~(A) In the City Center District and the Gateway Mixed Use District, a development may be eligible for a density and height bonus not to exceed a maximum of two (2) stories and thirty (30) du/ac subject to the maximum density and height limitations established under the applicable zoning district. The public park incentive fee shall be calculated pursuant to section 305-70(b), which shall be applied to the city's park fund for park land acquisition or park improvements. The full public park incentive fee shall be paid in order to exercise any density or height bonus or combination thereof, under this section. The full public park incentive fee shall be paid regardless of whether the use of the density or height bonus is limited by the maximum density or height established under the applicable zoning district or the applicant chooses not to exercise portions of the height or density bonuses. Eligibility for a density and height bonus under this section shall require development containing a minimum of twenty five (25) dwelling units.~~
- ~~(B) The public park incentive fee shall be equal in value to fifty cents (\$0.50) per square foot of estimated residential gross floor area.~~
- ~~(C) For purposes of this section, residential gross floor area shall be defined as the sum of the habitable horizontal area of all residential floors of all stories of a residential building or structure under a roof, and including, interior amenity areas, clubhouses, lobby areas however excluding private garages, maintenance areas, utility areas, operational areas, storage closets, electrical and mechanical facilities, balconies, stairwells, elevators, basements and subbasements, covered parking, loading areas, and parking structures.~~
- ~~(D) The contributions referenced in this section are calculated in 2014 dollars and shall be adjusted by the Consumer Price Index on an annual basis.~~
- ~~(E) Payment of the public park incentive fees shall be made prior to issuance of a building permit.²~~

Sec. 305-30. - Incentives for providing public open space.

² This section has been relocated and renumbered as Section 305-70 "Incentives for public parks."

- (A) In the Neighborhood Mixed-Use District, a one (1) story and ten (10) du/ac bonus incentive may be granted for a minimum two thousand five hundred (2,500) sf open space that complies with article 312, or a pedestrian paseo that complies with section 309-20. The open space or paseo may shall satisfy one hundred (100) percent of the pervious open space requirement for the lot that provides it.
- (B) In the City Center District, a two (2) stories and twenty (20) du/ac bonus incentive may be granted for a minimum two thousand five hundred (2,500) sf open space that complies with article 312, or pedestrian paseo that complies with section 309-20, and one (1) story and ten (10) du/ac for each full additional one thousand five hundred (1,500) sf of open space that complies with article 312. The open space or paseo may shall satisfy one hundred (100) percent of the pervious open space requirement for the lot that provides it.
- (C) Adjoining lots may earn each contribute a portion of a single open space and may earn the bonus. The bonus may shall be allocated among the lots proportionate to the open space contribution as agreed between the property owners in a binding development agreement or other instrument acceptable to the city attorney.
- (D) This intensity bonus is available at the discretion determination of the city commission ~~or designee~~ based upon whether the any given location is appropriate and desirable for open space.
- (E) The standards for provision of public open space for incentive credit shall be as provided in article 312.

Sec. 305-40. - Incentives for providing attainable housing.

- (A) *Definition.* Attainable housing shall mean "workforce," "moderate workforce" and "low-income" as defined by the Administrative Rules Document of the Broward County Land Use Plan, article 8, and includes both owner-occupied and rental housing.
- (B) [*Workforce-income unit bonus.*] A Bonus density incentive of one (1) market-rate dwelling unit for each unit in the building that is workforce-income may be granted, up to the maximum density allowed in the district. One (1) additional story may shall be permitted for every ten (10) du/ac of bonus market-rate units that are awarded, or fraction thereof.

Example: a one-acre lot within the SFED-MU District is permitted to build twenty-five (25) du (25/ac) by right and up to fifty (50) du/ac through the attainable housing bonus. Of the twenty-five (25) permitted units, all will be workforce-income units, which allows a bonus of twenty-five (25) market-rate units. The developer may now construct fifty (50) du (25 + 25), which does not exceed the maximum fifty (50) du/ac density allowed with bonuses. The twenty-five (25) bonus units equal a bonus density of twenty-five (25) du/ac, which divided by ten (10) du/ac per story equals two and one-half (2.5), rounded to three (3) bonus stories.

- (C) [*Moderate workforce-income unit bonus.*] A Bonus density incentive of three (3) market-rate dwelling units for each unit that is moderate workforce-income may be granted, ~~unit~~ up to the maximum density allowed in the district. One (1) additional story may shall be permitted for every ten (10) du/ac of bonus market-rate units that are awarded, or fraction thereof.

Example: a one-acre lot within the SFED-MU District is permitted to build twenty-five (25) du (25/ac) by right and up to fifty (50) du/ac through the attainable housing bonus. Of the twenty-five (25) permitted units, the developer incorporates eight (8) moderate-income units, which allows a bonus of twenty-four (24) market-rate units. The developer may now construct forty-nine (49) du (25 + 24), which does not exceed the maximum fifty (50) du/ac density allowed with bonuses. The twenty-four (24) bonus units equal a bonus density of twenty-four (24) du/ac, which divided by ten (10) du/ac per story equals two and four-tenths (2.4), rounded to three (3) bonus stories.

- (D) [*Low-income unit bonus.*] A Bonus density incentive of five (5) market-rate dwelling units for each low-income unit may be granted, up to the maximum density allowed in the district, provided that no additional bonus units are available for providing low-income units in excess of fifteen (15) percent of the number of dwelling units in the building. One (1) additional story may shall be permitted for every ten (10) du/ac of bonus market-rate units that are awarded, or fraction thereof.

Example: a one-acre lot within the SFED-MU District is permitted to build twenty-five (25) du (25/ac) by right and up to fifty (50) du/ac through the attainable housing bonus. Of the twenty-five (25) permitted units, the developer incorporates five (5) low-income units, which allows a bonus of twenty-five (25) market-rate units. The developer may now construct fifty (50) du (25 + 25), which does not exceed the maximum fifty (50) du/ac density allowed with bonuses. The five (5) low-income units also does not exceed 15 percent of the number of units in the building (five (5) units is ten (10) percent of fifty (50) units). The twenty-five (25) bonus units equal a bonus density of twenty-five (25) du/ac, which divided by ten (10) du/ac per story equals two and one-half (2.5), rounded to three (3) bonus stories.

- (E) [*Combined bonuses.*] Bonuses may be combined for providing different degrees of attainable housing within one development site.
- (F) [*Eligibility requirements.*] In order to be eligible for density and height bonuses under this section, the developer shall first guarantee the attainability of the unit for the specified income level as either rental or owner-occupied housing for a period of at least thirty (30) years via a restrictive covenant in a form acceptable to the city attorney ~~may require~~. The city commission may establish a one-time fee applicable to each development that receives bonus units to offset the cost of administering the attainable housing program.

Sec. 305-50. - Sustainable building practices; voluntary green building/development program.

- (A) *Overview.* The CRA green building/development program is a voluntary program that developers may choose to participate in, for which incentives outlined in this section may ~~shall~~ be awarded. Development incentive credit for sustainable ("green") building practices may be awarded based upon qualifying site design, construction and possibly, as applicable, operational practices.
- (B) *Green building; green building practices.* Green building practices refers to building and building site design, materials and construction techniques that minimize demand for nonrenewable material and energy resources, water consumption, and minimize the

generation of waste products, pollution, and storm-water runoff. Green building practices are generally consistent with the techniques used to achieve certification of construction and development through third-party green building and development certification programs including the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED), the Florida Green Building Coalition, and Florida Green Lodging.

- (C) *Rating organizations.* This program awards credits based on selected third-party green building/development certification programs, including, but not limited to, the Florida Green Building Coalition, Florida Green Lodging, and U.S. Green Building Council Leadership in Energy and Environmental Design (LEED).
- (D) *Approval of established third-party standards.* Applicants seeking to participate in the voluntary green building/development program are required to schedule a preliminary development application meeting with the community development director. At the preliminary development application meeting, the applicant shall identify the third-party green building/development standards proposed to be incorporated in the project design and implementation, and provide a copy of the standards to city staff the community development director for review. If the standards of a third-party certification program other than those listed in [subsection] (B) are proposed, the city staff [and] the community development director will review the standards of the rating organization certification program intended to be used by the applicant and notify the applicant if the proposed program and standards are accepted or rejected for the voluntary green building/development program.
- (E) *Review process and certification options.* Applicants seeking to participate in the voluntary green building/development program must choose to either:
 - (1) Formally apply for third-party certification with a selected third-party green building/development rating organization approved by the community development director, which includes meeting all the submittal, application and fee requirements for the selected third party certification; or
 - (2) As an alternative to formal application for third-party organization certification the applicant may participate in the city's cost-recovery green building/development review process. The community development director shall review and verify the third-party green building/development standards proposed to be incorporated in the project design and implementation. The applicant shall document compliance with all of the third-party certification criteria to the satisfaction of the community development director.
- (F) *Minimum submittal requirements for applying for voluntary green building or development program/receipt of incentives.* Site development plan submittal requirements to participate in the voluntary green building/development program shall include the following:
 - (1) Documentation that the applicant has participated in the preliminary development application meeting and has received approval from the community development director to utilize the third party green building/development standards used in the site development plan submittal.
 - (2) Written statement identifying the review option selected by the applicant (demonstration of formal third-party certification of the project, or community

development director verification of project compliance with third-party green building/development standards through cost-recovery based review).

- (3) A completed residential green development/building checklist, with a narrative explanation of how the green building measure is being incorporated.
- (4) The city shall require that the proposal exceed the number of points necessary for incentive credit under this section by a margin to be established administratively for each third-party certification program. The intent is to ensure certification as best possible in the event that a given green measure fails to qualify after construction is completed.
- (5) A notarized affidavit from the project architect demonstrating that the approved green building measures have been incorporated into the project plans.
- (6) Project site and engineering plans that clearly detail all green building measures which are intended to qualify for incentives.
- (7) A notarized affidavit certifying that a green building expert professional certified or accredited by a third-party green building and development rating organization deemed acceptable by the community development director is a part of the development team and shall remain part of the project team throughout its duration (i.e., from the design stage through final building inspection/issuance of certificate of occupancy).

(G) *Incentives.*

- (1) Developments that meet all of the criteria for certification under a third-party program, in accordance with [subsection] (D) above, plus the additional point margin to be established administratively by the city, may shall be awarded four (4) stories and twenty-eight (28) du/ac as a bonus, subject to the maximum height and density limitations of the applicable district, as well as a five (5) percent impervious area bonus.
- (2) Developments that qualify for at least one-half (½) of the total number of points required for third-party certification pursuant to subsection (E)(2), plus the additional point margin to be established administratively by the city, may shall be awarded two (2) stories and fourteen (14) du/ac as a bonus, subject to the maximum height and density limitations of the applicable district.

(H) *Performance bond.* Participants in the voluntary green building program, at the time of building permit application, shall post a performance bond, letter of credit or other form of surety approved by the city attorney.

- (1) The amount of the required performance bond, letter of credit or other approved form of surety shall be calculated as follows for projects seeking the incentive bonus for meeting third-party certification requirements:
 - (a) Two (2) percent of the total cost of construction for a development of less than one hundred thousand (100,000) square feet of building area.
 - (b) Three (3) percent of the total cost of construction for a development of up to two hundred thousand (200,000) square feet of building.
 - (c) Four (4) percent of the total cost of construction for any building greater than two hundred thousand (200,000) square feet.

- (2) The amount of the required performance bond for projects seeking an incentive bonus for earning at least one-half of the points needed for third-party certification shall be one-half (½) of the bond amount required in paragraph (1).
- (3) In the event the completed development does not achieve the third-party certification or the number of points for which the incentive bonus was based, a portion of the surety shall be forfeited in an amount equal to the percentage of the required third-party point total not earned. However, if the development does not qualify for at least ninety (90) percent of the number of points required to earn the bonus, the entire bond amount shall be forfeited.
- (4) The city may call on the performance bond if:
 - (a) The third-party certification is not achieved within one (1) year of the city issuance of the certificate of occupancy for the building; or
 - (b) In the case of city verification of credits in accordance with paragraph (G)(2), if the community development director determines that the development does not qualify for the credits upon which the incentive bonus is based within one (1) year of the city issuance of the certificate of occupancy for the building. Funds that become available to the city from the forfeiture of all or part of the surety shall be placed in the sustainable development fund established by the city, which shall be used to fund sustainable and energy-efficient city-initiated capital projects including, but not limited to, water-efficient landscaping, open space acquisition and improvements, traffic calming, public transportation-related improvements, pollution mitigation, sustainability improvements to public facilities, or similar improvements as deemed appropriate by the city commission.

Sec. 305-60. - Provide public parking.

~~A b~~Bonus incentive of one (1) story, five (5) du/ac, and two and one half (2.5) percent impervious area may be granted for each ten (10) public parking spaces provided to the city for public parking use through city approval of dedication of the spaces for public use, or for payment in lieu of off-street parking in accordance with section 265-92 through provision of a shared parking agreement in a form approved by the city attorney, which shall restrict the spaces for public use, and shall run with the subject property in perpetuity. The intensity bonus shall not exceed the maximum height, density and minimum impervious area limitations of the applicable district.

Sec. 305-70. - Incentives for public parks.

- (A) In the City Center District and the Gateway Mixed-Use District, a development may be eligible for a density and height bonus incentive not to exceed a maximum of two (2) stories and thirty (30) du/ac subject to the maximum density and height limitations established under the applicable zoning district. The public park incentive fee shall be calculated pursuant to section 305-70(B), which shall be applied to the city's park fund for park land acquisition or park improvements. The full public park incentive fee shall be paid in order to

exercise any density or height bonus or combination thereof, under this section. The full public park incentive fee shall be paid regardless of whether the use of the density or height bonus is limited by the maximum density or height established under the applicable zoning district or the applicant chooses not to exercise portions of the height or density bonuses. Eligibility for a density and height bonus under this section shall require development containing a minimum of twenty-five (25) dwelling units.

- (B) The public park incentive fee shall be equal in value to fifty cents (\$0.50) per square foot of estimated residential gross floor area.
- (C) For purposes of this section, residential gross floor area shall be defined as the sum of the habitable horizontal area of all residential floors of all stories of a residential building or structure under a roof, and including, interior amenity areas, clubhouses, lobby areas however excluding private garages, maintenance areas, utility areas, operational areas, storage closets, electrical and mechanical facilities, balconies, stairwells, elevators, basements and subbasements, covered parking, loading areas, and parking structures.
- (D) The contributions referenced in this section are calculated in 2014 dollars and shall be adjusted by the Consumer Price Index on an annual basis.
- (E) Payment of the public park incentive fees shall be made prior to issuance of a building permit.

* * *

Section 3. That if any section, clause, sentence or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed to such extent of the conflict.

Section 5. That this Ordinance shall be codified in accordance with the foregoing. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the City of Dania Beach Code of Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to “section”, “article” or such other appropriate word or phrase in order to accomplish such intentions.

Section 6. That this Ordinance shall take full effect immediately upon its passage and adoption.

PASSED on first reading on July 26, 2016.

PASSED AND ADOPTED on second reading on _____, 2016.

ATTEST:

LOUISE STILSON, CMC
CITY CLERK

MARCO A. SALVINO, SR.
MAYOR

APPROVED AS TO FORM AND CORRECTNESS:

THOMAS J. ANSBRO
CITY ATTORNEY