

Town of Lauderdale-By-The-Sea
Regular Planning and Zoning Board

Agenda

Wednesday, June 5, 2024

6:00 PM



Jarvis Hall 4505 N. Ocean Drive
www.Lauderdalebythesea-fl.gov

LAUDERDALE-BY-THE-SEA TOWN COMMISSION

Regular Planning and Zoning Board

Wednesday, June 5, 2024, 6:00 PM
Jarvis Hall 4505 N. Ocean Drive, 33308

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE TO THE FLAG**

3. **APPROVAL OF MINUTES**

3.a. May Minutes

4. **PUBLIC COMMENTS**

5. **NEW BUSINESS**

5.a. ORDINANCE 2024-06-AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 30 "UNIFIED LAND DEVELOPMENT REGULATIONS," ARTICLE I "IN GENERAL," SECTION 30-11, "DEFINITIONS" AND SECTION 30-154 "PROHIBITED USES" TO MODIFY, CLARIFY AND FURTHER DELINEATE REQUIREMENTS RELATED TO MARIJUANA; PROVIDING FOR CODIFICATION; SEVERABILITY; CONFLICTS; AND FURTHER PROVIDING FOR AN EFFECTIVE DATE.

5.b. ORDINANCE 2024-07:AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, CREATING CHAPTER 30 "UNIFIED LAND DEVELOPMENT REGULATIONS," ARTICLE IV "DEVELOPMENT PERMITS – APPLICATIONS, REQUIREMENTS AND REVIEW PROCEDURES," SECTION 30-125 "UNITY OF TITLE OR COVENANT IN LIEU OF UNITY OF TITLE" AND PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND FOR AN EFFECTIVE DATE.

6. **OLD BUSINESS**

7. **UPDATES/BOARD MEMBER COMMENTS**

8. **ADJOURNMENT**

THE TOWN OF LAUDERDALE-BY-THE-SEA WILL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES NECESSARY TO AFFORD INDIVIDUALS AN EQUAL OPPORTUNITY TO PARTICIPATE IN MEETINGS OF THE TOWN COMMISSION. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATUTE 286.26, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING

SHOULD CONTACT THE TOWN CLERK NO LATER THAN TWO (2) DAYS PRIOR TO THE MEETING AT (954) 640-4200 FOR ASSISTANCE.

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE TOWN COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSES MAY NEED TO ENSURE THAT A VERBATIM RECORDING OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

PROCEDURES FOR PUBLIC COMMENTS:

Public Comments may address issues that are not on this meeting's agenda, but should relate to the business of the Town, and should not contain personal attacks. If your comment requires follow up, the Town Manager will have a staff person respond to your concerns, and will advise us of the outcome.

The Town Clerk will read off the names of those who have signed up to speak. When your name is called, please come to the podium, state your name for the record, and indicate whether you are a Town resident. Do not state your address. You have up

to three minutes to make your comments, but there is no requirement to use the entire time. If you wish to address a particular Commissioner or member of Town Administration, please do so by use of their title.

If you wish to approach the Commission dais to hand out a document or for some other reason, please request permission and state your reason for doing so. All documents to be provided to the Commission should be handed to the Town Clerk for distribution.

These procedures have been developed to assure that the Town Commission meeting time is efficiently used, and that meetings are conducted in a polite and respectful manner. More information on the decorum rules for Town Commission meetings is available in Section 2-23 of the Town Code of Ordinances.

INVOCATION:

The Invocation before each Town Commission meeting is a voluntary service of a private citizen, offered to serve the spiritual needs of the members of the Town Commission and solemnize the meeting. It is not intended to be an opportunity to advance or disparage one faith or belief over another. The views expressed in the Invocation have not been previously reviewed by the Town and do not necessarily represent the beliefs of any Town employee or official. No person is required to be present at or participate in the Invocation, and the decision whether to be present or participate in the Invocation will not affect any person's right to actively participate in the official business of the Town or obtain any benefit from the Town. The Town's written Invocation policy is available on its website, and upon written request to the Town Clerk.all static



Agenda Item No: 3.a.

Planning and Zoning Board Agenda Item Report

Meeting Date: June 5, 2024

Submitted By: Jhanelle Campbell, Development Services Director

Submitting Department: Development Services

Item Type: Presentation

Agenda Section: APPROVAL OF MINUTES

Subject Title: May Minutes

Explanation:

Recommendation:

Exhibits:

1. May Minutes

NON APPROVED

**TOWN OF LAUDERDALE-BY-THE SEA
PLANNING AND ZONING BOARD MEETING MINUTES
JARVIS HALL, 4505 N OCEAN DRIVE, 33308
Wednesday, May 1, 2024**

1. CALL TO ORDER & PLEDGE OF ALLEGIANCE

Chair Piersante called the in-person Planning and Zoning (P&Z) Board meeting for the Town of Lauderdale-By-The-Sea (L-B-T-S) to order at approximately 6:05PM.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

ROLL CALL & WELCOME

Board Clerk Megan Small called the roll and present in-person were the Outgoing Chair Ron Piersante, Karen Sylvester, Karen Blake, Leslie Richardson, Jeff Goldman, and William (Bill) Ferrante. The absent person was Patrick Ucci. Present in person were Town Attorneys Susan Trevarthen and Narinah Jean-Batiste, Development Services Director Jhanelle Campbell, and Board Clerk Megan Small. *For the record, 1st Alternate William Ferrante could participate but would not vote tonight as a quorum was present.*

3. APPROVAL OF MINUTES

a. Planning & Zoning (P&Z) Meeting Minutes – January 3, 2024

Board Member Karen Sylvester made a motion to approve the minutes of the P&Z Meeting of January 3, 2024 as written. The motion was seconded by Board Member Karen Blake. The motion to approve the January 3, 2024 minutes as written carried 5-0. (*1st Alternate William Ferrante could not vote.*)

4. PUBLIC COMMENTS

Chair Piersante opened the meeting to the public for any comments but if a member of the public wished to speak on a specific agenda item, that person could choose to wait until public comment opened on that item. As no one wished to speak now, the Chair closed this portion of Public Comments.

5. NEW BUSINESS

5.A. BOARD OATH

The Chair announced that the Planning and Zoning Board Clerk, Megan Small, would conduct the Board Oaths. The Board Members raised their right hand and repeated the words spoken by the Clerk and then signed the document.

Election of Board Chair and Vice Chair.

The Outgoing Chair, Ron Piersante, made a few comments starting with thanking Megan Small and Muriel Ramiriz for always having the meeting set up. He also wanted to personally thank Jhanelle Campbell for her assistance when he had a personal family situation six months ago. He thanked the past Board Members for their input on items that came before the Board. He advised the new Board Members to review their packet and to go out to the site prior to the

Meeting. As the outgoing Chairperson, he informed that he had the privilege to nominate the next Chairperson and Vice Chairperson. As the floor was open for nominations, he made a motion to nominate Karen Sylvester as Chair and the motion was seconded by Leslie Richardson. As Karen Sylvester accepted/voted, this motion carried 5-0 (as the 1st Alternate, William Ferrante, could not vote tonight.)

The Outgoing Chair then made a motion to nominate Karen Blake as Vice Chairperson and the motion was seconded by Jeff Goldman. As she accepted/voted, this motion carried 5-0 (as the 1st Alternate, William Ferrante, could not vote tonight).

CHAIR KAREN SYLVESTER and VICE CHAIR KAREN BLAKE

5.B. BOARD TRAINING

Chair Sylvester called upon Staff to present this item. From the Town Attorney's Office, Attorney Narinah Jean-Baptiste, Weiss Serota, stated she would conduct the Planning and Zoning Board Orientation tonight. She explained that the Board Packet contained a more comprehensive overview of what they would be going over today (the Sunshine Law, Public Records, and Ethics). She gave a PowerPoint presentation that started with the Sunshine Law, Section 286.011, Florida Statutes. She went over, among other things, that the purpose of the Sunshine Law was to ensure decisions by public bodies were made in an open forum accessible to members of the public. She then went onto Public Records, Section 119, Florida Statutes. She went over, among other things, that Public Records meant all documents, papers, letters, maps, booklets, tapes, photographs, films, sound recordings, data processing software, etc. made or received pursuant to law or ordinance made in connection with the transaction of official business by any agency. Then she spoke about Public Meetings and Decorum, Chapter 286, F.S. and Section 2-23 and 30-23, Town Code of Ordinances. She went over, among other things, that in Section 286.0114 FS (2) – members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard was subject to rules or policies adopted by the Board or Commission. Then she went onto Florida's Ethics Code. Tonight they would discuss Florida's Constitutional Provisions, State Ethics Laws, Chapter 112, F.S. Part III and Ethics Enforcement. The attorney then called for Board questions/comments.

Board Member Richardson asked if Board Members could get emails with the Lauderdale-By-The-Sea (LBTS) domain in order to avoid using their own personal emails. Development Services Director Campbell answered that they have not done this in the past. The Board Member wanted to know if there was an advantage to not using their own personal email. The attorney said she understood her apprehension about using her own personal email. If this was of concern to a Board Member, try to limit what you put in writing. However, anything personal in a Board Member's life would not be subjected to Public Records. Board Member Richardson then asked how the Town would know about an email sent as a complaint to her personal email by someone in LBTS and the attorney said that was why she advised to keep track of anything a Board Member thought was a public record which also included social media posts. Board Member Piersante spoke about contacting Attorney Susan Trevarthen in the past regarding different issues. Today he asked if there was a development going up next door to him, could he speak with the developer and tell him he did not want a vacation rental or something to that effect. Attorney Jean-Batiste explained what they look for in a conflict of interest. Would there be a benefit – gain or loss to the Board Member or even to a relative? She did not think in the example Board Member Piersante gave, that the Board Member had a personal gain or loss in the project. Board Member Piersante pointed out that he could have

a personal loss because of this, if the developer turned this into a rental property which would not help his property. Attorney Jean-Batiste spoke about turning to the Commission on Ethics to gain their opinion on different case-by-case scenarios. Vice Chair Blake asked if there was a “cure” for a conflict of interest by stating the conflict and then being able to vote. Attorney Jean-Batiste answered in the negative. Attorney Susan Trevarthen explained that as a Board Member declaring their conflict of interest, that Board Member did not participate in the discussion and did not vote on that matter. The cleanest way would be to declare the conflict and get up and leave until that agenda item was over. At a minimum, you can remain but do not participate and do not vote. She further explained that if there “appears to be a conflict” the board member of an advisory board could choose not to vote. Otherwise, in Florida, if you were attending a meeting, you vote unless there was a conflict of interest. Board Member Goldman asked if a situation arose, as a board member should he contact the attorney’s office for their advice and Attorney Susan Trevarthen answered that was the way it should be handled. An early contact regarding a possible problem was the way to go but there was an attorney at the meeting, so a five-minute recess could be provided for a one-on-one contact with the board member and the Board Attorney. Before a meeting, you could always call the Development Services Director who would contact the Town Attorney Office with your question. 1st Alternate Ferrante asked if he went to the property prior to a meeting and the property owner approached with questions, how should this be handled? Attorney Susan Trevarthen said from a Sunshine perspective, the board member could not speak to another board member but could speak with a property owner. As the board member has not seen or heard all of the information before the board meeting, talking about how the board member would vote would not be advisable. There were no other Board questions/comments.

6. OLD BUSINESS

None.

Commissioner John Graziano asked to speak and was granted time by Chair Sylvester. He said that he read all the resumes and the Board was a group of outstanding people. He appreciated their willingness to come forward and felt that “Karen and Karen” would do a great job. He said that Ron Piersante has been a stalwart in this LBTS community that he loved. He felt that Susan Trevarthen was the best source of control and information. Chair Sylvester echoed what the Commissioner said and she knew that she now has big shoes to fill. Board Member Piersante said he turned this over to good hands and had all the confidence in Karen Sylvester to run this Board well.

7. UPDATES/BOARD MEMBER COMMENTS

None.

8. ADJOURNMENT

1st Alternate Ferrante made a motion to adjourn at approximately 6:38PM. The motion was seconded by Board Member Goldman. The motion to adjourn carried 5-0.

ATTEST:

Chair Karen Sylvester

Date Accepted: _____



Agenda Item No: 5.a.

Planning and Zoning Board Agenda Item Report

Meeting Date: June 5, 2024

Submitted By: Jhanelle Campbell, Development Services Director

Submitting Department: Development Services

Item Type: Ordinance

Agenda Section: NEW BUSINESS

Subject Title: ORDINANCE 2024-06-AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 30 "UNIFIED LAND DEVELOPMENT REGULATIONS," ARTICLE I "IN GENERAL," SECTION 30-11, "DEFINITIONS" AND SECTION 30-154 "PROHIBITED USES" TO MODIFY, CLARIFY AND FURTHER DELINEATE REQUIREMENTS RELATED TO MARIJUANA; PROVIDING FOR CODIFICATION; SEVERABILITY; CONFLICTS; AND FURTHER PROVIDING FOR AN EFFECTIVE DATE.

Explanation: The use of marijuana has become increasingly prevalent following changes in state laws regarding its medical and recreational use. Recently, the Florida Supreme Court approved the inclusion of a question regarding the legalization of adult personal use of marijuana on the ballot for the upcoming election in November, which provides:

Florida Amendment 3, the Marijuana Legalization Initiative, is on the ballot in Florida as an initiated constitutional amendment on November 5, 2024.

A "yes" vote supports legalizing marijuana for adults 21 years old and older and allowing individuals to possess up to three ounces of marijuana.

A "no" vote opposes legalizing marijuana for adult use in Florida.

Should the question be approved by the voters, the effective date of the legalization of adult personal use of marijuana will be six months after voter approval, allowing sufficient time for the necessary regulatory frameworks to be established. Nonetheless, it is important to note that, as was the case with medical marijuana, the legalization of adult personal use of marijuana would apply only to Florida law and does not change, or immunize violations of federal law.

The Town currently prohibits medical marijuana retail centers pursuant to Section 30-154 (a) of the Town Code of Ordinances ("Town Code"). Therefore, the Town recognizes the need to establish clear regulations concerning adult personal use of marijuana. To prevent inconsistency in interpretation and enforcement, it is important to amend the Town Code to remove ambiguity and include necessary detail into the Town's marijuana regulations. Ordinance 2024-06 achieves these goals.

Recommendation: Staff suggests a recommendation of approval of Ordinance 2024-06 by the Planning and Zoning Board.

Exhibits:

1. ORDINANCE 2024-06 Personal Use Marijuana Ordinance_ LBTS- FINAL

EXHIBIT 1

ORDINANCE 2024-06

AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 30 “UNIFIED LAND DEVELOPMENT REGULATIONS,” ARTICLE I “IN GENERAL,” SECTION 30-11, “DEFINITIONS” AND SECTION 30-154 “PROHIBITED USES” TO MODIFY, CLARIFY AND FURTHER DELINEATE REQUIREMENTS RELATED TO MARIJUANA; PROVIDING FOR CODIFICATION; SEVERABILITY; CONFLICTS; AND FURTHER PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lauderdale-By-The-Sea (the “Town”) Commission recognizes that changes to the adopted Code of Ordinances are periodically necessary in order to ensure that the Town’s regulations are current and consistent with the Town’s regulatory needs; and

WHEREAS, the use of marijuana has become increasingly prevalent following changes in state laws regarding its medical and recreational use; and

WHEREAS, the Florida Supreme Court has approved the inclusion of a question regarding the legalization of adult personal use of marijuana on the ballot for the upcoming election in November; and

WHEREAS, should the legislation be approved by voters, the effective date of the legalization of adult personal use of marijuana will be six months after voter approval, allowing sufficient time for the necessary regulatory frameworks to be established; and

WHEREAS, current Town regulations concerning marijuana are deemed ambiguous and insufficiently detailed, leading to inconsistencies in interpretation and enforcement; and

WHEREAS, clear and detailed regulations will promote compliance, enhance public safety, and support the responsible use of marijuana; and

WHEREAS, accordingly the Town Commission desires to amend the Town Code to clarify requirements related to marijuana within the Town; and

EXHIBIT 1

30 **WHEREAS**, the Planning and Zoning Board, sitting as the Local Planning Agency, has
31 reviewed the contents of this Ordinance at a duly noticed public hearing on June 05, 2024; and

32 **WHEREAS**, the Town Commission conducted first and second reading of this Ordinance at
33 duly noticed public hearings, as required by law, and after having received input from and
34 participation by interested members of the public and staff, the Town Commission has determined
35 that this Ordinance is consistent with the Town’s Comprehensive Plan and in the best interest of the
36 Town, its residents, and its visitors.

37 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN**
38 **OF LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:**

39 **SECTION 1. Recitals.** The preceding “Whereas” clauses are ratified and incorporated as
40
41 the legislative intent of this Ordinance.

42 **SECTION 2. Amendment.** Chapter 30, “Unified Land Development Regulations,” Article
43 I, “In General,” Section 30-11, “Definitions” of the Town Code of Ordinances, is hereby amended as
44 follows¹:

45 **Chapter 30 – UNIFIED LAND DEVELOPMENT REGULATIONS**

46 **ARTICLE I. IN GENERAL**

47 * * *

48 **Sec. 30-11. – Definitions.**

49 * * *

50 *(c) Abbreviations and definitions.*

51 * * *

52 *(2) Terms defined.*

53 * * *

¹ Additions to existing text are shown in underline. Deletions are shown in ~~striketrough~~. Additions to existing text since 1st reading are shown in double underline. Deletions since 1st reading are shown in ~~double striketrough~~.

EXHIBIT 1

Marijuana. Any strain of cannabis or marijuana, in any form, that is authorized by State law to be dispensed or sold in the State of Florida. Also referred to as “Medical Marijuana.” Includes marijuana for adult personal use and any other marijuana that may be authorized by State law.

* * *

Medical marijuana retail center. A retail establishment, licensed by the Florida Department of Health or other agency of the State of Florida as a “medical marijuana treatment facility,” “medical marijuana treatment center,” “dispensing organization,” “dispensing organization facility” or similar use, that sells and dispenses medical marijuana, marijuana for adult personal use, or marijuana of any kind.

* * *

SECTION 3. Amendment. Chapter 30, “Unified Land Development Regulations,” Article V, “Zoning,” Section 30-154, “Prohibited Uses” of the Town Code of Ordinances, is hereby amended as follows²:

Chapter 30 – UNIFIED LAND DEVELOPMENT REGULATIONS

ARTICLE V. ZONING

* * *

DIVISION 1. GENERALLY

* * *

Sec. 30-154. – Prohibited uses.

(a) *Medical marijuana retail center.* In accordance with F.S. § 381.986 (2017), as it may be amended, it is hereby expressly provided that medical marijuana retail centers are prohibited within the Town in each and every zoning district.

(b) *Other prohibited uses.* Except as provided in any applicable zoning district regulations, any use not specifically identified as a permitted, conditional, accessory, or temporary use within a zoning district is prohibited in that zoning district.

² Additions to existing text are shown in underline. Deletions are shown in ~~striketrough~~. Additions to existing text since 1st reading are shown in double underline. Deletions since 1st reading are shown in ~~double-striketrough~~.

EXHIBIT 1

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88 **SECTION 4. Codification.** This Ordinance shall be codified in accordance with the
89 foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall
90 become and be made a part of the Town of Lauderdale-By-The-Sea Code of Ordinances; and that
91 the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be
92 changed to “section,” “article” or such other appropriate word or phrase in order to accomplish
93 such intentions.

94 **SECTION 5. Severability.** If any section, sentence, clause, or phrase of this Ordinance is
95 held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding
96 shall in no way affect the validity of the remaining portions of this Ordinance.

97 **SECTION 6. Conflicting Ordinances.** All prior ordinances or resolutions, or parts thereof,
98 in conflict herewith are hereby repealed to the extent of said conflict.

99 **SECTION 7. Effective Date.** This Ordinance shall be in full force and effect immediately
100 upon its passage on second reading.

101 Passed on the first reading, this ____ day of June, 2024.

102 Passed and adopted on the second reading, this ____ day of June, 2024.

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MAYOR EDMUND MALKOON

	First Reading	Second Reading
Mayor Malkoon	_____	_____
Vice-Mayor Strauss	_____	_____
Commissioner Pouloupoulos	_____	_____
Commissioner DeNapoli	_____	_____
Commissioner Graziano	_____	_____

EXHIBIT 1

116 ATTEST:
117
118
119 _____
120 Town Clerk Katrina Adler
121
122 APPROVED AS TO FORM:
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124
125 _____
126 Susan L. Trevarthen, Town Attorney



Planning and Zoning Board Agenda Item Report

Meeting Date: June 5, 2024

Submitted By: Jhanelle Campbell, Development Services Director

Submitting Department: Development Services

Item Type: Ordinance

Agenda Section: NEW BUSINESS

Subject Title: ORDINANCE 2024-07: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, CREATING CHAPTER 30 "UNIFIED LAND DEVELOPMENT REGULATIONS," ARTICLE IV "DEVELOPMENT PERMITS – APPLICATIONS, REQUIREMENTS AND REVIEW PROCEDURES," SECTION 30-125 "UNITY OF TITLE OR COVENANT IN LIEU OF UNITY OF TITLE" AND PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND FOR AN EFFECTIVE DATE.

Explanation: Municipalities can utilize various methods to regulate and control multi-phased and/or mixed-use developments, which may result in multiple ownerships. Typically, a Unity of Title is used to insure adherence to an approved site plan. However, a Covenant In Lieu of Title may also be used to achieve the same results when multiple owners exist over more than one parcel. Unity of Title and Covenant in Lieu of Unity of Title agreements serve as mechanisms for promoting flexibility in property development while safeguarding the broader interests of the community.

In order to protect the zoning integrity of the overall site plan, but allow for the development of complex projects, a Covenant in Lieu of Unity of Title ("CIL") is required.

A CIL requires that:

1. A property will be developed in accordance with an approved site plan.
2. The subject property may be allowed to developed in phases which must be consistent with the overall site plan.
3. The CIL must be recorded in the public records and run with the land and shall be binding on all successors and assigns.

It should also be noted that an Easement and Operating Agreement must be recorded which maintains the integrity of the approved site plan prior to any sale of a portion of the tract subject to the CIL. The CIL has been utilized for many years and has achieved its intended goal of fully recognizing the zoning site plan of a parcel of land.

Ordinance 2024-07 establishes parameters for the use of unity of titles and covenant in lieu of

unity of title. A recent request from a hotel owner to utilize a CIL highlighted the need for established regulations to be added to the Town Code. As a result, Town Staff is recommending approval of the proposed Ordinance.

Recommendation: Staff suggests a recommendation of approval of Ordinance 2024-07 by the Planning and Zoning Board

Exhibits:

1. ORD 2024-07 -Covenant In Lieu of Unity of Title Ordinance- FINAL-47D3947

ORDINANCE 2024-07

**AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-
THE-SEA, FLORIDA, CREATING CHAPTER 30 “UNIFIED
LAND DEVELOPMENT REGULATIONS,” ARTICLE IV
“DEVELOPMENT PERMITS – APPLICATIONS,
REQUIREMENTS AND REVIEW PROCEDURES,” SECTION
30-125 “UNITY OF TITLE OR COVENANT IN LIEU OF
UNITY OF TITLE” AND PROVIDING FOR
CODIFICATION, SEVERABILITY, CONFLICTS, AND FOR
AN EFFECTIVE DATE.**

WHEREAS, the Town of Lauderdale-By-The-Sea, Florida (the “Town”) Commission recognizes that changes to the adopted Code of Ordinances are periodically necessary in order to ensure that the Town’s regulations are current and consistent with the Town’s planning and regulatory needs; and

WHEREAS, Unity of Title and Covenant in Lieu of Unity of Title agreements serve as mechanisms for promoting flexibility in property development while safeguarding the broader interests of the community; and

WHEREAS, the Town Commission desires to establish clear and consistent guidelines for Unity of Title or Covenant in Lieu of Unity of Title agreements to facilitate transparency, predictability, and compliance; and

WHEREAS, the Town Commission conducted first reading of this Ordinance at duly noticed public hearings, as required by law, and after gathering input from interested members of the public and staff, the Town Commission determined that this Ordinance is consistent with the Town’s Comprehensive Plan and in the best interest of the Town, its residents, and its visitors.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN
OF LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:**

SECTION 1. Recitals. The preceding “Whereas” clauses are ratified and incorporated as the legislative intent of this Ordinance.

SECTION 2. Amendment. Chapter 30 “Unified Land Development Regulations,” Article IV “Development Permits – Applications, Requirements and Review Procedures,” Section 30-125 “Unity of Title or Covenant in Lieu of Unity of Title” of the Town Code of Ordinances, is hereby created as follows¹:

Chapter 30 – UNIFIED LAND DEVELOPMENT REGULATIONS

ARTICLE IV. – DEVELOPMENT PERMITS – APPLICATIONS, REQUIREMENTS AND REVIEW PROCEDURES

* * *

Sec. 30-125. - Unity of title or covenant in lieu of unity of title.

An applicant that proposes a site plan that includes multiple buildings on a single property shall submit one of the following documents:

(a) *Unity of Title.* A unity of title, approved for legal form and sufficiency by the Town Attorney, which shall run with the land and be binding upon the heirs, successors, personal representatives and assigns, and upon all mortgagees or lessees and others presently or in the future having any interest in the property; or

(b) *Covenant in Lieu of Unity of Title.* A declaration of restrictive covenants, approved for legal form and sufficiency by the Town Attorney, which shall run with the land and be binding upon the heirs, successors, personal representatives and assigns, and upon all mortgagees and lessees and others presently or in the future having any interest in the property. To the extent applicable, the declaration shall contain the following necessary elements:

(1) The subject site will be developed in accordance with the approved site plan. No modification shall be submitted to the Town for approval without the written consent of the then owner(s) of the phase or portion of the property for which modification is sought.

¹ Additions to existing text are shown in underline. Deletions are shown in ~~striketrough~~. Additions to existing text since 1st reading are shown in double underline. Deletions since 1st reading are shown in ~~double striketrough~~.

EXHIBIT 1

(2) If the subject property will be developed in phases, that each phase will be developed in accordance with the approved site plan.

(3) In the event of multiple ownerships subsequent to site plan approval, that each of the subsequent owners shall be bound by the terms, provisions and conditions of the declaration of restrictive covenants. The owner shall further agree that he or she will not convey portions of the subject property to such other parties unless and until the owner and such other party (parties) shall have executed and mutually delivered, in recordable form, an instrument to be known as an "easement and operating agreement" which shall contain, among other things:

(a) Easements in the common area of each parcel of land for ingress to and egress from the other parcels of land;

(b) Easements in the common area of each parcel of land for the passage and parking of motor vehicles;

(c) Easements in the common area of each parcel of land for the passage and accommodation of pedestrians;

(d) Easements for access roads across the common area of each parcel of land to public and private roadways;

(e) Easements for the installation, use, operation, maintenance, repair, replacement, relocation and removal of utility facilities in appropriate areas in each such parcel of land;

(f) Easements on each such parcel of land for construction of buildings and improvements in favor of each such other parcel of land;

(g) Easements upon each such parcel of land in favor of each adjoining parcel of land for the installation, use, maintenance, repair, replacement and removal of common construction improvements such as footings, supports and foundations;

(h) Easements on each parcel of land for attachment of buildings;

(i) Easements on each parcel of land for building overhangs and other overhangs and projections encroaching upon such parcel of land from adjoining parcel of land for marquees, canopies, lights, lighting devices, awnings, wing walls and the like;

(j) Appropriate reservation of rights to grant utility easements;

(k) Appropriate reservation of rights to road rights-of-ways and curb cuts;

(l) Easements in favor of each such parcel of land for pedestrian and vehicular traffic over dedicated private ring roads and access roads; and

(m) Appropriate agreements between the owners of the several parcels of land as to the obligation to maintain and repair all private roadways, parking facilities, common areas and common facilities and the like.

In addition, such easement and operating agreement shall contain such other provisions with respect to the operation, maintenance and development of the property as agreed to by the parties, to insure that even although the property may have several owners, it will be constructed, conveyed, maintained and operated in accordance with the approved site plan. Non-use variances created solely by separate ownerships, pursuant to this section, shall be waived.

EXHIBIT 1

(4) Duration and Release. The declaration of restrictive covenants shall be in effect for a period of 30 years from the date the documents are recorded in the public records of Broward County, Florida, after which time they shall be extended automatically for successive periods of ten years unless released in writing by the owners and the Town Manager, acting for and on behalf of the Town, upon the demonstration and affirmative finding that the same is no longer necessary to preserve and protect the property for the purposes herein intended.

(5) Enforcement. Enforcement of the declaration of restrictive covenants shall be by action at law or in equity with costs and reasonable attorney's fees to the prevailing party.

* * *

SECTION 3. Codification. This Ordinance shall be codified in accordance with the foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall become and be made a part of the Town of Lauderdale-By-The-Sea 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 4. Severability. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5. Conflicting Ordinances. All prior ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed to the extent of said conflict.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect immediately upon its passage on second reading.

Passed on the first reading, this ____ day of June, 2024.

Passed and adopted on the second reading, this ____ day of June, 2024.

MAYOR EDMUND MALKOON

EXHIBIT 1

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	First Reading	Second Reading
Mayor Malkoon		
Vice-Mayor Strauss		
Commissioner Pouloupoulos		
Commissioner DeNapoli		
Commissioner Graziano		

ATTEST:

Katrina Adler, Town Clerk

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney