

ORDINANCE NO. 9726-23

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA MAKING AMENDMENTS TO THE COMMUNITY DEVELOPMENT CODE, BY AMENDING SECTION 6-109 TERMINATION OF STATUS AS A NONCONFORMITY; BY AMENDING APPENDIX C, DOWNTOWN DISTRICT AND DEVELOPMENT STANDARDS, DIVISION 3. CHARACTER DISTRICT STANDARDS AND DIVISION 8. FLEXIBILITY; CERTIFYING CONSISTENCY WITH THE CITY'S COMPREHENSIVE PLAN AND PROPER ADVERTISEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Clearwater adopted the Community Development Code on January 21, 1999, which took effect on March 8, 1999; and

WHEREAS, on August 2, 2018, the City adopted a new Downtown District and Development Standards as Appendix C of the Community Development Code to ensure Downtown redevelops with quality urban design, a high-quality public realm, and a dense and livable pattern of development; and

WHEREAS, the Public Amenities Incentive Pool was established by the Clearwater Downtown Redevelopment Plan ("Downtown Plan") to achieve the City's vision for Downtown Clearwater as the urban core and heart of the City which will be an attractive place to live, work, shop, and play and to overcome the numerous constraints affecting redevelopment; and

WHEREAS, the City has determined where the Community Development Code needs clarification and revision; and

WHEREAS, the City desires for the Community Development Code to function effectively and equitably throughout the City; and

WHEREAS, the City has determined that these amendments to the Community Development Code promote and support the public health, safety, morals, and welfare, of the City's residents; and

WHEREAS, at a duly noticed public meeting the Clearwater Community Development Board, pursuant to its responsibilities as the Local Planning Agency, has reviewed this amendment, conducted a public hearing, considered all public testimony and has determined that this amendment is consistent with the City of Clearwater's Comprehensive Plan and recommended that the City Council adopt this amendment; and

WHEREAS, the City Council has fully considered the recommendation of the Community Development Board and testimony and evidence submitted at its public hearing; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA:

Section 1. That Article 6, Nonconformity Provisions, Section 6-109, Termination of Status as a Nonconformity, be amended to read as follows:

Section 6-109 – Termination of Status as a Nonconformity

- A. A nonconforming use or structure may be deemed to be in conformity with this Development Code and may thereafter be allowed to continue and to expand as a lawfully existing use or structure if such use or structure is granted level two approval in accordance with the provisions this section.
- ~~B. A structure which is nonconforming with respect to density/intensity may be deemed to be in conformity with this Development Code and may thereafter be allowed to continue, to expand or be reconstructed provided such termination of nonconforming density/intensity is granted through a Level Two approval. Additionally, a site plan shall be submitted concurrently for review and approval by the Community Development Board that demonstrates compliance with the following:~~
- ~~1. If the existing structure is to remain or be expanded, such required site plan shall demonstrate compliance with the provisions set forth in Section 6-109.C below. All required improvements shall be completed within one year of the issuance of the Level Two development order approval or the termination will be null and void.~~
 - ~~2. If reconstruction of the nonconforming density/intensity is proposed, the required Level One or Level Two application shall be submitted in conjunction with the Level Two termination request and shall demonstrate compliance with the provisions of this Community Development Code. In the event such reconstruction does not occur within the timeframe specified in the development order granting the termination, such property shall comply with the provisions set forth in Section 6-109.C below within one year of the expiration of the development order or the termination of nonconformity will be null and void.~~
 - ~~3. If the required improvements or reconstruction authorized in any development order granted pursuant to 6-109.B.1. or 2. above are constructed, the nonconforming density/intensity shall be deemed legal and shall run with the land. Any future redevelopment utilizing this density/intensity shall comply with the provisions of the Community Development Code in effect at that time.~~
 - ~~4. Should the improvements on a property be demolished during the valid timeframe of a development order terminating nonconforming density/intensity pursuant to this section and the property is vacant, the property shall be deemed to be in compliance with these provisions and such termination of nonconforming density/intensity shall be vested and run with the land.~~
 - ~~5. Any terminated nonconforming units/floor area granted through Section 6-109.B.1. or 2. above shall not be transferred to another site or converted for another use.~~
- B. A structure which is nonconforming with respect to setbacks may, in addition to being deemed to be in conformity with this Community Development Code pursuant to Section 6-109.A, also be reconstructed if the reconstruction is approved by the Community Development Board as a Level Two approval that meets the following additional criteria:
1. The reconstruction complies with all other requirements of this Community Development Code; and
 2. The reconstruction is consistent with the size, location and intensity of the previously existing terminated nonconforming structure; and

3. The reconstruction with the approved setbacks will not negatively impact the surrounding area; and
4. The design of the proposed project creates a form and function which enhances the community character of the immediate vicinity of the parcel proposed for development; and
5. The intended vision for any applicable character district in which the property is located will be met.

~~C. A level two approval shall not be granted to terminate status as a nonconforming use or structure unless the nonconformity is improved according to the following requirements:~~

- ~~1. Perimeter buffers conforming to the requirements of Section 3-1202(D) shall be installed.~~
- ~~2. Off-street parking lots shall be improved to meet the landscaping standards established in Section 3-1202(E).~~
- ~~3. Any nonconforming signs, outdoor lighting or other accessory structure or accessory use located on the lot shall be terminated, removed or brought into conformity with this development code.~~
- ~~4. The comprehensive landscaping and comprehensive sign program may be used to satisfy the requirement of this section.~~
- ~~5. The use and structure complies with the general standards for Level One and Level Two approvals set forth in Section 3-914.~~

C. Any property located in the Downtown District that has been subject to a termination of nonconformity with regard to building height may reconstruct such height if approved by the Community Development Board as Level Two approval in accordance with the following criteria:

1. The reconstruction complies with all other requirements of this Community Development Code; and
2. The reconstruction of such increased height would not negatively impact the surrounding area; and
3. The design of the proposed project creates a form and function which enhances the community character of the immediate vicinity of the parcel proposed for development; and
4. The intended vision for the character district in which the property is located would be met.

~~D. Any property located in the Downtown District that has been subject to a termination of nonconformity with regard to building height may reconstruct such height if approved by the Community Development Board as Level Two approval in accordance with the following criteria:~~

- ~~1. The reconstruction complies with all other requirements of this Community Development Code; and~~
- ~~2. The reconstruction of such increased height would not negatively impact the surrounding area; and~~

3. ~~The design of the proposed project creates a form and function which enhances the community character of the immediate vicinity of the parcel proposed for development; and~~
4. ~~The intended vision for the character district in which the property is located would be met.~~

D. A structure which is nonconforming with respect to density/intensity may be deemed to be in conformity with this Development Code and may thereafter be allowed to continue, to expand or be reconstructed provided such termination of nonconforming density/intensity is granted through a Level Two approval. Additionally, a site plan shall be submitted concurrently for review and approval by the Community Development Board that demonstrates compliance with the following:

1. If the existing structure is to remain or be expanded, such required site plan shall demonstrate compliance with the provisions set forth in Section 6-109.E below. All required improvements shall be completed within one year of the issuance of the Level Two development order approval or the termination will be null and void.
2. If reconstruction of the nonconforming density/intensity is proposed, the required Level One or Level Two application shall be submitted in conjunction with the Level Two termination request and shall demonstrate compliance with the provisions of this Community Development Code. In the event such reconstruction does not occur within the timeframe specified in the development order granting the termination, such property shall comply with the provisions set forth in Section 6-109.E below within one year of the expiration of the development order or the termination of nonconformity will be null and void.
3. If the required improvements or reconstruction authorized in any development order granted pursuant to 6-109.D.1. or 2. above are constructed, the nonconforming density/intensity shall be deemed legal and shall run with the land. Any future redevelopment utilizing this density/intensity shall comply with the provisions of the Community Development Code in effect at that time.
4. Should the improvements on a property be demolished during the valid timeframe of a development order terminating nonconforming density/intensity pursuant to this section and the property is vacant, the property shall be deemed to be in compliance with these provisions and such termination of nonconforming density/intensity shall be vested and run with the land.
5. Any terminated nonconforming units/floor area granted through Section 6-109.D.1. or 2. above shall not be transferred to another site or converted for another use.

E. A level two approval shall not be granted to terminate status as a nonconforming use or structure unless the nonconformity is improved according to the following requirements:

1. Perimeter buffers conforming to the requirements of Section 3-1202.D shall be installed.
2. Off-street parking lots shall be improved to meet the landscaping standards established in Section 3-1202.E.
3. Any nonconforming signs, outdoor lighting or other accessory structure or accessory use located on the lot shall be terminated, removed or brought into conformity with this development code.

4. The comprehensive landscaping and comprehensive sign program may be used to satisfy the requirements of this section.

5. The use and structure complies with the general standards for Level One and Level Two approvals set forth in Section 3-914.

Section 2. That Appendix C. Downtown District and Development Standards, Division 3. Character District Standards, Section C-301. Development Potential, be amended to read as follows:

Section C-301. – Development Potential.

Table 1. Tier 1 Public Amenities Incentive Pool Criteria

Requirement (Public Benefit)	Type of Bonus (Residential Density, Hotel Density, Floor Area)	Downtown Core	Old Bay	South Gateway	Prospect Lake	Downtown Gateway
Rental residential units ¹ provided in project consistent with one of the following: <ul style="list-style-type: none"> • Minimum 25% gross floor area is rental residential for a mixed-use project; or • Minimum 50% is dedicated rental if project is residential-only. 	Residential (du/ac) Hotel (ov/ac) Floor Area (FAR)	40% -- --	40% -- --	40% -- --	40% -- --	40% -- --
Residential units ¹ provided in project consistent with one of the following: <ul style="list-style-type: none"> • Minimum 25% gross floor area is residential for a mixed-use project; or • Project is residential-only (100% residential). 	Residential (du/ac) Hotel (ov/ac) Floor Area (FAR)	20% -- --	20% -- --	20% -- --	20% -- --	20% -- --
<u>Residential units¹ provided in project (bonuses may not be stacked):</u> <ul style="list-style-type: none"> • <u>Rental Residential Project: Minimum 25% gross floor area is rental residential for a mixed-use project or minimum 50% is dedicated rental if project is residential-only; OR</u> • <u>Owner-occupied Residential Project: Minimum 25% gross floor area is residential for a mixed-use project or project is 100% residential.</u> 	Residential (du/ac) Hotel (ov/ac) Floor Area (FAR) Residential (du/ac) Hotel (ov/ac) Floor Area (FAR)	40% -- -- 20% -- --	40% -- -- 20% -- --	40% -- -- 20% -- --	40% -- -- 20% -- --	40% -- -- 20% -- --

<p>Class A Office space provided in project consistent with all of the following:</p> <ul style="list-style-type: none"> • Minimum 25% of building's aggregate rentable floor area as defined by the Building Owners and Managers Association International (BOMA) is solely reserved for occupancy by office uses; and • Such rentable floor area is Class A as determined by the Economic Development and Housing Director.² 	<p>Residential (du/ac) Hotel (ov/ac) Floor Area (FAR)</p>	--	--	--	--	--
<p>Hotel use includes a minimum of 20% of gross floor area comprised of public function space (e.g., meeting rooms, ballrooms, banquet halls).</p>	<p>Residential (du/ac) Hotel (ov/ac) Floor Area (FAR)</p>	25%	--	--	20%	--
<p>LEED Gold certification or equivalent as determined by the Community Development Coordinator achieved when project constructed.³</p>	<p>Residential (du/ac) Hotel (ov/ac) Floor Area (FAR)</p>	35%	35%	35%	35%	35%
<p>Public parking provided through one of the following:</p> <ul style="list-style-type: none"> • Structured parking that includes a minimum of 10% of all required vehicle parking spaces or 20 spaces total, whichever is greater, reserved for public parking; or • Financial support to the city's parking fund or its successor fund equal to one and one quarter of a percent (1.25%) of the aggregate job value. 	<p>Residential (du/ac) Hotel (ov/ac) Floor Area (FAR)</p>	35%	35%	35%	35%	35%
<p>Property frontage(s) meet the city's streetscape standards consistent with the Master Streetscape Plan within the Clearwater Downtown Redevelopment Plan or as determined by the Community Development Coordinator and City Engineer (e.g., wider sidewalks, decorative street lighting, street furniture).</p>	<p>Residential (du/ac) Hotel (ov/ac) Floor Area (FAR)</p>	35%	35%	35%	35%	35%
<p>Property frontage(s) along certain streets⁴ providing streetscaping determined by the Community Development Coordinator and City Engineer to meet the following:</p> <ul style="list-style-type: none"> • <u>The city's streetscape standards consistent with the Master Streetscape Plan within the Clearwater Downtown Redevelopment Plan, or</u> • <u>An enhanced pedestrian realm that meets the corresponding guidelines in the Complete Streets for Clearwater Implementation Plan.</u> 	<p>Residential (du/ac) Hotel (ov/ac) Floor Area (FAR)</p>	35%	35%	35%	35%	35%

<p>Electric Vehicle (EV) Parking Spaces provided in project consistent with all of the following:</p> <ul style="list-style-type: none"> • Minimum 20% of all required parking spaces and a minimum 10% for all additional parking spaces (not required), or 10 spaces total, whichever is greater, are EV-Ready;⁴⁻⁵ and • Minimum 5% of all required parking spaces and a minimum of 2% for all additional parking spaces (not required), or two spaces, whichever is greater, have electrical vehicle supply equipment (EVSE) with Level 2 charging capacity or greater installed. 	<p>Residential (du/ac) Hotel (ov/ac) Floor Area (FAR)</p>	<p>15% 10% 10%</p>	<p>15% 10% 10%</p>	<p>15% 10% 10%</p>	<p>15% 10% 10%</p>	<p>15% 10% 10%</p>
<p>Public art provided through one of the following:</p> <ul style="list-style-type: none"> • Minimum one percent (1%) of the aggregate job value up to the sum of \$350,000 per project for the provision of public art located in publicly accessible locations;⁵⁻⁶ or • Financial support to the city's public art fund or its successor fund equal to three quarters of one percent (0.75%) of the aggregate job value (applies to any portion of bonus requested). 	<p>Residential (du/ac) Hotel (ov/ac) Floor Area (FAR)</p>	<p>10% 5% 5%</p>	<p>10% 5% 5%</p>	<p>10% 5% 5%</p>	<p>10% 5% 5%</p>	<p>10% 5% 5%</p>
<p>Footnotes:</p> <ol style="list-style-type: none"> 1. Projects providing affordable or workforce housing shall provide to the Community Development Coordinator a restrictive covenant, duly executed by the owner of the parcel(s), in a form approved by the city attorney, that has been recorded in the Public Records of Pinellas County, Florida. This covenant shall: address income restrictions: homebuyer or tenant qualifications; long-term affordability, any other applicable restrictions and qualifications pertaining to the development and the reserved affordable or workforce housing units; and shall run with the land and shall be binding on the assigns, heirs and successors of the applicant. Reserved affordable or workforce housing units that are provided under this section, whether rental or owner-occupied, shall remain as affordable housing for a minimum of 15 years from the date of initial occupancy. Prior to June 1st of each year, the property owner(s) or authorized property manager of any reserved rental affordable or workforce housing dwelling unit shall submit to the city's Economic Development and Housing Department Director an annual report for the preceding calendar year, in a format as approved by the city, in order for the city to verify that the tenants meet the income requirements for the reserved rental affordable housing dwelling units and that other stipulations in the covenant are being met. 2. Class A office space is defined as office space that features the finishes, amenities, building systems, and services within the building based upon the best quality 1% of office space present in the Tampa- St. Petersburg- Clearwater Metropolitan Statistical Area, and shall be verified by the city's Economic Development and Housing Director. 3. Applicant shall submit the LEED Project Checklist or equivalent documentation prior to building permit issuance. Additionally, applicant shall post a bond at time of building permit application equal to the cost to construct the equivalent number of units received from the density bonus utilizing the rental or other residential housing bonus detailed in this table. If the project does not achieve LEED Gold certification, this bond shall be forfeited, and monies deposited into the city's housing trust fund or its successor fund. 4. <u>The following streets are eligible for the streetscape bonus: Osceola Avenue, Fort Harrison Avenue, Garden Avenue, Missouri Avenue, Martin Luther King Jr. Avenue, and Prospect Avenue.</u> 5. To be EV Ready the project must include a dedicated electrical circuit with sufficient capacity for future dedicated Level 2 charging or greater provided for each required space. Each circuit shall have conduit and wire sufficient to provide Level 2 charging or greater and shall end at an electrical box or enclosure located near each required space. 6. Aggregate job value shall be the combined job value of all building permits required for the construction of the project (e. a., site work, permits for individual structures, etc.) <p>du/ac= dwelling units per acre ov/ac= overnight accommodation units per acre</p> <p style="text-align: right;">FAR= floor area ratio</p>						

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Section 3. That Appendix C. Downtown District and Development Standards, Division 8. Flexibility, Section C-803. Flexibility Provisions, be amended to read as follows:

Section C-803. – Flexibility Provisions.

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N. General Flexibility Provisions.

1. Flexibility in the application of development standards for governmental uses, places of worship, certain indoor recreation uses such as auditoria, museums, and stadiums, public transportation facilities, public utilities uses, and for projects on parcels not fronting on a street may be approved if the proposed development is consistent with the vision, guiding principles, goals, objectives, and policies of the Clearwater Downtown Redevelopment Plan. Buildings and improvements shall include architectural details, landscape screening, and other treatments that contribute to the creation of safe and comfortable pedestrian environments along pedestrian walkways and/or public sidewalks and shall meet the development standards to the greatest extent practicable as determined by the Community Development Coordinator.

Section 4. Amendments to the Community Development Code of the City of Clearwater (as originally adopted by Ordinance No. 6348-99 and subsequently amended) are hereby adopted to read as set forth in this Ordinance.

Section 5. The City of Clearwater does hereby certify that the amendments contained herein, as well as the provisions of this Ordinance, are consistent with and in conformance with the City’s Comprehensive Plan.

Section 6. Should any part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part declared to be invalid.

Section 7. Notice of the proposed enactment of this Ordinance has been properly advertised in a newspaper of general circulation in accordance with applicable law.

Section 8. This ordinance shall take effect immediately upon adoption.

PASSED ON FIRST READING

PASSED ON SECOND AND FINAL
READING AND ADOPTED

Brian J. Aungst, Sr.
Mayor

Approved as to form:

Attest:

Matthew J. Mytych, Esq.
Senior Assistant City Attorney

Rosemarie Call, MPA, MMC
City Clerk