ORDINANCE NO. 18-2024

AN ORDINANCE OF THE CITY OF TITUSVILLE, FLORIDA, AMENDING THE STANDARDS AND PROCEDURES FOR DEVELOPMENT OF AFFORDABLE HOUSING PROJECTS IN COMMERCIAL, INDUSTRIAL AND MIXED USE DISTRICTS AND IMPLEMENTING AMENDMENTS TO SECTION 166.04151(7), FLORIDA STATUTES, THE "LIVE LOCAL ACT", BY AMENDING AND CLARIFYING CHAPTER 29 "SPECIAL DISTRICTS AND OVERLAYS", ARTICLE VIII "SPECIAL LAND USE STANDARDS" DIVISION 4 "AFFORDABLE HOUSING", SECTIONS 29-144 "PURPOSE", 29-145 "DEFINITIONS", 29-146 "DEVELOPMENT STANDARDS" AND 29-147 "EXPEDITED REVIEW PROCESS"; PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING ORDINANCES, EFFECTIVE DATE, SUNSET PROVISIONS, AND INCORPORATION INTO THE CODE.

WHEREAS, Chapter 2023-17, Laws of Florida, known as the "Live Local Act" was approved by the Governor on March 29, 2023, and took effect on July 1, 2023 (the "Act") The Act amended Section 166.04151, Florida Statutes, (the "Statute") and imposed various obligations, including the requirement for a municipality to authorize multifamily and mixed-use residential development as an allowable use in any area zoned for commercial, industrial, or mixed-use if at least 40 percent of the residential units in a proposed multifamily rental development are, for a period of at least 30 years, affordable as defined in Section 420.0004, Florida Statutes; and

WHEREAS, the Act preempted certain use, density and height regulations for qualifying developments that provide for the development of affordable multi-family rental housing in commercial, industrial, and mixed-use areas; and

WHEREAS, Chapter 2024-188, Laws of Florida, effective May, 16th, 2024, amended the Act, further amending Section 166.04151, Florida Statutes, by clarifying application of the law; amending the ability to restrict floor area ratios of certain developments; amending the calculation of density, floor area ratio, and height for certain developments; authorizing height restrictions in certain circumstances; prohibiting administrative approvals within a specified proximity to a military installation; requiring the maintenance of policies on the City website; requiring the consideration of reduced parking requirements under certain circumstances and the reduction or elimination of parking requirements for certain mixed-use developments; amending the allowances for certain bonuses for density, height, of floor area ratio in certain circumstances, and addressing the treatment of specified developments as conforming or nonconforming uses under certain circumstances; and

WHEREAS, the Act was amended to clarify that a municipality must authorize multifamily and mixed-use residential development as allowable uses in any area zoned for commercial, industrial, or mixed-use if at least forty (40) percent of the residential units in a proposed multifamily development are rental units that, for a period of at least 30 years, are affordable as defined in Section 420.0004, Florida Statutes; and

WHEREAS, Subsection 166.04151(7)(g) of the Statute provides that a municipality that designates less than twenty (20) percent of the land area within its jurisdiction for commercial or industrial use must authorize a proposed multifamily development as set forth in Subsection 166 04151(7) in areas zoned for commercial or industrial use only if the proposed multifamily development is mixed-use residential; and

WHEREAS, as of the date of this Ordinance, less than twenty (20) percent of the land area of the City of Titusville is currently designated for commercial or industrial use, therefore while this designation is less than twenty (20) percent, a proposed multi-family development must be a mixed-use residential development having a combination of residential and non-residential components in order to qualify as an allowable use in a commercial and industrial zoning district; accordingly it is appropriate that the development must be processed for approval as one unified development inclusive of both residential and non-residential uses; and must include the requisite percentage of residential units that qualify as affordable housing; and

WHEREAS, to qualify as a mixed-use residential development, a meaningful non-residential component is appropriate; and

WHEREAS, the Act, as amended, requires that for mixed-use residential developments, at least sixty-five (65) percent of the total square footage of the mixed-use development must be used for residential purposes; and

WHEREAS, the Titusville City Council has determined that a minimum of twenty (20) percent of the total square footage of the mixed-use residential development as a non-residential component is both meaningful and appropriate; and

WHEREAS, a proposed development authorized under the Act, as amended, must be administratively approved and no further action by the City Council is required if the development satisfies the City's land development regulations for multifamily developments in areas zoned for such use, and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, floor area ratios, height, and land use; and

WHEREAS, the Act requires the City to consider a reduction in required parking if the proposed development is within one-quarter (0.25) mile of a transit stop as defined in the Code, if the transit stop is accessible from the proposed development; and that the City must reduce parking requirements by at least twenty (20) percent or eliminate parking requirements under certain conditions as set forth in the Statute; and

WHEREAS, City Council has determined that it is appropriate and in the public interest that land development regulations for projects developed under the Act should be comparable to existing Code regulations applicable to multi-family in areas zoned for multi-family, including, but not limited to, minimum dwelling size, maximum intensity (building coverage) and setbacks; and

WHEREAS, working under the zoning in progress principals consistent with the pending ordinance doctrine, the City administration has developed this ordinance and all property owners and developers should be aware that provisions of this pending ordinance not yet adopted by the City Council may be applied to any proposed development applications and any development applications may be delayed until the adoption and effectiveness of this ordinance; thus, property owners and developers should not rely on existing land development regulations in making investment and development-related decisions; and

WHEREAS, City Council supports affordable housing and finds it necessary to amend the City Code of Ordinances in order to establish equitable policies, procedures and regulations for the development of mixed income developments as well as to implement the provisions of Section 166 04151, Florida Statutes, as amended, by the adoption of this ordinance.

BE IT ENACTED BY THE CITY OF TITUSVILLE, FLORIDA as follows:

SECTION 1. RECITALS. The foregoing recitals are deemed true and correct and are hereby adopted and incorporated herein by this reference.

SECTION 2. That the Code of Ordinances, City of Titusville Chapter 29, "Special Districts and Overlays", Article VIII "Special Land Use Standards", Division 4 "Affordable Housing", is amended to read as follows:

DIVISION 4. AFFORDABLE HOUSING

Sec. 29-144. – Purpose.

(a) The purpose of this Division is to set forth regulations and rules that will implement Section 166.04151(7), Florida Statutes, as created by Chapter 2023-17, Laws of Florida, the "Live Local Act" (the "Act"), amended by Chapter 2024-188 Laws of Florida, and as the Act may be amended in the future, by allowing for affordable housing developments. The provisions of this Division are in addition to, not in lieu of, other provisions of this Code except as noted below.

(b) The provisions of this Division shall apply to any application for the development of land authorized under Section 166.04151(7), Florida Statutes, as may be amended.

Sec. 29-145. - Definitions

Affordable Housing Development shall mean that a minimum of forty percent (40%) of the residential units within a proposed multifamily development are rental units that are affordable as defined in Section 420.0004, Florida Statutes, for a minimum period of thirty (30) years.

Commercial Zoning Districts shall be as designated in Chapter 28 "Zoning", Article IV Use Table , Section 28-54 Use Table

Industrial Zoning Districts shall be as designated in Chapter 28 Article IV Use Table", Section 28-54 Use Table

Mixed-Use Residential Development shall mean the development of a tract of land or building or structure with two (2) or more different uses to include affordable housing and uses permitted and limited in the underlying zoning district. At a minimum, sixty-five percent (65%) of the total square footage of the mixed-use development Floor Area Ratio must be residential, (lobby, service areas and amenity areas exclusively serving the residential uses shall be considered residential square footage) but no more than eighty percent (80%) shall be residential. At a minimum, twenty percent (20%) of the total square footage of the Floor Area Ratio of the development must be non-residential.

Mixed-use Zoning Districts shall be identified as the following zoning districts Downtown Mixed Use (DMU) Downtown, Uptown and Midtown Subdistricts Urban Mixed Use (UMU), Shoreline Mixed Use (SMU) excluding residential and commercial working waterfront consistent with Section 342 201, Florida Statutes, Urban Village (UV), Regional Mixed Use Multifamily (RMU-300) and Indian River City Neighborhood Commercial (IRCN-C)

Non-residential shall be identified as those uses in Chapter 28, Article IV "Use Table" Section 28-54 "Use Table" identified as Recreation (excluding private parks), Commercial and Industrial.

Sec. 29-146. - Development Standards

(a) Pursuant to the Live Local Act, at least forty percent (40%) of the residential units within a proposed multi-family development shall be rental units that are "affordable" as defined in Section 420.0004, Florida Statutes, and shall remain affordable for a period of at least thirty (30) years. This requirement shall be incorporated as a condition into any administrative approval. In conjunction with the submittal of a Site Plan application, the property owner shall execute a Pre-Development Acknowledgement, on a form approved by the City Administrator affirming the applicability of the Live Local Act conditions and restrictions to the proposed development, consistent with Section 166.04151(7), Florida Statutes and this Division. Additionally, prior to the issuance of a building permit, the property owner shall execute and deliver to the City a Land Use Restriction Agreement (LURA), on a form approved by the City Attorney, detailing the affordable housing criteria to ensure compliance with, and enforcement of, the affordability requirement including the City's monitoring requirements. This LURA shall be approved and executed by the City Administrator. Furthermore, as a prerequisite to the issuance of a Certificate of Occupancy, the Land Use Restriction Agreement (LURA) shall be recorded in the public records of Brevard County, Florida.

(b) Following issuance of a Certificate of Occupancy for the residential portion of the development, the property owner shall provide to the City, on or before January 30th of each year, an Affordable Housing Development Tenant Compliance Report in a format acceptable to the City Administrator, together with copies of all leases then in effect for the affordable units. The Owner shall also provide such other documentation as may be required in the Land Use Agreement and necessary to demonstrate that the occupants of the affordable units meet the requirements of the income standards and that the development meets the affordability criteria as set forth in Section 420.0004, Florida Statutes. The City has the right to audit the evidence of compliance with Section 420.0004, Florida Statutes, as deemed warranted by the City. Violations shall be enforceable in accordance with section 1-15 of the Code. Any continuing violations may be enjoined and restrained by injunctive order of the circuit court. Notwithstanding the foregoing, the City reserves the right to avail itself of any remedies that may be available to the City in law or equity to ensure compliance with this division.

(c) Land area of the following zoning districts shall be used to calculate the percentage of commercial and industrial properties within the City: Community Commercial (CC), Hospital Medical (HM), Light Industrial Services and Warehousing (M-1), Industrial (M-2), Highway Industrial Infill (M-3), Neighborhood Commercial (NC), Office Professional (OP), Planned Industrial Development (PID), Regional Commercial (RC), and Tourist (T). When a new application is received, the percentage of lands zoned commercial and industrial as described in this paragraph shall be reviewed. If the City designates less than twenty percent (20%) of the land area within its jurisdiction as commercial or industrial land use, it must authorize a proposed multifamily development as authorized in this division in areas zoned for commercial or industrial use only if the proposed multifamily development is a mixed-use residential development.

(d) A proposed development authorized under this Division and Section 166.04151(7), Florida Statutes must be administratively approved and no further action by the City Council is required if the development satisfies the City's land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, floor area ratios, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements.

(e) Commercial and Industrial Development.

(1) The commercial/industrial uses shall be those permitted or limited uses consistent with the zoning district in which the development is located.
(2) The interior buffer between industrial and residential uses shall be at least thirty (30) feet.
(3) The commercial component of a mixed-use development shall share the same vehicular access as the multi-family component of the development.
(4) Loading and unloading and refuse collection areas servicing the non-residential uses shall be located to provide the most minimal impact to the adjacent residential community or communities.

(f) Residential density within the development shall be a maximum of the highest currently allowed density on any land in the city where residential development is allowed under the City's land development regulations. For purposes of this section, the term "highest currently allowed density" does not include the density of any building that met the requirements of the Act or this Division or the density of any building that has received any bonus, variance, or other special exception for density provided in the City's land development regulations or the Act as an incentive for development.

(g) Except as stated in this division, development standards for residential units shall be found in Chapter 28 "Zoning", Article V "Zoning District Standards", Section 28-306, Multi-family Medium Density (R-2).

(h) Maximum height of the development cannot be restricted below the highest currently allowed height for a commercial or residential building located in the city within one (1) mile of the development as measured from lot line to lot line, or three (3) stories, whichever is higher. For purposes of this section, the term "highest currently allowed height" does not include the height of any building that met the requirements of the Act or this Division or the height of any building that has received any bonus, variance, or other special exception for height provided in the City's land development regulations or the Act as an incentive for development. If the proposed development is adjacent to, on two or more sides, a parcel zoned for single-family residential use that is within a single-family residential development with at least 25 contiguous single-family homes, the City may restrict the height of the development to one hundred fifty (150) percent of the tallest building on any property adjacent to the proposed development, the highest currently allowed height for the property provided in the land development regulations, or three (3) stories, whichever is higher. For the purposes of this paragraph, the term "adjacent to" means those properties sharing more than one point of a property line, but does not include properties separated by a road. Additional setbacks or other conditions established in the applicable zoning district or overlay upon which the maximum height is found will be required. For example, if the maximum height of the development is based upon Community Commercial (CC) which has no maximum height, the additional setbacks for structures over thirty-five (35) feet shall also be utilized.

(i) A qualifying mixed-use residential development may not be developed or platted in phases, rather, all residential and non-residential components of the development shall be identified on one site plan, and shall be located on the same or unified lot. The development shall be processed for approval as one unified development inclusive of both residential and non-residential uses as depicted on the site plan; and must include the requisite percentage of residential units that qualify as affordable housing. Prior to issuance of a permit, a Declaration of Restrictive Covenant, in a form approved by the City Attorney, shall be provided by the

Owner and will be recorded in the office of the Clerk of the Circuit Court of Brevard County, stipulating that a lot, lots, or parcel of land comprising the development shall be developed in accordance with the approved site plan and no portion thereof shall be sold, conveyed, or devised separately if the result of such sale, conveyance or devise will cause such property to become non-conforming or to violate the approved site plan. The declaration shall constitute a covenant to run with the land and binding until released by the City. The Administrator shall be authorized to release the declaration when the Administrator determines that it is no longer necessary or required and may approve amendments to the declaration when necessary to correct errors, mistakes or changes in circumstances.

(j) Open space.

(1) The minimum percentage of parks and open space required is twenty five percent (25%) of the total gross acreage of the development. The open space shall meet the minimum standards set forth per Chapter 30 "Development standards", Article III "Improvements", Division 3 "Open space", Sections 30-163 "Open space standards" and more specifically paragraphs (a) "required minimum open space" and (h) "Urban village". A minimum of the total open space shall include at least fifty (50) percent pervious area, dedicated to active or passive recreation.

(2) All parks, open space and civic plazas shall be preserved for its intended purpose as expressed in the site plan. The developer shall choose a method of administering open space as specified in Chapter 30 "Development standards", Article I "General provisions", Division 3 "Operations and maintenance".

(k) The City must consider reduced parking requirements for the development if the development is located within one-quarter (0.25) mile of a transit stop and is accessible from the development via a continuous ADA compliant pedestrian pathway. "Transit stop" is defined as a passenger rail station or intercity bus station, or a transit hub where two (2) or more transit routes converge. This determination as to accessibility and reduction in parking required shall be made by the Development Review Committee pursuant to Chapter 34 "Procedures", Article V "Variances and Appeals", Division 5 "Waivers to the Technical Manuals". The developer must provide a plan demonstrating compliance.

(l) The City must reduce parking requirements by at least twenty (20) percent for a development authorized under this Division if the development:

1. Is located within one-half mile of a major transportation hub that is accessible from the proposed development by safe, pedestrian-friendly means, such as sidewalks, crosswalks, elevated pedestrian or bike paths, or other multimodal design features

2. Has available parking within 600 feet of the proposed development which may consist of options such as on-street parking, parking lots, or parking garages available for use by residents of the proposed development. However, the City may not require that the available parking compensate for the reduction in parking requirements

3. The City must eliminate parking requirements for a proposed mixed-use residential development authorized under this Division within an

area recognized by the City as a transit-oriented development or area, as provided in paragraph (o).

4. For purposes of this subsection, the term "major transportation hub" means any transit station, whether bus, train, or light rail, which is served by public transit with a mix of other transportation options

(m) The noise standards in the development shall be determined by the zoning district in which the development is constructed, as found in Code of Ordinances Chapter 13 "Nuisances", Article IV "Noise".

(n) The floor area ratio of a development authorized under this Division may not be restricted below one hundred fifty (150) percent of the highest currently allowed floor area ratio on any land in the city where development is allowed under the city's land development regulations. For purposes of this section, the term "highest currently allowed floor area ratio" does not include the floor area ratio of any building that met the requirements of this division or the floor area ratio of any building that has received any bonus, variance, or other special exception for floor area ratio provided in the City's land development regulations as an incentive for development. For purposes of this subsection, the term "floor area ratio" includes floor lot ratio.

(o) A development authorized under this Division which is located within a transit-oriented development or area, as recognized by the City, must be mixed-use residential and otherwise comply with the requirements of the City's regulations applicable to the transit-oriented development or area except for use, height, density, floor area ratio, and parking as provided herein or as otherwise agreed to by the City and the applicant for the development.

Sec. 29-147. - Review Process

(a) Submit a completed site plan application consistent with the requirements described in Chapter 34, Article IV of the Land Development Regulations.

(b) Submit all required forms, including executed pre-development acknowledgement, land use restriction agreement, a Declaration of Restrictive Covenant, and any other documents, forms and exhibits necessary to review the development consistent with Section 166.04151(7), Florida Statutes and this Division.

(c) Partial reviews will not be provided.

(d) Variances and waivers shall utilize the procedures described in Chapter 34 "Procedures", Article V "Variances and Appeals."

SECTION 3. SEVERABILITY. If any provisions of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. REPEAL OF CONFLICTING ORDINANCES. All ordinances or parts of ordinances, and all resolutions and parts of resolutions, in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective upon adoption by the City Council in accordance with the Charter of the City of Titusville, Florida.

SECTION 6. SUNSET PROVISIONS The provisions of this Ordinance shall apply to any application for the development of land authorized under Section 166.04151(7), Florida Statutes. The ability to submit an application for approval pursuant to this Ordinance shall expire with the expiration date of the Live Local Act.

SECTION 7. INCORPORATION INTO CODE. This Ordinance shall be incorporated into the City of Titusville Code of Ordinances and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this ordinance and the Code may be made.

PASSED AND ADOPTED this 11th day of June, 2024.

Daniel E. Diesel, Mayor

ATTEST:

Wanda F. Wells, City Clerk

CC:
Richard Broome
Terrie Franklin
Laurie Dargie
Jolynn Donhoff