

**CITY OF MIRAMAR  
PROPOSED CITY COMMISSION AGENDA ITEM**

**First Reading Date:** November 16, 2020

**Second Reading Date:** January 27, 2021

**Presenter's Name and Title:** Eric Silva, Director, on behalf of the Community Development Department

**Prepared By:** Nixon Lebrun, Development and Capital Management Coordinator, Community Development

**Temp. Ord. Number:** 1754

**Item Description:** SECOND READING of Temp. Ord. No. 1754, AMENDING THE CODE OF THE CITY OF MIRAMAR, PURSUANT TO SECTION 166.041(3)(A), FLORIDA STATUTES; MORE SPECIFICALLY AT CHAPTER 2, ENTITLED "ADMINISTRATION," ARTICLE VI, ENTITLED "FINANCE AND MISCELLANEOUS FEES" BY AMENDING DIVISION 2.1 ENTITLED "IMPACT FEES FOR NEW DEVELOPMENT," SECTION 2-225.2, ENTITLED "DEFINITIONS" TO PROVIDE A DEFINITION FOR AFFORDABLE HOUSING AND SECTION 2-225.4 ENTITLED "EXEMPTIONS" TO EXEMPT AFFORDABLE HOUSING FROM THE REQUIRED PAYMENT OF IMPACT FEES; AND BY ADDING A NEW DIVISION 5, TO BE ENTITLED "AFFORDABLE HOUSING," PROVIDING DEFINITIONS; ESTABLISHING AN AFFORDABLE HOUSING TRUST FUND; PROVIDING FOR THE USE OF FUNDS; MAKING FINDINGS; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. **(Passed 1<sup>st</sup> Reading on 11/16/20)** *(Community Development Director Eric Silva)* ***(Requested by Commissioner Yvette Colbourne)***

Consent ☐ Resolution ☐ Ordinance ☒ Quasi-Judicial ☐ Public Hearing ☐

**Instructions for the Office of the City Clerk:**

**Public Notice** – As required by the Sec. \_\_\_\_\_ of the City Code and/or Sec. \_\_\_\_\_, Florida Statutes, public notice for this item was provided as follows: on \_\_\_\_\_ in a \_\_\_\_\_ ad in the \_\_\_\_\_; by the posting the property on \_\_\_\_\_ and/or by sending mailed notice to property owners within \_\_\_\_\_ feet of the property on \_\_\_\_\_ (fill in all that apply)

**Special Voting Requirement** – As required by Sec. \_\_\_\_\_ of the City Code and/or Sec. \_\_\_\_\_, Florida Statutes, approval of this item requires a \_\_\_\_\_ (unanimous, 4/5ths etc.) vote by the City Commission.

**Fiscal Impact:** Yes ☒ No ☐

**REMARKS:**

**Content:**

- **Agenda Item Memo from the City Manager to City Commission**
- **Ordinance TO 1754**
- **Attachment 1 – Broward County Affordable Housing Declaration of Restrictive Covenants**



**CITY OF MIRAMAR  
INTEROFFICE MEMORANDUM**

**TO:** Mayor, Vice Mayor, & City Commissioners

**FROM:** Vernon E. Hargray, City Manager *V. Hargray*

**BY:** Eric Silva, Community Development Director

**DATE:** January 21, 2021

**RE:** SECOND READING of Temp. Ord. No. 1754, amending Chapter 2, Article VI of the City Code by adding a new Division to establish an Affordable Housing Trust Fund and provide for an Affordable Housing Impact Fee Waiver

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**RECOMMENDATION:** That the City Commission holds two (2) public hearings (a first reading and a second reading), following the notification procedures of s. 166.041(3)(a), Florida Statutes ("F.S."), to consider an ordinance amending the Code of the City of Miramar (the "City"), at Chapter 2, Article VI, specifically by amending ss. 2-225.2 and 2-225.4 of Division 2.1 to provide for an affordable housing impact fee waiver and by adding a new Division 5, to be entitled "Affordable Housing," the purpose of which is to establish, among other things, an Affordable Housing Trust Fund and an Affordable Housing Impact Fee Waiver to support the preservation and production of affordable housing and increase opportunities for families and individuals to access decent affordable homes.

**ISSUE:** City Commission approval is required to amend the City Code.

**BACKGROUND:** Over the past two decades, the City has experienced unprecedented and sustained growth. The City currently has a population of over 140,000 residents, with all indications pointing to the population growing to over 150,000 by 2030. Similar to the rest of the Broward County, the City is facing an affordable housing shortage. The Florida Housing Data Clearinghouse estimated in 2013 that almost 58% of the City's households were considered either cost burdened or severely cost burdened. The City's 2015-2019 Community Development Plan submitted to the U.S. Department of Housing and Urban Development ("HUD"), estimated that:

- 89% of Miramar's 9,244 extremely low-income households (0-30% AMI) qualified as severely cost burdened and about 8% as cost burdened.

- 29% of Miramar's total 4,810 very low-income (30-50% Area Median Income or AMI) households are cost burdened, while 62% are severely cost burdened.
- 43% of Miramar's 6,912 low-income population (50-80% AMI) was cost burdened and 43% was considered severely cost burdened.

According to the most recent Broward County Affordable Needs Assessment, the City has more than 21,000 households that are either cost-burdened (paying in excess of 30 percent of their incomes on housing costs) or severely cost-burdened (paying in excess of 50 percent of their incomes on housing costs). This number includes 56.1 percent of the owner-occupied units and 61.9 percent of the renter-occupied units. Another assessment recently submitted on behalf of the City to the County as part of a land use map change application further indicates that the housing stock for moderate-income households and rental housing for the Very Low-Income category are largely deficient in the City. *The affordable housing gap analysis included in that assessment points to a shortage of 776 affordable for sale homes for the moderate-income owners and a shortage of 2,717 affordable rental units for the very low-income renters.*

**DISCUSSION:** The City has been receiving funds from the State Housing Initiative Partnership Program ("SHIP") since 1998, and from the Home Investment Partnership ("HOME") program, as a participating member of the Broward County HOME Consortium since 2003. The City has also been an entitlement grantee of federal funds since 2000, receiving a total of more than \$14,060,000 dollars from the Community Development Block Grant ("CDBG") program to date. These federal and state funds have helped the City preserve and repair affordable units. However, funding has not been adequate to create additional units to produce enough affordable housing, let alone avoid the current crisis. In fact, federal resources have been decreasing for several years and are currently under further threat from budget cuts. The State Sadowski Housing Trust Fund has been swept annually for general fund purposes rather than to address affordable housing, for which the funds were mandated to be used. The affordable housing challenge in the City is further compounded by escalating land cost in light of the low availability of development sites, the housing rapid appreciation of homes during and in the aftermath of the "housing bubble," as well as regulatory fees, such as impact fees, which inadvertently raise construction costs.

**ANALYSIS:** The shortfall in affordable homes has been decades in the making and will not be solved overnight. However, the City has always been proactive in finding and crafting strategies to preserve and develop affordable housing that is sufficiently flexible to meet varying and evolving needs and priorities, whether in the development of its HUD-mandated Consolidated Plan or in the approval of certain land use plan amendments that add more than 100 dwelling units to a development site.

The current economic crisis triggered by the coronavirus, which has left many Americans and City residents unemployed, and many non-profit affordable housing providers reeling, has compounded the problem and created an urgent need to act now.

The enactment of an affordable housing impact fee waiver, and the establishment of an affordable housing trust fund will go a long way and will further demonstrate the City's commitment to incentivize and support the preservation and production of affordable housing for extremely-, very-, low-, moderate, and workforce income households in the community. Indeed, planners and policymakers generally agree that impact fee waivers can act as catalysts for affordable housing by mitigating development costs and that housing trust funds can be a particularly effective policy in high- and rising-cost housing markets like South Florida, as they can be tailored to meet the varying housing needs. Affordable housing impact fee waivers are currently provided at the county level. Also, there are 47 states with housing trust funds, and more than 700 city and county housing trust funds in operation, dedicating an excess of \$1.2 billion annually to help address critical housing needs in the country. Below is a summary of the two new strategies that are being proposed by this ordinance:

**1. Establishment of an Affordable Housing Trust Fund**

In 2018, Broward County voters supported a charter amendment to create the Broward County Affordable Housing Trust Fund. The proposed ordinance is based on the Broward County Trust Fund and City of Fort Lauderdale's Trust Fund. The creation of an affordable housing trust fund will not impact the FY2021 budget. Potential funding sources will include:

- (a) One Hundred Percent (100%) of the net sales proceeds from the sale of all city owned residential surplus lots shall fund the Trust Fund;
- (b) Fifteen (15%) percent of the net sales proceeds from the sale of city-owned/ governmentally owned non-residential (commercial/industrial) shall fund the Affordable Housing Trust Fund. Proceeds from the sale of properties that are part of an enterprise fund shall not be used to fund the Trust Fund;
- (c) Broward County Affordable Housing Trust Funds;
- (d) Grants or donations made to the Trust Fund; and
- (e) Mandatory or voluntary payments made pursuant to the development policies.

Funds deposited in the Trust Fund shall be used to provide loans and grants for projects to create and sustain affordable housing for income eligible persons/families, including renters and homeowners. Funds will be used to provide assistance through production, acquisition, rehabilitation and preservation of land and/or housing units for rental and homeownership activities. All projects to be awarded funding shall be approved by the City Commission.

## **2. Affordable Housing Impact Fee Waiver**

Both Broward and Miami-Dade Counties provide impact fee waivers for affordable housing. The proposed ordinance is based on these programs. City impact fees would be waived for deed restricted affordable housing provided for households at or below 80 percent (\$71,300 for a four-person household) of the area median income. A declaration of restrictive covenants, similar to Broward County's (Attachment 1), would be required. Over the last five years only the six units constructed by Habitat for Humanity would have met this requirement. The fiscal impact of waiving impact fees for these six units would have been approximately \$36,000.

Temp. Ord. No. 1754  
7/30/20  
11/10/20

**CITY OF MIRAMAR  
MIRAMAR, FLORIDA**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, AMENDING THE CODE OF THE CITY OF MIRAMAR, PURSUANT TO SECTION 166.041(3)(A), FLORIDA STATUTES; MORE SPECIFICALLY AT CHAPTER 2, ENTITLED "ADMINISTRATION," ARTICLE VI, ENTITLED "FINANCE AND MISCELLANEOUS FEES" BY AMENDING DIVISION 2.1 ENTITLED "IMPACT FEES FOR NEW DEVELOPMENT," SECTION 2-225.2, ENTITLED "DEFINITIONS" TO PROVIDE A DEFINITION FOR AFFORDABLE HOUSING AND SECTION 2-225.4 ENTITLED "EXEMPTIONS" TO EXEMPT AFFORDABLE HOUSING FROM THE REQUIRED PAYMENT OF IMPACT FEES; AND BY ADDING A NEW DIVISION 5, TO BE ENTITLED "AFFORDABLE HOUSING," PROVIDING DEFINITIONS; ESTABLISHING AN AFFORDABLE HOUSING TRUST FUND; PROVIDING FOR THE USE OF FUNDS; MAKING FINDINGS; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Commission of the City of Miramar (the "City Commission") recognizes that the City of Miramar (the "City") has experienced rapid population growth over the past two decades and that these growth trends are predicted to continue; and

**WHEREAS**, coupled with escalating land and development costs, and the low availability of development sites, such unprecedented and sustained growth places pressures on the housing market and causes an increase in rents and home prices; and

Ord. No. \_\_\_\_\_

Temp. Ord. No. 1754  
7/30/20  
11/10/20

**WHEREAS**, more than 21,000 households in the City are considered either cost-burdened (paying in excess of 30 percent of their incomes on housing costs) or severely cost-burdened (paying in excess of 50 percent on their incomes on housing costs); and

**WHEREAS**, cost-burdened households in the City have significantly less income to spend on basic needs such as food, transportation, education and medical care; and

**WHEREAS**, the City Commission recognizes that the ability to provide enough affordable housing at all income levels is critical to healthy families, impacts the quality of life of the community and is increasingly important for meeting the City's full economic development potential; and

**WHEREAS**, the City Commission finds that the federal and state funds received by the City for preserving and producing affordable housing are insufficient to meet evolving community needs and create enough affordable housing; and

**WHEREAS**, pursuant to the grant of home rule powers set forth in Section 2(b), Article VIII of the Florida Constitution, as codified in Chapter 166, Florida Statutes ("F.S."), it is within the scope of the City's broad governmental, corporate and proprietary powers to support and facilitate housing affordability for its very low, low and moderate-income residents, as such action and/or legislation constitutes a legitimate "municipal purpose," one that is not expressly prohibited by the Florida Constitution, nor is it expressly preempted to the State or County government by the Florida Constitution or by general law, but is essential to the health, morals, protection and welfare of its residents; and



Temp. Ord. No. 1754  
7/30/20  
11/10/20

**WHEREAS**, consistent with the City's land use authority and land development planning efforts laid out originally in the 1985 Growth Management Act and remaining in force as part of the Community Planning Act of 2011, the City's Adopted Comprehensive Plan includes a Housing Element, which requires that the City assures the availability of a full range of housing types and values, and a diversity of location choices for all current and future residents, by adopting a housing strategy that focuses specifically on assisting the very low-, low- and moderate-income residents with their housing needs and provides incentives for the development of affordable housing, such as waiver of impact fees; and

**WHEREAS**, the City Commission is desirous to amend Chapter 2, Article VI of the Code of the City of Miramar, specifically by amending Division 2.1, Section 2-225.2 to provide for the definition of "affordable housing" and Section 2-225.4 to exempt affordable housing from the required payment of impact fees, and by adding a new Division 5 to establish an Affordable Housing Trust Fund, the purpose of which is to preserve and develop affordable housing for the very low, low and moderate-income families in the City; and

**WHEREAS**, the City Commission realizes that impact fees, which are defined as a type of regulatory fee imposed at the time of building permit approval by a local government, pursuant to its police powers, against new development to provide for capital facilities' costs made necessary by population growth, can add to the cost of construction and thereby constitute a regulatory barrier to the production of affordable housing; and

Temp. Ord. No. 1754  
7/30/20  
11/10/20

**WHEREAS**, exempting affordable housing from the required payment of impact fees shows the City Commission's commitment to subsidize and thereby incentivize the production of affordable housing in the community; and

**WHEREAS**, to "preserve" affordable housing means to acquire, finance, refinance, or rehabilitate housing that is at imminent risk of loss to the affordable housing supply (including housing that is restricted to affordable housing or housing that is otherwise provided at an affordable rent or an affordable housing cost to lower income households or very low income households) due to termination of use restrictions, non-renewal of subsidy contract, mortgage or tax default or foreclosure, rent increases, conversion to market-rate housing or other uses, demolition, or physical conditions that are likely to result in vacation of the property; and

**WHEREAS**, housing trust funds established by city, county or state governments that receive ongoing dedicated sources of public funding are a viable tool for facilitating the preservation and production of affordable housing and increase opportunities for families and individuals to access decent affordable homes; and

**WHEREAS**, housing trust funds systematically shift affordable housing funding from annual budget allocations to the commitment of dedicated public revenue; and

**WHEREAS**, to date, there are 47 states with housing trust funds, and more than 700 city and county housing trust funds in operation, dedicating an excess of \$1.2 billion annually to help address critical housing needs throughout the country; and

Temp. Ord. No. 1754  
7/30/20  
11/10/20

**WHEREAS**, approval of the City Commission is required to amend the City Code of Ordinances; and

**WHEREAS**, the City Manager recommends approval to amend Article VI of Chapter 2 of the City Code of Ordinances to create a new Division 5, the purpose of which is to establish an Affordable Housing Trust Fund for preserving and developing affordable housing; and

**WHEREAS**, the City Commission held two duly noticed public hearings, pursuant to the notice requirements of Section 166.041(3)(a), F.S., on October 28, 2020 and November 16, 2020, at which public hearings the City Manager's recommendation for adoption was considered and public testimony from all interested parties was heard; and

**WHEREAS**, the City Commission deems it to be in the best interest of the citizens and residents of the City of Miramar to approve the proposed amendment to Chapter 2, Article VI of the City Code of Ordinances.

Temp. Ord. No. 1754  
7/30/20  
11/10/20

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF  
MIRAMAR, FLORIDA, THAT:**

**Section 1:**    **Recitals.**    That the foregoing “**WHEREAS**” clauses are hereby adopted as legislative findings of the City of Miramar Commission and are hereby ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

**Section 2:**    That Section 2-225.2 of Division 2.1 of Article VI of Chapter 2 of the Code of the City of Miramar is hereby amended to read as follows:

**DIVISION 2.1. - IMPACT FEES FOR NEW DEVELOPMENT**

\* \* \*

**Sec. 2-225.2. - Definitions.**

When used in this division, the following words, terms, and phrases, and their derivations, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Affordable housing or affordable housing development* means housing for which monthly rents or monthly mortgage payments (including taxes and insurance) do not exceed 30 percent of an amount representing the percentage (very low = 50%; low = 80%; moderate = 120%) of the median income limits, as published by the U.S. Department of Housing and Urban Development (“HUD”), adjusted for family size for households within Broward County.

\* \* \*

**Section 3:**    That Section 2-225.4 of Division 2.1 of Article VI of Chapter 2 of the Code of the City of Miramar is hereby amended to read as follows:

Ord. No. \_\_\_\_\_

Temp. Ord. No. 1754  
7/30/20  
11/10/20

**Sec. 2-225.4. - Exemptions.**

This division does not apply to:

\* \* \*

- (11) Impact fees related to the development shall be waived for affordable when an application is made for the construction of affordable housing, if the City Commission or the director of the community development department finds that the proposed project will provide affordable housing for very low, or low, or income persons. Prior to consideration of any waiver request, the developer shall obtain certification from the community development department stating that the project qualifies as affordable housing at a specified income level(s). Any such waiver shall be only for that a portion of the development that qualifies as affordable housing. The percentage of any waiver granted shall be as one hundred percent (100%). Developers shall enter into an agreement with the city upon terms and conditions determined by the city to be necessary to reasonably ensure that affordable housing is constructed, that any waiver hereunder enhances the affordability of the housing, and that such units are rented or sold to persons meeting the income limitations defined by the procedure for qualification.

**Section 4:** That Article VI of Chapter 2 of the Code of the City of Miramar, Florida, entitled “Finances and Miscellaneous Fees,” is hereby amended to add a new division to be numbered 5, which said division shall hereafter read as follows:

**DIVISION 5. – AFFORDABLE HOUSING**

**Sec. 2-266. – Definitions.**

For the purposes of this division, the following definitions apply:

Affordable housing means housing for which monthly rents or monthly mortgage payments (including taxes and insurance) do not exceed 30 percent of an amount representing the percentage (very low = 50%; low = 80%; moderate = 120%) of the median income limits, as published by the U.S. Department of Housing and Urban Development (“HUD”), adjusted for family size for households within Broward County.

Temp. Ord. No. 1754  
7/30/20  
11/10/20

City of Miramar Affordable Housing Trust Fund or Fund means the fund established pursuant to this division to provide a continuing, non-lapsing fund for the City Commission to address the need for affordable housing in the City.

Income Eligible Person/Family means one or more natural persons or a family that has a total annual anticipated income for the household below 140 percent of the median annual income, as published by HUD, adjusted for family size for households within Broward County.

Low income household means one or more natural persons or a family, not including students, that has a total annual anticipated income for the household that does not exceed 80 percent of the median annual income, as published by HUD, adjusted for family size for households within Broward County.

Moderate income household means one or more natural persons or a family, not including students, that has a total annual anticipated income for the household that does not exceed 120 percent of the median annual income, as published by the HUD, adjusted for family size for households within Broward County.

Very low income household means one or more natural persons or a family, not including students, that has a total annual anticipated income for the household that does not exceed 50 percent of the median annual income, as published by HUD, adjusted for family size for households within Broward County.

Workforce income household one or more natural persons or a family, not including students, that has a total annual anticipated income for the household that does not exceed 140 percent of the median annual income, as published by HUD, adjusted for family size for households within Broward County.

#### **Sec. 2-267. - Establishment of the City of Miramar Affordable Housing Trust Fund**

The City of Miramar Affordable Housing Trust Fund (the "Trust Fund" or the "Fund") is hereby established, into which funds shall be deposited pursuant to this division.

#### **Sec. 2-268 – Purpose of Trust Fund**

The purpose of the Trust Fund is to provide a continuing, non-lapsing fund for the City Commission to address the need for workforce housing in the city.

Temp. Ord. No. 1754  
7/30/20  
11/10/20

**Sec. 2-269. – Revenue sources.**

The Trust Fund established under this Section shall be funded by the City Commission, and may be comprised of the following sources:

- (a) One Hundred Percent (100%) of the net sales proceeds from the sale of all city owned residential surplus lots shall fund the Trust Fund;
- (b) Fifteen (15%) percent of the net sales proceeds from the sale of city-owned governmentally owned non-residential (commercial/industrial) shall fund the Affordable Housing Trust Fund. Proceeds from the sale of properties that are part of an enterprise fund shall not be used to fund the Trust Fund;
- (c) Broward County Affordable Housing Trust Funds;
- (d) Grants or donations made to the Trust Fund; and
- (e) Mandatory or voluntary payments made pursuant to the development policies.

All investment earnings and other income shall be retained in the Trust Fund until used for affordable housing.

**Sec. 2-270. - Use of the Fund.**

- (a) Funds deposited in the Trust Fund shall be used to provide loans and grants for projects to create and sustain affordable housing for income eligible persons/families, including renters and homeowners.

Temp. Ord. No. 1754  
7/30/20  
11/10/20

- (b) Provide assistance through production, acquisition, rehabilitation and preservation of land and/or housing units for rental and homeownership activities. Funds shall not be used for supportive housing services such as daycare or job training.
- (c) Not more than five percent of the funds may be used to cover administrative expenses.
- (d) Not less than thirty percent of the funds shall be spent on affordable housing for very low-income households.
- (e) Not less than thirty percent of the funds shall be spent on affordable housing for low income households.

**Sec. 2-271. - Continuing Nature of the Fund.**

Notwithstanding any other provision of this division, unspent portions of the Trust Fund established under this division, repayments of principal and interest on loans provided from the Trust Fund, and interest earned from the deposit of investment monies from the Fund:

- (1) Shall remain in the Trust Fund, to be used exclusively for the purpose of the Fund.
- (2) Do not revert to the general revenues of the City; and
- (3) Any appropriations do not lapse.

**Sec. 2-272. - Administration.**

- (a) The Trust Fund shall be administered by the Community Development Department in a manner that allows the Trust Fund to leverage other sources of public funds and private investment; a national best practice. The Trust Fund shall be included in the annual audit.
- (b) All projects to be awarded funding shall be approved by the City Commission.



Temp. Ord. No. 1754  
7/30/20  
11/10/20

**Section 5: Repeal.** That all sections or parts of sections of the City Code, all Ordinances and part of Ordinances, all Resolutions or parts of Resolutions determined by a court of law to be inconsistent or in conflict with this Ordinance are hereby repealed.

**Section 6: Severability/Interpretation.**

(a) Severability. That if any word, clause, phrase, sentence, paragraph or section of this Ordinance is held to be unconstitutional or invalid by any court of competent jurisdiction, such unconstitutional or invalid part or application shall be considered as eliminated and shall not affect the validity of the remaining portions or applications which shall remain in full force and effect.

(b) Interpretation. That in interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Changes between first and second readings are denoted by underlined words. Asterisks (\* \* \*) indicate a deletion from the Ordinance of text, which exists in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and do not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

**Section 7: Scrivener's Error.** The City Attorney is hereby authorized to correct scrivener's errors found in this Ordinance by filing a corrected copy with the City Clerk.

Temp. Ord. No. 1754  
7/30/20  
11/10/20

**Section 8:**   **Codification.** That it is the intention of the City Commission of the City of Miramar that that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miramar, Florida. The sections of this Ordinance may be renumbered or re-lettered and the word “Ordinance” may be changed to “Chapter,” “Article,” “Division,” or “Section,” or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed.

Temp. Ord. No. 1754  
7/30/20  
11/10/20

**Section 9:**    **Effective Date:** That this Ordinance shall become effective upon adoption.

**PASSED FIRST READING:** \_\_\_\_\_

**PASSED AND ADOPTED ON SECOND READING:** \_\_\_\_\_

\_\_\_\_\_  
Mayor, Wayne M. Messam

\_\_\_\_\_  
Vice Mayor, Maxwell B. Chambers

ATTEST:

\_\_\_\_\_  
City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have approved  
this ORDINANCE as to form:

\_\_\_\_\_  
City Attorney,  
Austin Pamies Norris Weeks Powell, PLLC

**Requested by Commissioner Colbourne**

**Voted**

Commissioner Winston F. Barnes  
Vice Mayor Maxwell B. Chambers  
Commissioner Yvette Colbourne  
Commissioner Alexandra P. Davis  
Mayor Wayne M. Messam

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# Attachment 1 - SAMPLE COVENANT



Environmental Protection and Growth Management Department  
**PLANNING AND DEVELOPMENT MANAGEMENT DIVISION**  
1 N. University Drive, Suite 102A • Plantation, FL 33324 • 954-357-8695  
[broward.org/planning](http://broward.org/planning)

Return recorded copy to:

Planning and Development Management  
Division  
1 North University Drive, Suite 102A  
Plantation, Florida 33324

Document prepared by:

## DECLARATION OF RESTRICTIVE COVENANTS (AFFORDABLE HOUSING)

This Declaration of Restrictive Covenants, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, hereinafter referred to as "OWNER," and \_\_\_\_\_ as MORTGAGEE (if property described in Exhibit "A" is encumbered by a mortgage).

WHEREAS, OWNER is the fee title owner of that certain real property known as the \_\_\_\_\_ ("Plat"), located in Broward County, Florida, and legally described in Exhibit "A," attached hereto and incorporated herein (the "Property"); and

WHEREAS, OWNER hereby covenants that OWNER is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Declaration and all mortgagees have been joined or subordinated; that OWNER has good right and lawful authority to make this Declaration; and that OWNER agrees to fully warrant and defend this Declaration against the claims of all persons whomsoever; and

WHEREAS, OWNER intends to build affordable housing units on the Property and has applied to BROWARD COUNTY for the waiver of \_\_\_\_\_ and \_\_\_\_/100 (\$\_\_\_\_\_) in impact and/or administrative fees related to the Plat; and

WHEREAS, pursuant to Section 5-184 of the Broward County Land Development Code, a condition of waiving the impact and/or administrative fees for affordable housing is that OWNER

must reasonably ensure that affordable housing units are rented or sold to persons meeting the income limitations defined in Section 5-201 of the Broward County Code of Ordinances; and

WHEREAS, OWNER, in fulfillment of that obligation hereby places certain restrictions on the use of the Property; NOW, THEREFORE:

1. The recitals set forth above are true and correct and are incorporated into these restrictive covenants.
2. OWNER hereby declares that the Property shall be held, maintained, transferred, sold, conveyed, and owned subject to the following designations and restrictive covenants:

OWNER hereby agrees that \_\_\_\_\_  
and \_\_\_\_/100 Dollars (\$\_\_\_\_\_) in impact and/or administrative fees have been waived for the Plat for the construction of:

\_\_\_\_\_ very low income units  
\_\_\_\_\_ low income units

within the Plat. OWNER shall ensure that the aforementioned units shall be sold and rented to persons meeting the applicable income limitations, as defined in Section 5-201 of the Broward County Code of Ordinances.

3. This Declaration of Restrictive Covenants shall be recorded in the Public Records of Broward County, Florida, shall become effective upon recordation, and shall run with the Property at the specified income level(s) for a period of at least:

☐ Twenty (20) years for rental housing, or

☐ Ten (10) years for owner-occupied housing.

4. BROWARD COUNTY, at the request of OWNER or its successor, shall cause a release to be recorded in the Official Records of Broward County, Florida upon payment of all applicable impact fees at the rate in effect at the time of the request for the release of the restrictive covenant prior to the above referenced time periods.
5. BROWARD COUNTY, through its Board of County Commissioners, its successors and assigns, is the beneficiary of these restrictive covenants and as such, BROWARD COUNTY may enforce these restrictive covenants by an action at law or in equity against any person or persons, entity or entities, violating or attempting to violate the terms of these restrictions. Additionally, BROWARD COUNTY may institute foreclosure proceedings against the Property for the amount of fees that OWNER is bound to repay.

6. Any failure of BROWARD COUNTY to enforce these restrictive covenants shall not be deemed a waiver of the right to do so thereafter.
7. Invalidation of any one of these restrictive covenants by judgment or court order shall in no way affect any other conditions which remain in full force and effect.
8. (a) If there is a mortgage against the Property described in Exhibit "A," MORTGAGEE hereby agrees that the Mortgage it holds from OWNER recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Broward County, Florida, all of which encumber the Property described herein shall be and are subordinate to the restrictive covenants set forth above, restricting the use of the real Property for the time periods set forth above.  
  
(b) In the event of a foreclosure whereby MORTGAGEE takes title to the Property, MORTGAGEE may request the release of the restrictive covenant restricting the Property included in Exhibit "A." The County Administrator is authorized to execute a release of the restrictive covenant upon payment of all applicable impact fees at the rate in effect at the time of the request for the release of the restrictive covenant.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

**OWNER-INDIVIDUAL**

IN WITNESS WHEREOF, OWNER and MORTGAGEE have executed this Declaration of Restrictive Covenants and Subordination as follows:

Witnesses:

(Signature)

Print name: \_\_\_\_\_

(Signature)

Print name: \_\_\_\_\_

Name of Owner (Individual)

(Signature)

Print name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

### **ACKNOWLEDGMENT - INDIVIDUAL**

STATE OF )  
 ) SS.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_ who is

☐ personally known to me, or

☐ produced identification. Type of identification produced \_\_\_\_\_.

(Seal)

NOTARY PUBLIC:

Signature: \_\_\_\_\_

My commission expires:

Print name:

**OWNER-CORPORATION/PARTNERSHIP**

IN WITNESS WHEREOF, OWNER and MORTGAGEE have executed this Declaration of Restrictive Covenants and Subordination as follows:

Witnesses:

\_\_\_\_\_  
(Signature)

Print name: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Print name: \_\_\_\_\_

\_\_\_\_\_  
Name of Owner (corporation/partnership)

\_\_\_\_\_  
(Signature)

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

ATTEST (if corporation)

\_\_\_\_\_  
(Secretary signature)

Print Name: \_\_\_\_\_

(CORPORATE SEAL)

**ACKNOWLEDGMENT – CORPORATION/PARTNERSHIP**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ who is

☐ personally known to me, or

☐ produced identification. Type of identification produced \_\_\_\_\_.

(Seal)

NOTARY PUBLIC:

\_\_\_\_\_  
Signature:

My commission expires:

\_\_\_\_\_  
Print name:



## MORTGAGEE-INDIVIDUAL

MORTGAGEE, being the holder of a mortgage relating to the parcel(s) described in Exhibit "A" hereby consents and joins in for the purpose of agreeing that its mortgage shall be subordinated to the foregoing Declaration:

Witnesses:

(Signature)

Print name:

(Signature)

Print name:

Name of Mortgagee (Individual)

(Signature)

Print name:

Address:

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

## ACKNOWLEDGMENT - INDIVIDUAL

STATE OF )  
 ) SS.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ who is \_\_\_\_\_

☐ personally known to me, or

☐ produced identification. Type of identification produced \_\_\_\_\_.

(Seal)

NOTARY PUBLIC:

Signature:

My commission expires:

Print name:

## **MORTGAGEE-CORPORATION/PARTNERSHIP**

MORTGAGEE, being the holder of a mortgage relating to the parcel(s) described in Exhibit "A" hereby consents and joins in for the purpose of agreeing that its mortgage shall be subordinated to the foregoing Declaration:

Witnesses:

\_\_\_\_\_  
(Signature)

Print name: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Print name: \_\_\_\_\_

\_\_\_\_\_  
Name of Owner (corporation/partnership)

\_\_\_\_\_  
(Signature)

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

ATTEST (if corporation)

\_\_\_\_\_  
(Secretary signature)

Print Name: \_\_\_\_\_

(CORPORATE SEAL)

## **ACKNOWLEDGMENT – CORPORATION/PARTNERSHIP**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_ who is

☐

personally known to me, or

☐

produced identification. Type of identification produced \_\_\_\_\_.

(Seal)

NOTARY PUBLIC:

\_\_\_\_\_  
Signature:

My commission expires:

\_\_\_\_\_  
Print name:

**EXHIBIT "A"**

**LEGAL DESCRIPTION**