



# DEVELOPMENT SERVICES

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## ADMINISTRATIVE MEMORANDUM NO. 17- 307

DATE: August 18, 2017

TO: Planning and Zoning Board

VIA: David L. Recor, Director of Development Services

Jennifer Gomez, AICP, Assistant Director of Development Services 

FROM: Jean E. Dolan, AICP, Principal Planner 

RE: Updates to Chapter 154: Planning

Related to Residential and Nonresidential Flexibility Regulations

The “BrowardNext” planning process culminated with the adoption of the 2017 Broward County Land Use Plan which became effective in June, 2017. The new Broward County Land Use Plan includes several changes to the “flexibility” standards used by the County and the City. This flexibility is still intended to allow some variation in residential densities and in permitted uses in Nonresidential and Residential land use categories to facilitate redevelopment without requiring a lengthy Comprehensive Plan amendment process.

The following are the proposed changes to Chapter 154: Planning which are either details that were not included in the previous version of Chapter 154 or that are new regulations that were adopted as part of the BrowardNext planning process.

*It should be noted that these regulations do not create any new entitlements. Before the City can take advantage of the new pool of redevelopment units described below, the City’s Comprehensive Plan will need to be amended and the City will have to allocate all but 250 of the 1,420 flex units remaining before applying for an allocation of redevelopment units from the County.*

**(1) Flexibility Unit Definition:** Previously, there were two types of units that the City could use to increase density on residential land use categories or allow residential to be built in nonresidential land use categories. These were flex units and reserve units. Flex units are created when the City has less density approved on their land use plan than the County. Reserve units were equal to 2% of the total units allowed by the County’s Land Use Plan. As of June, 2017, the flex units and reserve units available for use by the City (1,420 units) were combined and are now defined as Flex Units. This new definition is reflected in the attached amendments to Chapter 154.

**(2) Redevelopment Units:** BrowardNext created a new pool of units equal to 3% of all the residential units approved County-wide and established a pool of about 35,000 redevelopment units for distribution County-wide. The City can apply for an allocation of these redevelopment units once the concept has been established in the Comprehensive Plan and only 250 or fewer flex units remain. The City can apply for 500 redevelopment units at a time. As part of the application process, the City must adopt a Redevelopment Unit Receiving Area map to show which areas will be eligible for those units. When only 5% (25) of each

500 unit allocation of redevelopment units remain to be built, the City can apply for another 500 units and this can continue until the City has been allocated the maximum amount which is equal to 3% of the units approved for development in Pompano per the County's 2017 Land Use Plan. This new redevelopment unit concept is included in the amendments to Chapter 154.

**(3) Residential Flexibility and the 10% Rule:** The BrowardNext process has changed the way the County identifies nonresidential land use categories. The County has combined the Commercial and Industrial land use categories into one land use category called "Commerce". The County's Plan allows 10% of all land within a Commerce category to be used for residential or mixed use purposes, however, flex or redevelopment units must be applied anytime this type of flexibility is used. The new Commerce land use category and the 10% Nonresidential Flex Rule has been added to the attached amendments to Chapter 154.

**(4) Nonresidential Flexibility and the 5% Rule:** The County's Plan allows 5% of all of the residential land area in the City to be converted to neighborhood retail and office uses without a Land Use Plan Amendment. This type of flexibility has not changed with BrowardNext, however, it was not previously described in Chapter 154 so it has been added to the attached text amendments.

**Changes to Chapter 154 Unrelated to BrowardNext:**

**154.80 Affordable Housing Contribution** – The City currently provides for an in lieu of fee as an option to satisfy the affordable housing requirement triggered by a City and County Comprehensive Plan amendment creating 100 or more new residential units. In the past, the City required all recipients of flex units to provide some affordable housing, either within their projects or off-site. The affordable housing was required to be deed restricted to remain affordable for 30 years. To be consistent with the Comprehensive Plan regulations that require affordable housing to be addressed, the attached amendment allows an in lieu of fee to be paid into the City's Local Affordable Housing Trust Fund if the Applicant for flex units prefers the buyout over building the affordable housing units. If the in lieu of fee option is chosen, the fee will be applied to all of the flex units allocated that do not meet the requirements of affordable housing as stated in Section 154.62(E).

**Changes to Chapter 155: Appendix C. Fee Schedule**

In reviewing the regulations for flexibility, it was noted that the Chapter 155, Appendix C Fee Schedule related to flex applications needed some clarification. The wording of the various types of applications was clarified on the proposed amendments to Appendix C and the fees for all flex-related applications were made the same given that the same review process (DRC, P&Z and City Commission) will be utilized for all types of flex applications.

It should be noted that prior to the adoption of BrowardNext, there was an additional type of flexibility which allowed commercial uses to be developed in up to 20% of the Industrial Land Use category on the County's Land Use Plan. Through the BrowardNext process, however, all commercial and industrial land was combined into one land use category called "Commerce". The 20% Industrial to Commercial type of flex, therefore, is no longer in use.

To ensure that the City can continue allowing some commercial uses to be built in the Industrial Land Use Category without a local Comprehensive Plan amendment, as originally intended by adopting the Industrial to Commercial flexibility rule in the Comprehensive Plan, the fee schedule has been amended to clarify the process and fee for implementation of that objective.

## **RESERVE AND FLEXIBILITY AND REDEVELOPMENT UNITS AND NONRESIDENTIAL FLEXIBILITY**

### **§ 154.60 DEFINITIONS.**

For the purpose of this subchapter the following words and phrases shall have the meanings herein set forth.

**FLEXIBILITY UNIT.** The difference between the number of dwelling units permitted within a flexibility zone by the Broward County Future Land Use Plan Map and the number of dwelling units permitted within the flexibility zone by the city's certified Future Land Use Element. Shall be equal to the difference between the number of dwelling units permitted within a flexibility zone by the Broward County Land Use Plan and the number of dwelling units permitted within the local government's certified future land use plan map, plus additional remaining permitted dwelling units, fixed at the adoption date of the 2017 Broward County Land Use Plan and formerly defined as "Reserve Units" which were equal to two percent (2%) of the total number of dwelling units permitted by the local government's certified future land use plan map.

**RESERVE UNIT.** Additional permitted dwelling units equal up to two percent of the total number of dwelling units permitted within a flexibility zone by the Broward County Future Land Use Plan Map.

**REDEVELOPMENT UNITS.** Means additional permitted dwelling units equal to three percent (3%) of the total number of dwelling units as established by the adoption of the 2017 BrowardNext Broward County Land Use Plan. Local governments may apply for redevelopment unit allocations as specified in the 2017 BrowardNext Land Use Plan, as may be amended from time-to-time. These units can be assigned to specific Redevelopment Unit Receiving Areas which the City must establish, per the County's requirements, at the time of application for Redevelopment Units. Redevelopment Units can be requested when there are 250 or fewer flexibility units remaining for use by the City.

**THE 5% RULE: NONRESIDENTIAL FLEXIBILITY.** The Broward County Land Use Plan and the City of Pompano Beach Comprehensive Plan permit up to 5% of the area with a designated residential land use category to be used for neighborhood commercial uses without applying for a land use plan amendment, as identified and in accordance with the 2017 Broward County Land Use Plan, based on the rules established within the County's "Administrative Rules Document: 2017 Broward County Land Use Plan", as may be amended from time to time.

**THE 10% RULE: RESIDENTIAL FLEXIBILITY.** The Broward County Land Use Plan and the City of Pompano Beach Comprehensive Plan permit 10 percent the lands designated "Commerce" on the 2017 Broward County Land Use Plan Map to be used for residential use (with the application of flexibility or redevelopment units) without a City or County Land Use Plan Amendment in accordance with the rules established within the County's "Administrative Rules Document: Broward County Land Use Plan" and the Chapter 163, Florida Statutes plan adoption and amendment process.

(Ord. 2013-34, passed 1-8-13)

## § 154.61 RESERVE REDEVELOPMENT AND FLEXIBILITY UNITS.

(A) In conformance with the Comprehensive Plan, flexibility and ~~reserve redevelopment~~ units as defined in § 154.60 of this chapter, may be allocated to authorize multifamily dwellings for residential projects or mixed use projects on properties with commercial land use designations (limited to 10% of the total lands designated Commerce in the County's 2017 Land Use Plan) or additional units on properties with residential land use designations. Approval of an ~~transfer allocation~~ of flexibility and ~~reserve redevelopment~~ units shall be achieved as outlined below.

(B) Distribution of flexibility and ~~reserve redevelopment~~ units.

(1) Available flexibility and ~~reserve redevelopment~~ units may be utilized by the city to rearrange residential densities consistent with the 2017 Broward County Land Use Plan provisions, as may be amended from time-to-time.

(2) Rearrangement of residential densities utilizing flexibility units will be administered within "flexibility zones." ~~The boundaries of and rules governing "flexibility zones" and rearrangement of residential densities therein, as referenced in the The County Land Use Plan effective as of June, 2017, approved through the BrowardNext process, identifies the entire boundary of Pompano Beach as one flexibility zone. The City can further restrict the area eligible to receive flex units through the adoption of a Residential and Nonresidential Flexibility Receiving Area Map. The rules associated with the allocation of flex units are~~ will be established within the Broward County Planning Council's "Administrative Rules Document" as referenced in the City's Comprehensive Plan.

(3) Additional residential density utilizing redevelopment units will be administered within specific redevelopment unit receiving areas as established on the Redevelopment Unit Receiving Area Map which must be adopted by the City and submitted to the County when the City applies for redevelopment units per the 2017 BrowardNext County Land Use Plan policies.

(4) The maximum number of dwelling units permitted in a flexibility zone by the city Future Land Use Plan shall not exceed the number of dwelling units permitted in the flexibility zone by the Broward County Future Land Use Plan.

(C) Procedure for Residential and Nonresidential (Per 5% Rule: Residential to Commercial) Flexibility Allocation and procedure for allowing Commercial Uses in Industrial Land Use Category.

(1) Step 1: Application submittal. The applicant shall submit an application to the Development Services Director as follows:

- (a) The application is in the form established by the Development Services Director;
- (b) The application is accompanied by the application fee as specified in Chapter 154, 155 Appendix A C: Fee Schedule; and
- (c) The applicant includes information in sufficient detail to evaluate the application in order to determine whether it complies with the review standards listed in subsection (D) below, including a conceptual site plan.

(2) Step 2: Staff review. Applicable to a recommendation by the Development Service Director, following DRC review and comment based on the Application Review Standards listed in subsection (D) below.

(3) Step 3: Advisory body review and recommendation. Applicable to a recommendation by the Planning and Zoning Board based on the Application Review Standards listed in subsection (D) below. (Note: For applications requesting Commercial Uses in an Industrial Land Use Category, The P&Z Board will be the decision-making body and Step 3 will be the last step.)

(a) The Planning and Zoning Board hearing shall be noticed as follows:

1. Published notice. Notice of the P&Z public hearing shall be published at least five calendar days before the hearing date.

2. Mailed notice. Notice of the P&Z public hearing shall be mailed at least six business days before the hearing date to the following recipients: Applicant; owner(s) of land subject to the application; owners of real property within 500 feet of the parcel(s) subject to the application; and the local planning agency of the county or adjacent municipality, if its jurisdictional boundary lies within 500 feet of the parcel(s) subject to the application.

(4) Step 4: Decision-making body review and decision. Applicable to a final decision by the City Commission.

(a) The City Commission hearing shall be noticed as follows:

1. Published notice. Notice of the City Commission public hearing shall be published at least ten calendar days before the hearing date.

2. Mailed notice. Notice of the first City Commission public hearing shall be mailed at least ten calendar days before the hearing date to the following recipients: Applicant; owner(s) of land subject to the application; owners of real property within 500 feet of the parcel(s) subject to the application; and the local planning agency of the county or adjacent municipality, if its jurisdictional boundary lies within 500 feet of the parcel(s) subject to the application.

(5) The availability of ~~reserve redevelopment~~ and flexibility units will become null and void upon the expiration of the time limits provided in the resolution allocating said flexibility and ~~reserve redevelopment~~ units. Time extensions may be granted for good cause shown if sufficient progress is demonstrated.

(D) Application review standards. An application shall only be approved on a finding that there is competent substantial evidence in the record that all of the following standards are met:

(1) Consistency with applicable goals, objectives and policies of the city's Comprehensive Plan and this chapter.

(2) The use of the ~~reserve redevelopment~~ and flexibility units; ~~the establishment of nonresidential development within a residential land use designation; or the approval of commercial uses in an Industrial Land Use category~~ will produce a reasonable development pattern. The criteria for reasonableness shall include compatibility of adjacent land uses and suitability of the parcel for various development patterns.

(3) Applications for the use of residential flexibility or redevelopment units requires an agreement to provide affordable housing units per subsection (E) below or an in lieu of fee in accordance with Section 154.80, except that infill properties which are one-acre or less are exempt from this requirement.

(E) Affordable housing requirements.

(1) Definitions. The following definitions apply to this section.

**LOW INCOME HOUSING UNIT.** A unit which is affordable by a person or persons who have a combined income of up to 80% median income of Broward County.

**MODERATE INCOME HOUSING UNIT.** A unit which is affordable by a person or persons who have a combined income of 80% to 100% median income of Broward County.

**WORKFORCE HOUSING UNIT.** A unit which is affordable by a person or persons who have a combined income of 100% to 120% median income of Broward County.

(2) Purpose and intent. The purpose of this section is to promote the construction of affordable housing units in the city or the payment of funds in lieu of construction into the Local Affordable Housing Trust Fund through the allocation of flexibility and reserve redevelopment units.

(3) To be eligible for the allocation of flexibility and reserve units the applicant must agree to provide affordable housing units on the application site of any one type or combination of types. Each different type of affordable housing units has a ratio which indicates how many affordable housing units shall be constructed for a specified number of flexibility or reserve redevelopment units. The different types and their respective ratios are:

(a) Workforce housing: (100% to 120% median income), for every one workforce housing unit constructed, the applicant may be granted one flexibility or reserve redevelopment unit.

(b) Moderate income housing: (80% to 100% median income) for every one moderate income housing unit constructed, the applicant may be granted three flexibility or reserve redevelopment units.

(c) Low income housing: (up to 80% median income) for every one low income housing unit constructed, the applicant may be granted five flexibility or reserve redevelopment units.

*Table 1*  
*Allocation of Flex and Reserve Redevelopment Units for Projects*  
*Containing Workforce Housing*

<i>Ratio of workforce housing units to market units:</i> <i>1 workforce housing unit to 1 market unit</i>		
<i>Total number of housing units proposed</i>	<i>Number of workforce units</i>	<i>Number of market rate units</i>
2	1	1
4	2	2

6	3	3
8	4	4
10	5	5
12	6	6
14	7	7
16	8	8
18	9	9
20	10	10
22	11	11
24	12	12
26	13	13
28	14	14
30	15	15

Note: For housing developments above 30 units continue with the formula above. For housing developments with number of units not shown above, the number of required moderate housing units shall be the resulting whole number of the total number of housing units divided by 2.

*Table 2*  
*Allocation of Flex and Reserve Redevelopment Units for Projects*  
*Containing Moderate Housing*

<i>Ratio of workforce housing units to market units:</i> <i>1 moderate housing unit to 3 market units</i>		
<i>Total number of housing units proposed</i>	<i>Number of moderate units</i>	<i>Number of market rate units</i>
4	1	3
8	2	6
12	3	9
16	4	12
20	5	15
24	6	18
28	7	21
32	8	24
36	9	27
40	10	30
44	11	33

48	12	36
52	13	39

Note: For housing developments above 50 units continue with the formula above. For housing developments with number of units not shown above, the number of required moderate housing units shall be the resulting whole number of the total number of housing units divided by 4.

*Table 3*  
*Allocation of Flex and Reserve Redevelopment Units for Projects*  
*Containing Low Income Housing*

<i>Ratio of low income housing units to market units:</i> <i>5 low income housing units to 1 market unit</i>		
<i>Total number of housing units proposed</i>	<i>Number of low income units</i>	<i>Number of market rate units</i>
6	1	5
12	2	10
18	3	15
24	4	20
30	5	25

Note: For housing developments above 30 units continue with the formula above. For housing developments with number of units not shown above, the number of required low income housing units shall be the resulting whole number of the total number of housing units divided by 6.

(4) Notwithstanding subsection (D)(2) above, off-site affordable units may be permitted if on-site construction is not found to be feasible, subject to the following. **OFF-SITE**, for the purposes of these provisions, is defined as within the city.

(5) Affordable housing units must be constructed according to the following guidelines:

(a) The unit mix (bedroom count per unit) of the affordable housing units should be proportional to the unit mix (bedroom count per unit) of the flexibility or reserve redevelopment units.

(b) The affordable housing units may be marginally smaller and have appliances, fixtures and finish, which meet all minimum governmental standards to reduce overall development costs.

(c) The affordable housing units should be incorporated into the general site and design of the overall development and have a compatible exterior design.

(d) The applicant may select whether the proposed development will be owner occupied or renter occupied.

(6) The affordable housing units shall be maintained as such for a period of 30 years through the use of restrictive covenants. Applicant is required to have such restriction placed in the deed from the applicant.

(7) All of the affordable housing units shall receive certificates of occupancy before the final 10% of the flexibility and reserve or redevelopment units obtain certificates of occupancy.

(Ord. 2013-34, passed 1-8-13; Am. Ord. 2014-19, passed 2-11-14; Am. Ord. 2016-12, passed 10-27-15)

## **§ 154.62 NONRESIDENTIAL FLEXIBILITY**

(A) In conformance with the Comprehensive Plan, nonresidential flexibility based on the 5% rule for Residential to Commercial Flex as defined in § 154.60 of this chapter, may be allocated to authorize neighborhood commercial projects or mixed use projects on properties with a residential land use designation. Approval of nonresidential flexibility shall be achieved as outlined above in Section 154.61(C).

(B) Distribution of nonresidential flexibility.

(1) Available nonresidential flexibility in accordance with the 5% rule may be utilized by the City to allow nonresidential development in a residential land use category without a City or County land use plan amendment subject to the 2017 Broward County Land Use Plan provisions, as may be amended from time-to-time.

(2) Nonresidential flexibility will be administered within "flexibility zones." The County Land Use Plan effective as of June, 2017, approved through the Broward Next process, identifies the entire boundary of Pompano Beach as one flexibility zone. The City can further restrict the area eligible to receive nonresidential flexibility through the adoption of a Residential and Nonresidential Flexibility Receiving Area Map. The rules associated with the allocation of residential and nonresidential flexibility are established within the Broward County Planning Council's "Administrative Rules Document" as referenced in the City's Comprehensive Plan.

## **AFFORDABLE HOUSING CONTRIBUTIONS**

### **§ 154.80 AFFORDABLE HOUSING CONTRIBUTIONS.**

(A) In lieu of providing affordable housing units on-site or off-site as required by regulations within Chapter 154 and Chapter 155 (Zoning) or pursuant to a land use plan amendment, a property owner may elect to contribute a fee in lieu of to be deposited into the city's Local Affordable Housing Trust Fund. If this in lieu of option is taken for the allocation of flex or redevelopment units, the in lieu of fee will apply to every flex unit allocated to the project that is not classified as affordable in accordance with the requirements in Section 154.62(E).

(B) The fee to be paid to the city shall be \$2,333 per market-rate unit.

(C) The fee shall be paid to the city at the time of building permit.

(D) The fee shall be reviewed a minimum of once every three years. The fee may be adjusted by the City Commission to reflect updated housing sales costs, development costs, land values and other considerations.

## APPENDIX C: FEE SCHEDULE

Note: Appendix C may be viewed in a printer-friendly, PDF document. Please click [APPENDIX C](#).

The following are the applicable fees for Applications for Development in the city ...

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VII. FLEXIBILITY	
A. <u>Submission of a written request for a determination as to the availability of surplus dwelling units-Application for allocation of flexibility or redevelopment units.</u>	\$1,765 plus \$120 per acre
B. Requests for time extension or reaffirmation of the initial allocation of surplus dwelling flexibility or redevelopment units.	\$1,765 plus \$120 per acre
C. Request for Residential to Commercial flexibility (when not associated done concurrent with a rezoning)	\$1,110-\$1,765 plus \$120 per acre
D. Request for Commercial Use in Industrial Land Use Category (when not done concurrent with rezoning, process required is DRC and P&Z only)	\$1,110