

**MINUTES
BREVARD PLANNING BOARD REGULAR MEETING
MARCH 22, 2022
CITY COUNCIL CHAMBERS**

Brevard Planning Board met for a regular meeting, Tuesday, March 22, 2022, at 5:30 PM, in Council Chambers at City Hall.

Members Present: Greg Hunter, Chair
Reid Wood, Vice Chair
Molly Jenkins
John Schommer
James Carli

Absent: Peter Chaveas

Others: Jonathan Rich, Transylvania Times

Staff Present: Paul Ray, Planning Director
Emily Brewer, Planner
Janice H. Pinson, Board Clerk

I. Welcome

At 5:30 PM, Greg Hunter, Chair called the meeting to order.

II. Introduction of Planning Board Members

The Board introduced themselves.

III. Certification of Quorum

Chair, Greg Hunter confirmed with the Board Clerk that a quorum of the Board was present.

IV. Approval of Agenda

Motion to approve agenda with the revision to table item a. by M. Jenkins, second by R. Wood, carried unanimously.

V. Approval of Minutes

a. February 22, 2022

Motion to approve as presented by J. Schommer, second by R. Wood, carried unanimously.

VI. New Business.

a. Consideration of Text Amendment TXT-21-020, Codifying Tap Fee Waivers for Eligible Affordable and Workforce Housing Projects.

Paul Ray, Planning Director presented his staff report which is attached hereto and labeled Exhibit "A".

After a brief discussion, M. Jenkins moved to approve waiving tap fees for affordable housing rental projects, providing that no single project would use more than 80% of available funds available annually, referencing the consistency statement (Attachment C), seconded by J. Schommer, carried unanimously.

VIII. Public Comment - None.

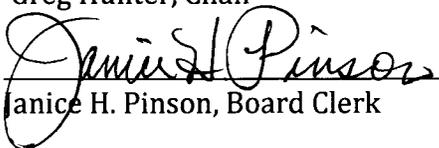
IX. Remarks - None.

X. Adjournment

There being no further business, R. Wood moved to adjourn, seconded by J. Schommer, carried unanimously, and the meeting adjourned at 5:55 PM.



Greg Hunter, Chair



Janice H. Pinson, Board Clerk

STAFF REPORT

Planning Board, Tuesday, March 22, 2022

Title: **TXT-21-020: Tap Fee Waivers for Affordable and Workforce Housing Projects**
Staff will present the Board with draft language for codifying tap fee waivers for eligible affordable housing and workforce housing projects.

Speaker: Paul Ray, CZO, Planning Director
Prepared by: Emily Brewer, AICP Candidate, Planner
Approved by: Paul Ray, CZO, Planning Director

Background

In September 2021, Staff brought Brevard City Council an Affordable Housing Project Agreement with Sunnyside Properties LLC to waive water and sewer tap fees in exchange for building two affordable housing units on a small lot off North Lane, intersecting Brown Lane (Attachment A). City Council unanimously approved the Agreement on September 20, 2021. Additionally, City Council charged the Planning Department with codifying similar agreements to facilitate additional affordable housing projects in Brevard by providing this financial incentive.

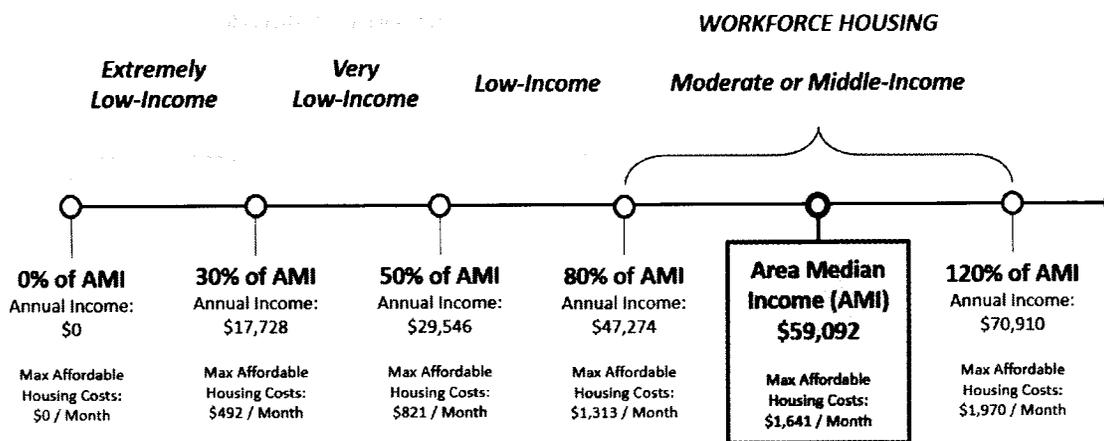
Section 160D-1316 of the North Carolina General Statute allows for local governments to expend funds for residential housing construction, new or rehabilitated, for sale or rental to persons and families of low and moderate income. The City may contract with any person, association or corporation for that purpose.

Discussion

The 2021 estimated area median income (AMI) for a family in Transylvania County is \$59,092 per year. Income levels are defined as a percentage of AMI (see Figure 1). The Department of Housing and Urban Development (HUD) defines "affordable housing" as housing that costs no more than 30% of a household's monthly gross income, including rent, utilities, insurance, and other housing-related expenses. It should be noted that the Urban Housing Authority is using a 1.04537% Consumer Price Index inflation factor when estimating the current AMI and therefore rent may increase annually by a small percentage.

Generally, "affordable housing" programs are aimed at creating or preserving housing that is affordable for households earning up to 80% of AMI, defined as "low-income." Similar programs for households earning 80% to 120% of AMI are referred to as "workforce housing" programs. The draft language will include these definitions.

Figure 1: Income Definitions and Associated 2021 Income Levels and Housing Cost Limits for Transylvania County



At the instruction of City Council, the Planning Department is proposing a text amendment to the Unified Development Ordinance that allows the City to issue tap fee waivers for affordable housing and workforce housing projects. Developers would agree to stay within HUD's range of "affordable housing" for low-income and moderate-income households, respectively, for at least 5 years in exchange for waiving its water and sewer tap fees at the time of construction. The waiver must be signed by the City Manager and the Developer with written agreement to these conditions. In the event that the guarantee is violated, the Developer must reimburse the City the full amount waived plus interest at 18% per annum plus costs of recovering this sum.

On March 10, 2022, the proposed text amendment was discussed at the Affordable Housing Trust Fund Committee Meeting. It received a favorable recommendation to be brought forward to the Board.

Policy Analysis

The 2015 Comprehensive Plan's Economic Health Element references ways to promote affordable housing in Brevard, including Policy 2.2.H: "Provide financial incentives to encourage additional affordable and workforce housing development."

Recommendation

The Board's role is to make a recommendation to City Council. The Board has the following options in this role:

1. Recommend adoption of the amendments as written;
2. Recommend adoption of the amendments as revised by the Board;
3. Recommend rejection of the amendments; or
4. Table the amendments for further consideration.



Staff recommends approval of the amendments as presented.

In accordance with North Carolina General Statutes the Planning Board must also submit a statement to City Council analyzing the consistency of this proposal with regards to existing policies or plans of the City of Brevard. A Statement of Consistency is included for the Board's review as Attachment C.

Fiscal Impact

The City's total cost for waiving the water tap fees and sewer tap fees would be evaluated annually as part of the yearly budgeting process.

Attachments

- A. Affordable Housing Agreement with Sunnyside Properties LLC, approved by Brevard City Council on September 20, 2021 and signed by City Manager Jim Fatland on September 27, 2021.
- B. New Draft Ordinance Language
- C. Consistency Statement



STATE OF NORTH CAROLINA

TRANSYLVANIA COUNTY

AGREEMENT

This Agreement is entered into by and between Sunny Side Properties LLC (herein after, "Developer") and the **CITY OF BREVARD** (herein after, "the City"), on this 20th day of September, 2021.

WHEREAS, the Developer owns of record certain real property located in Transylvania County, North Carolina, having PIN Number 8586-21-9844-000 and the address of 64 North Lane and 66 North Lane, Brevard NC 28712;

WHEREAS, the Developer intends on building affordable housing in the City of Brevard; and,

WHEREAS, affordable housing is defined as being housing set aside for the exclusive use of persons of low or moderate income defined as persons in households which, adjusted for family size, is not more than eighty percent (80%) of the Average Family Median Income (AMFI) for Transylvania County, North Carolina as adjusted periodically; and,

WHEREAS, the City is willing to waive 2 water tap fees and 2 sewer tap fees having a value up to \$5,500 dollars to facilitate the construction of said affordable housing provided the Developer agrees to set aside this property for a period of at least 3 years; and,

WHEREAS, the City is authorized by North Carolina General Statute 160D-1316(1) to enter into agreements to facilitate the construction of affordable housing.

NOW, THEREFORE, in exchange for a good and valuable consideration the receipt of which is hereby acknowledged:

1. The Developer shall provide housing exclusively for persons of low or moderate income as defined above on the property being developed. The dwellings shall be fully constructed within one year following the date of waiver of the fees herein.
2. The City shall waive the fees for 2 water taps and 2 sewer taps up to a total value of \$5,500 dollars.
3. Developer guarantees the housing will serve low- or moderate-income persons as that term is defined above for a period of 3 years beginning from the date of issuance of the Certificate of Occupancy. In the event this guarantee is breached, the Developer shall reimburse the City for the full amount waived plus interest at eighteen percent (18%) per annum plus costs of recovering this sum.
4. This Agreement binds the parties, their successors and assigns forever; or the aforementioned duration of time.
5. The only proper venue for any lawsuit regarding any aspect of this Agreement is Transylvania

ATTACHMENT A

County, North Carolina. North Carolina law shall control the construction of this Agreement.

Witness our hands and seals, the date first above written.

DEVELOPER:

By: Annelise Hagedorn (Seal)
Dr. Annelise Hagedorn, President of Sunnyside Properties, LLC.

CITY OF BREVARD:

By: Jim Fatland
Jim Fatland, City Manager

State of North Carolina,

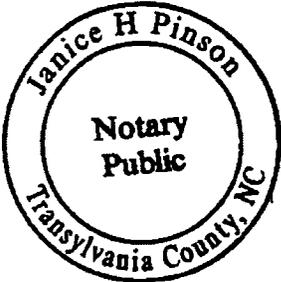
County of Transylvania.

I, Janice H. Pinson, a Notary Public of said State and County, do hereby certify that Annelise Hagedorn, President, Sunny Side Properties, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument as the act, word and deed of the said corporation.

WITNESS my hand and official stamp or seal, this the 27TH day of Sept. 2021.

Janice H. Pinson
Notary Public

My Commission Expires: May 27, 2023



ATTACHMENT A

State of North Carolina,

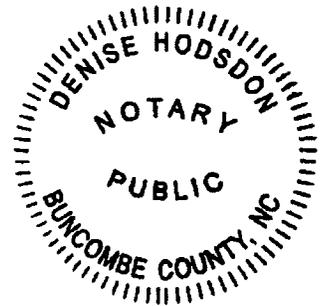
County of Transylvania.

I, Denise Hodsdon, a Notary Public the above stated state and county, hereby certify that on this day, the foregoing instrument was produced to me in Transylvania County, North Carolina, and Jim Fatland, City Manager for the City of Brevard, personally appeared and executed and acknowledged the foregoing instrument as the act, word and deed of the said corporation; and that he is known to me and is known to me to be the person described in the foregoing instrument.

WITNESS my hand and official stamp or seal, this the 27th day of September 2021.

Denise Hodsdon
Notary Public

My Commission Expires: 10/6/2024



h:\city\contracts\brevard music center indemnification and hold harmless agreement

13.4. General infrastructure design requirements.

A. Connection to city sewer system required.

1. All developed property within the city limits and located within 300 feet of a city sewer line shall be connected therewith, and the property owner shall be charged the prescribed tap fee and system development fee for all such connections. Such connection shall be made in accordance with the provisions of this article within 90 days after the date of official notice to connect.
2. Improved property served by wells and annexed by the city shall be connected to the city sewer systems within five years of the effective date of annexation; provided, however, that no connection to the sewer system shall be permitted without also connecting to the city's water system.
3. New development within the city limits shall, in all cases, connect to a city sewer line. Sewer line improvements required for new development are the sole responsibility of the developer. The installation of improvements beyond the development boundary which are required for service to the development will be provided by the developer.
4. City sewer is not required but may be permitted for new development within the city's extraterritorial jurisdiction. The owner of any property within the city's extraterritorial jurisdiction who requests connection to the city sewer system shall request voluntary annexation into the City of Brevard. Proposed development that will not connect to the city sewer system must contain adequate area for the installation of approved septic tank and disposal fields and must be approved in writing by the county health officer.
5. Except as provided in this article, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

B. Connection to city water system required.

1. All developed property within the city limits shall be connected therewith and the property owner shall be charged the prescribed tap fee and system development fee for all such connections.
2. Improved property served by wells and annexed by the city shall be connected to the city water system, if within 300 feet, within five years of the effective date of annexation.
3. New development within the city limits shall, in all cases, connect to a city water line. Water line improvements required for new development are the sole responsibility of the developer. The installation of improvements beyond the development boundary which are required for service to the development will be provided by the developer.
4. City water is not required but may be permitted for new development within the city's extraterritorial jurisdiction. Proposed development that will not connect to the city sewer system must contain adequate area for the installation of approved wells and must be approved in writing by the county health officer.
5. Any development served by the city water system shall install fire hydrants in accordance with city standards. Fire hydrant spacing and placement shall be determined by the public works director in consultation with the fire marshall. For any development within the city's ETJ without a fire suppression rated water system, that either has or is adjacent to an adequate permanent surface water supply, the applicant may be required to install a dry fire hydrant system, the type and the location of which is to be determined by the fire marshal. A road and easement to the water source providing permanent all-weather access to the water source that is adequate for fire-fighting equipment shall be constructed and dedicated to the city, if applicable.

ATTACHMENT B

- C. *Sewer and water connections and infrastructure.* Sewer and water connections and infrastructure shall occur in accordance with Chapter 70 of Brevard City Code and the City of Brevard *Standard Design and Specifications Manual for Public Improvements*, and any necessary conditions of the public works director.
- D. *Utility easements.*
1. Sewer, water, storm water, and other utility easements shall be required within all new development (including developments within the ETJ for which no public sewer or water is proposed), and may be required within existing developments undergoing improvements at the discretion of the administrator.
 2. The precise location and width of easements shall be determined by the administrator. However, unless otherwise specified, underground utilities should be located in alleys and lanes. If no alley or lane is provided, then a five-foot (minimum) utility easement shall be provided behind the sidewalk located within either the right-of-way or a public utility easement. Utility easements centered on rear or side lot lines shall be provided where deemed necessary by the approving authority and shall be at least 30 feet in width.
 3. Where a subdivision is traversed by a water course, drainage way, channel, or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such water course, and such further width or construction, or both, as may be adequate for the purpose of drainage.
 4. Lakes, ponds, creeks, and similar areas within a subdivision will not be accepted for maintenance by the city except as provided for in Chapter 6.
 5. Easements shall be accurately depicted upon all plats and plans, and dedicated to the city by means of a plat of dedication in accordance with procedures established by the administrator.
 6. No structure shall be placed upon any easement. Fences and other impermanent obstructions may be permitted by the administrator in consultation with the public works director.
- E. *Sewer and water.* Sewer and water shall be installed by the developer and dedicated to the city prior to the approval of any final subdivision plat or development plan unless a performance guarantee is provided to the administrator in accordance with city Code, this ordinance, and procedures established by the administrator. Sewer and water infrastructure shall be installed by the developer and dedicated to the city prior to the issuance of any Certificates of Occupancy for any building within that phase or along that line, as applicable to the particular development.
- F. *Tap Fee Waivers for Eligible Affordable and Workforce Housing Projects.* The City is allowed to issue tap fee waivers for eligible affordable housing and workforce housing projects within the City to facilitate the construction of dwellings units at these income levels. Projects are eligible if the developer agrees to provide housing exclusively for persons of low-income or moderate to middle-income, respectively, for a minimum of 5 years beginning from the date of issuance of the Certificate of Occupancy.
1. System development fees shall not be eligible for the waiver.
 2. The waiver must be signed by the City Manager, at the recommendation of the Zoning Administrator, and the Developer with written agreement to these conditions. The dwellings shall be fully constructed within 18 months of the date of waiver of the fees.
 3. In the event the guarantee is violated, the Developer shall reimburse the City of the full amount waived plus interest at 18% per annum plus costs of recovering this sum.
 4. The total available waiver amount is established each fiscal year as part of the City's annual budgeting process. The funds for this amount shall not come from the utility budget. Eligible properties are able to have 100% of their tap fees waived, unless the total cost is greater than the remaining annual budget.

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19.3. Definitions.

The following words, terms and phrases, when used in this UDO, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned vehicle: See Motor Vehicle.

Abut: To reach; to touch. To touch at one end or side of something; to be contiguous; join at a border or boundary; terminate on; end at; border on; reach or touch with an end.

Accessory retail: The on-premises, retail sale of products directly to customers, where the retail use is incidental to a primary use conducted upon the same premises. Examples include but are not limited to the following: a furniture manufacturer who operates a show floor for the display and sales of furniture produced by the manufacturer; a bicycle manufacturer who operates a floor for the display and sales of bicycles produced by the manufacturer; a brewery or distillery who operates a tasting room for the sampling and sales of beer or spirituous liquors produced within the brewer or distillery.

Accessory structure: A structure, which is subordinate to a principal structure, on the same lot, and is used for purposes customarily incidental to the principal structure.

Accessory use: A use of land or of a building or structure or portion thereof, which is incidental and subordinate to a principal use on the same lot.

Addition (to an existing building): An extension or increase in the floor area or height of a building or structure.

Administrative decision: Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in G.S. 160D or local government development regulations. These are sometimes referred to as ministerial decisions or administrative determinations.

Advertising sign: A sign which directs attention to a business, commodity, service or entertainment conducted, sold, manufactured, or offered. Such signs are further classified according to location, as follows:

- (a) On the same premises as the business, commodity, service, or entertainment advertised by the sign;
- (b) Remote from the business, commodity, service, or entertainment advertised by the sign (see Billboard).

Adult establishment: Any establishment having a substantial portion of materials or entertainment characterized by an emphasis on sexual activities, anatomical genital areas, or the female breast as defined in N.C. General Statute, § 14.210.10 (or any successor thereto).

Affordable housing: Housing units that cost no more than 30% of a low-income household's gross income, including rent, utilities, insurance, and other housing-related expenses. Low-income refers to households earning no more than 80% of area median income (AMI) for a family in Transylvania County, as adjusted periodically by the Department of Housing and Urban Development (HUD).

Agriculture: These establishments grow crops, raise animals, harvest timber, and harvest fish and other animals from a farm, ranch, or their natural habitats. They may be described as farms, ranches, dairies, greenhouses, nurseries, orchards, or hatcheries. A farm, as an establishment, may be one or more tracts of land, which may be owned, leased, or rented by the farm operator. Farms may hire employees for a variety of tasks in the production process. Subcategories in this dimension differentiate establishments involved in production versus those that support agricultural production. For agricultural research establishments administering programs for regulating and conserving land, mineral, wildlife, and forest use, apply the relevant institutional or research and development categories. (LBCS F9000 and S8000) Bona fide farms are defined in G.S. 160D-903 and outline exemptions from zoning regulations.

Air lot: A condominium unit or lot containing both horizontal and vertical dimensions. The air lot generally extends to the inner faces of the walls, floors and ceiling of the condominium unit.

Alcoholic beverage sales store: The retail sales of beer, wine, and/or other alcoholic beverages for off-premise consumption as a primary use. (LBCS F2155)

Amusements, indoor: Establishments that provide commercial recreation activities completely within an enclosed structure such as pool halls, arcades, movie theaters, skating rinks, roller rinks, and bowling alleys. (LBCS F5320, F5380, F5390 and S3200)

ATTACHMENT B

Wetland: Areas that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Window sign: Any sign oriented toward and visible from the exterior of a building which is placed directly on a glass window.

Wireless telecommunication facility: Equipment constructed in accordance with Section 332(c)(7) of the Telecommunications Act at a single location by a private business user, governmental user, or commercial wireless service provider to transmit, receive, or relay electromagnetic signals (including microwave). Such facility includes one or more of the following: antennas or antenna arrays, wireless telecommunication towers, support structures, transmitters, receivers, base stations, combiners, amplifiers, repeaters, filters, or other electronic equipment; together with all associated cabling, wiring, equipment enclosures, and other improvements.

Wholesaling and distribution: Establishments engaged in selling merchandise to retailers; to contractors, industrial, commercial, institutional, farm or professional business users; to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. Examples of these establishments include, without limitation, the following:

1. Agents, merchandise or commodity brokers, and commission merchants;
2. Assemblers, buyers and associations engaged in the cooperative marketing of farm products;
3. Merchant wholesalers; and
4. Stores primarily selling electrical plumbing, heating, and air conditioning supplies and equipment.

Workforce housing: Housing units that cost no more than 30% of a moderate-income household's gross income, including rent, utilities, insurance, and other housing-related expenses. Moderate-income households earn 80-120% of area median income (AMI) for a family in Transylvania County, as adjusted periodically by the United States Department of Housing and Urban Development (HUD).

Yard: A space on the same lot with a principal building, open, unoccupied, and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings and structures are expressly permitted.

Yard, front: A yard situated between the front building line and the front lot line extending the full width of the lot.

Yard, rear: A yard situated between the rear building line and the rear lot line extending the full width of the lot.

Yard, side: A yard situated between a side building line and side lot line and extending from the required front yard to the required rear yard. In determining the situation of accessory structures, the side yard shall be assumed to extend through the rear yard to the rear lot line.

Zoning district: The term applied to various geographical areas of the City of Brevard for the purpose of interpreting the provisions of the ordinance. The districts are designated with the use of symbols on the official zoning map. Regulations controlling land use in the various districts within the City of Brevard are set forth in this ordinance. The terms "district" and "zoning district" are synonymous and are used interchangeably throughout this ordinance.

(Ord. No. 3-07, § 10, 2-5-07; Ord. No. 3-08, § 1, 3-17-08; Ord. No. 14-08, § 3, 11-17-08; Ord. No. 15-08, § 51, 12-5-08; Ord. No. 20-09, § 4(Exh. B(14), (15)), 9-21-09; Ord. No. 03-10, § 3(Exh. C), 2-15-10; Ord. No. 07-10, § 3(Exh. C), 4-5-10; Ord. No. 19-2011, § 1(Exh. A), 8-1-11; Ord. No. 24-2011, § 3(Exh. A), 9-19-11; Ord. No. 2012-21, §§ 1-d(Exh. A), 2-c(Exh. B), 7-16-12; Ord. No. 2012-25, § 1(Exh. A), 11-5-12; Ord. No. 2014-24, § 05(Exh. E), 11-17-14; Ord. No. 2015-32, § 05, 11-16-15; Ord. No. 2015-35, § 02, 12-10-15; Ord. No. 2017-08, § 1(Exh. A), 3-20-17; Ord. No. 2017-22, § 1, 10-16-17; Ord. No. 2018-17, § 1(Att. D), 8-20-18; Ord. No. 2018-25, § 1(Att. C), 9-17-18; Ord. No. 2019-01, § 1(Exh. A), 2-18-19; Ord. No. 2019-02, § 1(Att. A), 3-18-19; Ord. No. 2020-04, § 1(Exh. A), 2-17-20; Ord. No. 2020-11, § 1(Exh. A), 6-29-20; Ord. No. 2020-17, § 1(Exh. A), 9-21-20; Ord. No. 2020-23, § 1(Exh. A), 10-19-20; Ord. No. 2020-24, § 1(Exh. A), 10-19-20; Ord. No. 2020-26, § 1(Exh. A), 10-19-20; Ord. No. 2021-11, § 1(Exh. A), 2-22-21; Ord. No. 2021-16, § 1(Exh. A), 4-19-21; Ord. No. 2021-28, § 1(Exh. A), 6-21-21; Ord. No. 2021-30, § 1(Exh. A), 6-21-21)

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ATTACHMENT C

COMMENT OF CONSISTENCY WITH COMPREHENSIVE PLAN AND ANY OTHER OFFICIALLY ADOPTED APPLICABLE PLANS

NCGS 160D-605 requires that the Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan prior to consideration by the Governing Board. The Planning Board shall provide a written recommendation to the Governing Board that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Governing Board.

The Brevard Planning Board forwards this recommendation to City Council with a finding that the proposed zoning map amendment is **consistent** with the following elements of the City's adopted plans and policies:

2015 Comprehensive Plan:

POLICY 2.2.H: Provide financial incentives to encourage additional affordable and workforce housing development.

OBJECTIVE 4.2: Develop a system of "complete neighborhoods" throughout Brevard.

POLICY 4.2.E: Collaborate with partners to increase the amount of available affordable and workforce housing, and to combat homelessness.

2002 Land Use Plan:

Goal 6.1: Provide adequate and appropriate rental housing for the various socio-economic groups.

Goal 6.2: Provide safe, adequate, and affordable housing for families within the City limits.

Focus 2020 Community Report:

Housing & Neighborhoods Rental Goal: To provide adequate and appropriate rental housing for the various socio-economic groups.

Housing & Neighborhoods Homeownership Goal: To provide safe, adequate, and affordable housing for families within the City limits.