

Temp. Ord. No. O1826
3/4/24
3/25/24

**CITY OF MIRAMAR
MIRAMAR, FLORIDA**

ORDINANCE NO. 24-10

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF MIRAMAR, PURSUANT TO SECTION 302 OF SAID CODE AND SECTION 166.041(3)(A), FLORIDA STATUTES; MORE SPECIFICALLY BY AMENDING CHAPTER 3, ENTITLED "PROCESSES," TO ADD A NEW SECTION 325 TO BE ENTITLED, "REASONABLE ACCOMODATION" TO IMPLEMENT A PROCEDURE FOR PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION FROM QUALIFIED INDIVIDUALS WITH DISABILITIES AS PROVIDED BY THE FEDERAL FAIR HOUSING ACT, TITLE II OF THE AMERICANS WITH DISABILITIES ACT, THE CIVIL RIGHTS ACT, AND THE REHABILITATION ACT (COLLECTIVELY "FEDERAL LAW"); MAKING FINDINGS; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in compliance with state law, the City Commission of the City of Miramar ("City Commission") adopted, in 1989, its Comprehensive Plan, as amended, in order to guide and manage future development within the City of Miramar ("City"); and

WHEREAS, in order to implement the Comprehensive Plan, the City Commission adopted in 1996 a set of land development regulations, which are codified in the City's Land Development Code ("LDC"); and

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WHEREAS, the Building, Planning, and Zoning Department (“Department”) has received multiple requests for relief from the development standards of the City’s LDC on the basis of disability; and

WHEREAS, an individual with a disability under the Federal Fair Housing Act (“FHA”) and the Americans with Disabilities Act (“ADA”) is defined as: (1) an individual who has a physical or mental impairment that substantially limits one or more major life activities; (2) a person who has a history or record of such an impairment; or (3) a person who is perceived by others as having such an impairment; and

WHEREAS, Section 315 of the City’s LDC establishes a uniform procedure for the review and granting of variances and zoning reliefs from the literal enforcement of the requirements of the LDC; and

WHEREAS, Section 315.7 of the City’s LDC provides that a variance can be granted only where the preponderance of the evidence presented in the particular case demonstrates that an undue hardship or practical difficulty exists that is peculiar to the property, and does not stem from personal circumstances, such as a disability; and

WHEREAS, Section 315.14 of the City’s LDC allows for potential deviations from the strict enforcement of the requirements of the LDC in order to address possible unintended violations of federal and Florida laws, subsequent to implementation of the LDC regulations in advance of costly litigation; and

WHEREAS, the Fair Housing Act, Title II of the Americans with Disabilities Act,

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the Civil Rights Act, and the Rehabilitation Act (collectively referred hereinafter as the "Federal Laws") make it unlawful for a state or a local government to refuse reasonable accommodations to rules, policies, practices, or services, which may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling; and

WHEREAS, in City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Dornbach v. Holley, 854 So. 2d 211 (2nd DCA 2002); and Austin v. Town of Farmington, 826 F.3d 622, (2nd Cir. 2016), the courts have applied the FHA to local governments, in the context of exclusionary zoning and other land use decisions; and

WHEREAS, in compliance with, and in furtherance of, Federal Law, the City is amending its LDC to add a new Section 325 to be entitled "Reasonable Accommodation," which will implement a procedure for processing requests for reasonable accommodations from individuals with disabilities (the "Amendment"); and

WHEREAS, the Amendment will establish consistent and predictable standards to grant reasonable accommodation requests that deviate from the strict requirements of the LDC and that may be necessary to afford individual with disabilities equal opportunity to use and enjoy their dwelling, including public and common use space; and

WHEREAS, the Amendment will attest to the City's unwavering commitment to align its zoning regulations with these Federal laws and to uphold the principles of non-discrimination, equal access, and inclusivity for all individuals, including individuals with disabilities within its jurisdictional boundaries; and

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WHEREAS, In accordance with the general purpose and standards set forth in Section 302 of the LDC, the Department evaluated the proposed Amendment and found it to promote the public health, safety welfare of the community, as it will provide for a judicious and efficient process for reviewing and approving reasonable accommodation requests consistent with the above-noted Federal Laws; and

WHEREAS, the Department further found the Amendment to satisfy the general purpose and standards of Section 302 of the LDC concerning the review of text amendments to the LDC and to be consistent with, and to further the goals, objectives, and policies of the City's Comprehensive Plan, as specifically laid out in the Property Rights Element; and

WHEREAS, the City Manager concurred with the findings of fact contained in the Department's Report and recommended adoption of the Amendment; and

WHEREAS, Section 107 of the City's LDC provides that the Planning and Zoning Board ("Board"), shall have the powers and duties to review and make recommendations to the City Commission regarding text amendments to the City's LDC; and

WHEREAS, Section 304 of the City's LDC provides that the Board shall hold one properly noticed public hearing to evaluate the proposed Amendment with respect to the review standards set forth in Subsection 307 of the City's LDC, consider the findings of fact in the Department's Report, as well as any oral or written public comments, and, upon a finding that the Amendment satisfies these review standards and is consistent with the City's Comprehensive Plan, forward a recommendation to the City Commission; and

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WHEREAS, Pursuant to 166.41(3)(c)(2), Florida Statutes (“F.S.”) and Section 302 of the City’s LDC, notification of the Amendment was published in the *Sun Sentinel* to advise that interested parties may appear at the meeting and be heard with respect to the Amendment or submit written comments to the Department prior to the public hearing, which written comments will be included in the record of the public hearing; and

WHEREAS, in conformity with the requirements of Section 304.5 of the City’s LDC, the Board held a duly noticed public hearing on March 12, 2024, on the Amendment; and

WHEREAS, upon reviewing the language of the Amendment, the Department’s Report, the City Manager’s recommendation, and any oral or written comments received before or at the hearing, the Board found the proposed Amendment to comply with the general purpose and standards set forth in Section 302 of the City’s LDC for the review of text amendments, and to be consistent with the Goals, Objectives, and Policies of the City’s Comprehensive Plan; and

WHEREAS, after due consideration of all matters, the Board voted to recommend adoption of the Amendment by the City Commission and further advised that the language of the Amendment be strengthened to include criteria for approval as well as certain safeguards to rein in abuse of this new process; and

WHEREAS, the Department has addressed the concerns of the Board by revising the language of the Amendment that accordingly; and

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WHEREAS, pursuant to Section 302.6.1 of the City's LDC, the City Commission held two (2) public hearings to adopt the proposed text amendment; and

WHEREAS, upon receipt of both the City Manager's and Planning and Zoning Board's recommendations, the City Commission held two duly noticed public hearings on April 2, 2024, and on May 1st, 2024 to consider the proposed text amendment; and

WHEREAS, the City Commission, after due consideration of all matters, found the proposed text amendment to comply with the review standards for text amendments to the City's LDC, as established in Section 302.7 of the LDC; and

WHEREAS, the City Commission has determined that the implementation, administration, and management of the Reasonable Accommodation request by the City Administration, pursuant to the newly created Section 325 of the LDC, would best serve the interests of the City and the residents.

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**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF
MIRAMAR, FLORIDA AS FOLLOWS:**

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: Findings: That the City Commission of the City of Miramar, Florida, hereby finds the proposed Amendment to the City’s Land Development Code at Chapter 3, entitled, “Processes” to add a new section 325 to be entitled, “Reasonable Accommodation,” to implement a procedure for processing requests for reasonable accommodation from qualified individuals with disabilities, as provided the federal Fair Housing Act, the Americans with Disabilities Act, the Civil Rights Act, and the Rehabilitation Act (collectively referred to as the "Federal Laws"), to comply with the applicable standards of the City’s Land Development Code for the review of text amendments, and to be consistent with the City’s Comprehensive Plan.

Section 3: Adoption: That the City Commission of the City of Miramar, Florida, hereby passes and adopts the ordinance enacting the proposed Amendment to the City Land Development Code, as incorporated herein.

Section 4: That Chapter 3 of the Land Development Code of the City of Miramar, Florida, is hereby amended by adding a section to be numbered 325, which said section (or article or chapter) reads as follows:

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Section 325. Reasonable Accommodation.

325.1 Purpose. The purpose of this section is to provide reasonable accommodation in the application of the city's Code of Ordinances, LDC, rules, policies, and procedures for persons with disabilities, as provided by Federal Fair Housing Amendments Act (42 U.S.C. 3601, et seq.) ("FHA"), Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131, et seq.) ("ADA"); Civil Rights Act, and the Rehabilitation Act (collectively "Federal Law").

325.2. Definitions. The following words, terms, and phrases, when used in this section 325, shall have the meanings ascribed to them herein, unless the context affirmatively designates to the contrary.

Disabled individual or person. A disabled individual or person shall also have any meaning set forth in Federal Law, as amended. It shall include any individual:

- (a) who has a documented disability from a licensed physician;
- (b) who has a physical or mental impairment that substantially limits one or more major life activities;
- (c) who has a history or record of such an impairment; or
- (d) who is perceived by others as having such an impairment.

Individual or person. Individual shall include, for purposes of this section, multiple people, or multiple qualified entities.

325.3 Application procedures. The following general provisions shall be applicable:

325.3.1 Notice to the public of availability of accommodation. The city shall display a notice on the city's webpage (and shall maintain copies available for review in the city clerk's office) advising the public that disabled individuals (and qualifying entities) may request reasonable accommodation as provided herein.

325.3.2 Eligibility. Any disabled individual may, pursuant to the procedures set forth in this section, request a reasonable accommodation with respect to the city's LDC, and any related rules, policies, practices and/or procedures of the city as provided by federal law. A disabled individual may apply for a reasonable accommodation on his or her own behalf or may be represented at all stages of the reasonable accommodation process by a person designated, in writing, by the disabled person.

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325.3.3 City assistance. The city shall provide such assistance as required by Federal Law in connection with a request for reasonable accommodation, including without limitation, assistance with reading application questions, responding to questions, completing the form, filing an appeal, and appearing at a hearing, etc., to ensure the process is accessible.

325.3.4. Reasonable accommodation request form. A request by an individual for a reasonable accommodation under this section shall be made in writing by completion of a reasonable accommodation request form to be submitted to the building, planning, and zoning department. The reasonable accommodation request form shall contain such questions and requests for information as are necessary for processing the reasonable accommodation request and implement the general policies in this section. Said form shall, at a minimum, require the following information:

- (a) Name and contact information for requesting individual;
- (b) Address or location at which accommodation is requested;
- (c) Name and mailing address of subject property owner;
- (d) Proof that the requesting individual is protected under the FHA and/or ADA by demonstrating that he or she is a disabled individual, as defined in federal law, as amended.
- (e) Description of reasonable accommodation requested;
- (f) Description of the specific regulation(s) or procedure(s) from which accommodation is sought;
- (g) Reasons the reasonable accommodation may be necessary for the individual(s) with disabilities to use and enjoy the property or other service;
- (h) Name and contact information for individual's authorized representative, if applicable;
- (i) Signature of individual, or authorized representative.

325.3.5 Fees. The city shall impose a fee for processing a request for reasonable accommodation or an appeal of determination related to such request. Such fee shall be as provided for the variance and zoning relief procedure fees in the city's adopted schedule of user fees. The city has no obligation to pay attorney's fees or costs incurred by an individual in connection with a request or an appeal.

325.4. Medical information confidential information. Should the information submitted by an individual include medical information or other confidential information, the individual may, at the time of submitting such information, request that the city, to the extent

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permitted by law, treat such information as confidential. The city shall thereafter endeavor to provide written notice to the disabled individual, or their representative, of any request received by the city for disclosure of the medical information or documentation which the disabled person has previously requested be treated as confidential by the city. The city will honor the confidentiality request and will cooperate with the disabled individual, to the extent allowed by law, in actions initiated by such individual to oppose the disclosure of such medical information or documentation.

Notwithstanding anything to the contrary, the city shall have no obligation to initiate, prosecute, or pursue any such action, or to incur any legal or other expense (whether by retention of outside counsel or allocation of internal resources) in connection therewith, and may comply with any judicial order without prior notice to the disabled person. The city will comply with any judicial order related to the records which are the subject of a confidentiality request. This section is subject to local, state, and federal revisions to privacy laws, including but not limited to the Health Insurance Portability and Accountability Act ("HIPAA"), as amended.

325.5. Determination process. The building, planning, and zoning department director in conjunction with the city attorney shall have the authority to consider and act on requests for reasonable accommodation.

325.5.1. The city shall issue a written determination within thirty (30) days of the date of receipt of a completed reasonable accommodation request form, except as provided in sub-subsection 325.5.2. below, and may, in accordance with federal law: (1) grant the accommodation request, (2) grant a portion of the request and deny a portion of the request or impose conditions upon the grant of the request, or (3) deny the request. The requesting individual is required to obtain any and all necessary permits required with the granting of a reasonable accommodation request.

The notice of determination shall be sent to the requesting individual or authorized representative by certified mail, return receipt requested. If the request is denied, the determination shall state the grounds therefor. All written determinations shall give notice of the right to appeal.

325.5.2. The city will not make a determination until all necessary information has been received. If reasonably necessary to reach a determination on the request for reasonable accommodation, the city, may, prior to the end of said 30-day period, request additional information from the requesting individual, specifying in detail what information is required. Such additional information may include, but is not limited to, additional medical information from the requesting individual. The requesting individual shall have thirty (30) calendar days after the date of the request for additional information to provide the requested information. In the event a request

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for additional information is made, the 30-day period to issue a written determination shall no longer be applicable, and the city, shall issue a written determination within thirty (30) calendar days after receipt of the additional information.

If the requesting individual fails to provide the requested additional information within said 30-day period, the city shall issue a written notice advising that the requesting party had failed to timely submit the additional information and therefore the request for reasonable accommodation shall be deemed abandoned or withdrawn and no further action by the city with regard to said reasonable accommodation request shall be required.

325.6. Criteria for determination. In determining whether the reasonable accommodation request shall be granted or denied, the requesting individual shall be required to establish that they are protected under the FHA and/or ADA by demonstrating that they are disabled, as defined in federal law, and amended. For purposes of this section, the disabled individual must demonstrate to the City:

325.6.1.

- (a) A physical or mental impairment which substantially limits one or more major life activities;
- (b) A record of having such impairment; or
- (c) That they are regarded as having such impairment; and

325.6.2. That the proposed accommodation being sought is reasonable and necessary to afford handicapped or disabled persons equal opportunity to use and enjoy housing.

325.7. Required findings. A request for reasonable accommodation pursuant to this chapter shall be approved, with or without conditions, if, based upon all of the evidence presented, the building, planning and zoning director finds that all of the following findings are made:

325.7.1. The property or dwelling that is the subject of the request for reasonable accommodation will be occupied by a disabled person;

325.7.2. The requested accommodation is necessary to provide a disabled person with an equal opportunity to use and enjoy a dwelling;

325.7.3. The requested accommodation will not impose an undue financial or administrative burden on the city; and

325.7.4. The requested modification will not require a fundamental alteration in the nature of a city program or law.

325.8. Conditions of approval. In granting a request for reasonable accommodation, the city may impose conditions of approval deemed reasonable and necessary to ensure

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that the reasonable accommodation would comply with the findings of this chapter including, but not limited to the following:

325.8.1. Inspection of the property periodically as specified, to verify compliance with this chapter and any conditions of approval.

325.8.2. Recordation of a deed restriction requiring removal of the improvements when the need for which the accommodation was granted no longer exists, except where the building, planning, and zoning department director finds that removal would constitute an unreasonable financial burden or is physically integrated with the structure and cannot feasibly be removed. If applicable, the restrictive covenant shall provide that the reasonable accommodation does not run with the land and shall terminate upon any sale transfer, lease, or other conveyance of the property.

325.8.3. Time limits or expiration of the approval if the need for which the accommodation was granted no longer exists.

325.8.4. Measures to reduce the impact on surrounding uses.

325.8.5. Measures in consideration of the physical attributes of the property and structures.

325.8.6. Other conditions necessary to protect the public health, safety, and welfare.

325.9. Appeal of determination. Within thirty (30) calendar days from the date of the city determination on a reasonable accommodation request, or revocation, or modification of a reasonable accommodation, individuals have a right to appeal and must do so in writing using the "Application to Appeal Determination on a Request for Reasonable Accommodation." All appeals shall contain a written statement containing sufficient detail of the grounds for the appeal. Appeals pursuant to this chapter shall be to the city commission who shall, after duly noticed public hearing, render a written determination as soon as reasonably practicable, but in no event later than sixty (60) calendar days after an appeal has been filed. Notice of any public hearing hereunder shall be provided to the applicant at least ten (10) calendar days in advance of the public hearing.

Any appeal not timely filed as set forth above shall be waived. Assistance in completion of the Appeal form will be provided by city officials if needed. The city will honor extensions where there is good cause, including when an individual requests additional time as a reasonable accommodation.

325.10. Stay of Enforcement. While a request for reasonable accommodation, or an appeal of a determination, is under review, the city will not enforce the subject LDC's regulations, and/or related rules, policies, practices, and procedures against the

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requesting individual. However, should the requesting individual proceed with any property purchase, building, construction, or other work associated with establishing a residence housing disabled individuals while the request for reasonable accommodation or appeal of determination is pending, the requesting individual understands that any of these actions are done at the requesting individual's own risk because the request or appeal may be denied.

325.11. Reapplication after Denial of a Reasonable Accommodation Request. No reasonable accommodation request shall be considered by the city if the same or substantially similar reasonable accommodation request was denied, and not overturned by subsequent order, within the previous twelve (12) months, unless there has been a material and substantial change in circumstances. City officials in conjunction with the city attorney shall determine whether such material and substantial change in circumstances has occurred.

325.12. Expiration of approvals. Approvals of requests for reasonable accommodation shall expire in one hundred eighty (180) calendar days, if not implemented, unless a request for extension, showing good cause for such extension, including additional time in connection with the issuance of proper building permits, is received in writing by the building, planning, and zoning department.

325.13. Revocation of an Approved Reasonable Accommodation Request. Should the city find substantial and competent evidence exists to revoke an approved reasonable accommodation request, the city shall cause to be served upon the requesting individual a written notice of intent to revoke, which shall contain the grounds upon which such revocation is proposed. The requesting individual shall have ten (10) calendar days in which to respond. Substantial and competent evidence that may lead to a revocation of an approved reasonable accommodation request includes the following:

325.13.1. The individual provided false or misleading information on the reasonable accommodation request; or

325.13.2. The property subject to the reasonable accommodation request has been found to be in violation of the conditions of approval of the reasonable accommodation request; or

325.13.3. Any applicable state or federal certification has expired or been revoked; or

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325.13.4. Since the granting of the request, the reasonable accommodation has become injurious to the health, safety, or welfare of the public.

325.13.5. The individual requiring the reasonable accommodation is no longer residing at the property where the reasonable accommodation was granted.

325.14. Annual Renewal: Approval of a reasonable accommodation request shall be valid for twelve (12) months. An individual may renew the reasonable accommodation request approval by completion of a renewal reasonable accommodation request form, which form is maintained by (and shall be submitted to) the building, planning, and zoning department. The renewal reasonable accommodation request form shall contain such questions and requests for information as are necessary for processing the reasonable accommodation renewal request. Said form must be received by the building, planning, and zoning department no later than the last day of the eleventh month from when the last approval was granted. All forms submitted after that date shall result in a denial, unless a request for extension, showing good cause for such extension, including additional time as reasonable accommodation, is received in writing by the building, planning, and zoning department.

Section 5: Repeal. That all sections or parts of sections of the Land Development Code of the City, 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. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, Section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby. In the event of a subsequent change in applicable law, so the provision which had been held invalid is no longer invalid, the provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding under this Ordinance.

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Section 7: Interpretation. That it is the intention of the City Commission, and it is hereby ordained, that the provisions and revisions of this Ordinance shall become and be made a part of the Code of the City of Miramar; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word. That in interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Amendments made to the Ordinance on second reading are double underlined.

Section 8: 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.

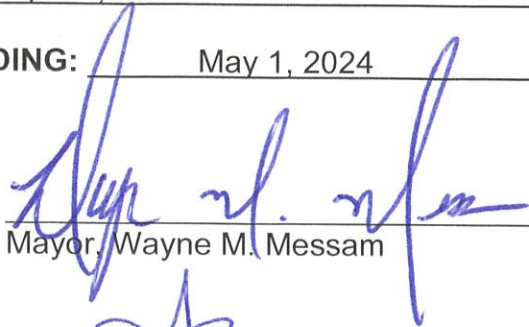
Section 9: Codification. That it is the intention of the City Commission of the City of Miramar that that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miramar, Florida. The sections of this Ord. Ordinance may be renumbered or re-lettered and 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.

Section 10: Effective Date. This Ordinance shall become effective immediately upon adoption.

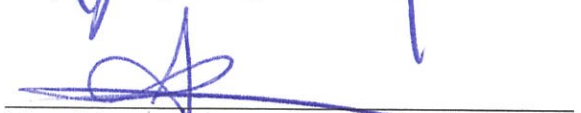
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PASSED FIRST READING: _____ April 2, 2024

PASSED AND ADOPTED ON SECOND READING: _____ May 1, 2024



Mayor, Wayne M. Messam



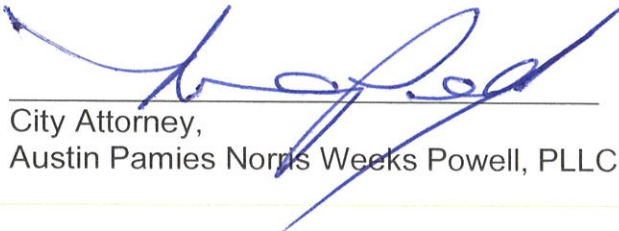
Vice Mayor, Alexandra P. Davis

ATTEST:



City Clerk, Denise A. Gibbs

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



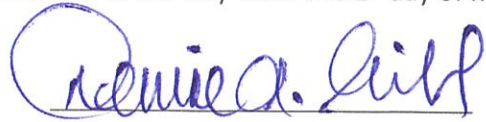
City Attorney,
Austin Pamies Norris Weeks Powell, PLLC

<u>Requested by Administration</u>	<u>Voted</u>
Commissioner Winston F. Barnes	Yes
Commissioner Maxwell B. Chambers	Yes
Commissioner Yvette Colbourne	Yes
Vice Mayor Alexandra P. Davis	Yes
Mayor Wayne M. Messam	Yes

Certificate of Filing for an Ordinance

CERTIFICATE OF FILING

I, Denise A. Gibbs, as City Clerk of the City of Miramar, a Florida Municipal Corporation, hereby certify that this fully executed Ordinance No. 24-10 was filed in the records of the City Clerk this 1st day of May, 2024.

A handwritten signature in blue ink that reads "Denise A. Gibbs". The signature is written in a cursive style and is positioned above a horizontal line.

Print Name: Denise A. Gibbs

Print Title: City Clerk