

ORDINANCE NO. 370

**AN ORDINANCE OF THE TOWN OF HAVANA, FLORIDA
ADOPTING REVISIONS TO THE TOWN'S PERFORMANCE
ZONING ORDINANCE PROVIDING FOR AN IMMEDIATE
FAMILY EXCEPTION TO DENSITY, PROVIDING FOR
SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Havana may find that, from time to time, circumstances of family hardship may occur under which the strict interpretation of the Town's Performance Zoning Ordinance may restrict a family's ability to provide relief to an immediate family member, and;

WHEREAS, the Statutes of the State of Florida includes Section 163.3179, Florida Statutes permits exceptions to housing density requirements for immediate family members, and;

WHEREAS, this permissive stance is not mandatory and does not stipulate that such provisions for overriding density shall occur, but that exceptions may be granted, and;

WHEREAS, Section 163.3179, F.S. is in reference to Comprehensive Planning, the Town of Havana chooses to take appropriate action to provide such relief in its Zoning Ordinance, and;

WHEREAS, Section 163.3179, F.S stipulates that an immediate family member is defined as: "the grandparent, parent, stepparent, adopted parent, sibling, child, stepchild, adopted child, or grandchild" of the Owner," and;

NOW THEREFORE BE IT ORDAINED BY THE TOWN OF HAVANA, FLORIDA AS FOLLOWS:

SECTION 1. The Town of Havana hereby adopts an amendment to the Town of Havana Performance Zoning Ordinance to include the addition of Section 4105, subsection C, describing the limitations and caution with which the Town Council shall consider such applications; (see Exhibit "A")

SECTION 2. Severability
If any portion of this Adoption Ordinance is declared by a court of competent jurisdiction to be invalid or unenforceable such declaration shall not be deemed to affect the remaining portions of this Ordinance.

SECTION 3: Effective Date
These revisions to the Town of Havana Performance Zoning Ordinance shall be in effect on passage of the second reading by the Town Council in its regularly scheduled meeting.

INTRODUCED ON FIRST READING ON:
PASSED ON SECOND READING ON:

December 13, 2016
January 31, 2017

ATTEST:



SHELIA EVANS, TOWN CLERK



T. J. DAVIS, MAYOR

163.3179 Family homestead.—A local government may include in its comprehensive plan a provision allowing the use of a parcel of property solely as a homestead by an individual who is the grandparent, parent, stepparent, adopted parent, sibling, child, stepchild, adopted child, or grandchild of the person who conveyed the parcel to said individual, notwithstanding the density or intensity of use assigned to the parcel in the plan. Such a provision shall apply only once to any individual.

History.—s. 6, ch. 92-129.

Section 4105. Residential Uses.

A. Conventional Residential. Conventional residential uses include all single-family detached dwelling units in subdivisions built or subdivided prior to enactment of this ordinance and all single-family detached dwelling units in subdivisions subdivided after enactment of this ordinance which are developed to the standards for conventional subdivisions required by this ordinance. In conventional residential subdivisions, where an overwhelming predominance of the existing structures are site built homes, no mobile homes shall be permitted. Exceptions shall be made for Manufacture Homes provided they meet the standards of FS 320.01(2)(b) and are anchored to a poured concrete foundation. The Town Council shall allow the Town Manager to make this determination based on an examination of the plans submitted.

Commentary: This use includes all individual houses, not part of a plat of existing subdivisions, and new single-family subdivisions.

B. Performance Residential. Performance residential uses consist of all residential subdivisions built or subdivided after enactment of this ordinance except those included within the conventional residential use category.

Commentary: This use category is intended to be the primary mode of residential development. It will permit the residential builder considerable freedom by allowing varied types of dwellings, lot sizes, and design. It also insures adequate open space in each development. Mobile homes shall not be permitted in Performance Residential subdivisions unless specifically included in the approved plat recording documents.

C. Immediate Family Exceptions. Per Section 163.3179, Florida Statutes, The Town Council may at its discretion provide for one additional residential unit for an immediate family member. Said unit shall be temporary in nature and removable, and shall be subject to an agreement "Covenants and Restrictions for Family Homestead". Each request shall be considered in light of the unique circumstances of hardship presented, are not to be considered uses by right, and shall not be considered as precedence for subsequent applications. The Town Council shall have final authority over said determinations.

Declaration of Covenants and Restrictions for Immediate Family Residence

This DECLARATION OF COVENANTS AND RESTRICTIONS FOR AN IMMEDIATE FAMILY RESIDENCE is made this ___ day of _____, 20___, by _____ hereinafter referred to as "the Owner."

WHEREAS, the Owner is the owner of record of certain real property in the Town of Havana, Florida, Gadsden Parcel ID: _____, more particularly and described in Exhibit A, attached hereto and incorporated herein by reference, hereinafter referred to as "the Parent Property"; and

WHEREAS, the Owner intends to permit to occupy a portion of the Parent Property with a temporary housing structure, more particularly described in Exhibit B, attached hereto and incorporated herein by reference, hereinafter referred to as "the Immediate Family Residence" by _____ hereinafter referred to as "the Immediate Family Member," for use as an Immediate Family Residence to be occupied solely by the Immediate Family Member.

WHEREAS, the Immediate Family Member is personally known and related to the Owner per the definition of immediate family member included in section 163.3179, Florida Statutes; "the grandparent, parent, stepparent, adopted parent, sibling, child, stepchild, adopted child, or grandchild" of the Owner.

NOW, THEREFORE, the Owner declares that the Immediate Family Residence shall be held and occupied, subject to the covenants and restrictions hereinafter set forth:

Section I: Limits on Occupation

- A. The Immediate Family Residence shall be used solely as a homestead of the Immediate Family Member for a period of ten (10) years from the date a certificate of occupancy is issued for the residence, and shall not be occupied before the issuance of a Gadsden County Certificate of Occupancy or after expiration of that ten-year period.
- B. In the event of the death or institutionalization of the Immediate Family Member, the covenants and restrictions contained herein shall be null and void and are not transferable to another family member without Council approval.
- C. In the event of a continued state of need, the Owner may petition the Town Council for an extension of these Covenants and Restrictions for a period not to exceed to (10) years.

Section II: Compliance with Other Requirements

- A. The Immediate Family Residence located on the Parent Property shall be a minimum of 120SF and meet all setback requirements of the Parent Property contained in the Town of Havana Performance Zoning Ordinance.
- B. The Parent Property and the Immediate Family Residence shall comply with all other applicable regulations found in the Town of Havana Performance Zoning Ordinance, the Florida Building Code, and applicable agreements between the Owner and the Neighborhood Architectural Control Committee.

C. Prior to occupation by the Immediate Family Member, the Owner shall document to the Town Clerk that the Immediate Family Residence has satisfied the County Building Official's requirements for a human domicile in accordance with the minimum standards of the Florida Building Code.

Section III: Enforcement

A. The covenants and restrictions contained herein shall be enforceable by the Town of Havana which has the discretion as to whether to pursue any appropriate legal or equitable remedies to enforce the terms and conditions contained herein. Venue shall be in the Town of Havana, Florida.

Section IV: Miscellaneous Provisions

A. Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions that shall remain in full force and effect.

B. Recording. The Owner shall record this Declaration of Covenants and Restrictions for Immediate Family Residence along with the Family Homestead Exemption approval in the clerk of the court's records at the Owner's expense. Proof that the required documents have been recorded must be submitted with any application for a building permit prior to approval by the Town Clerk.

C. Precedence. The Town of Havana in no way stipulates that these Covenants and Restrictions constitute Town of Havana policy or precedent for similar actions. These Covenants and Restrictions constitute the Town Council's humane consideration of exceptional circumstances and need expressed by the Owner.

IN WITNESS WHEREOF, the Owner has executed this Declaration of Restrictions the day and year first above written.

WITNESSED By:

Owner's Signature:

Printed Name

Printed Name

**State of Florida,
Town of Havana**

Sworn and Subscribed before me this ____ day of _____ 2016.

NOTARY PUBLIC

_____/_____/20____
Shelia Evans, Town Clerk Date

Typed Name:
Commission Expires: ____/____/20____
Commission No. _____
Affiant Personally known
Or produced identification
Type of Identification _____