

# BAL HARBOUR

- V I L L A G E -

Mayor Jeffrey P. Freimark  
Vice Mayor Seth E. Salver  
Councilman David J. Albaum  
Councilman Buzzy Sklar  
Councilman David Wolf

Village Manager Jorge M. Gonzalez  
Village Clerk Dwight S. Danie  
Village Attorneys Weiss Serota  
Helfman Cole & Bierman, P.L.

## Local Planning Agency Regular Meeting Agenda March 5, 2024 At 6:30 PM

Bal Harbour Village Hall • 655 - 96th Street • Bal Harbour • Florida 33154

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*This meeting will be conducted in-person. The meeting will also be broadcast on the Village's website ([www.balharbourfl.gov](http://www.balharbourfl.gov)). Members of the public were also encouraged to participate by email ([meetings@balharbourfl.gov](mailto:meetings@balharbourfl.gov)) or by telephone at 305-865-6449.*

### 1 Call to Order / Pledge of Allegiance

### 2 Approval of Minutes

October 17, 2023 LPA Minutes

[Bal Harbour Village Local Planning Agency Meeting Minutes October17\\_2023.pdf](#)

### 3 Hearings

#### LPA1 Ordinance - Live Local Regulations

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," OF THE CODE OF ORDINANCES TO ESTABLISH PROCEDURES AND REGULATIONS TO IMPLEMENT SECTION 166.04151(7), FLORIDA STATUTES, AS CREATED BY CHAPTER 2023-17, LAWS OF FLORIDA (THE LIVE LOCAL ACT OF 2023) FOR DEVELOPMENT OF STATUTORILY AUTHORIZED MIXED-USE MULTIFAMILY RESIDENTIAL DEVELOPMENT INCLUDING AFFORDABLE HOUSING; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, EXPIRATION, AND FOR AN EFFECTIVE DATE.

[Item Summary - Live Local Regulations ADA.pdf](#)

[Memorandum - Live Local Regulations ADA.pdf](#)

[Ordinance - Live Local Regulations ADA.pdf](#)

[Attachment - Community Development Memorandum - Proposed Code Amendments - Michael Miller Planning Associates \(MMPA\) ADA](#)

#### LPA2 Ordinance - Amend OF Oceanfront District Zoning

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," ARTICLE III "DISTRICT REGULATIONS," DIVISION 10 "OF OCEAN FRONT DISTRICT" OF THE

CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.

[Item Summary - OF Oceanfront District Zoning ADA.pdf](#)

[Memorandum - OF Oceanfront District Zoning ADA.pdf](#)

[Ordinance - OF Oceanfront District Zoning ADA.pdf](#)

[Attachment - Community Development Memorandum - Proposed Code Amendments - Michael Miller Planning Associates \(MMPA\) ADA](#)

**LPA3** Ordinance - Amend Zoning Administration In General

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," ARTICLE I "IN GENERAL," ARTICLE II "ADMINISTRATION," AND ARTICLE V "OFF-STREET PARKING FACILITIES" OF THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.

[Item Summary - Amend Zoning Administration In General ADA.pdf](#)

[Memorandum - Amend Zoning Administration In General ADA.pdf](#)

[Ordinance - Amend Zoning Administration In General ADA.pdf](#)

[Attachment - Community Development Memorandum - Proposed Code Amendments - Michael Miller Planning Associates \(MMPA\) ADA](#)

**LPA4** Ordinance - Amend Noise Regulations

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 11 "NUISANCES," ARTICLE II "NOISE" OF THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Noise Regulations ADA.pdf](#)

[Memorandum - Noise Regulations ADA.pdf](#)

[Ordinance - Noise Regulations ADA.pdf](#)

## **4 Motion to Adjourn**

One or more members of any Village Committee/Board may attend this meeting of the Council and may discuss matters which may later come before their respective Boards/Committees.

The New Business and Council Discussion Section includes a section for Public Comment. On public comment matters, any person is entitled to be heard by this Council on any matter; however, no action shall be taken by the Council on a matter of public comment, unless the item is specifically listed on the agenda, or is added to the agenda by Council action.

Any person who acts as a lobbyist, pursuant to Village Code Section 2-301 (Lobbyists), must register with the Village Clerk, prior to engaging in lobbying activities before Village staff, boards, committees, and/or the Village Council. A copy of the Ordinance is available in the Village Clerk's Office at Village Hall.

# BAL HARBOUR

- V I L L A G E -

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**CALL TO ORDER/PLEDGE OF ALLEGIANCE** -- Mayor Freimark called the meeting to order at 6:30 P.M.

The following were present:

Mayor Jeffrey Freimark  
Vice Mayor Seth Salver  
Councilman David Albaum  
Councilman David Wolf  
Councilman Buzzy Sklar

Also present:

Ramiro Inguanzo, Assistant Village Manager  
Dwight S. Danie, Village Clerk  
Susan Trevarthen, Village Attorney

### LPA - HEARING

**LPA1** AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 6 "BUILDINGS AND BUILDING REGULATIONS" OF THE CODE OF ORDINANCES TO UPDATE AND STRENGTHEN DEMOLITION REQUIREMENTS AND STANDARDS FOR CONSTRUCTION SITE OPERATIONS; PROVIDING FOR CONFLICT, CODIFICATION, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

Mr. Inguanzo introduced the item. There was a general consensus to recommend that the Village Council approve the ordinance with the additional language of requiring a safety plan to provide for the removal of windows and furnishings prior to the demolition of a structure.

MOTION: A motion to amend the ordinance for the safety plan to provide for the removal of windows and furnishings prior to demolition of the structure, and approve the ordinance on second reading, was moved by Vice Mayor Seth Salver and seconded by Councilman Buzzy Sklar..

ROLL CALL	VOTE
Mayor Jeffrey P. Freimark	Yes
Vice Mayor Seth E. Salver	Yes
Councilman David J. Albaum	Yes
Councilman Buzzy Sklar	Yes
Councilman David Wolf	Yes

VOTE: The Motion passed by unanimous roll-call vote (5-0).

ADJOURNMENT - The meeting was adjourned at 6:44 P.M.

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Mayor Jeffrey Freimark



Attest:

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Dwight S. Danie, Village Clerk

# BAL HARBOUR

- VILLAGE -

## LOCAL PLANNING AGENCY ITEM SUMMARY

### Condensed Title:

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," OF THE CODE OF ORDINANCES TO ESTABLISH PROCEDURES AND REGULATIONS TO IMPLEMENT SECTION 166.04151(7), FLORIDA STATUTES, AS CREATED BY CHAPTER 2023-17, LAWS OF FLORIDA (THE LIVE LOCAL ACT OF 2023) FOR DEVELOPMENT OF STATUTORILY AUTHORIZED MIXED-USE MULTIFAMILY RESIDENTIAL DEVELOPMENT INCLUDING AFFORDABLE HOUSING; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, EXPIRATION, AND FOR AN EFFECTIVE DATE.

### Issue:

Should the Local Planning Agency recommend to the Village Council to adopt the Ordinance amending Chapter 21 "Zoning" regulations for Live Local Act 2023?

### The Bal Harbour Experience:

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Beautiful Environment | <input checked="" type="checkbox"/> Safety | <input type="checkbox"/> Modernized Public Facilities/Infrastructure   |
| <input type="checkbox"/> Destination & Amenities          | <input type="checkbox"/> Unique & Elegant  | <input checked="" type="checkbox"/> Resiliency & Sustainable Community |

### Item Summary / Recommendation:

In its 2023 Session, the Florida Legislature adopted the "Live Local Act of 2023" for the stated purpose of promoting the development and availability of affordable housing in the State. The Governor signed the bill into law on March 29, 2023.


The Village seeks to amend Chapter 21 by defining terms and revising regulations and procedures to implement the requirements of the Live Local Act, as it may be amended, for the period of time in which it is effective.

The purpose of this Ordinance is to provide uniformity, clarity, and predictability to the Village's implementation of the Act, and the Village therefore determines that it is appropriate for all applications for LLA Development to be processed in accordance with the regulations herein, regardless of the timing of such application or submission. Also, any application for LLA Development submitted after the effective date of the Act but before the effective date of this Ordinance shall be subject and processed pursuant to this Ordinance.

The Village Council unanimously approved the proposed Ordinance on First Reading at the February 20, 2023 regular council meeting. It is recommended that the proposed Ordinance be approved on Second Reading, after considering the recommendation of the Local Planning Agency on March 5, 2024.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE.**

### Sign off:

Director Title	Building Official	Village Manager
Director Name	Eliezer Palacio	Jorge M. Gonzalez
		

# BAL HARBOUR

- V I L L A G E -

## LOCAL PLANNING AGENCY MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: March 5, 2024

SUBJECT: **AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," OF THE CODE OF ORDINANCES TO ESTABLISH PROCEDURES AND REGULATIONS TO IMPLEMENT SECTION 166.04151(7), FLORIDA STATUTES, AS CREATED BY CHAPTER 2023-17, LAWS OF FLORIDA (THE LIVE LOCAL ACT OF 2023) FOR DEVELOPMENT OF STATUTORILY AUTHORIZED MIXED-USE MULTIFAMILY RESIDENTIAL DEVELOPMENT INCLUDING AFFORDABLE HOUSING; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, EXPIRATION, AND FOR AN EFFECTIVE DATE.**

### **ADMINISTRATIVE RECOMMENDATION**

I am recommending that the Local Planning Agency recommend to the Village Council the approval of the ordinance.

### **BACKGROUND**

Early last year, the Village began to address Code provisions that were outdated, required updating, or addressed matters of concern to the quality of life or our residents. Certain amendments were approved to the "Noise" ordinance, construction site standards, underground parking provisions and certain elements of the Ocean Front district development standards and uses. These amendments were a result of feedback from our residents, concerns over safety and unsightliness of construction sites, resiliency and climate change concerns with underground parking facilities, as well as the overall character of our community. In light of the growing trend of further state preemption of local laws, it is advisable to continue to review our zoning code and make the necessary amendments to bring them up to current standards, address resiliency where needed and implement protections to the character of our community and the quality of life of our residents.

During the 2023 legislative session, the Florida Legislature adopted the "Live Local Act of 2023" (LLA or the Act) for the stated purpose of promoting the development and availability of affordable housing the State. While the stated purpose is admirable and well intended, the act is a significant and further preemption of local authority in zoning

matters. The Act specifically preempts the Village from regulating use, height and density on specific LLA projects that meet specified requirements. The LLA, however, does not entirely preempt local authority and as a result, there are several proposed amendments in this agenda item that are necessary to properly implement the LLA and at the same time protect the built-out character of our community and the quality of life of all our residents.

Therefore, as we continue to review and address Code provisions as mentioned above, it is appropriate to also consider the impacts of the Act and how the Village should best address its implementation and application. A review of other communities who have made amendments to their Zoning Code to address implementation of the Act was conducted and the relevant best practices which would best apply in Bal Harbour Village were identified. In addition, our Village Planner, Michael Miller and Associates was tasked with a similar review and development of recommendations to consider. Lastly, our Village Attorneys were asked to coordinate with staff. This collaboration has resulted in a set of recommended amendments for Village Council consideration that, we believe, capture the best ideas from the review of other communities as well as being tailored to the unique applications in Bal Harbour Village.

At the January 19, 2024 Council Meeting, in response to the overwhelming public comment received from the community regarding the recently received application from the Bal Harbour Shops under the LLA, the Village Council instructed the Village Attorney to explore the feasibility and advisability of establishing a Moratorium to review and address the impacts of the LLA. After careful consideration, the Village Attorney has advised that a Moratorium is not necessary at this time. Instead, staff has worked to develop the necessary code amendments that would ensure proper implementation of the LLA in Bal Harbour. These amendments will ensure that the Village is completely compliant with the Act, while working to both retain the character of our master planned community, as well as ensure that the affordable housing developed is dignified and respectful, and not segregated nor potentially unequal or discriminatory in any way.

### **Live Local Act**

The LLA implements many strategies to accomplish its stated goal. Among them are several preemptions of local government planning and zoning authority. Below is a brief summary of some of the key relevant provisions that affect local government generally found in Section 166.0415(7) of the Act ("Subsection 7"):

*(7)(a) A municipality must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use if at least 40 percent of the residential units in a proposed multifamily rental development are, for a period of at least 30 years, affordable as defined in s. 420.0004. Notwithstanding any other law, local ordinance, or*

*regulation to the contrary, a municipality may not require a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for the building height, zoning, and densities authorized under this subsection. For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes.*

*(b) A municipality may not restrict the density of a proposed development authorized under this subsection below the highest allowed density on any land in the municipality where residential development is allowed.*

*(c) A municipality may not restrict the height of a proposed development authorized under this subsection below the highest currently allowed height for a commercial or residential development located in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher.*

*(d) A proposed development authorized under this subsection must be administratively approved and no further action by the governing body of the municipality is required if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements.*

*(e) A municipality must consider reducing parking requirements for a proposed development authorized under this subsection if the development is located within one-half mile of a major transit stop, as defined in the municipality's land development code, and the major transit stop is accessible from the development.*

*(f) A municipality that designates less than 20 percent of the land area within its jurisdiction for commercial or industrial use must authorize a proposed multifamily development as provided in this subsection in areas zoned for commercial or industrial use only if the proposed multifamily development is mixed-use residential.*

*(g) Except as otherwise provided in this subsection, a development authorized under this subsection must comply with all applicable state and local laws and regulations.*

*(h) This subsection does not apply to property defined as recreational and commercial working waterfront ins. 342.201(2)(b) in any area zoned as industrial.*

*(i) This subsection expires October 1, 2033.*



The Act imposes various obligations, including the requirement for a municipality to permit mixed-use residential development as an allowable use in any area zoned for commercial, industrial, or mixed use if at least 40 percent of the residential units are, for a period of at least 30 years, affordable as defined in Section 420.0004, Florida Statutes.

Section 420.0004, Florida Statutes, defines "affordable" as follows:

*"Affordable" means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households indicated in subsection (9) [extremely-low-income persons], subsection (11) [low-income persons], subsection (12) [moderate-income persons] or subsection (17) [very-low-income persons]."*

*"Moderate-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.*

*"Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.*

*"Very-low-income persons" means one or more natural persons or a family, not including students as defined herein, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.*

*"Extremely-low-income persons" means one or more natural persons or a family whose total annual household income does not exceed 30 percent*

*of the median annual adjusted gross income for households within the state. The Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.*

The Village has one commercial zoning district, the B Business District, in which the LLA applies (no industrial or mixed use zoning districts), and the B Business District does not allow residential use. The Village has "Commercial" land use areas (the BHS site / Truist Bank site are the areas that are zoned B). Under subsection 7(f) of the LLA, if less than 20% of the land in a community is designated as "Commercial" on the adopted Future Land Use Map (FLUM), any residential development must be within a mixed-use development (not free-standing). Approximately 4% of the land area in the Village is designated "Commercial". As such, any application under LLA must be "Mixed -Use Residential."

Finally, subsection 7(d) of the Act provides that LLA development applications must be "administratively approved" if the development "satisfies the Village's land development regulations for multifamily developments ... and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements.

Furthermore, in recent meetings with members of the State Legislature, we were explicitly advised that the LLA does not preempt anything other than Use, Height and Density; and they reassured us that the various concurrency requirements in our community must be met. Lastly, some legislators encouraged the Village to consider ordinances that would result in the delivery of dignified and respectful housing that would not be segregated nor potentially unequal or discriminatory in any way.

### **Analysis**

The purpose of this Ordinance is to amend Chapter 21, the Village's zoning code, to provide uniformity, clarity and predictability to the Village's implementation of the Act, and the Village therefore determines that it is appropriate for all applications for LLA Development to be processed in accordance with these regulations, regardless of the timing of such application or submission. Also, any application for LLA Development submitted after the effective date of the Act but before the effective date of this Ordinance shall be subject to, and processed pursuant to this Ordinance.

It is the intention of the Village to comply with the Act by adoption of this Ordinance, and provide for affordable housing for Village residents of a quality and character respectful of the dignity of Village residents, in a manner that is not discriminatory to

any resident in terms of their access to the amenities and quality of development in which they reside.

It is not a best practice to rely solely on administrative interpretation to harmonize the requirements of the LLA with those of the Village Code. Therefore, for ease of reference, it is appropriate to amend the B Business District of the Village's Zoning Code in Chapter 21 to specifically reference the statutorily permitted uses and statutorily mandated regulations and processes for LLA Development.

In addition, the Village requires submission of a major site plan amendment pursuant to Section 21-322 of the B Business District of the Code in order to determine that these other requirements are satisfied. The major site plan process requires Village Council approval, but the minor site plan process requires an administrative approval by the Village Manager, considering the review and recommendation of the Village's Architectural Review Board. As a result, this minor site plan process is most similar to the requirements of the Act and most suitable for LLA Development.

After a review of the existing Village Code provisions and a review of best practices from other communities, the Village finds it appropriate and in the public interest that the land development regulations applicable to LLA Development be based on those regulations applicable to development of residential uses in the OF Oceanfront District, in large part because it is the Village's only zoning district that allows more than 45 feet in height. While 56 feet is the height allowed in the B Business District, the preemption introduced by the Live Local Act could allow for much greater height than is already approved. Therefore, the OF Oceanfront District is the only other suitable model.

The proposed amendments to Chapter 21 define terms and revise regulations and procedures to appropriately implement the requirements of the Act, as it may be amended from time to time. Adopting these regulations aligns with best practices followed by other municipalities. Additionally, it streamlines the overarching policy and criteria for maintaining consistency during the review of LLA Development submissions. The most critical concern within our Village is the gradual erosion of its unique character and charm due to the impacts of overdevelopment, which could greatly affect the quality of life of our residents.

### **ANALYSIS**

The Village was completely master-planned and is essentially built-out as an exclusive high-end community, with distinct land use areas (known as Euclidian Zoning). This includes high-rise residential / hotel / resort development along the Atlantic Ocean east of Collins Avenue, low-rise (2-4 story) multifamily development located along the west side on Collins Avenue and at a few other locations within the gated area along Park Drive at the south end of the community or near the Haulover Inlet, single-family

homes within the gated area between Park Drive and the Indian Creek Waterway, the Bal Harbour Shops (BHS) Mall located west of Collins Avenue and north of 96<sup>th</sup> Street, a small commercial site north of 96<sup>th</sup> Street between Collins Avenue and Harding Avenue, various municipal facilities (Village Hall / Parks / beach / etc.) and various private open spaces and recreational facilities (passive parks / marina).

The community can be best described as a suburban neighborhood to the City of Miami – clearly not Urban in character in the context of Miami-Dade County. Along Collins Avenue large setbacks have always been required, originally by plat and later by zoning. The beachfront sites are a minimum of 200 feet in width and extend hundreds of feet toward the oceanfront. Shorter buildings / structures like parking garages on the Ocean Front (OF) sites are limited to 22 feet / 2-stories in height and have a 100-foot minimum setback. Towers must have at least a 150' setback from Collins Avenue. The low-rise multiple-family development along the west side of Collins Avenue is limited to 4-stories in height and has a minimum 50-foot building setback. The Village was designed specifically to avoid the appearance of a high-rise “concrete canyon” along its roadways.

The BHS site is generally limited to 3-stories / 56 feet in height with an exception for 5-stories for parking garages (same overall height). A slightly taller (69') carve-out area is allowed within a small portion of the site. All of the single-family homes are limited to 2-stories. Following established urban design guidelines, similar types of land development should follow the same pattern of setbacks, scale, building height, and bulk. The Charter and Code reinforce the above via various land development regulations.

The amended language and new section added to the B Business District for LLA as described below has been drafted to protect and maintain the character of the Village as initially planned:

## **B” Business District Permitted Uses**

The proposed Code amendment will include a new definition for “statutory uses” such as LLA Mixed-Uses per Florida Statute.

(c) Statutory uses: Mixed Use multifamily development pursuant to the Live Local Act of 2023, Chapter 2023-17, Laws of Florida, as it may be amended. For purposes of this section, “Mixed Use” means a combination of residential uses and their amenities with nonresidential uses, where the percentage of FAR devoted to nonresidential uses does not<sup>1</sup> exceed 35%

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<sup>1</sup> As noted at first reading, a typo resulted in the words “does not” being missing from the first reading version of the Ordinance. That typo is corrected here and in the Ordinance for second reading.

of the total FAR. The nonresidential uses shall be those uses allowed as permitted or conditional uses provided in subsections (a) and (b) above.

Please see attached Ordinance which identifies the various proposed amendments.

### **"B" Business District Maximum Building Height**

The proposed amendment will simply include a reference to the 2023 LLA building height exception.

For development pursuant to the Live Local Act of 2023, Chapter 2023-17, Laws of Florida, the Village will comply with the building height requirements set forth in section 166.04151(7), F.S., as it may be amended from time to time.

Please see attached Ordinance which identifies the various proposed amendments.

**"B" Business District Yards / Setbacks** (Sec. 21-319) - The current Code contains those building setbacks created over the years for Village's "B" Business District commercial uses. These were created specifically for a maximum 56-foot height / 3-story commercial development, not high-rise buildings. As the current 2023 LLA potentially allows a developer to utilize a higher standard, staff has analyzed the long-established land development regulations for the OF District to ensure similar types of development utilize the same or similar setbacks and other regulations, as allowed by the LLA.

In the OF District, the original 1946 subdivision plat included a minimum setback from Collins Avenue of 100 feet for any building. Subsequently, as oceanfront development was built, the Village adjusted some of the setbacks and other land development regulations. The current OF District requires a minimum 100-foot setback for parking garages with a maximum height of 22 feet above street grade. Any towers must be set back a minimum of 150 feet from Collins Avenue. As a building gets taller additional setbacks are required.

Similarly the setbacks for other roadways listed in the B Business District are intended for the existing specified commercial development. The existing setbacks are not suited for taller buildings that could overshadow / overscale the adjoining roadways and nearby low-density residential development. Therefore, staff recommends that the Village adopt amendments to the "B" Business District regulations to mandate similar setbacks as have existed in the OF District for decades.

(2) Front Yard Setback for Live Local Act Development. To ensure that the appearance and scale of all taller buildings are consistent as to appearance and separation from the right of way and surrounding uses, the following front Yard Setbacks from the OF Oceanfront District shall be maintained for development pursuant to the Live Local Act (which allows additional height for mixed use or residential development in the B Business District, based on the maximum building height in the OF Oceanfront District):

a. From Collins Avenue/Bal Harbour Boulevard and Harding Avenues: All buildings and structures used for residential or mixed use of 17 stories or less shall be set back a minimum of 150 feet from the right of way. Each story above the 17th story shall be set back an additional 25 feet from the story below: i.e., 18 stories, 175-foot setback; 19 stories, 200-foot setback; etc. Buildings may comply by either setting back each higher story by the minimum amount or by placing the entire building at the maximum setback from the right of way. Parking Structures used for residential or mixed use shall be set back a minimum of 100 feet from the right of way.

b. From 96th St.: 0 feet for all Buildings, Parking Structures, and all other Structures.

c. From Bal Bay Drive, Park Dr. and Bal Cross Drive: All Buildings and Structures used for residential or mixed use shall be set back a minimum of 100 feet from the property line of the listed roadways. The following requirements shall apply to such Buildings and Structures, including their Parking Structures that are taller than 56 feet (or 69 feet as provided in Section 21-318):

(i) The minimum setback shall be the height of the Building or Structure.

(ii) Each story above the 10th story shall be set back an additional 25 feet from the story below: i.e., 11 stories, 125-foot setback; 12 stories, 150-foot setback; etc.

(iii) Buildings and Structures may comply by either setting back each higher story by the minimum amount or by placing the entire Building or Structure at the maximum setback from the property line of the listed roadways.

Please see attached Ordinance which identifies the various proposed amendments.

**"B" Business District Floor Area Ratio (FAR) (Sec. 21-321)** - The current state law does not include any preemption allowing an LLA Development to apply a higher FAR from another building or zoning district in the Village; however, were that to change, this provision would apply.

(c) For development pursuant to the Live Local Act of 2023, Chapter 2023-17, Laws of Florida (which allows residential development in the B Business District):

1. FAR shall be determined by the B Business District regulations; if state law later preempts the application of this FAR standard, FAR shall be as defined in Section 21-280 for the OF Oceanfront District, and shall comply with the FAR requirements of the OF Oceanfront District in Section 21-286, so that only the FAR of Parking Structures under 22 feet in height shall be exempt from the calculation of maximum FAR; and
2. The Village will comply with the density requirements set forth in section 166.04151 (7), F.S., as it may be amended from time to time, by applying the density requirements of Section 21-285(1) of the OF Oceanfront District.

Please see attached Ordinance which identifies the various proposed amendments.

**"B" Business District Site Plan Review (Sec. 21-322)** - The proposed amendments will add revised site plan review procedures for LLA developments, as required by state law. Currently the ARB is required to review and Village Council is required to approve all development in the "B" Business District. The LLA mandates that such development be approved administratively if the project complies with local land development regulations.

Please see attached Ordinance which identifies the various proposed amendments so that the minor site plan process, culminating in approval by the Village Manager, will apply, while the substantive standards for major site plan review will continue to apply.

**"B" Business District Administrative Review & Design Criteria for LLA Projects** - This new Code section is intended to establish project review procedures and adopt project design criteria for mixed-use development in the district. The recommended project design criteria are similar to the Village's current ARB review procedures and building criteria. However, as related to mixed-use development, additional criteria is proposed for the residential uses (affordable & market rate housing), and sets forth urban design parameters (breezeways / building lengths / building articulation) to avoid large massive unbroken building appearances.

Please see attached Ordinance which identifies the various proposed amendments assuring the affordability and equity/dignity of the affordable residential uses, and controlling the mass of the mixed use buildings to make them more compatible with the neighboring low intensity residential uses to the north, and to preserve the character of the Collins Avenue corridor.



**"B" Business District Off-Street Parking (Sec. 21-381 and 21-382)** - The Village's Code includes separate off-street parking provisions for the Special Business Improvement District. The proposed amendment will require the use of the standard off-street parking regulations for all residential uses, as they differ greatly from the specialized criteria allowed for this exclusive commercial mall.

(d) For development pursuant to the Live Local Act in the B Business District, 100% of required parking spaces for residential uses shall be fully enclosed, designated for residential use only, and integrated into the Building containing the residential units served by that parking. Parking spaces serving any nonresidential uses in the Building open to the public shall be in accordance with the requirements of the Business (B) District.

Please see attached Ordinance which identifies additional Off-Street Parking requirements for residential development in the B Business District pursuant to the Act.

### ***THE BAL HARBOUR EXPERIENCE***

By amending the Village Code, the Village would continue to "implement smart policies and strategic solutions to address the challenges of today and to ensure that we remain a Resilient and Sustainable community able to protect our future."

### **CONCLUSION**

This Ordinance seeks to amend Chapter 21 by defining terms and revising regulations and procedures to implement the requirements of the Live Local Act, as it may be amended, from time to time. The purpose of this Ordinance is to provide uniformity, clarity and predictability to the Village's implementation of the LLA. In addition, the proposed Ordinance streamlines the overarching policy and criteria for maintaining consistency during the review of LLA Development submissions.

At first reading, Vice Mayor Salver inquired as to whether the section of the Ordinance addressing the enforcement of the affordability requirements of the Act needed to be strengthened with additional details. The Ordinance creates the obligation to report and the opportunity to audit, which are the key powers needed. Following adoption of this Ordinance, the Administration will develop administrative guidance for how this obligation will be enforced to assure full compliance with state law and with our Code on this important issue. This process will not be implemented until after any project pursuant to the Act is constructed, so there is time to develop these guidelines.

The Village Council unanimously approved the proposed Ordinance on First Reading at the February 20, 2023 regular council meeting. It is recommended that the proposed Ordinance be approved on Second Reading following consideration of the recommendation of the Local Planning Agency on March 5, 2024.



**ORDINANCE NO. 2024\_\_\_\_**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," OF THE CODE OF ORDINANCES TO ESTABLISH PROCEDURES AND REGULATIONS TO IMPLEMENT SECTION 166.04151(7), FLORIDA STATUTES, AS CREATED BY CHAPTER 2023-17, LAWS OF FLORIDA (THE LIVE LOCAL ACT OF 2023) FOR DEVELOPMENT OF STATUTORILY AUTHORIZED MIXED-USE MULTIFAMILY RESIDENTIAL DEVELOPMENT INCLUDING AFFORDABLE HOUSING; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, EXPIRATION, AND FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Bal Harbour Village (the "Village") Council finds it periodically necessary to amend its Code of Ordinances (the "Village Code") in order to update regulations and procedures to implement municipal goals and objectives; and

**WHEREAS**, Section 166.04151(7), Florida Statutes, as created by Chapter 2023-17, Laws of Florida, known as the Live Local Act of 2023 (the "Live Local Act" or the "Act"), in relevant part, requires municipalities to permit mixed-use multifamily residential development in areas zoned for commercial use if at least 40% of the multifamily residential units are, for a period of at least 30 years, affordable as defined in Section 420.0004, Florida Statutes; and

**WHEREAS**, the Live Local Act expires on October 1, 2033; and

**WHEREAS**, the Village seeks to amend Chapter 21 by defining terms and revising regulations and procedures to implement the requirements of the Live Local Act, as it may be amended, for the period of time in which it is effective; and

**WHEREAS**, the Village has one commercial zoning district, the B Business District, in which the Live Local Act applies (no industrial or mixed use zoning districts), and the B Business District does not allow residential use; and

**WHEREAS**, Section 166.04151(7)(f), Florida Statutes, provides that, if a municipality has designated less than 20% of the land area within its jurisdiction for commercial or industrial use, it is required to allow multifamily development pursuant to the Act as part of a mixed-use development, and the Village finds and determines that less than 20% of the Village's land area is designated for commercial use; and

**WHEREAS,** the Act requires that such mixed-use multifamily development (“LLA Development”) involve a combination of residential and nonresidential components, as well as a minimum 40% percentage of residential dwelling units that qualify as affordable housing units; and

**WHEREAS,** the Act requires that the residential component of LLA Development must be a minimum of 65% of the total square footage of the LLA Development; and

**WHEREAS,** the Act contains self-executing provisions regarding LLA Development that affect the application of the list of permitted uses and the density and height regulations applicable to such development in commercial zoning districts, and the Village hereby acknowledges and incorporates those mandatory provisions into this Ordinance for ease of reference; and

**WHEREAS,** rather than rely on administrative interpretation and for ease of reference, it is appropriate to amend the B Business District of the Village’s zoning code in Chapter 21 to specifically reference the statutorily permitted uses and statutorily mandated regulations and processes for LLA Development; and

**WHEREAS,** the Village finds it appropriate and in the public interest that the land development regulations applicable to LLA Development be based on those regulations applicable to development of residential uses in the OF Oceanfront District, because it is the Village’s only zoning district that allows more than 45 feet in height; greater height is available for development in the B Business District, and the Act’s height preemption introduces the potential for much greater height for LLA Development than is already allowed in the B Business District; and

**WHEREAS,** the Planned Development option for development in the OF Oceanfront District requires a discretionary rezoning decision of the Village Council, based on the negotiation of a site plan and development agreement that establish development standards which may vary from the OF Oceanfront District standards, so it is therefore not relevant to the application of the Act in the Village; and

**WHEREAS,** certain modifications to the OF Oceanfront District standards are necessary for them to be applied to LLA Development in the B Business District because mixed use development is not allowed in the OF Oceanfront District as of right; and

**WHEREAS,** the addition of LLA Development to an existing B Business development is a change that triggers the requirement of the B Business District for a major site plan amendment; and

**WHEREAS,** the Act provides that LLA Development must be “administratively approved” if it satisfies the Village’s regulations for multifamily developments, and is otherwise consistent with the Village’s Comprehensive Plan and Code requirements (aside from the use, height and density preemptions of the Act), and the Village requires submission of a major site plan amendment pursuant to Section 21-322 of the B Business District of the Code in order to determine that these other requirements are satisfied; and

**WHEREAS,** the major site plan process requires Village Council approval, but the minor site plan process requires an administrative approval by the Village Manager considering the review and recommendation of the Village’s Architectural Review Board, and is therefore the process most similar to the requirements of the Act and most suitable for LLA Development; and

**WHEREAS,** the purpose of this Ordinance is to provide uniformity, clarity and predictability to the Village’s implementation of the Act, and the Village therefore determines that it is appropriate for all applications for LLA Development to be processed in accordance with the regulations herein, regardless of the timing of such application or submission, and that any application for LLA Development submitted after the effective date of the Act but before the effective date of this Ordinance shall be subject, and processed pursuant to this Ordinance; and

**WHEREAS,** it is the intention of the Village to comply with the Act by adoption of this Ordinance, and provide for affordable housing for Village residents of a quality and character respectful of the dignity of Village residents, that is not discriminatory to any resident in terms of their access to the amenities and quality of development in which they reside; and

**WHEREAS,** the Village Council specifically finds and determines that this Ordinance is necessary to facilitate the orderly development of affordable multifamily housing pursuant to the Act; identify the B Business District as the sole zoning district in the Village eligible for LLA Development; confirm that LLA Development must be mixed-use

residential rather than solely residential as provided by the Act; confirm which land development regulations are applicable to LLA Development, while incorporating the statutory mandates as to density, height and use; confirm the minimum dwelling unit square footage of the residential component in order to provide reasonable living conditions; provide a maximum commercial square footage of 35% to ensure that the statutory mandate for mixed-use is meaningful; confirm the maximum Floor Area Ratio for LLA Development and how it applies to Parking Structures; and designate the B Business District minor site plan process as the administrative approval process for LLA Development, including provisions for appeals of administrative decisions; and

**WHEREAS**, the Village Administration recommended approval of this Ordinance in its report for the February 20, 2024 Village Council meeting; and

**WHEREAS**, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed public hearing in accordance with law on \_\_\_\_\_, 2024, determined that this Ordinance is consistent with the Village's Comprehensive Plan, and recommended approval; and

**WHEREAS**, the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village's Comprehensive Plan and in the best interest of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1.**     **Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2.**     **Village Code Amended - Chapter 21, Article III, Division 11.** That Chapter 21 "Zoning," Article III "District Regulations," Division 11 "B Business District" of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:<sup>1</sup>

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<sup>1</sup> Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~striketrough~~. Any changes between first and second reading are shown by highlighted double underline and ~~double striketrough~~ font.

## CHAPTER 21. - ZONING

\* \* \*

### ARTICLE III. - DISTRICT REGULATIONS.

\* \* \*

#### DIVISION 11. - B BUSINESS DISTRICT.

##### **Sec. 21-316. - Permitted uses.**

No Building or land shall be used in the B Business District and no Building shall be erected, constructed, reconstructed or structurally altered which is designed, arranged, or intended to be used for any purpose, unless otherwise provided for in this chapter, except for one or more of the following permitted, ~~or conditional~~ or statutory uses:

\* \* \*

(c) Statutory uses: Mixed Use multifamily development pursuant to the Live Local Act of 2023, Chapter 2023-17, Laws of Florida, as it may be amended. For purposes of this section, "Mixed Use" means a combination of residential uses and their amenities with nonresidential uses, where the percentage of FAR devoted to nonresidential uses does not exceed 35% of the total FAR. The nonresidential uses shall be those uses allowed as permitted or conditional uses provided in subsections (a) and (b) above.

\* \* \*

##### **Section 21-318. Maximum Building Height.**

Except as set forth herein, no Building or Structure in the B Business District shall exceed 56 feet or three Stories in Height, whichever is less. No Parking Structure shall exceed 56 feet or five Stories above the surface parking level in Height, whichever is less. Any Parking Structure which exceeds 36 feet or three Stories shall require a public hearing in accordance with the procedures set forth in Sections 21-51 and 21-52 and the standards set forth in Section 21-53(a). Notwithstanding any other limitation herein, for any assemblage of contiguous Lots now or hereafter owned by the same owner in the Business

District which contains five or more contiguous acres, an area not to exceed 42,600 square feet thereof may, after a public hearing in accordance with the procedures set forth in Sections 21-51 and 21-52 and the standards set forth in Section 21-53(a), contain Structures not to exceed 69 feet in Height. Except as provided below, when a parapet wall is provided, the vertical distance shall be measured from the highest point of any street bounding the property to the highest point of the parapet wall. Parapet walls shall not exceed four feet in Height as measured from the highest point of the roof to the highest point of the parapet wall. Except as otherwise provided herein, a "Story" of a Structure shall be considered to be no greater than 19 feet in Height and a "Story" of a Parking Structure shall be considered to be no greater than 11 feet six inches in Height. For development pursuant to the Live Local Act of 2023, Chapter 2023-17, Laws of Florida, the Village will comply with the building height requirements set forth in section 166.04151(7), F.S., as it may be amended from time to time.

#### **Section 21-319. Yards; Setbacks.**

\* \* \*

##### **(b) Front Yard Setback.**

(1) *Front Yard Setback for Commercial Development.* The following front Yard Setbacks shall be maintained for commercial development of uses permitted in the B Business District as permitted or conditional uses:

- a. From Collins/Bal Harbour Boulevard and Harding Avenues: 1. 50 feet for Buildings occupied and used for the sale of merchandise or services at retail. 2. 100 feet for Parking Structures and all other Structures.
- b. From 96th Street: 7.5 feet for all Buildings, Parking Structures and all other Structures.
- c. From Bal Bay Drive: 20 feet for all Buildings, Parking Structures and all other Structures.
- d. From Park Drive: 100 feet for all Buildings, Parking Structures and all other Structures.

e. From Bal Cross Drive: 50 feet for all Buildings, Parking Structures and all other Structures.

(2) Front Yard Setback for Live Local Act Development. To ensure that the appearance and scale of all taller buildings are consistent as to appearance and separation from the right of way and surrounding uses, the following front Yard Setbacks from the OF Oceanfront District shall be maintained for development pursuant to the Live Local Act (which allows additional height for mixed use or residential development in the B Business District, based on the maximum building height in the OF Oceanfront District):

a. From Collins Avenue/Bal Harbour Boulevard and Harding Avenues: All buildings and structures used for residential or mixed use of 17 stories or less shall be set back a minimum of 150 feet from the right of way. Each story above the 17th story shall be set back an additional 25 feet from the story below: i.e., 18 stories, 175-foot setback; 19 stories, 200-foot setback; etc. Buildings may comply by either setting back each higher story by the minimum amount or by placing the entire building at the maximum setback from the right of way. Parking Structures used for residential or mixed use shall be set back a minimum of 100 feet from the right of way.

b. From 96th St.: 0 feet for all Buildings, Parking Structures, and all other Structures.

c. From Bal Bay Drive, Park Dr. and Bal Cross Drive: All Buildings and Structures used for residential or mixed use shall be set back a minimum of 100 feet from the property line of the listed roadways. The following requirements shall apply to such Buildings and Structures, including their Parking Structures that are taller than 56 feet (or 69 feet as provided in Section 21-318):

(i) The minimum setback shall be the height of the Building or Structure.

(ii) Each story above the 10th story shall be set back an additional 25 feet from the story below: i.e., 11 stories, 125-foot setback; 12 stories, 150-foot setback; etc.

(iii) Buildings and Structures may comply by either setting back each higher story by the minimum amount or by placing the entire Building or Structure at the maximum setback from the property line of the listed roadways.

(23) Interior, side and rear Yards. There shall be interior, side and rear Yards having a width of not less than seven feet six inches on each side of a Building or Structure, including Parking Structures.

(34) Waterfront Setback. There shall be a waterfront Setback of 40 feet, as measured from the outside face of the Seawall.

\* \* \*

**Sec. 21-321. - Floor Area Ratio and Density.**

(a) The maximum allowable Floor Area Ratio for the B Business District shall be FAR 0.70.

(b) The maximum allowable Floor Area Ratio for the Special Business Improvement Area shall be FAR 1.22.

(c) For development pursuant to the Live Local Act of 2023, Chapter 2023-17, Laws of Florida (which allows residential development in the B Business District):

1. FAR shall be determined by the B Business District regulations; if state law later preempts the application of this FAR standard, FAR shall be as defined in Section 21-280 for the OF Oceanfront District, and shall comply with the FAR requirements of the OF Oceanfront District in Section 21-286, so that only the FAR of Parking Structures under 22 feet in height shall be exempt from the calculation of maximum FAR; and

2. The Village will comply with the density requirements set forth in section 166.04151 (7), F.S., as it may be amended from time to time, by applying the density requirements of Section 21-285(1) of the OF Oceanfront District.

**Sec. 21-322. - Site plan review.**

*(a) Definitions and Applicability.*

(1) For purposes of this section and Section 21-323, the following terms are defined:



- a. *Adjacent* shall mean contiguous with, or located immediately across any roadway, right-of-way or easement from, a development site that is subject to this section.
- b. *Development* shall mean (1) construction, reconstruction, conversion, structural alteration, relocation, enlargement, or demolition of a building or structure; or (2) any change in the use or intensity of use of any building, structure or use of land. When appropriate to the context, development refers to the act of development or to the result of development.
- c. *Development Site* shall mean a lot, tract or parcel of land, or combination of lots, tracts or parcels of land, which has been developed or is proposed to be developed as a unified project.
- d. *Municipal Building* shall mean a Building, Structure or other improvement owned by the Village.
- e. *Exterior Facing* shall mean work subject to this section or Section 21-323 which faces a property which is not owned by the applicant, or is not located in the B Business District.
- f. *Interior* shall mean work subject to this section or Section 21-323 which is not Exterior Facing.

(2) Site plan review and approval as hereinafter provided shall be required prior to issuance of a building permit for any new Development, modification, or redevelopment, including an amendment to a previously approved site plan, that would result in one or more of the following:

- a. A horizontal shift of the exterior-facing boundaries of the existing building footprint of any Structure which results in an increase in Floor Area Ratio or lot coverage;
- b. An increase in the height of any existing Structure;
- c. Alterations to existing physical features affecting traffic circulation or access patterns between the site and any right-of-way; or

d. A change in use of a Structure, or any part thereof, to a Conditional Use or Statutory Use as listed in Section 21-316.

e. A reduction or relocation of more than ten percent of the parking spaces existing on a Development Site.

\* \* \*

(4) A site plan application for LLA Development shall be presumed to be a major site plan. Any site plan application shall be presumed to be a major site plan unless the applicant demonstrates to the satisfaction of the Village Manager or designee that the proposed Development and/or Conditional Use will not significantly alter existing impacts to Adjacent premises or significantly increase the burden on existing infrastructure or public services, in which case it shall be reviewed as a minor site plan. In evaluating such impacts, the Village Manager or designee shall consider, as appropriate for the circumstances of the application:

- a. The extent to which the Development would create or alleviate environmental problems such as air or water pollution or noise;
- b. The amount of pedestrian or vehicular traffic likely to be generated;
- c. The number of persons, including employees, likely to be present;
- d. The size of the Development;
- e. The likelihood that additional or subsidiary Development will be generated; and
- f. The extent to which the Development would create an additional demand for, or additional use of, energy, water, sewer capacity, road infrastructure, and other public services.

(b) *Application.* The application shall be in a form prescribed by the Village Manager or designee, and shall be accompanied by a current survey, detailed site plan, a description of the intended use, a conceptual building plan and elevations, preliminary engineering plans, proposed preliminary design guidelines, exterior lighting plan, and a landscaping plan, as applicable, and in no event shall require disclosure of the name of the prospective tenant. The application shall be reviewed by the Village Manager or designee to determine

whether the application involves a minor or major site plan, and whether any additional supporting documentation is required for review. A minor site plan application shall be accompanied by a nonrefundable fee of ~~\$1,02,500.00~~. A major site plan application shall be accompanied by a nonrefundable application fee of ~~\$3,5,000.00~~. The Village shall maintain a record of all costs of review of a major site plan application including, but not limited to, fees of Village staff and consultants and out of pocket costs. Prior to scheduling a major site plan application for a public hearing, the applicant shall pay the Village for all actual costs over ~~\$3,5,000.00~~. The application fee does not include the costs of advertising and public notice; all such advertising and public notice costs shall be borne by the applicant.

*(c) Review of Minor Site Plan Applications.*

(1) *Procedure.* A minor site plan application shall be evaluated by the Village Manager or designee, for compliance with the criteria described in sub-paragraph (f) of this section. If the Village Manager or designee determines that more information is warranted, additional materials that are reasonably related to the application may be requested from the applicant. The Architectural Review Board shall review the application in accordance with sub-paragraph (d) below, and the Board's comments and recommendation, if any, shall be provided to the Village Manager or designee. The Village Manager or designee shall review the application, and the comments and recommendations of the Architectural Review Board, if any, and shall render a final written decision on the application within 21 days of the Architectural Review Board meeting on the application. At least seven days prior to the Village Manager or designee rendering a final decision, posted notice regarding the application shall be provided on the property and at a conspicuous location at Village Hall. The posted notices shall provide that any interested person may contact the Village Clerk and request a written notice of the final decision on the application. In issuing the final decision, the Village Manager or designee may attach conditions including, but not limited to, requirements for screening or buffering, landscaping, limitations on manner, scope, and extent of operation(s), changes in proposed construction, location or design of Buildings, and relocation of proposed open space or alteration of use of such space. The final written decision of the Village Manager or designee shall be mailed to the

applicant and to any interested parties who have requested written notice of the decision, along with instructions on the process for an appeal.

(2) *Expiration.* Failure to obtain a master building permit within 12 months from the approval of a minor site plan shall render the site plan approval void.

(3) *Appeal.* If the applicant, or any other substantially affected party, disagrees with the final decision of the Village Manager or designee, the decision may be appealed by filing a written request with the Clerk accompanied by a \$1,500.00 appeal fee within 15 days of the date of issuance of the final decision. In the event of such appeal, the Village Council shall review the minor site plan application on a regularly scheduled agenda and shall have the power to approve, reverse or modify the decision of the Village Manager or designee. At its discretion, the Council may assess any portion of the costs associated with the appeal against the losing party to the appeal, or may order the appeal fee refunded to the appellant.

(d) *Advisory Review of Site Plan Applications by the Architectural Review Board.* The Architectural Review Board shall review each major and minor site plan application.

(1) *Criteria for ARB Review.* The Board shall evaluate the application under the following review criteria, and the design and aesthetic appearance of the site and Buildings. Definitions of capitalized terms shall be as defined in this Chapter and Section 5.5-2 of the Code.

a. The Exterior Building Components and External Architectural Features shall have Attractive and cohesive Architectural Character.

b. The orientation, appearance and design of External Architectural Features of new and existing Buildings and Structures, and/or additions or modifications to existing Buildings and Structures, shall indicate sensitivity to and shall be compatible with the Streetscape and Adjacent Buildings and Structures, enhance the appearance of surrounding properties, and create or maintain important view corridor(s).

c. Landscaping and paving materials shall ensure a cohesive relationship with and enhancement of the overall site plan design.

d. Buffering materials shall ensure that headlights of vehicles, noise, and light from Structures are adequately shielded from public view, Adjacent properties and pedestrian areas.

e. Colors shall be subtle and harmonious with the Landscaping and nearby Buildings and Structures. Bright or brilliant colors shall be used for accent only.

f. All rooftops of buildings with flat roof decks, including parking garage roof decks, shall be designed to minimize negative appearances by screening Mechanical Equipment and Utility Hardware, and by minimizing the ponding of stormwater through use of drains and scuppers. Rooftops shall be designed to allow for the continued maintenance of the roof surface in an attractive manner in accordance with Section 21-324.

g. Mechanical Equipment and Utility Hardware on roofs, ground or buildings shall be screened from public view with materials harmonious with the building, or shall be located so as not to be visible from streets, Waterways, service alleys, and adjoining properties. Screening shall be of such material and color so that it matches or blends with the existing roof or portion above the top floor where it is installed. This provision shall not be interpreted to require screening of Mechanical Equipment and Utility Hardware from adjoining buildings that may exceed the height of the rooftop upon which the Mechanical Equipment or Utility Hardware is installed. In this instance, only screening to the maximum height of the equipment or hardware is required.

h. The choice of materials and their usage shall be conducive to regular maintenance and durability in accordance with Section 21-324.

(2) *Conditions.* The Board may recommend to the Village Manager or designee specific conditions to address potential incompatibility, to better address the applicable criteria, or other impacts to surrounding properties.

(3) *Additional Reviews.* The initial review by the Board is mandatory for each site plan application proposed. All subsequent reviews by the Board, should they be requested, are at the option of the applicant.

(4) *Response to ARB Review.* If the Board does not recommend approval of the site plan and the applicant elects not to pursue further review by the Board, the Board's position on the site plan and any comments discussed at the meeting shall be included within the staff report to the Village Manager (for an application for minor site plan approval) or the Village Council (for an application for major site plan approval), as applicable.

(e) *Staff Review of Site Plan Applications.* The Village Manager or designee shall review the application when complete and shall prepare a staff report to the Village Council (for an application for major site plan approval), or to the Architectural Review Board (for an application for minor site plan approval), as applicable, including (without limitation) an assessment of whether the review criteria of Section 21-322(d)(1) are met. The staff report shall include a recommendation for approval, approval with conditions, or denial of the site plan.

(f) *Village Council Determination of Major Site Plan Applications.* The Village Council shall consider the major site plan application at a public hearing that is noticed in the manner set forth in Section 21-52. The Village Council may approve, approve with conditions, defer or deny the application. In rendering its decision, the Village Council shall consider the Village Manager or designee's recommendation. Approval of the proposed application and intended use shall require a finding that the major site plan and intended use(s):

(1) Are designed and scaled to be compatible with and avoid depreciation of Adjacent properties and to minimize adverse impacts to Adjacent Development and the surrounding neighborhood by virtue of the proposal's nature, location, design, Building mass, intensity of use, or mitigation measures; and

(2) Will not create excessive noise, traffic, illumination or other adverse impacts; and

(3) Provide for safe, efficient, convenient and harmonious groupings of Structures, uses and facilities and for appropriate relationship of space inside and outside of Buildings to intended uses and to structural and architectural features within the site; and

(4) Uphold the basic intent and purpose of zoning and other land use regulations, observing the spirit of the regulations and assuring public safety and welfare, without

tending to create a fire or other equally or more dangerous hazard or provoke the excessive overcrowding or concentration of people or population.

In connection with the approval of the application, the Village Council may impose reasonable limitations on the permissible uses, and conditions for Development and operation to ensure the compatibility of the uses with Adjacent Development(s) and the surrounding neighborhood and the mitigation of any adverse impacts from the proposed Development. Such mitigation may include, without limitation, screening or buffering, landscaping, limitations on manner, scope, and extent of operation(s), changes in proposed construction, location or design of Buildings, relocation of proposed open space or alteration of use of such space, changes in traffic circulation or signalization, and any other matter reasonably calculated to address potential impacts to Adjacent Development and the surrounding neighborhood.

(g) *Extensions of Major Site Plan Approvals.* Failure to obtain a building permit within 18 months of the Village Council's approval of the application shall render the major site plan void, unless after good cause shown, an extension to this timeframe has been granted by the Village Council. The major site plan extension shall be advertised and noticed in the same manner as a major site plan application. The Village Council shall consider the Village Manager or designee's recommendation on the major site plan extension and render its decision after a public hearing.

(h) *Development Agreement.* As a condition of a major site plan application, a Development Agreement, or amendment to an existing Development Agreement, may be required in order to mitigate the impacts that the proposed Development will have on the Village. The Development Agreement shall provide for one or more of the following, as appropriate for the circumstances of the application: (1) the applicant's dedication of property and/or construction of facilities to mitigate its impacts upon the Village; (2) any deed restrictions, covenants, and bonded commitments that are necessary and acceptable to the Village to ensure timely completion of the Development according to the approved major site plan; (3) any new or continuing operational obligations and maintenance of areas, functions and facilities which are not proposed to be provided, operated or maintained at public expense; and (4) any other matter determined by the Village to be

appropriate to mitigate impacts of Development. Unless otherwise specifically agreed to in the Development Agreement and otherwise approved by variance in the manner provided for in this Chapter 21, construction of all Structures shall comply with all provisions within the Village Code of Ordinances. If approved, the Development Agreement shall be recorded at the applicant's expense in the Miami-Dade County public records.

(i) Administrative Review and Design Criteria of Live Local Act Development.

(1) Definitions. For purposes of this subsection (i), the following terms are defined:

a. The Live Local Act or the Act means the Live Local Act of 2023, Chapter 2023-17, Laws of Florida, as it may be amended.

b. LLA Development means mixed use multifamily development pursuant to the Act. All components of the LLA Development shall be located on the same parcel or on one unified parcel.

(2) Intent. The Act requires that the Village allow LLA Development in the B Business District even though this district does not permit residential use. The Act further requires that the Village allow height, density and use inconsistent with the otherwise applicable requirements of the Code. LLA Development shall comply with all requirements of the Code for such development unless otherwise specified for LLA Development in the B Business District. The Village Manager shall review and approve a major site plan or major site plan amendment for LLA Development, if:

a. no further action by the Village is required (e.g., no variance, conditional use or other approval is required); and

b. the proposed development satisfies the land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use, in the manner further specified herein.

(3) Review Process. The review process shall assure that LLA Development satisfies all requirements of the Act, as well as the Village Comprehensive Plan and Code provisions



that are not preempted by the Act for a major site plan, and all other applicable laws. LLA Development shall follow the minor site plan process, with review by the Administration of whether the LLA Development satisfies all requirements of law, including (without limitation) the review criteria of Section 21-322(d)(1) and other requirements for major site plan approval, a recommendation by the ARB, and administrative approval by the Village Manager rather than approval by the Village Council.

(4) Density and height.

a. The maximum density of a residential component of an LLA Development is the highest allowed density on any land in the Village where residential development is allowed (55 dus/acre).

b. The maximum height of a residential component of an LLA Development shall be the highest currently allowed for a commercial or residential development within the Village and within 1 mile of the proposed development, or 3 stories, whichever is higher.

c. When determining "highest allowed density" or "highest currently allowed height," the following shall not be considered:

(i) an LLA Development;

(ii) a development that is not in compliance with the current zoning code (such as non-conforming structures); and

(iii) a development with increased height or increased density, if any, allowed as a bonus or incentive, or as a variance.

(5) Standards for LLA Development Residential Components. LLA Development shall meet all requirements for major site plan approval. As LLA Development is the only type of development in the B Business District allowed to include residential uses in a mixed use project, the following additional standards are provided to assure that such residential development is equitable, is consistent with the quality of Village development, and avoids discrimination against any Village resident.

a. Required residential and non-residential uses.

(i) Residential uses. At least 65 percent of the total square footage of an LLA Development shall be used for residential purposes. Lobby, service areas, and amenity areas exclusively serving the residential uses of the LLA Development shall not be considered residential square footage. Common/shared ground floor lobby, service areas, and amenity areas shall be proportionately allocated to the residential and non-residential square footage requirements.

(ii) Non-residential uses. A maximum 35 percent of the total square footage of the LLA Development shall be devoted to main or principal (and not accessory) nonresidential uses. Retail or restaurant uses shall be located on the first 75 feet of the ground floor of any Building of the LLA Development facing Collins Avenue/Bal Harbour Boulevard and Harding Avenues or 96<sup>th</sup> Street.

b. Equivalency of affordable dwelling units.

(i) No segregation of units. Affordable dwelling units and market rate units within an LLA Development shall be located within the same Building or shall be proportionately distributed between multiple Buildings, if multiple Buildings are proposed. In no event shall an LLA Development Building's residential component consist entirely of market rate units.

(ii) Equal access to amenities. All common areas and amenities within an LLA Development shall be equally accessible and available to all residents (both affordable and market rate units).

(iii) Equal access to units. Access to the required affordable dwelling units in an LLA Development shall be provided through the same principal entrance(s) and with the same elevators/stairwells utilized by market rate dwelling units in the development. For townhouse-style affordable dwelling units, each unit shall have its own entrance.

(iv) Equal access to parking. Parking for affordable dwelling units shall be provided in the same manner, with the same level of convenience and proximity as parking for market rate units.

(v) Equal quality of construction and common areas. The design and construction of the affordable dwelling units and associated common areas shall be of the same quality as the design and construction of the market rate units and associated common areas.

(vi) Equal provision of a range of unit types. The number of each type of affordable dwelling unit provided in an LLA Development shall be approximately proportional to the number of each type of market rate unit in the LLA Development, with type determined by the number of bedrooms. For purposes of this subparagraph, "approximately proportional" shall mean that the percentage of each type of unit among the affordable dwelling units shall be within 5 percentage points of the percentage of each type of unit among the market rate dwelling units (e.g. if 25 percent of the market rate units are two-bedroom units, then between 20 percent and 30 percent of the affordable units shall also be two-bedroom units, etc., maintaining an approximately proportional distribution of affordable and market rate units and unit types within the LLA Development). If the 5 percent calculation results in less than a full unit, then the amount shall be rounded up and "approximately proportional" shall mean a difference of one unit.

d. Affordability commitment. Pursuant to the Act, at least 40 percent of the residential units within a proposed LLA Development shall be "affordable" as defined in Section 420.0004, Florida Statutes, and shall remain affordable for a period of at least 30 years. This requirement shall be incorporated as a condition of any administrative approval of an LLA Development. Furthermore, as a prerequisite to the issuance of a building permit, the Owner shall execute and deliver to the Village for recordation in the public records, on a form approved by the Village Attorney, a deed restriction in favor of the Village ensuring compliance with, and enforcement of, this affordability requirement. Additionally, the property owner shall provide to the Village, each year on January 15, copies of all leases then in effect for the affordable units, together with such other documentation necessary to demonstrate that such leases meet the affordability criteria as set forth in Section 420.0004, Florida Statutes, and confirm that the occupants of the affordable units

meet the requirements of the income standards. The Village has the right to audit the evidence of compliance with Section 420.0004, Florida Statutes, at any time if warranted.

e. *Tower articulation.* To avoid large unbroken “boxy” massing appearances of taller Buildings and Parking Structures, the Village adopts the following required design criteria.

(i) *Length of Building or Parking Structure.* For Buildings or Parking Structures over 56 feet in height, the maximum overall length of any single Building or Parking Structure in a linear shape, with no breaks or angles greater than 15 degrees, shall not exceed 200 feet, as further regulated by the requirements provided below.

(ii) *Breezeways.* For purposes of this section, a “breezeway” is an open area that divides two buildings or structures, or parts of buildings or structures, that may be crossed by a path or bridge. A Building or Parking Structure may exceed 120 feet in length if breezeways divide such Building or Parking Structure, into parts not exceeding 120 feet in length. Such breezeways shall have a minimum unobstructed width of at least 20 feet for their entire length. Components of a Building(s) or Parking Structure(s) may be connected through bridges, which may have covers. The top floor bridge may be covered by the roof of the overall Building or Parking Structure.

(iii) *Distance Between Buildings/Parking Structures.* The minimum distance, unobstructed, between Buildings and Parking Structures on a lot, plot or parcel of land shall be 20 feet.

(iv) *Alternative Design.* Notwithstanding the above, the Village may modify the application of this tower articulation requirement in instances where enhanced architectural articulation and detailing is provided on

the Building or Parking Structure facade(s) to break the massing of the Building or Parking Structure.

\* \* \*

**Section 3. Village Code Amended - Chapter 21, Article V.** That Chapter 21 "Zoning," Article V "Off-Street Parking" of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:

## **CHAPTER 21. - ZONING**

\* \* \*

### **ARTICLE V. - OFF-STREET PARKING.**

\* \* \*

#### **Sec. 21-381. - Generally.**

(a) Except as otherwise provided in this chapter, when any Building or Structure is erected or structurally altered, off-street parking spaces shall be provided in accordance with the regulations set out in this article.

(b) In the Ocean Front (OF) District, 100 percent of required parking spaces shall be contained in a fully enclosed Parking Structure.

(c) In all other zoning districts, off-street parking spaces may be located in surface parking facilities open to the sky, or within enclosed parking garages.

(d) For development pursuant to the Live Local Act in the B Business District, 100% of required parking spaces for residential uses shall be fully enclosed, designated for residential use only, and integrated into the Building containing the residential units served by that parking. Parking spaces serving any nonresidential uses in the Building open to the public shall be in accordance with the requirements of the B Business District.

#### **Sec. 21-382. - Interpretation of requirements.**

(a) *Alterations and change in use.* Whenever a Building, Structure or use is enlarged by the addition of floor area, number of units, employees, seating capacity or otherwise, which creates a requirement for increased off-street parking spaces, such spaces shall be provided on the basis of the enlargement or change.

(b) *Change in use.* When the use of any Structure or premises is changed, in total or part,

to a different use, parking spaces shall be provided on the basis of the change in use.

(c) *Mixed uses*. In the case of mixed uses within a Building or Structure, the parking spaces required shall equal the sum of the requirements of the various uses computed separately, unless otherwise approved by the Village Council, based on a traffic study, or parking study or both submitted by the applicant meeting the technical specifications required by the Village Manager. For development pursuant to the Live Local Act in the B Business District, the Village Manager shall require the same studies and may approve any parking variations based on the internalization of uses or sharing of parking based on his reasonable determination of whether the study findings are professionally acceptable.

\* \* \*

(m) *Tandem parking*. Tandem parking is a parking layout in which one or more automobiles must be moved in order to retrieve another automobile. Where tandem parking is employed, full-time parking attendants are required, and no self-parking shall be permitted, and tandem parking must not be more than two stalls in depth. The restrictions of this paragraph, requiring parking attendants and prohibiting self-parking, shall not apply if the tandem parking spaces which restrict access to one another are assigned to the same occupancy or dwelling unit, in accordance with a restrictive covenant filed in the official records of Miami-Dade County, Florida, and approved as to legal form and sufficiency by the Village Attorney. Where tandem parking is employed in a Special Business Improvement District, spaces shall not be limited to a two-stall depth but shall meet all other requirements for the Special Business Improvement Area. However, if residential uses are provided pursuant to the Live Local Act, tandem stalls shall not be used for the parking constructed to serve the residential components since tandem parking is not allowed for any residential uses.

\* \* \*

(q) *Special Business Improvement Area*. These provisions shall supersede any other provisions in this section which may be in conflict, except as provided for herein.

(1) *Number of spaces*.

a. *Permanent Parking Ratio*. 2.1 permanent parking spaces for each 1,000 square feet of 90 percent of gross floor area. For residential development proposed under the

Live Local Act, the off-street parking requirements for Multiple-Family residential uses in Section 21-384(2) of the OF Oceanfront District shall apply to the parking constructed to serve the residential components. The flex parking ratio and the potential reductions in parking ratios in b. and c. below shall not apply to such residential development, but will apply to the nonresidential uses.

b. *Flex Parking Ratio.* Recognizing the seasonal nature of population, tourism, business activity and parking demand in the Village of Bal Harbour, parking plans whereby spaces designed and normally used for self-parking may be converted to valet parking layout and operations to increase the parking ratio to 2.9 parking spaces for each 1,000 square feet of 90 percent of the gross floor area and higher. The capacity of the parking facility in the valet parking layout shall be used in determining the adequacy of the parking supply. The valet layout need not be striped or have bumper guards or wheel stops. In the event the property owner intends to utilize flex parking for more than six continuous months, the property owner shall provide written notice to the Village Manager of the scope of its intended use.

c. *Reductions in Permanent and Flex Parking Ratios.* The permanent parking ratio may be reduced below 2.1 but no lower than 1.8 permanent parking spaces, and the flex parking ratio may be reduced below 2.9 but no lower than 2.3 flex parking spaces, upon presentation of a professionally acceptable parking report by a parking expert demonstrating that over the immediate prior twenty-four consecutive months, parking utilization in the facility remained below the proposed reductions in the permanent and flex parking ratios 85 percent of the time. The analysis of the permanent parking ratio shall exclude peak season (peak season is defined as November 1 to April 1, excluding the week of Thanksgiving, December 16 to January 2, and the week of Art Basel).

\* \* \*

(6) *Minimum dimensions.* Parking layouts shall conform to the minimum requirements of this section. For any residential development proposed under the Live Local Act, the minimum parking lot design criteria listed in Section 21-385(a)-(p) for Multiple-Family residential uses shall apply to the parking constructed to serve the residential components.

\* \* \*

(8) *Mechanical Parking*: Mechanical parking, including mechanical lifts and stackers, shall be permitted and shall count towards permanent or flex parking ratios. Mechanical parking may not be placed in surface parking lots located along Collins Avenue or 96th Street. Mechanical parking structures shall not be interpreted to be structures as defined by this Chapter, and shall be subject to the screening requirements of Section 21-386. For any residential development proposed under the Live Local Act, mechanical parking facilities are prohibited for the parking constructed to serve the residential components to assist in reduced construction costs, living costs, and safety concerns for those residents.

\* \* \*

**Section 4. Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and be made a part of the Bal Harbour Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 6. Conflict.** That all Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.



**Section 7.**    **Effective Date.**    That this Ordinance shall become effective upon adoption on second reading. This Ordinance shall apply only to building permits for which a process number is issued after the effective date of this Ordinance.

PASSED AND ADOPTED on first reading this 20<sup>th</sup> day of February, 2024.

PASSED AND ADOPTED on second reading this 5<sup>th</sup> day of March, 2024.



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Mayor Jeffrey P. Freimark

ATTEST:

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Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.



**BAL HARBOUR VILLAGE  
COMMUNITY DEVELOPMENT  
MEMORANDUM**

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**To:** Local Planning Agency (LPA) / Village Council  
Bal Harbour Village

**From:** Michael J. Miller, AICP   
Consultant Village Planner

**Thru:** Jorge M. Gonzalez – Village Manager  
Eliezer Palacio – Village Building Official  
Susan Trevarthen, Esq. – WSH Village Attorney

**Date:** February 26<sup>th</sup>, 2024

**Subject:** Proposed Code Amendments  
Live Local Act (LLA) Amendments / General Code Amendments  
Administrative Site Plan Procedures / OF District / Business District / Noise  
MMPA Acct. No.: 00-1103-0100

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**RECOMMENDED ACTION**

MMPA recommends the Village Council, acting initially as the designated Local Planning Agency (LPA), and subsequently as the Local Government Body for the Village, review the proposed Code Amendments, the contents of this staff report and receive public comments. MMPA recommends that the Village **APPROVE** the Code Amendments for the reasons stated.

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**ISSUE**

During the Florida Legislature's 2023 session, the "Live Local Act of 2023" (Chapter 2023-17 Laws of Florida, which established Section 166.04151(7) of the Florida Statutes), was adopted under Senate Bill 102 and signed into law by the Governor on March 29<sup>th</sup>, 2023. The stated purpose of this law was to promote the development and availability of "affordable housing" in the state. The Act provides that a municipality must authorize multifamily housing and mixed-use residential development as allowable uses in any area zoned commercial, industrial, or mixed-use, if at least 40% of the residential uses in a proposed multifamily development are, for a period of at least 30 years, "affordable" as defined in Sec. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a municipality may not require such a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for the building height, zoning and densities authorized under this subsection. For mixed-use residential projects, at least 65% percent of the total square footage must be used for residential purposes.

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Sec. 166.04151(7) includes a number of implementing provisions related to allowable density, building height, and approval procedures. More specifically, the Act requires that any such proposal be administratively approved by the local government and no further action by the governing body of the municipality is required if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such uses and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use. Such land development regulations include, but are not limited to, setbacks and parking regulations. Except as otherwise provided in the subsection, a development authorized under this subsection must comply with all applicable state and local laws and regulations.

Based on the Village staff's / MMPA analysis, a series of Code revisions are being recommended to update some thought to be "outdated" Code provisions, and to address the new LLA mandates. The initial Code amendment proposals are aimed at some general Code updates including the criteria for Floor Area Ratio (FAR), Site Plan requirements, setbacks, and off-street parking and driveway designs. Many of these Code provisions are from the Village's original 1974 Zoning Code with few updates over the years. Separate Ordinances were drafted to address specific land development criteria and other matters.

**Existing Community Design** – The Village was completely master-planned with distinct land use areas (known as Euclidian Zoning). This includes high-rise residential / hotel / resort development along the Atlantic Ocean east of Collins Avenue, low-rise (2-4 story) multifamily development located along the west side on Collins Avenue and at a few other locations within the gated area along Park Drive at the south end of the community or near the Haulover Inlet, single-family homes within the gated area between Park Drive and the Indian Creek Waterway, the Bal Harbour Shops Mall located west of Collins Avenue and north of 96<sup>th</sup> Street, a small commercial site north of 96<sup>th</sup> Street between Collins Avenue and Harding Avenue, various municipal facilities (Village Hall / Parks / beach / etc.) and various private open spaces and recreational facilities (passive parks / marina). The community can be best described as a suburban neighborhood to the City of Miami – clearly not "Urban" in the context of Miami-Dade County in character. Along Collins Avenue large setbacks have always been required originally by plat and later by zoning laws. The beachfront sites are a minimum of 200 feet in width and extend hundreds of feet toward the oceanfront. Shorter buildings / structures like parking garages on the OF sites are limited to 22 feet / 2-stories in height and have a 100-foot minimum setback. Tower structures must have at least a 150' setback from Collins Avenue. The low-rise multiple-family development along the west side of Collins Avenue is limited to 4-stories in height and has a minimum 50-foot building setback. The Village was designed specifically to avoid the appearance of a high-rise "concrete canyon" along its roadways. The BHS site is generally limited to 3-stories / 56 feet in height with an exception for up to 5-story parking garages (same overall height). A slightly taller (69') carve-out area is allowed within the site. All of the single-family homes are limited to two-stories in height. Following these long-established urban design guidelines, similar types of land development should follow the same pattern of setbacks, scale, building height, and bulk. The Charter and Codes reinforce the above via various land development regulations.

In 2017 after years of review and negotiations, the Village approved the BHS landowner's request to build an additional 350,000 square feet of Gross Floor Area (GFA) so that the BHS could include up to 850,000 square feet of GFA. A new multi-level commercial "wing" of the mall was proposed with a new anchor store (Barneys) at the west edge of the site, new parking facilities and general aesthetic improvements. The entire BHS site includes only commercial land uses per the Village's Comprehensive Plan, Zoning District & other Land Development Regulations (LDRs) allowances, and the mutually agreed upon recorded Development Agreement (DA). The DA included a specific site plan design, land use allowances & limits, and development rights. A number of covenants and conditions were included.

The proposed 2024 BHS LLA request includes a significant reduction in the commercial square footage to about 683,000 square feet, including the removal of two existing major anchors stores (Saks & Nieman Marcus) and a previously proposed new anchor store, the introduction of 528 dwelling units (DU), of which 228 are deemed "Affordable" housing DU, a proposed 70-room hotel, and an unspecified "private club" with 200 members / 40 employees. The new residential component is requested through the Florida Live Local Act (LLA).

The Village has no "Industrial" land use areas, only "Commercial" land use areas (BHS site / Truist Bank site). Under the LLA, if less than 20% of the land in a community is designated as "Commercial" on the adopted Future Land Use Map (FLUM), any residential development must be within a mixed-use development (not free-standing). Approximately 4% of the land area in the Village is designated "Commercial". For mixed-use developments at least 65% of the total square footage must be used for residential purposes.

## **PROPOSED CODE REVISIONS**

- A) **"B" Business District Permitted Uses** – The proposed Code amendment will include a new definition for "statutory uses" such as LLA Mixed-Uses per Florida Statute.
- B) **"B" Business District Maximum Building Height** – The proposed amendment will simply include a reference to the 2023 LLA building height exception.
- C) **"B" Business District Yards / Setbacks (Sec. 21-319)** - The current Code contains those building setbacks created over the years for Village's "B" Business District commercial uses. These were created specifically for a maximum 56-foot height / 3-story commercial development, not high-rise buildings. As the current 2023 LLA allows a developer to utilize a community's highest residential density and building height within 1-mile of the site (OF = 55 DUA / 275' building height) staff has analyzed the long-established land development regulations for the OF District to ensure similar types of development utilize the same or similar setbacks and other regulations, as allowed by the LLA. In the OF District the original 1946 subdivision plat included a minimum setback from Collins Avenue of 100 feet for any building. As oceanfront development was built the Village adjusted some of the setbacks and other land development regulations. The current OF District requires a minimum 100-foot setback for parking garages with a maximum height of 22 feet above street grade. Any towers must be set back a minimum of 150 feet from Collins Avenue. As buildings get taller (above 17



floors) additional setbacks are required. Similarly, the setbacks for other roadways listed in the Code are intended for the existing specified commercial development. The existing setbacks for the "B" Business District are not suited for taller buildings that could overshadow / overscale the adjoining roadways and nearby low-density residential development. Therefore, MMPA recommends that the Village adopt amendments to the "B" Business District regulations to mandate similar setbacks as have existed in the OF District for decades.

- D) **"B" Business District Floor Area Ratio (FAR) (Sec. 21-321)** – The current state law does not include any allowance to utilize the FAR of the highest density / building height within 1-mile of the site; however, there are proposed statute revisions that could allow that. The current maximum FAR in the "B" Business District is 1.22. The current maximum FAR in the "OF" Oceanfront District is 2.80. The Village's team has analyzed the existing oceanfront development (some precede modern regulations / were granted variances / etc.) and recommend some adjustments to the OF FAR regulations. As the same type of development could be mandated to occur in the "B" Business District, we feel the same / similar land development regulations should apply. The proposed Code amendments would require the same FAR as in the OF regulations.
- E) **"B" Business District Site Plan Review (Sec. 21-322)** – The proposed amendments will add revised site plans review procedures for LLA developments, as required by state law. Currently the ARB and Village Council are required to review / approve all development in the "B" Business District. The LLA mandates that such development be approved administratively if the project complies with local land development regulations. The Code changes will establish criteria & procedures for staff reviews.
- F) **"B" Business District Administrative Review & Design Criteria for LLA Projects** – This new Code section is intended to establish project review procedures and adopt project design criteria for possible mixed-use development in the district. The recommended project design criteria are very similar to the Village's current ARB review procedures and building design criteria. However, as related to mixed-use development, additional criteria is proposed for the residential uses (affordable & market rate housing) setting forth urban design parameters (breezeways / building lengths / building articulation) to avoid large massive unbroken building appearances.
- G) **"B" Business District Off-Street Parking (Sec. 21-381 and 21-382)** – The Village's Code includes separate off-street parking provisions for the so-called Special Business Improvement District versus all other zoned areas. The proposed amendment will require the use of the standard off-street parking regulations for all residential uses, as they differ greatly from the specialized criteria allowed for this exclusive commercial mall.
- H) **Zoning Code Definitions** – A common definition of Floor Area Ratio (FAR) is readily available by dictionary and most local government codes include a similar definition. The Village Code has had an overall definition of FAR for many years in Sec. 21-1 (Gross Floor Area (GFA) less any listed exception areas). Within each Zoning District the individual allowances of what GFA allows (ex. max. 22' hgt. above grade / 2-story

parking garages in OF District / max. 56' hgt. / 5-story parking garages in the Business District above grade). The proposed modification simply intends to make reference to each zoning district's specific FAR regulations.

- I) **Public Hearing Procedures** – This Code provision has existed for many decades. The proposed new provision will require that all property owners within a site, or those with lease rights, must include a written consent from any leaseholder.
- J) **Parking Spaces** – The Village has had some form of off-street parking requirements since its original Zoning Code was adopted in 1974. As can be expected several modifications were made over the years as the increased use of motor vehicles has occurred. As related to multiple-family developments, the same quantity of parking spaces has been required for many years (1.5 spaces per DU + 1 space for each 10 DU). The Village Code requires this formula regardless of the size of a dwelling unit or number of bedrooms. Most modern Codes and professional engineering studies recommend a sliding scale based on the number of bedrooms (studio / 1 BR / 2 BR / etc.). Complaints have been made about the lack of adequate parking in some instances. After researching this the staff recommends some updates based on the number of bedrooms in a dwelling unit, with additional parking for employees, guests and deliveries and maintenance / service / construction workers.
- K) **Driveway Design** – The Village Code in Sec. 21-385 includes some basic design guidelines for driveway widths. However, the Code only has provisions for the OF Oceanfront District and B Business District - none for single-family or the various RM Districts. Often some architects / owners request permission to pave large driveway areas along the streets, which looks poor and can create safety issues. The existing driveway widths noted are very typical in local zoning codes and provide flexibility. Along roadways landscaped swales are typically required for drainage / utilities / vehicle recovery from swerving maneuvers and the Miami-Dade Code requires Street Trees. Staff recommends that the Village revise the Code to include basic driveway criteria Village-wide.

## **SUMMARY**

During the Florida Legislature's 2023 session, the "Live Local Act of 2023" (Section 166.04151(7) F.S), was adopted. The stated purpose of this law is to promote the development and availability of "affordable housing" in the state. The Act provides that a municipality must authorize multifamily housing and mixed-use residential development as allowable uses in any area zoned commercial, industrial, or mixed-use, if at least 40% of the residential uses in a proposed multifamily development are, for a period of at least 30 years, "affordable" as defined in Sec. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a municipality may not require such a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for the building height, zoning and densities authorized under this subsection.

**Bal Harbour Village  
LPA / Village Council Staff Report  
Proposed Code Amendments  
Live Local Act (LLA) Amendments / General Code Amendments  
Administrative Site Plan Procedures / OF District / Business District / Noise  
February 26<sup>th</sup>, 2024  
Page 6**

The Village Manager assembled a “Team” to analyze the LLA impacts on the Village and to provide recommendations. The Village’s “Team” was comprised of members of the Village Attorney’s office / Village staff (Bldg. Dept. / PD) / MMPA. The Village’s “Team” has determined that our current Code site plan review procedures and some of our land development regulations were not adequate to protect the Village’s overall master-planned design, desired building scale, similar setbacks and several other development criteria. Also, based on community input (parking requirements / noise), staff was instructed to review the existing regulations and offer suggested revisions.

A series of Code revisions are being recommended to update some thought to be “outdated” Code provisions, and to address the new LLA mandates. Many of the Code provisions we utilize today are from the Village’s original 1974 Zoning Code. Separate Ordinances were being drafted to address specific land development criteria and other matters.

State Law (Section 163.3202) requires the Village to create, maintain and update as necessary its various Land Development Regulations (LDRs) to help implement its Comprehensive Plan Goals, Objectives and Policies (GOPs), which in the Village’s situation, include references to its master-planned “roots” and the protection of its original design and LDRs. LDRs include the local government’s Zoning Code and numerous other regulations (Architectural / Landscaping / Signage / Building & Construction / etc.). The Village’s GOPs require the Village to create, maintain and update as necessary its Land Development Regulations (LDRs). Notwithstanding the new 2023 LLA state law, the Village in recent years has been analyzing and updating its LDRs to address a number of topics including new flood regulations, modern trends and desired urban design. The proposed new Code Amendments continue this effort.

Following are some applicable excerpts from the Village’s adopted Comprehensive Plan Future Land Use Element (FLUE):

- GOAL:** Maintain the high-quality built environment of Bal Harbour by ensuring that all physical development activities adhere to the Village’s Land Development Regulations.
- Objective:** Maintain and enforce a current comprehensive set of Land Development Regulations (LDR’s).
- Policy:** Periodically review LDR’s to ensure they properly address all land development activities.
- Policy:** Those Density and Intensity Standards found in the Future Land Use Element shall be enforced rigidly.
- GOAL:** Maintain the existing character of the Village while honoring the Future Land Use Map.



- Policy:** Location, extent, and intensity of future developments shall be subject to the physical ability to provide for adequate public services to levels adopted by the comprehensive plan.
- Policy:** New developments and construction shall be required to make improvements to existing public facilities in order to mitigate their impact thereon.
- Policy:** Maintain adequate resources to review and assess Impact of new construction on public services, resources and facilities.
- Objective:** There shall be no land uses that are inconsistent with community's character and with future land uses:
- Policy:** Review construction and development plans for consistency with the goal set herein, and for conformity with the community's standards.
- Policy:** Enforce the Zoning and Development Codes of Bal Harbour.
- Objective:** Encourage use of innovative land development techniques.
- Policy:** Maintain the Bal Harbour Village code to permit mixed-use and planned development to form part of any redevelopment of the ocean-front district.
- Policy:** Allow the oceanfront parcels to develop as hotels, condominiums or rental apartments, and permit mixed use of those properties with limited convenience commercial or business uses to primarily serve their residents or patrons.



# BAL HARBOUR

- V I L L A G E -

## LOCAL PLANNING AGENCY ITEM SUMMARY

### Condensed Title:

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," ARTICLE III "DISTRICT REGULATIONS," DIVISION 10 "OF OCEAN FRONT DISTRICT" OF THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.

### Issue:

Should the Local Planning Agency recommend the Village Council adopt the Ordinance amending Chapter 21 "Zoning" regulations pertaining to the OF District?

### The Bal Harbour Experience:

☒ Beautiful Environment    ☐ Safety    ☐ Modernized Public Facilities/Infrastructure  
☐ Destination & Amenities    ☐ Unique & Elegant    ☒ Resiliency & Sustainable Community  
☐ Other: \_\_\_\_\_

### Item Summary / Recommendation:

Early last year, the Village began to address Code provisions that were outdated, required updating or addressed matters of concern to the quality of life of our residents.

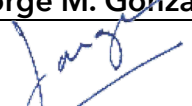
These additional Code revisions are being recommended to continue to update "outdated" Code provisions. These initial Code amendment proposals are general Code updates to the definition of Floor Area Ratio (FAR), and PD Planned Development District.

In light of the growing trend of further state preemption laws, it is advisable to continue to review our zoning code and make the necessary amendments to bring them up to standards, address resiliency where needed and implement protections to the character of our community and the quality of life of our residents.

The Village Council unanimously approved the proposed Ordinance on First Reading at the February 20, 2023 regular council meeting. It is recommended that the proposed Ordinance be approved on Second Reading after considering the recommendation of the Local Planning Agency on March 5, 2024.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE.**

### Sign off:

Director Title	Building Official	Village Manager
Director Name	Eliezer Palacio	Jorge M. Gonzalez
		

# BAL HARBOUR

- V I L L A G E -

## LOCAL PLANNING AGENCY MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: March 5, 2024

SUBJECT: **AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," ARTICLE III "DISTRICT REGULATIONS," DIVISION 10 "OF OCEAN FRONT DISTRICT" OF THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.**

### **ADMINISTRATIVE RECOMMENDATION**

I am recommending that the Local Planning Agency recommend to the Village Council the approval of the ordinance.

### **BACKGROUND**

Early last year, the Village began to address Code provisions that were outdated, required updating or addressed matters of concern to the quality of life or our residents. Certain amendments were approved to the "Noise" ordinance, construction site standards, underground parking provisions and certain elements of the Ocean Front district development standards and uses. These amendments were a result of feedback from our residents, concerns over safety and unsightliness of construction sites, resiliency and climate change concerns with underground parking facilities, as well as the overall character of our community. In light of the growing trend of further state preemption of local laws, it is advisable to continue to review our zoning code and make the necessary amendments to bring them up to current standards, address resiliency where needed and implement protections to the character of our community and the quality of life of our residents.

These additional Code revisions are being recommended to continue to update "outdated" Code provisions. These initial Code amendment proposals are general Code updates to the definition of Floor Area Ratio (FAR), Site Plan submittal requirements, and off-street parking and driveway designs. As you know, many of the existing Code provisions date back to the Village's original 1974 Zoning Code with only a few targeted updates over the years. It is appropriate to continue to review and amend our Code to ensure that we are current and able to address the development climate that exists today and into the future. It is through the Village Code that the Village can best nurture the character of our built-out community as well as ensure the highest quality of life for our residents. Further revisions may be necessary and we will

bring those recommendations to you as warranted. In the meantime, the proposed amendments in this agenda item are ready for your consideration.

As you will recall, on September 19, 2023, the Village Council approved two ordinances amending Chapter 21, "Zoning" and Underground Parking Regulations in the OF Oceanfront District. Since the adoption of these regulations, administration and staff has continued to review our code and have identified further amendments to Chapter 21 "Zoning" Article III "District Regulations" Division 10 "OF Oceanfront District" as related to Floor Area Ratio that are advisable.

### **ANALYSIS**

The Village was completely master-planned and is essentially built-out as an exclusive high-end community, with distinct land use areas (known as Euclidian Zoning). This includes high-rise residential / hotel / resort development along the Atlantic Ocean east of Collins Avenue, low-rise (2-4 story) multifamily development located along the west side on Collins Avenue and at a few other locations within the gated area along Park Drive at the south end of the community or near the Haulover Inlet, single-family homes within the gated area between Park Drive and the Indian Creek Waterway, the Bal Harbour Shops (BHS) Mall located west of Collins Avenue and north of 96<sup>th</sup> Street, a small commercial site north of 96<sup>th</sup> Street between Collins Avenue and Harding Avenue, various municipal facilities (Village Hall / Parks / beach / etc.) and various private open spaces and recreational facilities (passive parks / marina).

The community can be best described as a suburban neighborhood to the City of Miami - clearly not Urban in character in the context of Miami-Dade County. Along Collins Avenue large setbacks have always been required originally by plat and later by zoning. The beachfront sites are a minimum of 200 feet in width and extend hundreds of feet toward the oceanfront. Shorter buildings / structures like parking garages on the Ocean Front (OF) sites are limited to 22 feet / 2-stories in height and have a 100-foot minimum setback. Towers must have at least a 150' setback from Collins Avenue. The low-rise multiple-family development along the west side of Collins Avenue is limited to 4-stories in height and has a minimum 50-foot building setback. The Village was designed specifically to avoid the appearance of a high-rise "concrete canyon" along its roadways.

The BHS site is generally limited to 3-stories / 56 feet in height with an exception for 5-stories for parking garages (same overall height). A slightly taller (69') carve-out area is allowed within a small portion of the site. All of the single-family homes are limited to 2-stories. Following established urban design guidelines, similar types of land development should follow the same pattern of setbacks, scale, building height, and bulk. The Charter and Code reinforce the above via various land development regulations.

The OF District is mapped on the east side of Collins Avenue. The properties are zoned OF unless they have gone through the process of Planned Development PD review

and rezoning, which is only available for larger properties and is a negotiated process that requires approval of a development agreement. The proposed ordinance does not change the PD standards, but it does clarify that the FAR applicable to a PD is that approved by the plan and the development agreement for the PD. The OF district allows multi-family residential and hotel uses, and specifically provides for and regulates a number of limited accessory and commercial uses. All Village zoning districts, including the OF District, are also regulated by supplemental regulations and requirements for off-street parking and loading. The proposed amendments in this agenda item will not impact existing buildings in the OF District all of which are "grandfathered" in, as provided in the effective date clause.

The amended language has been drafted to protect and maintain the character of the Village as initially planned, as described below:

### **Definitions (Sec 21-280)**

The Florida Statutes do not contain a definition for Floor Area Ratio (FAR) to our knowledge; the Community Planning Act does use the concept in defining urban infill in Section 163.3164(49). However, a common definition is readily available by dictionary and most local government codes include a similar definition. The Village Code has had an overall definition of FAR for many years in Sec. 21-1 (Gross Floor Area (GFA), as defined by the Code<sup>1</sup>, less any listed exception areas). Within each Zoning District the individual allowances of what GFA allows (compare max. 22' hgt. above grade / 2-story parking garages in OF District with max. 56' hgt. / 5-story parking garages in the Business District above grade). The companion Ordinance revising Chapter 21 makes reference to each zoning district's specific FAR regulations as follows:

#### **Sec. 21-1. Definitions and rules of construction.**

Floor Area Ratio (FAR) means the Gross Floor Area, not including Parking Structures unless otherwise defined or required by the applicable regulations for the Zoning District, on a Lot or Project Site, divided by the Lot area or Project Site area. (For example, a Building containing 20,000 square feet of floor area on the zoning Lot of 10,000 square feet has a Floor Area Ratio of 2.0).

This Ordinance clarifies how FAR applies for development using the OF development standards, by incorporating reference to the OF height limit for parking garages.

"Floor Area Ratio (FAR)" means the Gross Floor Area, not including Parking Structures up to 22 feet in height per Section 21-288(4), on a Lot or Project Site, divided by the area of the Lot or Project Site. (For example, a Building

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<sup>1</sup> *Gross Floor Area* means the area of all Structures, including all floors but excluding mezzanines, elevator shafts, emergency stairwells, trash chutes, other vertical mechanical spaces and open balcony areas, measured to the outside of the Structure at each floor.

containing 20,000 square feet of floor area on a Lot or Project Site of 10,000 square feet, with a Parking Structure that is 22 feet in height, has a Floor Area Ratio of 2.0).

### **Maximum Floor Area Ratio (Sec 21-286)**

The current Village Code section now allows a FAR of 2.80. In earlier years, that ratio was different, as reflected by some older buildings that still exist. The OF District has long established setbacks, from the 1946 Subdivision Plat and later in the Zoning Code Regulations. These setbacks are essential to the pedestrian and driver experience one enjoys when traveling along our major thoroughfare and residing in our community. That open and natural feeling created by these setbacks are a critical design/planning element that distinguishes Bal Harbour Village from many other communities.

The proposed amendment establishes a new FAR of 1.30. The amendment, however, creates a mechanism for a developer to acquire additional “bonus” density as an incentive for development to help guide the design toward the desired outcomes. The bonus mechanism proposes two bonus opportunities should a prospective developer meet the required guidelines. These bonuses are not mutually exclusive and a prospective developer can choose to meet either or both of the bonus opportunities, with the resulting development limited to a maximum FAR of 2.8. A review of existing OF development reveals that most current buildings comply with this design/planning element; however, any existing building that does not meet the bonus established will be considered legal-nonconforming, and no further action would be required of them.

#### **Sec. 21-286. - Maximum Floor Area Ratio.**

The Floor Area Ratio in the OF Ocean Front District shall not exceed ~~2.8~~ 1.3 to one, exclusive of floor area within enclosed Parking Structures devoted entirely to off-street parking and those floor areas listed in section 21-1 that are excluded in the definition of Floor Area Ratio. The Floor Area Ratio calculation in the OF Ocean Front district may include the area of the Project Site located east of the platted Lot and west of the erosion control line.

OF development may achieve additional FAR if it complies with additional incentives for development to be compatible with adjacent development(s) and the surrounding neighborhood, and to mitigate any adverse impacts from the proposed development. The OF Development may qualify for one or both of the incentives, but in no event shall the maximum FAR exceed 2.8:

(a) A bonus of 0.50 FAR applies if nonresidential uses, excluding amenities exclusively for the use of the residents of the OF development, are limited to a maximum of 20% of the FAR of the OF Development.

(b) A bonus of 1.0 FAR applies if all Buildings are at the maximum front setback provided by Section 21-291(1).

## **PD Planned Development District (Sec. 21-299)**

The current minimum size of a PD Development is 5 acres, and was intended for larger sites (typically 2 or more standard lots in the Oceanfront Plat). A typical oceanfront lot is 200' in width and about 2.5 acres in size. Some of the existing oceanfront development was built on 1.5 platted lots (300 +/- street frontage and over four (4) acres in size).

There are 3 existing PD Developments; St. Regis, Oceana, One Bal Harbour. The proposal is to lower the 5 acre minimum lot size to 4 acres. This would allow 3 additional sites to potentially apply for PD if redeveloped and obtain more flexibility in the regulations (FAR and setbacks).

(a) *Applicability.* Owners of properties located within the OF Ocean Front District which contain ~~five~~ four or more contiguous acres may apply to the Village Council to approve a rezoning to a PD Planned Development district applicable to their properties, in accordance with the following provisions and in the discretion of the Village Council.

(f) *Maximum Density and FAR.*

(1) Density: The maximum densities applicable to the OF Ocean Front District, at section 21-285, are also applicable to a PD Planned Development District. Where an application for site plan in a PD Planned Development District includes multiple Lots or phases, and any one or more of those Lots or phases contains legal non-conforming use as to Density, the existence of such legal non-conforming use shall not reduce the number of units per acre permitted in this section for any other Lot or phase. However, Density may be transferred within PD phases, provided that a final PD site plan for a particular phase shall not be approved unless:

~~(1)~~ a. The cumulative Density of the final PD phase site plan to be approved and all prior approved final PD phase site plans does not exceed the Density of the OF Ocean Front District; or

~~(2)~~ b. The Density of future phase site plans is restricted such that the total Density of the final PD site plan to be approved, all prior approved PD phase site plans, and all future PD phase site plans do not exceed the Density requirements of the OF Ocean Front District.

(2) FAR. The maximum FAR of PD development shall be as approved by the PD zoning and development agreement, and all PD site plans shall not exceed the approved FAR.



### **THE BAL HARBOUR EXPERIENCE**

By amending the Village Code, the Village would continue to “implement smart policies and strategic solutions to address the challenges of today and to ensure that we remain a Resilient and Sustainable community able to protect our future.”

### **CONCLUSION**

This Ordinance seeks to amend Chapter 21 by revising the OF Oceanfront District to clarify and further regulate the Floor Area Ratio of such development. This will assure uniformity, clarity and predictability to the Village’s interpretation and application of these standards.

The Village Council unanimously approved the proposed Ordinance on First Reading at the February 20, 2023 regular council meeting. It is recommended that the proposed Ordinance be approved on Second Reading after considering the recommendation of the Local Planning Agency on March 5, 2024.

**ORDINANCE NO. 2024\_\_\_\_**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL  
HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21  
"ZONING," ARTICLE III "DISTRICT REGULATIONS," DIVISION  
10 "OF OCEAN FRONT DISTRICT" OF THE CODE OF  
ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY,  
INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.**

**WHEREAS,** the Bal Harbour Village (the "Village") Council finds it periodically necessary to amend its Code of Ordinances (the "Village Code") in order to update regulations and procedures to implement municipal goals and objectives; and

**WHEREAS,** the Village seeks to amend Chapter 21 regulations related to development in the OF Oceanfront District of the Village; and

**WHEREAS,** the Village Administration recommended approval of this Ordinance in its report for the February 20, 2024 Village Council meeting; and

**WHEREAS,** the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed public hearing in accordance with law on \_\_\_\_\_, 2024, determined that this Ordinance is consistent with the Village's Comprehensive Plan, and recommended approval; and

**WHEREAS,** the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village's Comprehensive Plan and in the best interest of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF BAL  
HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended - Chapter 21.** That Chapter 21 "Zoning," Article III "District Regulations," Division 10 "OF Oceanfront District" of the Code of Bal

Harbour Village, Florida, is hereby amended to read as follows:<sup>1</sup>

## CHAPTER 21. - ZONING

\* \* \*

### ARTICLE III. - DISTRICT REGULATIONS.

\* \* \*

#### DIVISION 10. - OF OCEAN FRONT DISTRICT.

\* \* \*

##### Sec. 21-280. - Definitions.

The definitions in Section 21-1 apply to all of chapter 21. For purposes of this division, the following terms are defined:

"Floor Area Ratio (FAR)" means the Gross Floor Area, not including Parking Structures up to 22 feet in height per Section 21-288(4), on a Lot or Project Site, divided by the area of the Lot or Project Site. (For example, a Building containing 20,000 square feet of floor area on a Lot or Project Site of 10,000 square feet, with a Parking Structure that is 22 feet in height, has a Floor Area Ratio of 2.0).

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##### Sec. 21-286. - Maximum Floor Area Ratio.

The Floor Area Ratio in the OF Ocean Front District shall not exceed ~~2.8~~ 1.3 to one, exclusive of floor area within enclosed Parking Structures devoted entirely to off-street parking and those floor areas listed in section 21-1 that are excluded in the definition of Floor Area Ratio. The Floor Area Ratio calculation in the OF Ocean Front district may include the area of the Project Site located east of the platted Lot and west of the erosion control line.

OF development may achieve additional bonus FAR if it complies with additional incentives for development to be compatible with adjacent development(s) and the surrounding neighborhood, and to mitigate any adverse impacts from the proposed development. The OF Development may qualify for one or both of the incentives, but in no event shall the maximum FAR exceed 2.8:

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<sup>1</sup> Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~striketrough~~. Any changes between first and second reading are shown by highlighted double underline and ~~double striketrough~~ font.

(a) A bonus of 0.50 FAR applies if nonresidential uses, excluding amenities exclusively for the use of the residents of the OF development, are limited to a maximum of 20% of the FAR of the OF Development.

(b) A bonus of 1.0 FAR applies if all Buildings are at the maximum front setback provided by Section 21-291(1).

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#### **Sec. 21-299. - PD Planned Development District.**

(a) *Applicability.* Owners of properties located within the OF Ocean Front District which contain ~~five~~ four or more contiguous acres may apply to the Village Council to approve a rezoning to a PD Planned Development district applicable to their properties, in accordance with the following provisions and in the discretion of the Village Council.

\* \* \*

(f) *Maximum Density and FAR.*

(1) Density: The maximum densities applicable to the OF Ocean Front District, at section 21-285, are also applicable to a PD Planned Development District. Where an application for site plan in a PD Planned Development District includes multiple Lots or phases, and any one or more of those Lots or phases contains legal non-conforming use as to Density, the existence of such legal non-conforming use shall not reduce the number of units per acre permitted in this section for any other Lot or phase. However, Density may be transferred within PD phases, provided that a final PD site plan for a particular phase shall not be approved unless:

(1) a. The cumulative Density of the final PD phase site plan to be approved and all prior approved final PD phase site plans does not exceed the Density of the OF Ocean Front District; or

(2) b. The Density of future phase site plans is restricted such that the total Density of the final PD site plan to be approved, all prior approved PD phase site plans, and all future PD phase site plans do not exceed the Density requirements of the OF Ocean Front District.

(2) FAR. The maximum FAR of PD development shall be as approved by the PD zoning and development agreement, and all PD site plans shall not exceed the FAR approved by those documents.

\* \* \*

**Section 3. Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall

remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 4. Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and be made a part of the Bal Harbour Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 5. Conflict.** That all Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 6. Effective Date.** That this Ordinance shall become effective upon adoption on second reading. This Ordinance shall apply only to building permits for which a process number is issued after the effective date of this Ordinance.

PASSED AND ADOPTED on first reading this 20<sup>th</sup> day of February, 2024.

PASSED AND ADOPTED on second reading this 5<sup>th</sup> day of March, 2024.



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Mayor Jeffrey P. Freimark

ATTEST:

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Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


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Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.

**BAL HARBOUR VILLAGE  
COMMUNITY DEVELOPMENT  
MEMORANDUM**

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**To:** Local Planning Agency (LPA) / Village Council  
Bal Harbour Village

**From:** Michael J. Miller, AICP   
Consultant Village Planner

**Thru:** Jorge M. Gonzalez – Village Manager  
Eliezer Palacio – Village Building Official  
Susan Trevarthen, Esq. – WSH Village Attorney

**Date:** February 26<sup>th</sup>, 2024

**Subject:** Proposed Code Amendments  
Live Local Act (LLA) Amendments / General Code Amendments  
Administrative Site Plan Procedures / OF District / Business District / Noise  
MMPA Acct. No.: 00-1103-0100

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**RECOMMENDED ACTION**

MMPA recommends the Village Council, acting initially as the designated Local Planning Agency (LPA), and subsequently as the Local Government Body for the Village, review the proposed Code Amendments, the contents of this staff report and receive public comments. MMPA recommends that the Village **APPROVE** the Code Amendments for the reasons stated.

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**ISSUE**

During the Florida Legislature's 2023 session, the "Live Local Act of 2023" (Chapter 2023-17 Laws of Florida, which established Section 166.04151(7) of the Florida Statutes), was adopted under Senate Bill 102 and signed into law by the Governor on March 29<sup>th</sup>, 2023. The stated purpose of this law was to promote the development and availability of "affordable housing" in the state. The Act provides that a municipality must authorize multifamily housing and mixed-use residential development as allowable uses in any area zoned commercial, industrial, or mixed-use, if at least 40% of the residential uses in a proposed multifamily development are, for a period of at least 30 years, "affordable" as defined in Sec. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a municipality may not require such a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for the building height, zoning and densities authorized under this subsection. For mixed-use residential projects, at least 65% percent of the total square footage must be used for residential purposes.

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Sec. 166.04151(7) includes a number of implementing provisions related to allowable density, building height, and approval procedures. More specifically, the Act requires that any such proposal be administratively approved by the local government and no further action by the governing body of the municipality is required if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such uses and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use. Such land development regulations include, but are not limited to, setbacks and parking regulations. Except as otherwise provided in the subsection, a development authorized under this subsection must comply with all applicable state and local laws and regulations.

Based on the Village staff's / MMPA analysis, a series of Code revisions are being recommended to update some thought to be "outdated" Code provisions, and to address the new LLA mandates. The initial Code amendment proposals are aimed at some general Code updates including the criteria for Floor Area Ratio (FAR), Site Plan requirements, setbacks, and off-street parking and driveway designs. Many of these Code provisions are from the Village's original 1974 Zoning Code with few updates over the years. Separate Ordinances were drafted to address specific land development criteria and other matters.

**Existing Community Design** – The Village was completely master-planned with distinct land use areas (known as Euclidian Zoning). This includes high-rise residential / hotel / resort development along the Atlantic Ocean east of Collins Avenue, low-rise (2-4 story) multifamily development located along the west side on Collins Avenue and at a few other locations within the gated area along Park Drive at the south end of the community or near the Haulover Inlet, single-family homes within the gated area between Park Drive and the Indian Creek Waterway, the Bal Harbour Shops Mall located west of Collins Avenue and north of 96<sup>th</sup> Street, a small commercial site north of 96<sup>th</sup> Street between Collins Avenue and Harding Avenue, various municipal facilities (Village Hall / Parks / beach / etc.) and various private open spaces and recreational facilities (passive parks / marina). The community can be best described as a suburban neighborhood to the City of Miami – clearly not "Urban" in the context of Miami-Dade County in character. Along Collins Avenue large setbacks have always been required originally by plat and later by zoning laws. The beachfront sites are a minimum of 200 feet in width and extend hundreds of feet toward the oceanfront. Shorter buildings / structures like parking garages on the OF sites are limited to 22 feet / 2-stories in height and have a 100-foot minimum setback. Tower structures must have at least a 150' setback from Collins Avenue. The low-rise multiple-family development along the west side of Collins Avenue is limited to 4-stories in height and has a minimum 50-foot building setback. The Village was designed specifically to avoid the appearance of a high-rise "concrete canyon" along its roadways. The BHS site is generally limited to 3-stories / 56 feet in height with an exception for up to 5-story parking garages (same overall height). A slightly taller (69') carve-out area is allowed within the site. All of the single-family homes are limited to two-stories in height. Following these long-established urban design guidelines, similar types of land development should follow the same pattern of setbacks, scale, building height, and bulk. The Charter and Codes reinforce the above via various land development regulations.

In 2017 after years of review and negotiations, the Village approved the BHS landowner's request to build an additional 350,000 square feet of Gross Floor Area (GFA) so that the BHS could include up to 850,000 square feet of GFA. A new multi-level commercial "wing" of the mall was proposed with a new anchor store (Barneys) at the west edge of the site, new parking facilities and general aesthetic improvements. The entire BHS site includes only commercial land uses per the Village's Comprehensive Plan, Zoning District & other Land Development Regulations (LDRs) allowances, and the mutually agreed upon recorded Development Agreement (DA). The DA included a specific site plan design, land use allowances & limits, and development rights. A number of covenants and conditions were included.

The proposed 2024 BHS LLA request includes a significant reduction in the commercial square footage to about 683,000 square feet, including the removal of two existing major anchors stores (Saks & Nieman Marcus) and a previously proposed new anchor store, the introduction of 528 dwelling units (DU), of which 228 are deemed "Affordable" housing DU, a proposed 70-room hotel, and an unspecified "private club" with 200 members / 40 employees. The new residential component is requested through the Florida Live Local Act (LLA).

The Village has no "Industrial" land use areas, only "Commercial" land use areas (BHS site / Truist Bank site). Under the LLA, if less than 20% of the land in a community is designated as "Commercial" on the adopted Future Land Use Map (FLUM), any residential development must be within a mixed-use development (not free-standing). Approximately 4% of the land area in the Village is designated "Commercial". For mixed-use developments at least 65% of the total square footage must be used for residential purposes.

## **PROPOSED CODE REVISIONS**

- A) **"B" Business District Permitted Uses** – The proposed Code amendment will include a new definition for "statutory uses" such as LLA Mixed-Uses per Florida Statute.
- B) **"B" Business District Maximum Building Height** – The proposed amendment will simply include a reference to the 2023 LLA building height exception.
- C) **"B" Business District Yards / Setbacks (Sec. 21-319)** - The current Code contains those building setbacks created over the years for Village's "B" Business District commercial uses. These were created specifically for a maximum 56-foot height / 3-story commercial development, not high-rise buildings. As the current 2023 LLA allows a developer to utilize a community's highest residential density and building height within 1-mile of the site (OF = 55 DUA / 275' building height) staff has analyzed the long-established land development regulations for the OF District to ensure similar types of development utilize the same or similar setbacks and other regulations, as allowed by the LLA. In the OF District the original 1946 subdivision plat included a minimum setback from Collins Avenue of 100 feet for any building. As oceanfront development was built the Village adjusted some of the setbacks and other land development regulations. The current OF District requires a minimum 100-foot setback for parking garages with a maximum height of 22 feet above street grade. Any towers must be set back a minimum of 150 feet from Collins Avenue. As buildings get taller (above 17



floors) additional setbacks are required. Similarly, the setbacks for other roadways listed in the Code are intended for the existing specified commercial development. The existing setbacks for the "B" Business District are not suited for taller buildings that could overshadow / overscale the adjoining roadways and nearby low-density residential development. Therefore, MMPA recommends that the Village adopt amendments to the "B" Business District regulations to mandate similar setbacks as have existed in the OF District for decades.

- D) **"B" Business District Floor Area Ratio (FAR) (Sec. 21-321)** – The current state law does not include any allowance to utilize the FAR of the highest density / building height within 1-mile of the site; however, there are proposed statute revisions that could allow that. The current maximum FAR in the "B" Business District is 1.22. The current maximum FAR in the "OF" Oceanfront District is 2.80. The Village's team has analyzed the existing oceanfront development (some precede modern regulations / were granted variances / etc.) and recommend some adjustments to the OF FAR regulations. As the same type of development could be mandated to occur in the "B" Business District, we feel the same / similar land development regulations should apply. The proposed Code amendments would require the same FAR as in the OF regulations.
- E) **"B" Business District Site Plan Review (Sec. 21-322)** – The proposed amendments will add revised site plans review procedures for LLA developments, as required by state law. Currently the ARB and Village Council are required to review / approve all development in the "B" Business District. The LLA mandates that such development be approved administratively if the project complies with local land development regulations. The Code changes will establish criteria & procedures for staff reviews.
- F) **"B" Business District Administrative Review & Design Criteria for LLA Projects** – This new Code section is intended to establish project review procedures and adopt project design criteria for possible mixed-use development in the district. The recommended project design criteria are very similar to the Village's current ARB review procedures and building design criteria. However, as related to mixed-use development, additional criteria is proposed for the residential uses (affordable & market rate housing) setting forth urban design parameters (breezeways / building lengths / building articulation) to avoid large massive unbroken building appearances.
- G) **"B" Business District Off-Street Parking (Sec. 21-381 and 21-382)** – The Village's Code includes separate off-street parking provisions for the so-called Special Business Improvement District versus all other zoned areas. The proposed amendment will require the use of the standard off-street parking regulations for all residential uses, as they differ greatly from the specialized criteria allowed for this exclusive commercial mall.
- H) **Zoning Code Definitions** – A common definition of Floor Area Ratio (FAR) is readily available by dictionary and most local government codes include a similar definition. The Village Code has had an overall definition of FAR for many years in Sec. 21-1 (Gross Floor Area (GFA) less any listed exception areas). Within each Zoning District the individual allowances of what GFA allows (ex. max. 22' hgt. above grade / 2-story

parking garages in OF District / max. 56' hgt. / 5-story parking garages in the Business District above grade). The proposed modification simply intends to make reference to each zoning district's specific FAR regulations.

- I) **Public Hearing Procedures** – This Code provision has existed for many decades. The proposed new provision will require that all property owners within a site, or those with lease rights, must include a written consent from any leaseholder.
- J) **Parking Spaces** – The Village has had some form of off-street parking requirements since its original Zoning Code was adopted in 1974. As can be expected several modifications were made over the years as the increased use of motor vehicles has occurred. As related to multiple-family developments, the same quantity of parking spaces has been required for many years (1.5 spaces per DU + 1 space for each 10 DU). The Village Code requires this formula regardless of the size of a dwelling unit or number of bedrooms. Most modern Codes and professional engineering studies recommend a sliding scale based on the number of bedrooms (studio / 1 BR / 2 BR / etc.). Complaints have been made about the lack of adequate parking in some instances. After researching this the staff recommends some updates based on the number of bedrooms in a dwelling unit, with additional parking for employees, guests and deliveries and maintenance / service / construction workers.
- K) **Driveway Design** – The Village Code in Sec. 21-385 includes some basic design guidelines for driveway widths. However, the Code only has provisions for the OF Oceanfront District and B Business District - none for single-family or the various RM Districts. Often some architects / owners request permission to pave large driveway areas along the streets, which looks poor and can create safety issues. The existing driveway widths noted are very typical in local zoning codes and provide flexibility. Along roadways landscaped swales are typically required for drainage / utilities / vehicle recovery from swerving maneuvers and the Miami-Dade Code requires Street Trees. Staff recommends that the Village revise the Code to include basic driveway criteria Village-wide.

## **SUMMARY**

During the Florida Legislature's 2023 session, the "Live Local Act of 2023" (Section 166.04151(7) F.S), was adopted. The stated purpose of this law is to promote the development and availability of "affordable housing" in the state. The Act provides that a municipality must authorize multifamily housing and mixed-use residential development as allowable uses in any area zoned commercial, industrial, or mixed-use, if at least 40% of the residential uses in a proposed multifamily development are, for a period of at least 30 years, "affordable" as defined in Sec. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a municipality may not require such a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for the building height, zoning and densities authorized under this subsection.

**Bal Harbour Village  
LPA / Village Council Staff Report  
Proposed Code Amendments  
Live Local Act (LLA) Amendments / General Code Amendments  
Administrative Site Plan Procedures / OF District / Business District / Noise  
February 26<sup>th</sup>, 2024  
Page 6**

The Village Manager assembled a “Team” to analyze the LLA impacts on the Village and to provide recommendations. The Village’s “Team” was comprised of members of the Village Attorney’s office / Village staff (Bldg. Dept. / PD) / MMPA. The Village’s “Team” has determined that our current Code site plan review procedures and some of our land development regulations were not adequate to protect the Village’s overall master-planned design, desired building scale, similar setbacks and several other development criteria. Also, based on community input (parking requirements / noise), staff was instructed to review the existing regulations and offer suggested revisions.

A series of Code revisions are being recommended to update some thought to be “outdated” Code provisions, and to address the new LLA mandates. Many of the Code provisions we utilize today are from the Village’s original 1974 Zoning Code. Separate Ordinances were being drafted to address specific land development criteria and other matters.

State Law (Section 163.3202) requires the Village to create, maintain and update as necessary its various Land Development Regulations (LDRs) to help implement its Comprehensive Plan Goals, Objectives and Policies (GOPs), which in the Village’s situation, include references to its master-planned “roots” and the protection of its original design and LDRs. LDRs include the local government’s Zoning Code and numerous other regulations (Architectural / Landscaping / Signage / Building & Construction / etc.). The Village’s GOPs require the Village to create, maintain and update as necessary its Land Development Regulations (LDRs). Notwithstanding the new 2023 LLA state law, the Village in recent years has been analyzing and updating its LDRs to address a number of topics including new flood regulations, modern trends and desired urban design. The proposed new Code Amendments continue this effort.

Following are some applicable excerpts from the Village’s adopted Comprehensive Plan Future Land Use Element (FLUE):

- GOAL:** Maintain the high-quality built environment of Bal Harbour by ensuring that all physical development activities adhere to the Village’s Land Development Regulations.
- Objective:** Maintain and enforce a current comprehensive set of Land Development Regulations (LDR’s).
- Policy:** Periodically review LDR’s to ensure they properly address all land development activities.
- Policy:** Those Density and Intensity Standards found in the Future Land Use Element shall be enforced rigidly.
- GOAL:** Maintain the existing character of the Village while honoring the Future Land Use Map.

- Policy:** Location, extent, and intensity of future developments shall be subject to the physical ability to provide for adequate public services to levels adopted by the comprehensive plan.
- Policy:** New developments and construction shall be required to make improvements to existing public facilities in order to mitigate their impact thereon.
- Policy:** Maintain adequate resources to review and assess Impact of new construction on public services, resources and facilities.
- Objective:** There shall be no land uses that are inconsistent with community's character and with future land uses:
- Policy:** Review construction and development plans for consistency with the goal set herein, and for conformity with the community's standards.
- Policy:** Enforce the Zoning and Development Codes of Bal Harbour.
- Objective:** Encourage use of innovative land development techniques.
- Policy:** Maintain the Bal Harbour Village code to permit mixed-use and planned development to form part of any redevelopment of the ocean-front district.
- Policy:** Allow the oceanfront parcels to develop as hotels, condominiums or rental apartments, and permit mixed use of those properties with limited convenience commercial or business uses to primarily serve their residents or patrons.

# BAL HARBOUR

- V I L L A G E -

## LOCAL PLANNING AGENCY ITEM SUMMARY

### Condensed Title:

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," ARTICLE I "IN GENERAL," ARTICLE II "ADMINISTRATION," AND ARTICLE V "OFF-STREET PARKING FACILITIES" OF THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.

### Issue:

Should the Local Planning Agency recommend that the Village Council adopt the Ordinance amending Chapter 21 "Zoning" regulations?

### The Bal Harbour Experience:

☒ Beautiful Environment    ☐ Safety    ☐ Modernized Public Facilities/Infrastructure  
☐ Destination & Amenities    ☐ Unique & Elegant    ☒ Resiliency & Sustainable Community  
☐ Other: \_\_\_\_\_

### Item Summary / Recommendation:

Early last year, the Village began to address Code provisions that were outdated, required updating or addressed matters of concern to the quality of life of our residents.

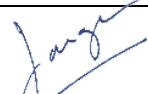
These additional Code revisions are being recommended to continue to update "outdated" Code provisions. These initial Code amendment proposals are general Code updates to the definition of Floor Area Ratio (FAR), Site Plan submittal requirements and off-street parking and driveway designs.

In light of the growing trend of further state preemption laws, it is advisable to continue to review our zoning code and make the necessary amendments to bring them up to standards, address resiliency where needed and implement protections to the character of our community and the quality of life of our residents.

The Village Council unanimously approved the proposed Ordinance on First Reading at the February 20, 2023 regular council meeting. It is recommended that the proposed Ordinance be approved on Second Reading after considering the recommendation of the Local Planning Agency on March 5, 2024.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE.**

### Sign off:

Director Title	Building Official	Village Manager
Director Name	Eliezer Palacio	Jorge M. Gonzalez
		

# BAL HARBOUR

- V I L L A G E -

## LOCAL PLANNING AGENCY MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: March 5, 2024

SUBJECT: **AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," ARTICLE I "IN GENERAL," ARTICLE II "ADMINISTRATION," AND ARTICLE V "OFF-STREET PARKING FACILITIES" OF THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.**

### **ADMINISTRATIVE RECOMMENDATION**

I am recommending that the Local Planning Agency recommend to the Village Council the approval of the ordinance.

### **BACKGROUND**

Early last year, the Village began to address Code provisions that were outdated, required updating or addressed matters of concern to the quality of life or our residents. Certain amendments were approved to the "Noise" ordinance, construction site standards, underground parking provisions and certain elements of the Ocean Front district development standards and uses. These amendments were a result of feedback from our residents, concerns over safety and unsightliness of construction sites, resiliency and climate change concerns with underground parking facilities, as well as the overall character of our community. In light of the growing trend of further state preemption of local laws, it is advisable to continue to review our zoning code and make the necessary amendments to bring them up to current standards, address resiliency where needed and implement protections to the character of our community and the quality of life of our residents.

These additional Code revisions are being recommended to continue to update "outdated" Code provisions. These initial Code amendment proposals are general Code updates to the definition of Floor Area Ratio (FAR), Site Plan submittal requirements, and off-street parking and driveway designs. As you know, many of the existing Code provisions date back to the Village's original 1974 Zoning Code with only a few targeted updates over the years. It is appropriate to continue to review and amend our Code to ensure that we are current and able to address the development



climate that exists today and into the future. It is through the Village Code that the Village can best nurture the character of our built-out community as well as ensure the highest quality of life for our residents. Further revisions may be necessary and we will bring those recommendations to you as warranted. In the meantime, the proposed amendments in this agenda item are ready for your consideration.

As you will recall, on September 19, 2023, the Village Council approved two ordinances amending Chapter 21, "Zoning" and Underground Parking Regulations in the OF Oceanfront District. Since the adoption of these regulations, administration and staff has continued to review our code and have identified further amendments to Chapter 21 "Zoning" Article I "Administration" and Article V "Off-Street Parking Facilities" that are advisable.

The proposed amendments in this agenda item will not impact existing buildings in the OF District all of which are "grandfathered" in, as provided in the effective date clause. Moreover, changes to the number of bedrooms in a unit in an existing building will not be required to meet the new parking standards for multiple family dwellings; the new standards will only apply if the changes to the overall building amount to a substantial improvement as defined by Section 8.5-2 of the Village Code.

### **ANALYSIS**

The Village was completely master-planned and is essentially built-out as an exclusive high-end community, with distinct land use areas (known as Euclidian Zoning). This includes high-rise residential / hotel / resort development along the Atlantic Ocean east of Collins Avenue, low-rise (2-4 story) multifamily development located along the west side on Collins Avenue and at a few other locations within the gated area along Park Drive at the south end of the community or near the Haulover Inlet, single-family homes within the gated area between Park Drive and the Indian Creek Waterway, the Bal Harbour Shops (BHS) Mall located west of Collins Avenue and north of 96<sup>th</sup> Street, a small commercial site north of 96<sup>th</sup> Street between Collins Avenue and Harding Avenue, various municipal facilities (Village Hall / Parks / beach / etc.) and various private open spaces and recreational facilities (passive parks / marina).

The community can be best described as a suburban neighborhood to the City of Miami - clearly not Urban in character in the context of Miami-Dade County. Along Collins Avenue large setbacks have always been required originally by plat and later by zoning. The beachfront sites are a minimum of 200 feet in width and extend hundreds of feet toward the oceanfront. Shorter buildings / structures like parking garages on the Ocean Front (OF) sites are limited to 22 feet / 2-stories in height and have a 100-foot minimum setback. Towers must have at least a 150' setback from Collins Avenue. The low-rise multiple-family development along the west side of Collins Avenue is limited to 4-stories in height and has a minimum 50-foot building

setback. The Village was designed specifically to avoid the appearance of a high-rise “concrete canyon” along its roadways.

The BHS site is generally limited to 3-stories / 56 feet in height with an exception for 5-stories for parking garages (same overall height). A slightly taller (69’) carve-out area is allowed within a small portion of the site. All of the single-family homes are limited to 2-stories. Following established urban design guidelines, similar types of land development should follow the same pattern of setbacks, scale, building height, and bulk. The Charter and Code reinforce the above via various land development regulations.

The amended language as described below has been drafted to protect and maintain the character of the Village as initially planned:

**Definitions** - The Florida Statutes do not contain a definition for Floor Area Ratio (FAR) to our knowledge; the Community Planning Act does use the concept in defining urban infill in Section 163.3164(49). However, a common definition is readily available by dictionary and most local government codes include a similar definition. The Village Code has had an overall definition of FAR for many years in Sec. 21-1 (Gross Floor Area (GFA), as defined by Section 21-1 of the Code<sup>1</sup>, less any listed exception areas). Within each Zoning District the individual allowances of what GFA allows (compare max. 22’ hgt. above grade / 2-story parking garages in OF District with max. 56’ hgt. / 5-story parking garages in the Business District above grade). The proposed modification simply intends to make reference to each zoning district’s specific FAR regulations.

The definitions in Section 21-1 apply to all of chapter 21. For purposes of this division, the following terms are defined:

*Floor Area Ratio (FAR) means the Gross Floor Area, not including Parking Structures unless otherwise defined or required by the applicable regulations for the Zoning District, on a Lot or Project Site, divided by the Lot area or Project Site area. (For example, a Building containing 20,000 square feet of floor area on the zoning Lot of 10,000 square feet has a Floor Area Ratio of 2.0).*

**Public Hearing Procedures** - This Code provision has existed for many decades. The proposed new provision will clarify that all property owners seeking approvals from the Village address the interests of those with long-term lease rights, and requires that the application include a written sworn-to consent from the long-term leaseholder.

All applications for nonuse variances or for other public hearings or approvals required under this Code shall be initiated by the filing of an

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<sup>1</sup> *Gross Floor Area* means the area of all Structures, including all floors but excluding mezzanines, elevator shafts, emergency stairwells, trash chutes, other vertical mechanical spaces and open balcony areas, measured to the outside of the Structure at each floor.



application with the Village Building Official on a form prescribed by the Village Manager, executed and sworn to by the Owners of at least 80 percent of the Property described in the application, by Tenants with the Owner's Written, sworn-to consent, or by duly authorized agents, such agent to be evidenced by a Written power of attorney if not a member of the Florida Bar. If the application proposes changes to any portion of a Property subject to a lease with a term of at least 20 years, the application must be accompanied by the Written, sworn-to consent of the leaseholder.

**Parking Spaces** - The Village has had some form of off-street parking requirements since its original Zoning Code was adopted in 1974. As can be expected, several modifications were made over the years as the use of motor vehicles has changed.

As related to multiple-family developments, the same basic quantity of parking spaces has been required (1.5 spaces per DU + 1 space for each 10 DU). The Village Code requires this formula regardless of the size of a dwelling unit or number of bedrooms. Most modern Codes and professional engineering studies recommend a sliding scale based on the number of bedrooms (studio / 1 BR / 2 BR / etc.). Complaints have been made in the Village about the lack of adequate parking in some instances. After researching this (see comparison table), the staff recommends updates based on the number of bedrooms in a dwelling unit, with additional parking for employees, guests and deliveries and maintenance / service / construction workers.

#### **Sec. 21-384. - Number of spaces**

The schedule of off-street parking requirements shall be as follows:

(1) *Single-family detached dwellings*: Two parking spaces for each dwelling unit, with not less than one space provided within a garage or Carport.

(2) *Multiple-Family Dwellings*:

a. Per unit: One parking space for each studio dwelling unit. One and one-half parking spaces for each dwelling unit with one or two bedrooms. For each additional bedroom, one additional parking space is required, plus one additional space for each ten dwelling units in the total apartment multifamily complex, plus the required spaces for any business establishments contained within the complex.

b. Per employee: For each employee of the Multiple-Family complex, one additional parking space shall be provided.

c. Guest, Deliveries and Loading: Each Multiple-Family residential complex, including any residential developments located in mixed-use complexes, shall provide at least one parking space for guests, deliveries and temporary loading, and overall shall provide at least one parking space for each 15 dwelling units in the complex for these purposes. All

such parking spaces shall be located in the front yard areas of a site near the lobby entrance, unless otherwise approved by the Village. All such parking spaces and drop off areas shall be noted by the use of signage and pavement marking, and shall not be located on remote public or private parking lots or garages without prior approval of the Village  
d. Maintenance/Service Workers and Construction Contractors. Each Multiple-Family residential complex, including any residential developments located in mixed-use complexes, shall provide at least one parking space for Maintenance/Service Workers and Construction Contractors, and overall shall provide at least one parking space for each 15 dwelling units in the complex for these purposes. All such parking spaces shall be accessible for oversized vehicles. All such parking spaces and drop off areas shall be noted by the use of signage and pavement markings, and shall not be located on remote public or private parking lots or garages without prior approval of the Village Manager.

**Driveway Design** - The Village Code in Sec. 21-385 includes basic design guidelines for driveway widths. However, the Code only has provisions for the OF Oceanfront District and B Business District - none for single-family or the various RM Districts. Often architects / owners request permission to pave large driveway areas along the streets, which looks poor and can create safety issues. The existing driveway widths noted are very typical in local zoning codes and provide flexibility. Along all roadways, landscaped swales are required for drainage / vehicle recovery from swerving maneuvers and Miami-Dade Codes require Street Trees. Staff recommends that the Village revise the Code to include the same driveway criteria Village-wide.

- (i) *Driveway width.* In the ~~Ocean Front (OF) and Business (B)~~ all Districts, access driveway widths shall have the following minimum dimensions:

### **THE BAL HARBOUR EXPERIENCE**

By amending the Village Code, the Village would continue to “implement smart policies and strategic solutions to address the challenges of today and to ensure that we remain a Resilient and Sustainable community able to protect our future.”

### **CONCLUSION**

This Ordinance seeks to amend Chapter 21 by defining terms and revising regulations and procedures to assure that the parking standards for residential development adequately address the needs of modern development, and to provide uniformity, clarity and predictability to the Village’s interpretation and applicability. In addition, the proposed Ordinance streamlines the overarching policy and criteria for maintaining consistency.

The Village Council unanimously approved the proposed Ordinance on First Reading at the regular council meeting on February 20, 2023. It is recommended that the proposed Ordinance be approved on Second Reading after consideration of the recommendation of the Local Planning Agency on March 5, 2024.

For clarity, the changes to the multiple family dwelling parking standards will only apply if the changes to the overall building amount to a substantial improvement as defined by Section 8.5-2 of the Village Code.

**ORDINANCE NO. 2024\_\_\_\_**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," ARTICLE I "IN GENERAL," ARTICLE II "ADMINISTRATION," AND ARTICLE V "OFF-STREET PARKING FACILITIES" OF THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.**

**WHEREAS,** the Bal Harbour Village (the "Village") Council finds it periodically necessary to amend its Code of Ordinances (the "Village Code") in order to update regulations and procedures to implement municipal goals and objectives; and

**WHEREAS,** the Village seeks to amend Chapter 21 by defining terms, by providing for application requirements, and by regulating parking standards for residential development in the Village; and

**WHEREAS,** the Village Administration recommended approval of this Ordinance in its report for the February 20, 2024 Village Council meeting; and

**WHEREAS,** the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed public hearing in accordance with law on \_\_\_\_\_, 2024, determined that this Ordinance is consistent with the Village's Comprehensive Plan, and recommended approval; and

**WHEREAS,** the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village's Comprehensive Plan and in the best interest of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended - Chapter 21, Article I.** That Chapter 21 "Zoning," Article I "In General" of the Code of Bal Harbour Village, Florida, is hereby

amended to read as follows:<sup>1</sup>

## **CHAPTER 21. - ZONING**

### **ARTICLE I. - IN GENERAL.**

#### **Sec. 21-1. Definitions and rules of construction.**

*Floor Area Ratio* (FAR) means the Gross Floor Area, not including Parking Structures unless otherwise defined or required by the applicable regulations for the Zoning District, on a Lot or Project Site, divided by the Lot area or Project Site area. (For example, a Building containing 20,000 square feet of floor area on the zoning Lot of 10,000 square feet has a Floor Area Ratio of 2.0).

\* \* \*

**Section 3. Village Code Amended - Chapter 21, Article II.** That Chapter 21 "Zoning," Article II "Administration," Division 2 "Amendments; Zoning Changes; Variances" of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows

## **CHAPTER 21. - ZONING**

\* \* \*

### **ARTICLE II. - ADMINISTRATION**

\* \* \*

#### **DIVISION 2. - AMENDMENTS; ZONING CHANGES; VARIANCES**

##### **Sec. 21-51. - Procedure for nonuse variances and for other public hearings or approvals— Application; fees.**

(a) All applications for nonuse variances or for other public hearings or approvals required under this Code shall be initiated by the filing of an application with the Village Building Official on a form prescribed by the Village Manager, executed and sworn to by the Owners of at least 80 percent of the Property described in the application, by Tenants with the Owner's Written, sworn-to consent, or by duly authorized agents, such agent to be evidenced by a Written power of attorney if not a member of the Florida Bar. If the

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<sup>1</sup> Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~striketrough~~. Any changes between first and second reading are shown by highlighted double underline and ~~double striketrough~~ font.

application proposes changes to any portion of a Property subject to a lease with a term of at least 20 years, the application must be accompanied by the Written, sworn-to consent of the leaseholder.

\* \* \*

**Section 4. Village Code Amended - Chapter 21, Article V.** That Chapter 21 "Zoning," Article V "Off-Street Parking Facilities" of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:

#### **CHAPTER 21. - ZONING**

\* \* \*

#### **ARTICLE V. - OFF-STREET PARKING FACILITIES**

\* \* \*

##### **Sec. 21-384. - Number of spaces.**

The schedule of off-street parking requirements shall be as follows:

(1) *Single-family detached dwellings*: Two parking spaces for each dwelling unit, with not less than one space provided within a garage or Carport.

(2) *Multiple-Family Dwellings*:

a. *Per unit*: One parking space for each studio dwelling unit. One and one-half parking spaces for each dwelling unit with one or two bedrooms. For each additional bedroom, one additional parking space is required, plus one additional space for each ten dwelling units in the total ~~apartment~~ multifamily complex, plus the required spaces for any business establishments contained within the complex.

b. *Per employee*: For each employee of the Multiple-Family complex, one additional parking space shall be provided.

c. *Guest, Deliveries and Loading*: Each Multiple-Family residential complex, including any residential developments located in mixed-use complexes, shall provide at least one parking space for guests, deliveries and temporary loading, and overall shall provide at least one parking space for each 15 dwelling units in the complex for these purposes. All such parking spaces shall be located in the front yard areas of a site near the lobby entrance, unless otherwise approved by the Village Manager. All such parking spaces and

drop off areas shall be noted by the use of signage and pavement markings, and shall not be located on remote public or private parking lots or garages without prior approval of the Village Manager.

d. *Maintenance/Service Workers and Construction Contractors.* Each Multiple-Family residential complex, including any residential developments located in mixed-use complexes, shall provide at least one parking space for Maintenance/Service Workers and Construction Contractors, and overall shall provide at least one parking space for each 15 dwelling units in the complex for these purposes. All such parking spaces shall be accessible for oversized vehicles. All such parking spaces and drop off areas shall be noted by the use of signage and pavement markings, and shall not be located on remote public or private parking lots or garages without prior approval of the Village Manager.

**Sec. 21-385. - Design and maintenance.**

\* \* \*

(i) *Driveway width.* In the ~~Ocean Front (OF) and Business (B)~~ all Districts, access driveway widths shall have the following minimum dimensions:

(1) A minimum of 12 feet for all one-way driveways; one-way driveways shall not exceed 15 feet in width.

(2) A minimum of 20 feet for all two-way driveways; two-way driveways shall not exceed 30 feet in width.

\* \* \*

**Section 5. Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 6. Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and be made a part of the Bal Harbour Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed

to "Section" or other appropriate word.

**Section 7. Conflict.** That all Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 8. Effective Date.** That this Ordinance shall become effective upon adoption on second reading. This Ordinance shall apply only to building permits for which a process number is issued after the effective date of this Ordinance. The new parking standards in Section 4 of this Ordinance shall only apply to change(s) to an existing building that meet the definition of substantial improvement pursuant to Village Code Section 8.5-2.

PASSED AND ADOPTED on first reading this 20<sup>th</sup> day of February, 2024.

PASSED AND ADOPTED on second reading this 5<sup>th</sup> day of March, 2024.



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Mayor Jeffrey P. Freimark

ATTEST:

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Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.



**BAL HARBOUR VILLAGE  
COMMUNITY DEVELOPMENT  
MEMORANDUM**

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**To:** Local Planning Agency (LPA) / Village Council  
Bal Harbour Village

**From:** Michael J. Miller, AICP   
Consultant Village Planner

**Thru:** Jorge M. Gonzalez – Village Manager  
Eliezer Palacio – Village Building Official  
Susan Trevarthen, Esq. – WSH Village Attorney

**Date:** February 26<sup>th</sup>, 2024

**Subject:** Proposed Code Amendments  
Live Local Act (LLA) Amendments / General Code Amendments  
Administrative Site Plan Procedures / OF District / Business District / Noise  
MMPA Acct. No.: 00-1103-0100

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**RECOMMENDED ACTION**

MMPA recommends the Village Council, acting initially as the designated Local Planning Agency (LPA), and subsequently as the Local Government Body for the Village, review the proposed Code Amendments, the contents of this staff report and receive public comments. MMPA recommends that the Village **APPROVE** the Code Amendments for the reasons stated.

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**ISSUE**

During the Florida Legislature's 2023 session, the "Live Local Act of 2023" (Chapter 2023-17 Laws of Florida, which established Section 166.04151(7) of the Florida Statutes), was adopted under Senate Bill 102 and signed into law by the Governor on March 29<sup>th</sup>, 2023. The stated purpose of this law was to promote the development and availability of "affordable housing" in the state. The Act provides that a municipality must authorize multifamily housing and mixed-use residential development as allowable uses in any area zoned commercial, industrial, or mixed-use, if at least 40% of the residential uses in a proposed multifamily development are, for a period of at least 30 years, "affordable" as defined in Sec. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a municipality may not require such a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for the building height, zoning and densities authorized under this subsection. For mixed-use residential projects, at least 65% percent of the total square footage must be used for residential purposes.

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Sec. 166.04151(7) includes a number of implementing provisions related to allowable density, building height, and approval procedures. More specifically, the Act requires that any such proposal be administratively approved by the local government and no further action by the governing body of the municipality is required if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such uses and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use. Such land development regulations include, but are not limited to, setbacks and parking regulations. Except as otherwise provided in the subsection, a development authorized under this subsection must comply with all applicable state and local laws and regulations.

Based on the Village staff's / MMPA analysis, a series of Code revisions are being recommended to update some thought to be "outdated" Code provisions, and to address the new LLA mandates. The initial Code amendment proposals are aimed at some general Code updates including the criteria for Floor Area Ratio (FAR), Site Plan requirements, setbacks, and off-street parking and driveway designs. Many of these Code provisions are from the Village's original 1974 Zoning Code with few updates over the years. Separate Ordinances were drafted to address specific land development criteria and other matters.

**Existing Community Design** – The Village was completely master-planned with distinct land use areas (known as Euclidian Zoning). This includes high-rise residential / hotel / resort development along the Atlantic Ocean east of Collins Avenue, low-rise (2-4 story) multifamily development located along the west side on Collins Avenue and at a few other locations within the gated area along Park Drive at the south end of the community or near the Haulover Inlet, single-family homes within the gated area between Park Drive and the Indian Creek Waterway, the Bal Harbour Shops Mall located west of Collins Avenue and north of 96<sup>th</sup> Street, a small commercial site north of 96<sup>th</sup> Street between Collins Avenue and Harding Avenue, various municipal facilities (Village Hall / Parks / beach / etc.) and various private open spaces and recreational facilities (passive parks / marina). The community can be best described as a suburban neighborhood to the City of Miami – clearly not "Urban" in the context of Miami-Dade County in character. Along Collins Avenue large setbacks have always been required originally by plat and later by zoning laws. The beachfront sites are a minimum of 200 feet in width and extend hundreds of feet toward the oceanfront. Shorter buildings / structures like parking garages on the OF sites are limited to 22 feet / 2-stories in height and have a 100-foot minimum setback. Tower structures must have at least a 150' setback from Collins Avenue. The low-rise multiple-family development along the west side of Collins Avenue is limited to 4-stories in height and has a minimum 50-foot building setback. The Village was designed specifically to avoid the appearance of a high-rise "concrete canyon" along its roadways. The BHS site is generally limited to 3-stories / 56 feet in height with an exception for up to 5-story parking garages (same overall height). A slightly taller (69') carve-out area is allowed within the site. All of the single-family homes are limited to two-stories in height. Following these long-established urban design guidelines, similar types of land development should follow the same pattern of setbacks, scale, building height, and bulk. The Charter and Codes reinforce the above via various land development regulations.

In 2017 after years of review and negotiations, the Village approved the BHS landowner's request to build an additional 350,000 square feet of Gross Floor Area (GFA) so that the BHS could include up to 850,000 square feet of GFA. A new multi-level commercial "wing" of the mall was proposed with a new anchor store (Barneys) at the west edge of the site, new parking facilities and general aesthetic improvements. The entire BHS site includes only commercial land uses per the Village's Comprehensive Plan, Zoning District & other Land Development Regulations (LDRs) allowances, and the mutually agreed upon recorded Development Agreement (DA). The DA included a specific site plan design, land use allowances & limits, and development rights. A number of covenants and conditions were included.

The proposed 2024 BHS LLA request includes a significant reduction in the commercial square footage to about 683,000 square feet, including the removal of two existing major anchors stores (Saks & Nieman Marcus) and a previously proposed new anchor store, the introduction of 528 dwelling units (DU), of which 228 are deemed "Affordable" housing DU, a proposed 70-room hotel, and an unspecified "private club" with 200 members / 40 employees. The new residential component is requested through the Florida Live Local Act (LLA).

The Village has no "Industrial" land use areas, only "Commercial" land use areas (BHS site / Truist Bank site). Under the LLA, if less than 20% of the land in a community is designated as "Commercial" on the adopted Future Land Use Map (FLUM), any residential development must be within a mixed-use development (not free-standing). Approximately 4% of the land area in the Village is designated "Commercial". For mixed-use developments at least 65% of the total square footage must be used for residential purposes.

## **PROPOSED CODE REVISIONS**

- A) **"B" Business District Permitted Uses** – The proposed Code amendment will include a new definition for "statutory uses" such as LLA Mixed-Uses per Florida Statute.
- B) **"B" Business District Maximum Building Height** – The proposed amendment will simply include a reference to the 2023 LLA building height exception.
- C) **"B" Business District Yards / Setbacks (Sec. 21-319)** - The current Code contains those building setbacks created over the years for Village's "B" Business District commercial uses. These were created specifically for a maximum 56-foot height / 3-story commercial development, not high-rise buildings. As the current 2023 LLA allows a developer to utilize a community's highest residential density and building height within 1-mile of the site (OF = 55 DUA / 275' building height) staff has analyzed the long-established land development regulations for the OF District to ensure similar types of development utilize the same or similar setbacks and other regulations, as allowed by the LLA. In the OF District the original 1946 subdivision plat included a minimum setback from Collins Avenue of 100 feet for any building. As oceanfront development was built the Village adjusted some of the setbacks and other land development regulations. The current OF District requires a minimum 100-foot setback for parking garages with a maximum height of 22 feet above street grade. Any towers must be set back a minimum of 150 feet from Collins Avenue. As buildings get taller (above 17



floors) additional setbacks are required. Similarly, the setbacks for other roadways listed in the Code are intended for the existing specified commercial development. The existing setbacks for the "B" Business District are not suited for taller buildings that could overshadow / overscale the adjoining roadways and nearby low-density residential development. Therefore, MMPA recommends that the Village adopt amendments to the "B" Business District regulations to mandate similar setbacks as have existed in the OF District for decades.

- D) **"B" Business District Floor Area Ratio (FAR) (Sec. 21-321)** – The current state law does not include any allowance to utilize the FAR of the highest density / building height within 1-mile of the site; however, there are proposed statute revisions that could allow that. The current maximum FAR in the "B" Business District is 1.22. The current maximum FAR in the "OF" Oceanfront District is 2.80. The Village's team has analyzed the existing oceanfront development (some precede modern regulations / were granted variances / etc.) and recommend some adjustments to the OF FAR regulations. As the same type of development could be mandated to occur in the "B" Business District, we feel the same / similar land development regulations should apply. The proposed Code amendments would require the same FAR as in the OF regulations.
- E) **"B" Business District Site Plan Review (Sec. 21-322)** – The proposed amendments will add revised site plans review procedures for LLA developments, as required by state law. Currently the ARB and Village Council are required to review / approve all development in the "B" Business District. The LLA mandates that such development be approved administratively if the project complies with local land development regulations. The Code changes will establish criteria & procedures for staff reviews.
- F) **"B" Business District Administrative Review & Design Criteria for LLA Projects** – This new Code section is intended to establish project review procedures and adopt project design criteria for possible mixed-use development in the district. The recommended project design criteria are very similar to the Village's current ARB review procedures and building design criteria. However, as related to mixed-use development, additional criteria is proposed for the residential uses (affordable & market rate housing) setting forth urban design parameters (breezeways / building lengths / building articulation) to avoid large massive unbroken building appearances.
- G) **"B" Business District Off-Street Parking (Sec. 21-381 and 21-382)** – The Village's Code includes separate off-street parking provisions for the so-called Special Business Improvement District versus all other zoned areas. The proposed amendment will require the use of the standard off-street parking regulations for all residential uses, as they differ greatly from the specialized criteria allowed for this exclusive commercial mall.
- H) **Zoning Code Definitions** – A common definition of Floor Area Ratio (FAR) is readily available by dictionary and most local government codes include a similar definition. The Village Code has had an overall definition of FAR for many years in Sec. 21-1 (Gross Floor Area (GFA) less any listed exception areas). Within each Zoning District the individual allowances of what GFA allows (ex. max. 22' hgt. above grade / 2-story

parking garages in OF District / max. 56' hgt. / 5-story parking garages in the Business District above grade). The proposed modification simply intends to make reference to each zoning district's specific FAR regulations.

- I) **Public Hearing Procedures** – This Code provision has existed for many decades. The proposed new provision will require that all property owners within a site, or those with lease rights, must include a written consent from any leaseholder.
- J) **Parking Spaces** – The Village has had some form of off-street parking requirements since its original Zoning Code was adopted in 1974. As can be expected several modifications were made over the years as the increased use of motor vehicles has occurred. As related to multiple-family developments, the same quantity of parking spaces has been required for many years (1.5 spaces per DU + 1 space for each 10 DU). The Village Code requires this formula regardless of the size of a dwelling unit or number of bedrooms. Most modern Codes and professional engineering studies recommend a sliding scale based on the number of bedrooms (studio / 1 BR / 2 BR / etc.). Complaints have been made about the lack of adequate parking in some instances. After researching this the staff recommends some updates based on the number of bedrooms in a dwelling unit, with additional parking for employees, guests and deliveries and maintenance / service / construction workers.
- K) **Driveway Design** – The Village Code in Sec. 21-385 includes some basic design guidelines for driveway widths. However, the Code only has provisions for the OF Oceanfront District and B Business District - none for single-family or the various RM Districts. Often some architects / owners request permission to pave large driveway areas along the streets, which looks poor and can create safety issues. The existing driveway widths noted are very typical in local zoning codes and provide flexibility. Along roadways landscaped swales are typically required for drainage / utilities / vehicle recovery from swerving maneuvers and the Miami-Dade Code requires Street Trees. Staff recommends that the Village revise the Code to include basic driveway criteria Village-wide.

## **SUMMARY**

During the Florida Legislature's 2023 session, the "Live Local Act of 2023" (Section 166.04151(7) F.S), was adopted. The stated purpose of this law is to promote the development and availability of "affordable housing" in the state. The Act provides that a municipality must authorize multifamily housing and mixed-use residential development as allowable uses in any area zoned commercial, industrial, or mixed-use, if at least 40% of the residential uses in a proposed multifamily development are, for a period of at least 30 years, "affordable" as defined in Sec. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a municipality may not require such a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for the building height, zoning and densities authorized under this subsection.

**Bal Harbour Village  
LPA / Village Council Staff Report  
Proposed Code Amendments  
Live Local Act (LLA) Amendments / General Code Amendments  
Administrative Site Plan Procedures / OF District / Business District / Noise  
February 26<sup>th</sup>, 2024  
Page 6**

The Village Manager assembled a “Team” to analyze the LLA impacts on the Village and to provide recommendations. The Village’s “Team” was comprised of members of the Village Attorney’s office / Village staff (Bldg. Dept. / PD) / MMPA. The Village’s “Team” has determined that our current Code site plan review procedures and some of our land development regulations were not adequate to protect the Village’s overall master-planned design, desired building scale, similar setbacks and several other development criteria. Also, based on community input (parking requirements / noise), staff was instructed to review the existing regulations and offer suggested revisions.

A series of Code revisions are being recommended to update some thought to be “outdated” Code provisions, and to address the new LLA mandates. Many of the Code provisions we utilize today are from the Village’s original 1974 Zoning Code. Separate Ordinances were being drafted to address specific land development criteria and other matters.

State Law (Section 163.3202) requires the Village to create, maintain and update as necessary its various Land Development Regulations (LDRs) to help implement its Comprehensive Plan Goals, Objectives and Policies (GOPs), which in the Village’s situation, include references to its master-planned “roots” and the protection of its original design and LDRs. LDRs include the local government’s Zoning Code and numerous other regulations (Architectural / Landscaping / Signage / Building & Construction / etc.). The Village’s GOPs require the Village to create, maintain and update as necessary its Land Development Regulations (LDRs). Notwithstanding the new 2023 LLA state law, the Village in recent years has been analyzing and updating its LDRs to address a number of topics including new flood regulations, modern trends and desired urban design. The proposed new Code Amendments continue this effort.

Following are some applicable excerpts from the Village’s adopted Comprehensive Plan Future Land Use Element (FLUE):

- GOAL:** Maintain the high-quality built environment of Bal Harbour by ensuring that all physical development activities adhere to the Village’s Land Development Regulations.
- Objective:** Maintain and enforce a current comprehensive set of Land Development Regulations (LDR’s).
- Policy:** Periodically review LDR’s to ensure they properly address all land development activities.
- Policy:** Those Density and Intensity Standards found in the Future Land Use Element shall be enforced rigidly.
- GOAL:** Maintain the existing character of the Village while honoring the Future Land Use Map.

- Policy:** Location, extent, and intensity of future developments shall be subject to the physical ability to provide for adequate public services to levels adopted by the comprehensive plan.
- Policy:** New developments and construction shall be required to make improvements to existing public facilities in order to mitigate their impact thereon.
- Policy:** Maintain adequate resources to review and assess Impact of new construction on public services, resources and facilities.
- Objective:** There shall be no land uses that are inconsistent with community's character and with future land uses:
- Policy:** Review construction and development plans for consistency with the goal set herein, and for conformity with the community's standards.
- Policy:** Enforce the Zoning and Development Codes of Bal Harbour.
- Objective:** Encourage use of innovative land development techniques.
- Policy:** Maintain the Bal Harbour Village code to permit mixed-use and planned development to form part of any redevelopment of the ocean-front district.
- Policy:** Allow the oceanfront parcels to develop as hotels, condominiums or rental apartments, and permit mixed use of those properties with limited convenience commercial or business uses to primarily serve their residents or patrons.





# BAL HARBOUR

- V I L L A G E -

## LOCAL PLANNING AGENCY ITEM SUMMARY

### Condensed Title:

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 11 "NUISANCES," ARTICLE II "NOISE" OF THE CODE OF ORDINANCES. SECOND READING

### Issue:

Should the Local Planning Agency recommend that the Village Council amend Chapter 11 "Nuisance," Article II "Noise" of the Code to align the regulations for the B District with the rest of the Village to address quality of life concerns?

### The Bal Harbour Experience:

☒ Beautiful Environment    ☐ Safety    ☐ Modernized Public Facilities/Infrastructure  
☐ Destination & Amenities    ☐ Unique & Elegant    ☐ Resiliency & Sustainable Community

### Item Summary / Recommendation:

On December 18, 2018, at the Regular Council Meeting, the Village Council approved amendments to Section 11-32 which regulates construction noise in the Business District.


On June 20, 2023, the Village Council approved amendments to Chapter 11 of the Village Code, which regulates nuisances such as construction noises, and prohibited exterior construction noises on Saturdays. Additionally, the proposed amendments only applied to the residential areas of the Village. The regulation of these activities in the "B" Business District listed in Section 11-32 of the Village Code were not affected by these amendments.

The proposed amendments to Section 11-32 of the Village Code seek to bring the Business District into alignment with the rest of the Village. This action is based on feedback from the community, who have expressed a desire not to have construction noise during the weekends or during hours which affect the overall quality of life. This is also more relevant to the Business District now, as the construction activity associated with the Bal Harbour Shops expansion has shifted from 96<sup>th</sup> Street to the north in much closer proximity to the residential community. The proposed amendments for the Business District seek to bring the noise regulations in line with the rest of the Village. The desire is to provide a respite from noisy work, which affects the overall quality of life for residents.

On February 20, 2024, the Village Council considered the proposed amendments at the Regular Council meeting. The proposed amendments were passed on First Reading by a vote of 5-0. As part of the public comment, a suggestion was made to further amend this code to prohibit construction noise on all federal holidays.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE** after considering the recommendation of the Local Planning Agency.

### Sign off:

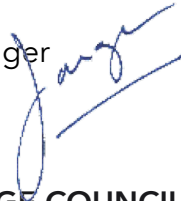
Director Title	Chief of Police	Village Manager
Director Name	Raleigh M. Flowers, Jr.	Jorge M. Gonzalez
		

# BAL HARBOUR

- V I L L A G E -

## LOCAL PLANNING AGENCY MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager 

DATE: March 5, 2024

SUBJECT: **AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 11 "NUISANCES," ARTICLE II "NOISE" OF THE CODE OF ORDINANCES; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE. (SECOND READING)**

### **ADMINISTRATIVE RECOMMENDATION**

I am recommending that the Local Planning Agency recommend to the Village Council the approval of the ordinance.

### **BACKGROUND**

On June 20, 2017, at the Regular Village Council meeting, the Village Council approved an amendment to the Code of Ordinances by adopting regulations for construction noise in the Business District. This initial ordinance placed the onus strictly on the property owner for all violations related to construction noise. The ordinance provided for specific decibel levels and times during which construction noise is prohibited. However, the ordinance also allows for construction activities that occur "completely within the exterior walls of a building" to occur within those prohibited times as long as the activities do not exceed 55 decibels. This allows construction noise to occur continuously.

On December 18, 2018, at the Regular Council Meeting, the Village Council approved amendments to Section 11-32 which regulates construction noise in the Business District. The amendments are highlighted in the bullets below:

- Created relevant definitions
  - The amendment created definitions so that regulatory distinctions can be drawn between the property owner, the Permit Applicant, and the Violator.
  - The Permit Applicant is defined as the person who hired or will serve as the contractor or company to perform the construction activities.
  - The Violator is the general contractor, subcontractor, company, or person performing the construction activities in violation of the provisions of the noise ordinance.
- Provided for mitigation to address community complaints through coordination of meetings between the owner and the affected residents. The Village Manager may

also impose reasonable conditions or request further noise mitigation. The owner may appeal to the Village Manager's imposed conditions or noise mitigation requests to the Village Council.

- The amendment added the Permit Applicant and/or Violator to the meeting process as well, and to allow the Owner's representative to attend.
- Established a procedure for applicants to request permission from the Village Manager to exceed the permitted decibel levels after demonstrating a need.

At the Village Council Retreat last year, the Village Council expressed concerns about construction noises being a nuisance on Saturdays. These concerns were shared with the Council by their constituents, and they are reflective of the impact of construction noise on the everyday lives of residents. The Council provided direction to explore amending the current ordinance which allows for exterior construction from Monday through Saturday from 8:30 a.m. through 5:30 p.m., excluding certain holidays. The work being conducted on Saturdays, while permitted by the code, was still affecting the overall quality of life for residents who generally utilize the weekend to enjoy time with their families and for religious observances. The desire to provide a respite from noisy work was addressed through the following amendments to the Village Council.

On June 20, 2023, the Village Council approved amendments to Chapter 11 of the Village Code, which regulates nuisances such as construction noises, and prohibited exterior construction noises on Saturdays. The approved amendment allowed for landscaping work and activities of similar intensity to landscaping to continue to occur on Saturdays. Additionally, the proposed amendments only applied to the residential areas of the Village. The regulation of these activities in the "B" Business District listed in Section 11-32 of the Village Code were not affected by these amendments.

Unfortunately, this created an inconsistent and ambiguous condition. In addition, the concern about construction noise on Saturdays remains partially unresolved. The proposed amendments to Section 11-32 of the Village Code seek to bring the Business District into alignment with the rest of the Village. This action is based on feedback from the community, who have expressed a desire not to have construction noise during the weekends or during hours which affect the overall quality of life. This is also more relevant to the Business District now, as the construction activity associated with the Bal Harbour Shops expansion has shifted from 96<sup>th</sup> Street to the north in much closer proximity to the residential community. As a result, the Village has recently received complaints associated with construction noise from the community. Moreover, as we strive to provide an enhanced quality of life for all residents during the weekend, the utilization of two different construction noise standards throughout the Village makes the attainment of this goal untenable and hard to manage.

On February 20, 2024, the Village Council considered the proposed amendments at the Regular Council meeting. The proposed amendments were passed on First Reading by a vote of 5-0. As part of the public comment associated with this item, a suggestion was made to further amend this code to prohibit construction noise on all federal holidays, as

opposed to the seven (7) federal holidays currently prohibited, in addition to Good Friday, Yom Kippur, and Rosh Hashanah. Currently, there are a total of ten (10) holidays outlined in the code on which construction noise is restricted.

### **ANALYSIS**

Section 11-32, as adopted, deems violations as irreparable in nature as a matter of law, delineates enhanced enforcement penalties within the Business District, and incorporates procedures and standards to address any violation.

The proposed amendments to Section 11-32 are as follows:

The first amendment seeks to update the prohibited hours of construction to eliminate work currently allowed on Saturdays and provide for an end time of 9 p.m. for activities that occur completely within the exterior walls of a building. The 9 p.m. time is consistent with the hours allowed for interior work for the rest of the Village. The amendments do not seek to alter the allowable decibel levels for the Business District.

(b) *Regulations.* Construction Noise in the "B" Business District shall conform to the following regulations:

- (1) *Prohibited Hours of Construction:* Construction Noise is prohibited from ~~64:00~~ p.m. ~~Friday~~ ~~Saturday~~ through 8:30 a.m. Monday, and all day on New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day, Good Friday, Yom Kippur, Rosh Hashanah, and Christmas Day. Construction activities that occur completely within the exterior walls of a Building may occur ~~within the prohibited hours of construction from 6:00 pm. through 9:00 p.m. Monday through Friday,~~ so long as Construction Noise does not exceed 55 decibels when measured from a Noise Receptor Site.
- (2) *Permitted Decibel Levels:* The Permitted Decibel Level of Construction Noise shall not exceed the following limits during the specified times, when measured from a Noise Receptor Site:
  - a. *Night:* 55 decibels ~~for all hours outside of those defined as Day in subsection b. from 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday, and~~
  - b. *Day:* 80 decibels from 8:30 a.m. to 6:00 p.m., Monday through Friday, ~~and from 10:00 a.m. to 4:00 p.m. Saturday.~~

The second proposed amendment pertains to the enforcement section of this code. The amendment does not seek to change the schedule of civil penalties within the Business District. The amendment does add the Property Owner to every step of the civil penalties. The Code currently only provides for the Violator and Permit Applicant to be cited and only provides for the Property Owner to have a penalty imposed after continued or recurring violations. The addition of the Property Owner to the violation is consistent with how noise violations are handled throughout the rest of the Village. This provides for a

mechanism through which the Village may assess liens if penalties are not complied. This amendment also increases the amount of time needed for the civil penalties to reset for recurring violations from six (6) months to twelve (12) months.

(e) *Enforcement.* This section shall be enforced by the Village Manager in accordance with the following procedures and standards. The Village finds that Construction Noise violations are irreparable or irreversible in nature as a matter of law, and the penalties for such violations are established as follows in accordance with F.S. § 162.09(2).

(1) *Verbal warning.* If the Village Manager finds a violation of this section, he or she shall issue a verbal warning to the Violator, Permit Applicant, and Property Owner requiring immediate correction of the violation.

(2) *Civil penalties.*

- a. *First citation.* If the violation is not corrected immediately after issuance of the verbal warning, the Village Manager shall issue a citation requiring immediate correction of the violation, shall impose fines in the amount of \$500.00 against both the Violator, and Permit Applicant, and shall notify the Property Owner of the violation.
- b. *Second citation.* If the violation is not corrected immediately after issuance of the first citation, or the violation recurs within a 60-day period, the Village Manager shall issue a second citation requiring immediate correction of the violation, shall impose fines in the amount of \$1,000.00 against both the Violator, and Permit Applicant, and shall notify the Property Owner of the violation.
- c. *Third citation.* If the violation is not corrected immediately after issuance of the second citation, or the violation recurs within a 60-day period, the Village Manager shall issue a third citation requiring immediate correction of the violation, shall impose fines in the amount of \$2,500.00 against both the Violator, and Permit Applicant, and shall notify the Property Owner of the violation.
- d. *Continuing or recurring violations.* In the event that the violation continues after or recurs within 60 days of issuance of the third citation, the Village Manager shall revoke the ability of both the Violator and Permit Applicant to make any Construction Noise between 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday for seven consecutive days, and may impose an additional penalty of \$5,000.00 against both the Violator, and Permit Applicant, and Property Owner. The Village Manager may revoke the ability of both the Violator and Permit Applicant to make any Construction Noise between 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday for periods of time in excess of seven consecutive days, in the event that the Violator or Permit Applicant has more than three violations in a six-month period of time and the Violator or Permit Applicant has failed to address and resolve the violations. In such event, the Village Manager may also impose a penalty of

\$5,000.00 against the Property Owner if the Property Owner is not the Permit Applicant.

- e. *Future violations.* If no other violation occurs for ~~six~~ twelve consecutive months after a violation is complied, the enforcement procedures of this subsection shall reset as to all parties and any future violations will again result first in a verbal warning, followed by the escalating progression of citations and penalties as set forth in subsections a–e.
- (3) *Criminal penalties.* In addition to or in lieu of the civil penalties set forth above, with respect to any of the provisions of this section, the Violator may be arrested and punished by imprisonment in the county jail for a period not to exceed 60 days.

The third and final amendment allows for noises associated with landscaping to continue as is allowed in the residential districts of the Village.

(3) The regulations of this subsection shall not be interpreted to apply to noise arising from landscaping activities.

On second reading, if the Council wishes to include all federal holidays as suggested, the ordinance could be further revised to include that construction noise is not allowed on all federally designated holidays throughout the Village. A change of this nature would add Martin Luther King, Jr. Day, Presidents Day, Juneteenth Independence Day, and Columbus Day to the holidays which are already restricted in the code. Good Friday, Yom Kippur, and Rosh Hashanah would remain as days on which construction noise is prohibited. This change would increase the number of total holidays on which construction noise is prohibited from ten (10) to fourteen (14). A change of this nature would be applied to all zoning districts within the Village.

These changes could be accomplished as follows:

**Sec. 11-31. - Certain Noises restricted to specified hours.**

(a) *Regulated Noises.* Noises, other than those enumerated in section 11-29 because of their nature and characteristics, shall be grouped as follows for the purpose of control and restriction:

\* \* \*

(b) *Prohibited Times.*

(1) The Noises set forth in subsection (a)(1) of this section are hereby prohibited at any location and at any hour on Saturdays and Sundays and on federally recognized holidays, ~~New Year's Day, Christmas Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day,~~ Good Friday, Yom Kippur, and Rosh Hashanah, and on Mondays through Fridays from 5:30 p.m. to 8:30 a.m., except as provided in subsections (d) and (e) of this section.



(2) The Noises set forth in subsection (a)(2) of this section are hereby prohibited at any location and at any hour on Sundays and on federally recognized holidays, ~~New Year's Day, Christmas Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day,~~ Good Friday, Yom Kippur, and Rosh Hashanah, and on Mondays through Saturdays from 5:30 p.m. to 8:30 a.m., except as provided in subsections (d) and (e) of this section.

\* \* \*

#### **Sec. 11-32. Construction Noise in the "B" Business District.**

\* \* \*

(b) *Regulations.* Construction Noise in the "B" Business District shall conform to the following regulations:

- (1) *Prohibited Hours of Construction:* Construction Noise is prohibited from ~~64:00 p.m. Friday Saturday~~ through 8:30 a.m. Monday, and all day on federally recognized holidays, ~~New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day,~~ Good Friday, Yom Kippur, and Rosh Hashanah, ~~and Christmas Day.~~ Construction activities that occur completely within the exterior walls of a Building may occur within the prohibited hours of construction from 6:00 pm. through 9:00 p.m. Monday through Friday, so long as Construction Noise does not exceed 55 decibels when measured from a Noise Receptor Site.
- (2) *Permitted Decibel Levels:* The Permitted Decibel Level of Construction Noise shall not exceed the following limits during the specified times, when measured from a Noise Receptor Site:
  - a. *Night:* 55 decibels for all hours outside of those defined as Day in subsection b. from 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday, and
  - b. *Day:* 80 decibels from 8:30 a.m. to 6:00 p.m., Monday through Friday; ~~and from 10:00 a.m. to 4:00 p.m. Saturday.~~

The Council may also wish to consider providing for a courtesy period for the implementation of these amendments to the code upon approval at Second Reading. The elimination of currently available workdays may affect the timeline and scheduling of certain projects and vendors. The additional time provided for implementation would afford these owners and vendors the ability to adjust their project accordingly.

The Council provided direction at the June 20, 2023, Council Meeting regarding the changes to the code which prohibited construction noise on Saturdays. In that instance there was a courtesy period which ran from the approval of the amendments on Second Reading on June 20, 2023, through August 31, 2023. This provided for seventy-two (72)

days to allow for education on the new changes and to give time for the vendors to adjust their projects accordingly.

It is the Administration's recommendation that a similar courtesy period be established for this ordinance, from March 5, 2024, through June 1, 2024. This would provide an eighty-seven (87) day courtesy period.

Additionally, should the Council approve the proposed amendments to restrict construction noise on federal holidays, it would also necessitate amending Section 19-7 of the Village Code which regulates parking of commercial vehicles. The amendment to Section 19-7 would bring all the restricted holidays into alignment and would be presented for the Council's consideration on First Reading at the April 9, 2024 Village Council meeting.

### **THE BAL HARBOUR EXPERIENCE**

The approval of these amendments would meet *The Bal Harbour Experience* by enhancing *the Beautiful Environment of the Village* by allowing for additional days during which noisy work is restricted, thereby increasing the quality of life.

### **CONCLUSION**

The proposed amendments were already adopted by Village Council action for the residential districts on June 20, 2023. The proposed amendments for the Business District seek to bring the noise regulations in line with the rest of the Village. The desire is to provide a respite from noisy work, which affects the overall quality of life for residents.

The Administration recommends the approval of the ordinance on Second Reading after consideration of the recommendation of the Local Planning Agency. We will follow the Council's direction concerning the rollout of enforcement of these new requirements.

ORDINANCE NO. 2024\_\_\_\_

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 11 "NUISANCES," ARTICLE II "NOISE" OF THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** the Village Council of Bal Harbour Village ("Village") seeks to amend regulations related to certain noises on in the "B" Business district; and

**WHEREAS,** with the transition of construction activity from the 96<sup>th</sup> Street parking garage to the north, the noise impacts of construction are now much closer to the neighboring single family residential neighborhood to the north for the first time, and the Village has received an increase in noise complaints related to this construction; and

**WHEREAS,** in 2023, the Village amended the noise regulations applicable everywhere other than the B Business District to prohibit construction noise on Saturdays, and the Village desires to bring the noise regulations in the B Business District into alignment with those of the rest of the Village; and

**WHEREAS,** the Village further seeks to more closely align the process for enforcement of noise requirements with that followed in the remainder of the Village; and

**WHEREAS,** the Village finds that these changes will improve the quality of life for its residents and further the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended - Chapter 11.** That Chapter 11 "Nuisances", Article II "Noise" of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:<sup>1</sup>

**CHAPTER 11 - NUISANCES**

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<sup>1</sup> Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~strikethrough~~. Any changes between first and second reading are shown by highlighted double underline and ~~double strikethrough~~ font.

\* \* \*

## ARTICLE II. - NOISE

\* \* \*

### Sec. 11-32. Construction Noise in the "B" Business District.

- (a) *Definitions.* For the purposes of this section, the following terms will have the following prescribed meaning unless the context indicates otherwise:
- (1) *Permit Applicant* means the person who hired or will serve as the contractor or company to perform the construction activities.
  - (2) *Noise Receptor Site* means a Lot which is the recipient of Construction Noise emanating from outside of the Lot's property line or, in the event that the Lot is part of an approved site plan, outside of the boundary of the site plan, regardless of whether that Lot is located in the Village.
  - (3) *Permitted Decibel Level* means the maximum decibel level permitted for Construction Noise.
  - (4) *Violator* means the general contractor, subcontractor, company, or person performing the construction activities in violation of the provisions of this Section.
- (b) *Regulations.* Construction Noise in the "B" Business District shall conform to the following regulations:
- (1) *Prohibited Hours of Construction:* Construction Noise is prohibited from 6:00 p.m. Friday Saturday through 8:30 a.m. Monday, and all day on New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day, Good Friday, Yom Kippur, Rosh Hashanah, and Christmas Day. Construction activities that occur completely within the exterior walls of a Building may occur within the prohibited hours of construction from 6:00 p.m. through 9:00 p.m. Monday through Friday, so long as Construction Noise does not exceed 55 decibels when measured from a Noise Receptor Site.
  - (2) *Permitted Decibel Levels:* The Permitted Decibel Level of Construction Noise shall not exceed the following limits during the specified times, when measured from a Noise Receptor Site:
    - a. *Night:* 55 decibels for all hours outside of those defined as Day in subsection b. from 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday, and
    - b. *Day:* 80 decibels from 8:30 a.m. to 6:00 p.m., Monday through Friday, and from 10:00 a.m. to 4:00 p.m. Saturday.
  - (3) The regulations of this subsection shall not be interpreted to apply to noise arising from landscaping activities.

\* \* \*

- (e) *Enforcement.* This section shall be enforced by the Village Manager in accordance with the following procedures and standards. The Village finds that Construction Noise violations are irreparable or irreversible in nature as a matter of law, and the penalties for such violations are established as follows in accordance with F.S. § 162.09(2).
- (1) *Verbal warning.* If the Village Manager finds a violation of this section, he or she shall issue a verbal warning to the Violator, Permit Applicant, and Property Owner requiring immediate correction of the violation.
- (2) *Civil penalties.*
- a. *First citation.* If the violation is not corrected immediately after issuance of the verbal warning, the Village Manager shall issue a citation requiring immediate correction of the violation, shall impose fines in the amount of \$500.00 against ~~both the Violator, and Permit Applicant, and shall notify the Property Owner of the violation.~~
- b. *Second citation.* If the violation is not corrected immediately after issuance of the first citation, or the violation recurs within a 60-day period, the Village Manager shall issue a second citation requiring immediate correction of the violation, shall impose fines in the amount of \$1,000.00 against ~~both the Violator, and Permit Applicant, and shall notify the Property Owner of the violation.~~
- c. *Third citation.* If the violation is not corrected immediately after issuance of the second citation, or the violation recurs within a 60-day period, the Village Manager shall issue a third citation requiring immediate correction of the violation, shall impose fines in the amount of \$2,500.00 against ~~both the Violator, and Permit Applicant, and shall notify the Property Owner of the violation.~~
- d. *Continuing or recurring violations.* In the event that the violation continues after or recurs within 60 days of issuance of the third citation, the Village Manager ~~shall revoke the ability of both the Violator and Permit Applicant to make any Construction Noise between 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday for seven consecutive days, and may impose an additional penalty of \$5,000.00 against both the Violator, and Permit Applicant, and Property Owner. The Village Manager may revoke the ability of both the Violator and Permit Applicant to make any Construction Noise between 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday for periods of time in excess of seven consecutive days, in the event that the Violator or Permit Applicant has more than three violations in a six month period of time and the Violator or Permit Applicant has failed to address and resolve the violations.~~ In such event, the Village Manager may also impose a penalty of \$5,000.00 against the Property Owner if the Property Owner is not the Permit Applicant.

- e. *Future violations.* If no other violation occurs for ~~six~~ twelve consecutive months after a violation is complied, the enforcement procedures of this subsection shall reset as to all parties and any future violations will again result first in a verbal warning, followed by the escalating progression of citations and penalties as set forth in subsections a–e.
- (3) *Criminal penalties.* In addition to or in lieu of the civil penalties set forth above, with respect to any of the provisions of this section, the Violator may be arrested and punished by imprisonment in the county jail for a period not to exceed 60 days.

\* \* \*

**Section 3. Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 4. Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and be made a part of the Bal Harbour Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 5. Conflict.** That all Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 6.**    **Effective Date.** That this Ordinance shall be effective upon adoption on second reading.

PASSED AND ADOPTED on first reading this 20<sup>th</sup> day of February, 2024.

PASSED AND ADOPTED on second reading this 5<sup>th</sup> day of March, 2024.



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Mayor Jeffrey P. Freimark

ATTEST:

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Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.



