

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

April 9, 2024

At 6:30 AM

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

1 CALL TO ORDER / PLEDGE OF ALLEGIANCE

2 APPROVAL OF MINUTES

March 5, 2024 Local Planning Agency Minutes

[VillageCouncil-LocalPlanningAgencyMeetingMinutes_March5_2024.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 AND AMEND 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, AS AMENDED) 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 - Notice of LPA & Second Reading ADA.pdf](#)

LPA2 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](#)

[Attachment - Notice of LPA & Second Reading 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. 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. If a person decides to appeal any decision made by the Village Council with respect to any matter considered at a meeting or hearing, that person will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105). All persons who need assistance or special accommodations to participate in virtual meetings please contact the Village Clerk's Office (305-866-4633), not later than two business days prior to such proceeding. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the Village Clerk's Office (305-866-4633), not later than two business days prior to such proceeding. All Village Council meeting attendees, including Village staff and consultants, are subject to security screening utilizing a metal detector and/or wand, prior to entering the Council Chamber, Conference Room, or other meeting area located within Village Hall. This is for the safety of everyone. Thanks for your cooperation.

BAL HARBOUR

- V I L L A G E -

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Bal Harbour Village Council

Local Planning Agency Meeting Minutes

March 5, 2024

At 630 PM

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

This meeting was conducted in-person. The meeting was also broadcast on the Village's website (www.balharbourfl.gov). Members of the public were also encouraged to participate by email (meetings@balharbourfl.gov) or by telephone at 305-865-6449.

- 1. CALL TO ORDER/ PLEDGE OF ALLEGIANCE-** Mayor Freimark called the meeting to order at 6:34 P.M. following the General Employees' Retirement Board meeting.

The following were present:

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

Also present:

Jorge M. Gonzalez, Village Manager
Dwight S. Danie, Village Clerk
Susan Trevarthen, Village Attorney

Mayor Freimark announced that Agenda Items LPA1, LPA2, and LPA3 would be presented and considered concurrently for Council discussion and public comments. He then provided directions for meeting decorum.

2 APPROVAL OF MINUTES

- 11.** October 17, 2023 Local Planning Agency Meeting Minutes

MOTION: A motion to approve the minutes was moved by Councilman Buzzy Sklar and seconded by Councilman David Wolf.

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

3 HEARINGS

Mayor Freimark asked everyone attending to focus their remarks to items on the Agenda and to refrain from discussing legal strategies. The Village Clerk read the titles for agenda items LPA1, LPA2, and LPA3.

Mr. Gonzalez introduced the items providing an overview of the 2023 Live Local Act. He said that although the purpose of the Act is well-intended, in practice, its application is left open to broad interpretation that impacts local communities in their regulation of development, ensuring good planning and design, by preempting restrictions on use, height and density. He said the law also inhibits public input by making the application review an administrative process without public hearings. He said that Act does not preempt anything other than use, height and density, and that the Village's land development regulations and concurrency requirements must still be met. He said that he had been encouraged by legislators to develop ordinance that ensure dignified and respectful housing that would not be discriminatory in any way.

He said that these proposed ordinances emphasize the need for clarity and predictability in implementing the Act, ensuring compliance with state and local land development regulations, adding that proposed ordinance amendments aim to address potential abuses and maintain the character and quality of life in the community, equality and accessibility in affordable housing developments, with provisions for equal access to amenities, parking, and quality of construction. He added that the Village also retains the right to audit as necessary.

He said that the criticism aimed at Bal Harbour claiming that it is elitist and unwelcoming to affordable housing is unfair, and that the segregation of affordable housing to the rear of the property in the Shops' application is a glaring example of why the Village needs to make sure that the proposed housing is dignified, respectful and fair.

LPA1 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.

MOTION: A motion to recommend that the Village Council approve the ordinance on second reading was moved by Councilman Buzzy Sklar and seconded by Councilman David Wolf.

Babak Raheb, 128 Balfour Drive, said that he supported the ordinances, and expressed his concern that County green space requirements may not be met. He said that Stanley Whitman historically opposed any type of discrimination. He also expressed his concern that the Village should not give up its right to challenge the original 2023 Act.

Ms. Trevarthen said that the Shops had submitted correspondence from the Shops' attorney opposing the ordinances and requesting that they will not apply to the current expansion or the Live Local application. There was no motion to amend the ordinances.

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).

LPA2 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.

MOTION: A motion to recommend that the Village Council approve the ordinance on second reading was moved by Vice Mayor Seth E. 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).

LPA3 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.

MOTION: A motion to recommend that the Village Council approve the ordinance on second reading was moved by Vice Mayor Seth E. 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).

LPA4 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.

Mr. Gonzalez introduced the item saying after the first reading, per request from the Council, an amendment had been included in the Agenda packet to include all Federal Holidays.

Mauricio Escarra, Deputy Chief of Police, said these amendments would also now include the business district which would bring it into alignment with the rest of the community and that property owners would not be included in civil penalties for noise violations. He added that the ordinance would allow for landscaping on Saturdays. He said that there would be a grace period until June 1, 2024.

MOTION: A motion amend the ordinance to include all recognized Federal holidays Councilman David Albaum and seconded by Councilman Buzzy Sklar.

Mayor Freimark asked if there were any interested parties in the room that wished to speak on the ordinances, to which there was no response. He then asked if anyone in the room was from the Bal Harbour Shops and would like to comment, to which there was no response.

Neca Logan, 64 Camden Drive, said that not all Federal holidays are days off for most residents, and that limiting noise on those days, when its easier to get around due to lessened traffic, might not be a benefit to all. Mr. Gonzalez clarified that the four additional holidays would be Martin Luther King Day, Presidents’ Day, Juneteenth, and Columbus Day.

Babak Raheb, 128 Balfour Drive, said he supported the ordinance. He asked if it would be possible for the Village to utilize decibel meters, for times when noise has stopped by the time a code enforcement officer is notified and arrives on scene, to which Mr. Gonzalez said that the Village does use a decibel meter and a second one is being proposed by the applicant.

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).

MOTION: A motion to recommend that the Village Council approve the ordinance as amended was moved by Councilman David Wolf and seconded by Vice Mayor Seth E. Salver.

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).

4 MOTION TO ADJOURN The meeting was adjourned at 7:02 PM.

Mayor Jeffrey Freimark



Attest:

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 AND AMEND 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, AS AMENDED) FOR DEVELOPMENT OF STATUTORILY AUTHORIZED MIXED-USE MULTIFAMILY RESIDENTIAL DEVELOPMENT INCLUDING AFFORDABLE HOUSING.

Issue:

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

The Bal Harbour Experience:

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

Item Summary / Recommendation:

ACTIONS SINCE MARCH 5, 2024 COUNCIL MEETING

Since the March 5th 2024, Village Council meeting, the State Legislature have passed amendments to the Live Local Act of 2023 (FS 166.04151(7), by 2024 Senate Bill 328 ("SB 328"), also known as the "Glitch Bill"). Therefore, it has been determined that this Ordinance is necessary to respond to the 2024 amendments to the Act, by specifying that the affordable residential units within the mixed use residential project must be rental, incorporating the statutory preemption of and standards for FAR regulation, addressing the impact of adjacent single family zoning on the statutory height preemption, and of any bonuses or other variations to the statutory height, FAR, and density preemptions, identifying that the Village considers reduction of parking requirements for proposed LLA Development located within one-quarter mile of a transit stop, and requiring the posting of a policy containing procedures and expectations for administrative approval on the Village website. Also included in this Ordinance is the incorporation of Section 21-289 of the OF Oceanfront District, which establishes minimum habitable unit sizes of residential units, into the standards for an LLA Development.


At the March 5, 2024, Regular Council Meeting, the Council adopted the LLA Ordinance by a vote of 5-0. The changes from the March 5 version are highlighted in yellow for ease of reference and are proposed to address the Glitch Bill as well as to ensure consistency with continually updating Code Provisions.

The Administration recommends that the Council approve the readoption and amendment of this Ordinance in order to address the requirements of the Glitch Bill, improve the LLA regulations by requiring that such development conform to the OF minimum habitable unit sizes, and address the alleged concerns over the propriety of the notice for the original adoption of this Ordinance.

The Village Council unanimously approved the proposed Ordinance on First Reading at the March 27, 2024, 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 April 9, 2024.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE.

Sign off:

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

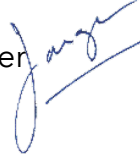
BAL HARBOUR

- V I L L A G E -

LOCAL PLANNING AGENCY MEMORANDUM

TO: Honorable Members of the Local Planning Agency

FROM: Jorge M. Gonzalez, Village Manager



DATE: April 9, 2024

SUBJECT: **AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," OF THE CODE OF ORDINANCES TO ESTABLISH AND AMEND 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, AS AMENDED) 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.

The Village Council unanimously approved the proposed Ordinance on First Reading at the March 27, 2024 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 April 9, 2024.

ACTIONS SINCE MARCH 5, 2024 COUNCIL MEETING

Since the March 5th 2024, Village Council meeting, the State Legislature has passed amendments to the Live Local Act of 2023 (FS 166.04151(7)), by 2024 Senate Bill 328 ("SB 328"), also known as the "Glitch Bill". Therefore, it has been determined that this Ordinance is necessary to respond to the 2024 amendments to the Act, by specifying that the affordable residential units within the mixed use residential project must be rental, incorporating the statutory preemption of and standards for FAR regulation, addressing the impact of adjacent single family zoning on the statutory height preemption, and addressing the impact of any bonuses or other variations to the statutory height, FAR, and density preemptions, identifying that the Village considers reduction of parking requirements for proposed LLA Development located within one-quarter mile of a transit stop, and requiring the posting of a policy containing procedures and expectations for administrative approval on the Village website.

Also included in this Ordinance is the incorporation of Section 21-289 of the OF Oceanfront District, which establishes minimum habitable unit sizes of residential units, into the regulations for an LLA Development.

At the March 5, 2024, Regular Council Meeting, the Council adopted the LLA Ordinance by a vote of 5-0. This Ordinance is being proposed to be readopted in full, in an abundance of caution to ameliorate any concerns over the alleged noticing deficiencies. The changes from the March 5 version are highlighted in yellow for ease of reference, and are made to respond to the Glitch Bill as well as to ensure consistency with continually updating Code Provisions.

The Administration recommends that the Council approve the readoption and amendment of this Ordinance in order to address the requirements of the Glitch Bill, improve the LLA regulations by requiring that such development conform to the OF minimum habitable unit sizes, and address the alleged concerns over the propriety of the notice for the original adoption of this 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.

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 96th Street, a small commercial site north of 96th 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 not¹ 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.

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

¹ 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.

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 approved the LLA Ordinance in 2nd Reading on March 5, 2024.

The Administration recommends that the Council approve the readoption and amendment of this Ordinance in order to address the requirements of the Glitch Bill, improve the LLA regulations by requiring that such development conform to the OF minimum habitable unit sizes, and address the alleged concerns over the propriety of the notice for the original adoption of this Ordinance.

The Village Council unanimously approved the proposed Ordinance on First Reading at the March 27, 2024 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 April 9, 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 AND AMEND 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, AS AMENDED) 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"), as amended by 2024 Senate Bill 328 ("SB 328") (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 the statutory mandate for mixed-use; 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 Council further finds and determines that this Ordinance is necessary to respond to the 2024 amendments to the Act, by specifying that the affordable residential units within the mixed use residential project must be rental, incorporating the statutory preemption of and standards for FAR regulation, addressing the impact of adjacent single family zoning on the height preemption, addressing the impact of any bonuses or other variations to the statutory height, FAR, and density preemptions, identifying that the Village considers reduction of parking requirements for proposed LLA Development located within one-quarter mile of a transit stop, and requiring the posting of a policy containing procedures and expectations for administrative approval on the Village website; and

WHEREAS, the Village Council further desires to add minimum habitable unit sizes of residential units in an LLA Development, as required in Section 21-289 of the OF Oceanfront District; and

WHEREAS, the Village Administration recommended approval of this Ordinance in its report for the **March 27, 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:¹

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

¹ 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.

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, Minimum Habitable Unit Floor Areas, 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. Minimum habitable unit floor areas shall be as provided in the OF Oceanfront District, as follows: Efficiency dwelling units: 600 square feet; One-bedroom dwelling units: 900 square feet; Two-bedroom dwelling units: 1,150 square feet; Three-bedroom dwelling units: 1,500 square feet; and For each additional bedroom over three, an additional 200 square feet of floor area shall be required. Spaces which are convertible to additional bedrooms shall be considered as bedrooms for purposes of determining minimum habitable unit floor areas.; and

2.3. 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, floor area ratio, 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, floor area ratio, 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. The Village Manager shall promulgate a policy containing procedures and expectations for administrative approval, and shall maintain it on the Village website.

(4) Density and height.

a. The maximum density of a residential component of an LLA Development is the highest currently allowed density on any land in the Village where residential development is allowed (55 dus/acre), or as otherwise provided by statute.

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 currently 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.

d. Any LLA development eligible for additional height, FAR, or density bonuses is permitted to utilize them.

(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 96th 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.c. Affordability commitment. Pursuant to the Act, at least 40 percent of the residential units within a proposed LLA Development shall be rental units and 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.d. 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. The Village Manager may, after consideration of the LLA Development application, reduce parking requirements for the proposed development if the development is located within one-quarter mile of and accessible to a transit stop.

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 27th day of March, 2024.

PASSED AND ADOPTED on second reading this 9th day of April, 2024.



Mayor Jeffrey P. Freimark

ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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

BAL HARBOUR

- V I L L A G E -

NOTICE OF LOCAL PLANNING AGENCY HEARING **AND REGULAR VILLAGE COUNCIL MEETING** **FOR SECOND READING ZONING ORDINANCES**

NOTICE IS HEREBY GIVEN that public hearings will be held by the Bal Harbour Village Council, sitting in its capacity as the **LOCAL PLANNING AGENCY** and **BAL HARBOUR VILLAGE COUNCIL**, **Tuesday, April 9, 2024, at 6:30 p.m.** or soon thereafter. The in-person hearings will be conducted at **Bal Harbour Village Hall, Bal Harbour, FL 33154 in the Council Chamber**. The purpose of the Local Planning Agency hearings is to consider and make recommendations to the Village Council on the following ordinances, after which, the **BAL HARBOUR VILLAGE COUNCIL** will meet to consider adopting the same following ordinances on second reading.

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 RESIDENTIAL DEVELOPMENT INCLUDING AFFORDABLE HOUSING; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, EXPIRATION, AND FOR AN EFFECTIVE DATE.

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.

Public Comments may be submitted by telephone at 305-865-6449 or emailed to meetings@balharbourfl.gov before and during the meeting. The proposed ordinances may be inspected by the public at the Village Clerk's Office, 655 - 96th Street, Bal Harbour, Florida 33154, or online at www.balharbourfl.gov under the heading "Council Meeting Information".

All persons who are disabled and who need special accommodations to participate in this proceeding should contact the Village Clerk's Office (305.866.4633) not later than two business days before such proceeding (Americans with Disabilities Act of 1990).

If a person decides to appeal any decision made by the Village Council, to any matter considered at a meeting or hearing, that person will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).



LPA-49

Dwight S. Danie, Village Clerk

LPA-50

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 to the Village Council to 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 96th 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.

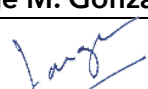
Actions Since March 5, 2024, Council Meeting

On March 5, 2024, at the Regular Village Council Meeting the Council adopted this Ordinance by a vote of 5-0. It has been alleged that this Ordinance had not been properly noticed. Therefore, in an abundance of caution and to ameliorate any concerns about the noticing, this Ordinance is being presented to the Village Council for approval on First Reading again.

The Village Council unanimously approved the proposed Ordinance on First Reading at the March 27, 2024 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 April 9, 2024.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE ON SECOND READING.

Sign off:


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

BAL HARBOUR

- VILLAGE -

LOCAL PLANNING AGENCY MEMORANDUM

TO: Honorable Members of the Local Planning Agency

FROM: Jorge M. Gonzalez, Village Manager 

DATE: April 9, 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.

The Village Council unanimously approved the proposed Ordinance on First Reading at the March 27, 2024 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 April 9, 2024.

ACTIONS SINCE MARCH 5, 2024 COUNCIL MEETING

On March 5, 2024, at the Regular Village Council Meeting the Council adopted this Ordinance by a vote of 5-0. The Council also provided for a courtesy period for implementation of these amendments to be in effect until June 1, 2024. It has been alleged that this Ordinance had not been properly noticed. Therefore, in an abundance of caution and to ameliorate any concerns about the noticing, this Ordinance is being presented to the Village Council for approval on First Reading again.

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 96th 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.

On March 5, 2024, at the Regular Village Council Meeting the Council considered this Ordinance and adopted it by a vote of 5-0. The Council also provided for a courtesy period for implementation of these amendments to be in effect until June 1, 2024.

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 updates 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 6:00 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 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.~~

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 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.

The fourth and final amendment changes the holidays on which construction noise is prohibited from specific holidays to federally recognized holidays. This change adds 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.

At the March 5, 2024 Village Council meeting the Council provided direction to have enforcement of this Ordinance begin on June 1, 2024.

Additionally, these amendments to restrict construction noise on federal holidays, 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. We will follow the Council's direction concerning the rollout of enforcement of these new requirements.

The Village Council unanimously approved the proposed Ordinance on First Reading at the March 27, 2024 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 April 9, 2024.

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 96th 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, based on feedback received following first reading of this Ordinance, the Village Council desires to expand the holidays on which construction noise is prohibited throughout the Village to include all federally recognized holidays along with those already listed in the Code; 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:¹

CHAPTER 11 - NUISANCES

* * *

ARTICLE II. - NOISE

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.

(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.

¹ 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.

- (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 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.~~
 - (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 Manger 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 27th day of March, 2024.

PASSED AND ADOPTED on second reading this 9th day of April, 2024.



Mayor Jeffrey P. Freimark

ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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

BAL HARBOUR

- V I L L A G E -

NOTICE OF LOCAL PLANNING AGENCY HEARING **AND REGULAR VILLAGE COUNCIL MEETING** **FOR SECOND READING ZONING ORDINANCES**

NOTICE IS HEREBY GIVEN that public hearings will be held by the Bal Harbour Village Council, sitting in its capacity as the **LOCAL PLANNING AGENCY** and **BAL HARBOUR VILLAGE COUNCIL**, **Tuesday, April 9, 2024, at 6:30 p.m.** or soon thereafter. The in-person hearings will be conducted at **Bal Harbour Village Hall, Bal Harbour, FL 33154 in the Council Chamber**. The purpose of the Local Planning Agency hearings is to consider and make recommendations to the Village Council on the following ordinances, after which, the **BAL HARBOUR VILLAGE COUNCIL** will meet to consider adopting the same following ordinances on second reading.

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 RESIDENTIAL DEVELOPMENT INCLUDING AFFORDABLE HOUSING; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, EXPIRATION, AND FOR AN EFFECTIVE DATE.

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.

Public Comments may be submitted by telephone at 305-865-6449 or emailed to meetings@balharbourfl.gov before and during the meeting. The proposed ordinances may be inspected by the public at the Village Clerk's Office, 655 - 96th Street, Bal Harbour, Florida 33154, or online at www.balharbourfl.gov under the heading "Council Meeting Information".

All persons who are disabled and who need special accommodations to participate in this proceeding should contact the Village Clerk's Office (305.866.4633) not later than two business days before such proceeding (Americans with Disabilities Act of 1990).

If a person decides to appeal any decision made by the Village Council, to any matter considered at a meeting or hearing, that person will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).



LPA-65

LPA-66