

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

September 17, 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

- 2.1** April 9, 2024 Local Planning Agency Meeting Minutes
[BalHarbourVillage-LocalPlanningAgencyMeetingMinutes_Apr9_2024.pdf](#)

3 HEARINGS

- LPA1** Ordinance - Amending Zoning Related To Fair Housing (First Reading)
AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES TO CLARIFY AND REVISE DEFINITIONS AND REGULATIONS APPLICABLE TO THE RESIDENTIAL ZONING DISTRICTS, AND TO PROVIDE REGULATORY INCENTIVES FOR AFFORDABLE RENTAL DWELLINGS; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.
[Item Summary - Amending Zoning Related To Fair Housing - LPA ADA.pdf](#)
[Memorandum - Amending Zoning Related To Fair Housing - LPA ADA.pdf](#)
[Ordinance - Amending Zoning Related To Fair Housing ADA.pdf](#)
[Attachment - Miller BHV Fair Housing Staff Report July 2 2024 ADA.pdf](#)
[Attachment - Discussion Item Proposed Ordinance Amendments Related To Fair Housing Opportunities ADA.pdf](#)

- LPA2** Ordinance - Amending Zoning To Prohibit Sale of Marijuana (First Reading)
AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES TO ESTABLISH DEFINITIONS AND REGULATIONS APPLICABLE TO MARIJUANA USES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.
[Item Summary - Amending Zoning To Prohibit Marijuana Retail Uses - LPA ADA.pdf](#)
[Memorandum - Amending Zoning To Prohibit Marijuana Retail Uses - LPA ADA.pdf](#)
[Ordinance - Amending Zoning To Prohibit Marijuana Retail Uses 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 -

Mayor Jeffrey P. Freimark
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Local Planning Agency

Regular Meeting Minutes

April 9, 2024

At 6:30 AM

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** - Mayor Freimark called the meeting to order at 6:58 P.M. following the General Employees' Retirement Board Meeting.

The following were present:

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

Also present:

Jorge M. Gonzalez, Village Manager
Dwight S. Danie, Village Clerk
Roger Pou, Deputy Village Attorney

The Pledge of Allegiance was led by Mayor Freimark.

2 APPROVAL OF MINUTES

March 5, 2024 Local Planning Agency Minutes

MOTION: A motion to approve the minutes was moved by Mayor Jeffrey P. Freimark and seconded by Councilman Buzzy Sklar.

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

3 HEARINGS

Mayor Freimark provided a brief summary of meeting protocol and noted that there were no interested parties in the Council Chamber. He said that he would like reference comments from prior Council meetings regarding the items.

The Village Clerk read the titles for Agenda Items LPA1 and LPA2

LPA1 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.

LPA2 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 items saying that he would also like to incorporate his remarks from previous Council Meetings regarding the items.

He said that since the last meeting, the Florida Legislature had approved amendments to the Live Local Act "Glitch Bill" which was awaiting the Governor' signature and that this ordinance reflects those changes as well as changes made upon further review of Village Code such as minimum habitable dwelling units that would be in alignment to similar standards in the Oceanfront District. He said that the noise ordinance would amend the commercial vehicle ordinance to align it with the noise ordinance to in include all Federal Holidays as the listed prohibition dates.

There were no comments from the public or from interested parties.

MOTION: A motion to recommend that the Village Council approve this ordinance (LPA1) on second reading was moved by Councilman Buzzy Sklar and seconded by Councilman David Albaum.

| 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 this ordinance (LPA2) on second reading was moved by Councilman Buzzy Sklar and seconded by Councilman David Albaum.

| 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 7:12 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 CLARIFY AND REVISE DEFINITIONS AND REGULATIONS APPLICABLE TO THE RESIDENTIAL ZONING DISTRICTS, AND TO PROVIDE REGULATORY INCENTIVES FOR AFFORDABLE MULTIPLE FAMILY RENTAL DWELLINGS.

Issue:

Should the Local Planning Agency recommend the Village Council adopt the Ordinance to revise and clarify definitions and regulations applicable to the residential zoning districts and provide regulatory incentives for affordable multiple family rental dwellings on first reading?

The Bal Harbour Experience:

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

Item Summary / Recommendation:

As part of the presentation for the Live Local Ordinance amendments enacted earlier this year, I indicated that staff would continue to examine the Village Code and identify additional amendments for consideration as appropriate. At the May 2024 Council meeting, I brought forward a discussion item identifying opportunities to further enhance or clarify the Village Code to encourage a full range of fair housing opportunities as development or redevelopment occurs in our community. The Council endorsed the preparation of an Ordinance regarding affordable housing incentives in the Multiple Family and OF zoning districts, and modernizing the definitions applicable to servants' quarters in the Single Family and Multiple Family zoning districts. An Ordinance was drafted based on input from the Village Planner with assistance from the Village Attorney, and deferred in July 2024. It is recommended that following consideration of the Local Planning Agency recommendation, the Village Council adopt on first reading the Ordinance clarifying and revising definitions and regulations applicable to residential zoning districts and providing regulatory incentives for affordable multiple family rental dwellings.

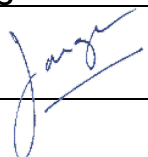
THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE.

Financial Information:

| | Amount | Account | Account # |
|--|--------|---------|-----------|
| | X | X | X |

Sign off:

| | | |
|--------------------------|--------------------------------|------------------------|
| Building Official | Chief Financial Officer | Village Manager |
| Eliezer Palacio | Claudia Dixon | 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: September 17, 2024

SUBJECT: **AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES TO CLARIFY AND REVISE DEFINITIONS AND REGULATIONS APPLICABLE TO THE RESIDENTIAL ZONING DISTRICTS, AND TO PROVIDE REGULATORY INCENTIVES FOR AFFORDABLE MULTIPLE FAMILY RENTAL DWELLINGS; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

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

BACKGROUND

As part of the presentation for the Live Local Ordinance amendments enacted earlier this year, I indicated that staff would continue to examine the Village Code and identify additional amendments for consideration as appropriate. At the May 2024 Council meeting, I brought forward a discussion item identifying opportunities to further enhance or clarify the Village Code to encourage a full range of fair housing opportunities as development or redevelopment occurs in our community.

The Council endorsed the preparation of an Ordinance regarding affordable housing incentives in the Multiple Family and OF zoning districts, and modernizing the definitions applicable to servants' quarters in the Single Family and Multiple Family zoning districts. Further analysis led to a focus on updating existing provisions for the R-1 and R-2 Single Family and RM-5 Multiple Family zoning districts and incentivizing affordable multiple family rental housing in the RM Multiple Family and Oceanfront zoning districts.

ANALYSIS

This Ordinance has been drafted based on input from the Village Planner with assistance from the Village Attorney, clarifying and revising definitions and regulations applicable to residential zoning districts and providing regulatory incentives for affordable multiple family rental dwellings.

This Ordinance seeks to amend several portions of the Village Code applicable to residential zoning districts first by amending and clarifying relevant definitions, as follows:

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

* * *

Family means one or more Persons occupying premises and living together under one head as a single housekeeping unit. The term "Family" shall be deemed to include domestic or personal workers servants, but shall not include paying guests.

* * *

Guest House means a detached Structure or accessory Building intended to be occupied by nonpaying guests in connection with a Single-Family Dwelling, and equipped with sanitary plumbing facilities ~~only~~; it shall provide Rooms and necessary appurtenances for the sleeping accommodations of nonpaying guests and their workers servants, and may or may not but shall not provide cooking facilities. When used in connection with a Multiple-Family Dwelling, a Guest House means a detached dwelling occupied or intended to be occupied for hire and shall be considered an Apartment Unit, with complete living accommodations permitted. Guest Houses are not required to meet the minimum floor area requirements of the zoning district in which they are located.

Guest Room. In connection with a Single-Family Dwelling, Guest Room means a Room in the main or Accessory Building, occupied or intended to be occupied by nonpaying guests, and equipped with sanitary plumbing facilities ~~only~~, and may or may not include separate cooking facilities. When used in connection with a Multiple-Family Dwelling, Guest Room means a Room in the main Building to be occupied by paying guests, and shall be considered the same as a Hotel Room.

* * *

~~*Servants' Accessory Quarters.* As accessory to multifamily occupancies, Servants' Accessory Quarters means accommodations for such number of ~~servants workers and other employees~~ as are required by the main occupancy, which accommodations may be detached and may or may not include separate cooking facilities. As accessory to single-family occupancies, Servants' Accessory Quarters means accommodations for such number of ~~servants workers~~ as are required by the main occupancy in personal service and/or for the maintenance of the premises as could reasonably be required, which accommodations may be detached but ~~shall~~ may or may not have separate cooking facilities ~~except in connection with Properties which have a ground area of 15,000 or more square feet. In any occupancy, Accessory Quarters are not required to meet the minimum floor area requirements of the zoning district in which they are located.~~~~

* * *

Lot Coverage means the percentage of Lot area that is covered by surfaces impervious to the penetration of water into the ground. For purposes of making maximum Lot Coverage calculations, brick paver surfaces will be counted as 50 percent of their area being impervious, provided evidence is

submitted demonstrating, and the Building Department determines that (i) the pavers are pervious and the underlying sub-base is designed to allow stormwater to percolate into the soil, or (ii) an adequate underground drainage system is provided.

* * *

Next, the Ordinance implements the modernized terminology from the amended definitions (from Servants' Quarters to Accessory Quarters) in the R-1 and R-2 Single Family Residential Districts and clarifies where Accessory Quarters can be built in R-2, as follows:

Sec. 21-96. - Permitted uses.

No Building or land shall be used and no Building shall be erected or constructed on any Lot in the R-1 Single Family Residential District except for the following uses:

- (1) Single-family detached dwelling.
- (2) Parks, playgrounds or municipal buildings owned and operated by the Village.
- (3) Accessory Uses incidental to and customary to single-family detached dwellings. No Accessory Building, attached or detached from the main premises, shall be allowed that is susceptible of being occupied for residential purposes (except by ~~domestic servants~~ as Accessory Quarters).
- (4) Vacation Rentals in accordance with section 21-363.

* * *

Sec. 21-102. - Setbacks. [R-1]

* * *

(b) Garages and ~~Servant's~~ Accessory Quarters may be constructed as a part of the residence Building. If a wall is erected along the rear line of the Lot (the outside face of such wall shall not be nearer than ten feet to the street line), then garages and ~~Servant's~~ Accessory Quarters not more than one Story in height may be constructed as a part of or abutting such wall. Such garage or ~~Servant's~~ Accessory Quarters may have a gateway entry from the Street. Otherwise, garages or ~~Servant's~~ Accessory Quarters must be located not nearer than 20 feet to the rear line of the Lot. No garage or ~~Servant's~~ Accessory Quarters shall exceed 15 feet in height.

Sec. 21-127. - Setbacks. [R-2]

* * *

(d) Accessory Quarters may be constructed as a part of the main residence Building, attached by some means to it, or detached from it.

* * *

The Ordinance also provides an incentive in the R-1 and R-2 Lot Coverage requirements for Accessory Quarters, while implementing the new terminology:

Sec. 21-103. - Maximum Lot Coverage.

The maximum Lot Coverage of all impervious areas in the R-1 Single Family Residential District shall not exceed 50 percent of Lot area. The maximum Lot Coverage by buildings and/or structures shall not exceed 40 percent. ~~Other impervious areas, including, but not limited to, driveways, walkways, decks and similar areas shall not exceed ten percent of the Lot area.~~ Lot Coverage accomplished by a combination of buildings and structures together with other impervious areas shall not exceed ~~be subject to~~ a 50 percent total maximum of Lot Coverage. If an Accessory Quarters is provided, a bonus Lot Coverage increase of 3% shall be allowed (43% maximum Lot Coverage for buildings and structures/ 53% total maximum Lot Coverage).

* * *

Sec. 21-129. - Maximum Lot Coverage.

Maximum Lot Coverage in the R-2 Single Family Residential District shall not exceed 50 percent of Lot area. The maximum Lot Coverage by buildings and/or structures shall not exceed 40 percent. ~~Other impervious areas, including, but not limited to, driveways, walkways, decks and similar areas shall not exceed ten percent of the Lot area.~~ Lot Coverage accomplished by a combination of buildings and structures together with other impervious areas shall not exceed ~~be subject to~~ a 50 percent total maximum of Lot Coverage. If an Accessory Quarters is provided, a bonus Lot Coverage increase of 3% shall be allowed (43% maximum Lot Coverage for buildings and structures/ 53% total maximum Lot Coverage).

* * *

The Ordinance provides an incentive in the RM-5 District by allowing Accessory Quarters to be one or two stories, and modernizes terminology, as follows:

Sec. 21-267. - Setbacks.

No Building or any part thereof, except a second and third story balcony overhang of four feet, may be erected in the RM-5 Multiple Family Residential District nearer to the front line, which is Bal Harbour Boulevard, than 50 feet, or as otherwise shown on the recorded plats of the Residential Section of Bal Harbour, and Resubdivision of Lot 21, Block 12 and Tract F of the Residential Section of Bal Harbour, or nearer to the side lines than 25 feet, or nearer to the rear lines than 50 feet, except that one-story garages and/or ~~Servants'~~ one or two-story Accessory Quarters may be erected within the rear 30 feet of the Lot, but not nearer than five feet to the side or rear lines. All lots in the

RM-5 Multiple Family Residential District except Lots 1 to 3, inclusive, Block 12A, shall be regarded as fronting on Bal Harbour Boulevard. Lots 1 to 3, inclusive, Block 12A, shall be regarded as fronting on Baker's Haulover Inlet.

* * *

Finally, the Ordinance adopts a set of incentives for minimum floor area, parking, and for the Lot area available for Accessory Quarters, which are applicable to verified affordable multiple family rental housing in any of the MF Districts and in the OF Districts, as follows:

Sec. 21-366. - Incentives for Affordable Rental Housing for Permanent Occupancy

For multiple-family rental dwellings for permanent occupancy that are restricted by covenant to be affordable as defined in s. 420.0004, Florida Statutes, for a period of at least 30 years, in any multiple-family residence and the Oceanfront OF zoning districts of this Code, the following incentives are available:

(1) the minimum floor area requirements for all such multiple-family dwellings may be reduced by 10%, and

(2) the total number of parking spaces necessary to satisfy the minimum parking requirements for such multiple-family dwellings may be reduced by 10%, and

(3) Accessory Quarters for such multiple-family dwellings may occupy up to 30% of the maximum Lot area.

As a prerequisite to the issuance of a building permit for any multiple family rental dwelling using any one or more of the above incentives, 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, at the Owner's expense.

Adoption of this Ordinance will modernize the Code and its treatment of accessory quarters in the single and multiple family districts, and provide incentives for affordable multiple family rental housing in the Village.

THE BAL HARBOUR EXPERIENCE

The Ordinance addresses the sustainability of the Village by incentivizing the provision of verified affordable multiple family rental housing and modernizing Code terminology and standards.

CONCLUSION

The Administration recommends the adoption of the Ordinance on First reading following consideration of the recommendation of the Local Planning Agency.

Attachments:

1. Attachment - Miller BHV Fair Housing Draft Staff Report July 2 2024
2. Attachment - Discussion Item Proposed Ordinance Amendments Related To Fair Housing Opportunities

ORDINANCE NO. 2024____

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES TO CLARIFY AND REVISE DEFINITIONS AND REGULATIONS APPLICABLE TO THE RESIDENTIAL ZONING DISTRICTS, AND TO PROVIDE REGULATORY INCENTIVES FOR AFFORDABLE RENTAL DWELLINGS; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.

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

WHEREAS, the Village seeks to amend its Chapter 21 "Zoning" regulations to encourage the development of affordable rental dwellings in the Village; and

WHEREAS, the Village Code already provides for affordable housing by maintaining a range of Multiple-Family Residential zoning districts in addition to its Single-Family Residential zoning districts, and by providing for Servants' Quarters in its Single-Family Residential and Multiple-Family Residential zoning districts; and

WHEREAS, the Village proposes to amend Article I "In General," Article III "District Regulations," and Article IV "Supplementary District Regulations" of Chapter 21 "Zoning" to clarify and amend definitions and regulations applicable to Servants' Quarters, Guest Houses/Rooms, and Accessory Buildings, and related development standards including Lot Coverage, in the Village's single and multi-family residential zoning districts; and

WHEREAS, the Village also proposes to amend Article IV "Supplementary District Regulations" to provide regulatory incentives for the development of affordable rental dwelling units in the Village's RM-5 and Oceanfront OF Districts; and

WHEREAS, the Administration recommended approval of this Ordinance in its report for the July 16, 2024 Village Council meeting; and

WHEREAS, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed public hearing in accordance with law on _____,

2024, determined that this Ordinance is consistent with the Village’s Comprehensive Plan, and recommended approval; and

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

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

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

Section 2. **Village Code Amended - Chapter 21.** That Chapter 21 “Zoning” of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:¹

CHAPTER 21. - ZONING

ARTICLE I. - IN GENERAL

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

(a) For the purpose of this chapter, which shall be known as the Zoning Ordinance of Bal Harbour Village, Florida, words used in the present tense include the future; the singular number includes the plural, and the plural the singular; the words "used for" include the meaning "designed for"; the word "structure" includes the word "building"; the word "shall" is mandatory and not directory; and the word "lot" includes the words "plot" and "tract".

(b) Words and terms not defined in this section shall be interpreted in accord with their normal dictionary meaning and customary usage.

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

* * *

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.

Accessory Building means a subordinate Building or outbuilding, or a portion of the main Building, which is located on the same Lot or which is on a contiguous Lot, the use of which is clearly incidental to the use of the main Building.

Accessory Uses means uses customarily incident to the principal uses as permitted, but not including any commercial activity. Any Building, the use of which is not clearly accessory and incidental to the main occupancy, shall be considered as a separate occupancy and shall conform to the provisions of this chapter and chapter 6 for such occupancy.

* * *

Family means one or more Persons occupying premises and living together under one head as a single housekeeping unit. The term "Family" shall be deemed to include domestic or personal ~~workers~~ servants, but shall not include paying guests.

* * *

Guest House means a detached Structure or accessory Building intended to be occupied by nonpaying guests in connection with a Single-Family Dwelling, and equipped with sanitary plumbing facilities ~~only~~; it shall provide Rooms and necessary appurtenances for the sleeping accommodations of nonpaying guests and their workers ~~servants~~, and may or may not but shall not provide cooking facilities. When used in connection with a Multiple-Family Dwelling, a Guest House means a detached dwelling occupied or intended to be occupied for hire and shall be considered an Apartment Unit, with complete living accommodations permitted. Guest Houses are not required to meet the minimum floor area requirements of the zoning district in which they are located.

Guest Room. In connection with a Single-Family Dwelling, Guest Room means a Room in the main or ~~A~~ Accessory Building, occupied or intended to be occupied by nonpaying guests, and equipped with sanitary plumbing facilities ~~only~~, and may or may not include separate cooking facilities. When used in connection with a Multiple-Family Dwelling, Guest Room means a Room in the main Building to be occupied by paying guests, and shall be considered the same as a Hotel Room.

* * *

~~Servants'~~ Accessory Quarters. As accessory to multifamily occupancies, ~~Servants'~~ Accessory Quarters means accommodations for such number of ~~servants~~ workers ~~and other employees~~ as are required by the main occupancy, which accommodations may be detached and may or may not include separate cooking facilities. As accessory to single-family occupancies, ~~Servants'~~ Accessory Quarters means accommodations for such number of ~~servants~~ workers as are required by the main occupancy in personal service and/or for the maintenance of the premises as could reasonably be required, which accommodations may be detached but ~~shall~~ may or may not have separate cooking facilities ~~except in connection with Properties which have a ground area of 15,000 or more square feet~~. In any occupancy, Accessory Quarters are not required to meet the minimum

floor area requirements of the zoning district in which they are located.

* * *

Lot Coverage means the percentage of Lot area that is covered by surfaces impervious to the penetration of water into the ground. For purposes of making maximum Lot Coverage calculations, brick paver surfaces will be counted as 50 percent of their area being impervious, provided evidence is submitted demonstrating, and the Building Department determines that (i) the pavers are pervious and the underlying sub-base is designed to allow stormwater to percolate into the soil, or (ii) an adequate underground drainage system is provided.

* * *

Setback means the minimum horizontal distance between the street line and the front line of the Building, or between the Bulkhead, Seawall or other established line and the Building, or between the side Lot Lines and the Building or any projection, except as otherwise provided in this chapter.

* * *

ARTICLE III. - DISTRICT REGULATIONS.

* * *

DIVISION 2. - R-1 SINGLE FAMILY RESIDENTIAL DISTRICT.

Sec. 21-96. - Permitted uses.

No Building or land shall be used and no Building shall be erected or constructed on any Lot in the R-1 Single Family Residential District except for the following uses:

- (1) Single-family detached dwelling.
- (2) Parks, playgrounds or municipal buildings owned and operated by the Village.
- (3) Accessory Uses incidental to and customary to single-family detached dwellings. No Accessory Building, attached or detached from the main premises, shall be allowed that is susceptible of being occupied for residential purposes (except ~~by domestic servants~~ as Accessory Quarters).
- (4) Vacation Rentals in accordance with section 21-363.

* * *

Sec. 21-99. - Maximum Density.

There shall not be more than one single-family detached dwelling per recorded Lot in the R-1 Single Family Residential District.

* * *

Sec. 21-102. - Setbacks.

(a) No Building or any part thereof, except a second story balcony overhang of four feet, may be erected in the R-1 Single Family Residential District nearer to the Seawall than 40 feet, measured from the outside face thereof, or nearer to the rear line, which is the line abutting the Street, than 15 feet, except as stated hereinafter. The minimum side Setback shall be ten feet for a single-story construction up to 18 feet of Structure Height. For every additional foot in Height above 18 feet, there shall be one additional foot of side Setback for that portion of the building over 18 feet in height. The additional side setback requirement for buildings over 18 feet, provided by this Section, shall not prohibit up to one-third of the length of the side walls of such building from being situated in compliance with the minimum ten-foot side setback, but not fully conforming to the additional setback requirement. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district.

(b) Garages and ~~Servant's~~ Accessory Quarters may be constructed as a part of the residence Building. If a wall is erected along the rear line of the Lot (the outside face of such wall shall not be nearer than ten feet to the street line), then garages and ~~Servant's~~ Accessory Quarters not more than one Story in height may be constructed as a part of or abutting such wall. Such garage or ~~Servant's~~ Accessory Quarters may have a gateway entry from the Street. Otherwise, garages or ~~Servant's~~ Accessory Quarters must be located not nearer than 20 feet to the rear line of the Lot. No garage or ~~Servant's~~ Accessory Quarters shall exceed 15 feet in height.

Sec. 21-103. - Maximum Lot coverage.

The maximum Lot Coverage of all impervious areas in the R-1 Single Family Residential District shall not exceed 50 percent of Lot area. The maximum Lot Coverage by buildings and/or structures shall not exceed 40 percent. ~~Other impervious areas, including, but not limited to, driveways, walkways, decks and similar areas shall not exceed ten percent of the Lot area.~~ Lot Coverage accomplished by a combination of buildings and structures together with other impervious areas shall not exceed ~~be subject to~~ a 50 percent total maximum of Lot Coverage. If an Accessory Quarters is provided, a bonus Lot Coverage increase of 3% shall be allowed (43% maximum Lot Coverage for buildings and structures/ 53% total maximum Lot Coverage).

* * *

DIVISION 3. - R-2 SINGLE FAMILY RESIDENTIAL DISTRICT.

Sec. 21-121. - Permitted uses.

No Building or land shall be used and no Building shall be erected or constructed on any Lot in the R-2 Single Family Residential District except for the following uses: any use permitted in the R-1 Single Family Residential District.

* * *

Sec. 21-124. - Maximum Density.

There shall not be more than one single-family detached dwelling per recorded Lot in the R-2 Single Family Residential District.

* * *

Sec. 21-127. - Setbacks.

(a) *Front and rear.* No Building or any part thereof may be erected in the R-2 Single Family Residential District beyond the front Setback lines of 30 feet as shown on the recorded plat of the Residential Section of Bal Harbour, or nearer than 15 feet to the rear Lot Lines. For every additional foot in Height of the Building above 18 feet, there shall be one additional foot of rear Setback for that portion of the building over 18 feet in height. Notwithstanding the above, the rear setback requirements provided by this Section shall not prohibit up to one-fourth of the length of the outside walls of any building, regardless of Height, along the rear property lines from being situated not less than 15 feet from the rear property line. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the District.

(b) *Side.* The minimum side Setback shall be ten feet for single-story construction up to 18 feet of structure Height. For every additional foot in Height above 18 feet, there shall be one additional foot of side Setback for that portion of the building over 18 feet in height. The additional side setback requirement for buildings over 18 feet, provided by this Section, shall not prohibit up to one-third of the length of the side walls of such building from being situated in compliance with the minimum ten-foot side setback, but not fully conforming to the additional setback requirement. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district.

(c) *Pools and pool decks.* Notwithstanding the above, the following shall govern pools and pool decks.

(1) No swimming pool may be constructed within ten feet of the rear and side Setback or Yard lines.

(2) On corner lots no swimming pool may be constructed nearer than 15 feet to the platted Lot Lines adjacent to any vehicular right-of-way, as shown on the recorded plat of the Residential Section of Bal Harbour.

(3) Pool decks shall not be included for purposes of determining the Setbacks.

(4) Pools and decks shall be obscured by a decorative wall, fence, hedge or other equivalent screening five feet in height.

(d) Accessory Quarters may be constructed as a part of the main residence Building, attached by some means to it, or detached from it.

* * *

Sec. 21-129. - Maximum Lot coverage.

Maximum Lot Coverage in the R-2 Single Family Residential District shall not exceed 50 percent of Lot area. The maximum Lot Coverage by buildings and/or structures shall not exceed 40 percent. ~~Other impervious areas, including, but not limited to, driveways, walkways, decks and similar areas shall not exceed ten percent of the Lot area.~~ Lot Coverage accomplished by a combination of buildings and structures together with other impervious areas shall not exceed be subject to a 50 percent total maximum of Lot Coverage. If an Accessory Quarters is provided, a bonus Lot Coverage increase of 3% shall be allowed (43% maximum Lot Coverage for buildings and structures/ 53% total maximum Lot Coverage).

* * *

DIVISION 9. - RM-5 MULTIPLE FAMILY RESIDENTIAL DISTRICT

* * *

Sec. 21-267. - Setbacks.

No Building or any part thereof, except a second and third story balcony overhang of four feet, may be erected in the RM-5 Multiple Family Residential District nearer to the front line, which is Bal Harbour Boulevard, than 50 feet, or as otherwise shown on the recorded plats of the Residential Section of Bal Harbour, and Resubdivision of Lot 21, Block 12 and Tract F of the Residential Section of Bal Harbour, or nearer to the side lines than 25 feet, or nearer to the rear lines than 50 feet, except that one-story garages and/or ~~Servants' one or two-story Accessory Quarters~~ one or two-story Accessory Quarters may be erected within the rear 30 feet of the Lot, but not nearer than five feet to the side or rear lines. All lots in the RM-5 Multiple Family Residential District except Lots 1 to 3, inclusive, Block 12A, shall be regarded as fronting on Bal Harbour Boulevard. Lots 1 to 3, inclusive, Block 12A, shall be regarded as fronting on Baker's Haulover Inlet.

* * *

ARTICLE IV. - SUPPLEMENTARY DISTRICT REGULATIONS

* * *

Sec. 21-355. - Accessory Buildings.

(a) Unless specifically permitted in the district regulations, Accessory Buildings shall not occupy in aggregate more than 20 percent of the maximum Lot area.

(b) No Accessory Building, including Cabanas, shall be constructed except concurrently with or subsequent to the construction of the main Building.

(c) In addition to other applicable requirements, the following requirements shall apply to canvas structures used as Carports:

(1) Color canvas used shall complement the color of the home which it serves. Tints and shades of home color shall be acceptable.

(2) Carports must be screened so as not to be seen from the Street.

(3) Carport structures shall be designed to incorporate architectural elements of the residence or other primary building on the property. Metal framing structures shall be clad with architectural materials.

* * *

Sec. 21-366. - Incentives for Affordable Rental Housing for Permanent Occupancy

For multiple-family rental dwellings for permanent occupancy that are restricted by covenant to be affordable as defined in s. 420.0004, Florida Statutes, for a period of at least 30 years, in any multiple-family residence and the Oceanfront OF zoning districts of this Code, the following incentives are available:

(1) the minimum floor area requirements for all such multiple-family dwellings may be reduced by 10%, and

(2) the total number of parking spaces necessary to satisfy the minimum parking requirements for such multiple-family dwellings may be reduced by 10%, and

(3) Accessory Quarters for such multiple-family dwellings may occupy up to 30% of the maximum Lot area.

As a prerequisite to the issuance of a building permit for any rental dwelling using any one or more of the above incentives, 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, at the Owner's expense.

Secs. 21-~~366~~367–21-380. - Reserved.

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

Section 4. Inclusion in the Code. That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and be made a part of the Bal Harbour Village Code; that the sections of this Ordinance may be renumbered or

relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

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

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

PASSED AND ADOPTED on first reading this 17th day of September, 2024.

PASSED AND ADOPTED on second reading this ___ day of _____, 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 VILLAGE COMMUNITY DEVELOPMENT MEMORANDUM

To: Jorge M. Gonzalez
Village Manager

From: Michael J. Miller, AICP
Consultant Village Planner

Date: July 2nd, 2024

Subject: Proposed Code Amendments
Chapter 21 Zoning
Accessory Units / Fair Housing Opportunities
MMPA Acct. No.: 00-1103-0100

ISSUE

The provision of sufficient and affordable housing has long been a goal of the State of Florida and local governments. The State's population has grown tremendously over the years from the earliest coastal areas to inland locations up to the Everglades boundaries. In recent years redevelopment of the early developed areas, often at higher densities, has occurred. Most of the original development in the state occurred near coastal areas following the Flagler Railroad corridor and early major roadway corridors such as Federal Highway (US 1), Dixie Highway and State Road A1A. As of 2024 there is very little vacant undeveloped land left in South Florida.

Bal Harbour is approximately 290 acres in size, of which 40 are submerged lands and 245.3 are developed. Only about 4.32 acres remain vacant. Bal Harbour was developed beginning in 1929 when sand dunes and mangroves were razed, drained, filled and bulk-headed. During World War II, the entirety of Bal Harbour was leased by its developers to the U.S. Government. In 1946, the owners, Miami Beach Heights, Inc., incorporated the land into a town. At that time, the land was subdivided and platted. Development during the 1950's was mostly single-family houses, most of which still stand today, although a great deal of renovation and/or redevelopment has occurred. Development in the 1960's was mostly of hotels and apartment houses. During the 1970's high-rise residential buildings were built along the oceanfront, and some redevelopment was experienced, as some hotels were transformed into high-rise residential buildings. Since 2000 some of the oceanfront sites were redeveloped, including the former Harbour House North site into a mixed-use hotel / residential complex, the former Sheraton Hotel Resort was also redeveloped into a mixed-use hotel / residential complex, and the former Beach Club site was redeveloped into a high-rise residential complex.

Existing Community Design – The Village was completely master-planned in 1947 and is essentially built-out as an exclusive high-end community, with distinct segregated 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

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July 2nd, 2024
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development located along the west side on Collins Avenue and at a few other locations within the gated area along Park Drive at the south end of the community or near the Haulover Inlet, single-family homes within the gated area between Park Drive and the Indian Creek Waterway, the Bal Harbour Shops Mall located west of Collins Avenue and north of 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 fully master-planned exclusive suburban neighborhood to the City of Miami. The Village was always envisioned / planned and built as a high-end enclave with expensive housing for the oceanfront location. In close proximity to the Village are a number of other municipalities on the coastal barrier island and mainland that provide abundant quantity and types of housing easily accessible by vehicles, mass transit, bicycles and pedestrian. While the primary housing opportunities in Bal Harbour are limited and expensive, the developer and Village have always allowed some accessory housing as an integrated part of single-family homes and some multiple-family homes – so called accessory housing for in-house help such as maids / child nanny's / workers / servants). Most of the existing older and new single-family homes have an in-house living quarters (bedroom & bath / some with limited cooking facilities), and a few of the RM-5 Multiple-family District complexes located on the west side of Collins Avenue have such living quarters adjoining their west property lines (buffer wall & open space along Park Drive Drive). On average the accessory living facilities range from about 200-300 square feet in size.

In urban planning every city is not expected to provide every land use type or every type of housing. Location, community design, infrastructure availability, and in the case of the coastal barrier islands and coastal mainland areas are not appropriate for large concentrations of people due to potential hurricane / tropical storm evacuation concerns. It is a long-standing policy of the State of Florida to discourage higher density population concentrations near the coastlines due to storm surge, and now increased sea level rise. In fact, in 2007 the State of Florida mandated as part of the Village's Comprehensive Plan updates that a Policy be included in the Coastal Management Element that prohibits the Village from allowing increased residential density over what was allowed at that time by the Future Land Use Map (FLUM) and Land Development Regulations (LDRs). The State of Florida refused to find the Village's Comprehensive Plan "In-Compliance" unless the Village included the density increase policy.

During the Florida Legislature's 2023 session, the so-called "Live Local Act of 2023" (Chapter 2023-17 Laws of Florida, which established Section 166.04151(7) of the Florida Statutes), was adopted under Senate Bill 102 and signed into law by the Governor on March 29th, 2023. The stated purpose of this law was to promote the development and availability of "**affordable housing**" in the state. The Act provides that a municipality must authorize multifamily housing and mixed-use residential as allowable uses in any area zoned commercial, industrial, or mixed-use if at least 40% of the residential uses in a proposed multifamily development are, for a period of at least 30 years, affordable as defined in Sec. 420.0004. 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

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building height, zoning and densities, and other provisions authorized under this subsection. For mixed-use residential projects, at least 65% percent of the total square footage must be used for residential purposes. Sec. 166.04151(7) includes a number of implementing provisions related to allowable density, building height, and approval procedures. More specifically, the Act requires that any such proposal be administratively approved by the local government and no further action by the governing body of the municipality is required if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such uses and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use. Such land development regulations include, but are not limited to, setbacks and parking regulations. Except as otherwise provided in the subsection, a development authorized under this subsection must comply with all applicable state and local laws and regulations.

After the adoption of the original 2023 Live Local Act (LLA) and proposed 2024 LLA updates, the Village discussed the possible implications to the Village. After considerable analysis and study, the Village has adopted several Land Development Regulation (LDR) Code amendments to address the LLA, as well as ongoing modernization of various Codes.

Recently the Village received an application for a LLA mixed-use development within the Bal Harbour Shops (BHS) site. The applicant has accused the Village of being exclusionary; however, as explained above, the Village is master-planned, and the Complan / laws prohibit massive residential density increases. In fact, the developer of the Bal Harbour Shops (Stanley Whitman) was part of the group that designed and set forth the future urban design parameters of the Village, and was known as a racial and religious exclusionist, and supported density limits. It is odd the Village is now accused of development limitations, when in fact, as stated above, the Village has always allowed accessory units for other than the primary owners, as many other similar high-end communities allow (Palm Beach / Indian Creek / Gulf Stream / etc.).

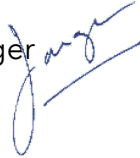
While the Village Code has allowed such accessory housing since the Village was created, and many homes include such uses, the Village is cognizant of the laws and need for additional housing and seeks to encourage the inclusion of accessory housing. As part of this effort, the Village is proposing some Code amendments to modernize the Code and incentivize the practice of providing accessory housing. In addition to definition and term updates, changes could be included to increase Lot Coverage allowances and other incentives. In addition, a few other miscellaneous Code updates are proposed.

BAL HARBOUR

- V I L L A G E -

DISCUSSION ITEM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager 

DATE: May 21, 2024

SUBJECT: **Discussion Regarding Proposed Ordinance Amendments Related to Fair Housing Opportunities.**

BACKGROUND

As part of the presentation for the Live Local ordinance amendments enacted a few months ago, I indicated that staff would continue to examine the Village Code and identify additional amendments for consideration as appropriate. The below discussion items are opportunities that have been identified to further enhance or clarify the Village code to encourage a full range of fair housing opportunities as development or redevelopment occurs in our community. These are presented for the Village Council's review and guidance. Based on this discussion, staff will work to draft and develop the appropriate ordinance amendments for Village Council action.

It is appropriate for the Village Council to discuss and provide Staff with their direction.

SUMMARY OF PROPOSED ORDINANCE REVISIONS

1. Modernize definitions in the Chapter 21, Zoning, of the Code of Ordinances, which allow for accessory dwellings to be occupied by persons working for the occupants of the main tenancy in the single and multiple family zoning districts - "servants" to "workers".
2. Liberalize regulations of Accessory Quarters and Guest Houses in single family and multiple family zoning districts, as follows:
 - Clarify that Guest Houses and Accessory Quarters do not need to meet the minimum floor areas,
 - Consider whether to allow Guest Houses and Accessory Quarters to encroach into the side setbacks if not otherwise limited by easements or the plats to be reduced,
 - Consider whether to allow Guest Houses and Accessory Quarters to encroach into the rear setbacks if not otherwise limited by easements or the plats to be reduced if they have granted the front easements to replace the rear easements for all utilities,
 - Consider allowing Accessory Quarters for multiple family dwellings in RM-5 along Collins Avenue to be two stories in height and to be located closer to the rear property line if they provide a taller perimeter wall, to act as additional buffers and security for the gated community.

3. Consider adopting the following incentives for affordable housing into the Supplemental Regulations of Chapter 21, that would apply in any Village multiple-family residential zoning district and the Oceanfront OF zoning district if the unit is covenanted to be affordable for 30 years per s. 420.0004, Florida Statutes:
 - Reduction of minimum floor area by 10% or some other amount
 - Reduction of required parking spaces by 10% or some other amount
 - Increase of maximum Lot coverage of 10% or some other amount
 - Allow Accessory Quarters to occupy up to 30% of the maximum Lot area or some other amount.

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 DEFINITIONS AND REGULATIONS APPLICABLE TO MARIJUANA USES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.

Issue:

Should the Local Planning Agency recommend to the Village Council to adopt this Ordinance that establishes a clear prohibition of marijuana retail uses in conformance with state law, in advance of the potential voter approval of Amendment 3 approving marijuana for adult personal use in Florida which is on November 5, 2024 Ballot?

The Bal Harbour Experience:

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

Item Summary / Recommendation:

The use of marijuana has become increasingly prevalent following changes in state laws regarding its medical use. It is currently a felony of the third degree to sell, manufacture, deliver, or possess with intent to sell, manufacture, or deliver, cannabis in Florida, outside of the medical marijuana system created by constitutional amendment in 2016.

Recently, the Florida Supreme Court approved the inclusion of a question to again amend the Florida Constitution, on the ballot for the November 2024 election, to legalize adult personal use of marijuana. The effect of the question is summarized as follows: A "yes" vote supports legalizing marijuana for adults 21 years old and older and allowing individuals to possess up to three ounces of marijuana. A "no" vote opposes legalizing marijuana for adult use in Florida.

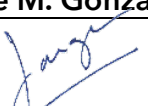
If Amendment 3, the Marijuana Legalization Initiative, is approved by the voters, the effective date of the legalization of adult personal use of marijuana will be six months after voter approval, allowing sufficient time for the necessary state regulatory framework to be established.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE.

Financial Information:

| | Amount | Account | Account # |
|--|--------|---------|-----------|
| | X | X | X |

Sign off:

| Building Official | Chief Financial Officer | Village Manager |
|-------------------|-------------------------|---|
| Eliezer Palacio | Claudia Dixon | Jorge M. Gonzalez |
| | |  |

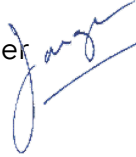
BAL HARBOUR

- VILLAGE -

LOCAL PLANNING AGENCY MEMORANDUM

TO: Honorable Members of the Local Planning Agency

FROM: Jorge M. Gonzalez, Village Manager



DATE: September 17, 2024

SUBJECT: **AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES TO ESTABLISH DEFINITIONS AND REGULATIONS APPLICABLE TO MARIJUANA USES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

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

BACKGROUND

The use of marijuana has become increasingly prevalent following changes in state laws regarding its medical use. It is currently a felony of the third degree to sell, manufacture, deliver, or possess with intent to sell, manufacture, or deliver, cannabis in Florida, outside of the medical marijuana system created by constitutional amendment in 2016.

Recently, the Florida Supreme Court approved the inclusion of a question to amend the Florida Constitution, on the ballot for the November 2024 election, to legalize adult personal use of marijuana. The effect of the question is summarized as follows:

A "yes" vote supports legalizing marijuana for adults 21 years old and older and allowing individuals to possess up to three ounces of marijuana.

A "no" vote opposes legalizing marijuana for adult use in Florida.

If Amendment 3, the Marijuana Legalization Initiative, is approved by the voters, the effective date of the legalization of adult personal use of marijuana will be six months after voter approval, allowing sufficient time for the necessary state regulatory framework to be established.

Nonetheless, it is important to note that, as was the case with medical marijuana, the legalization of adult personal use of marijuana would apply only to Florida law, and does not change or immunize violations of federal law. The substance remains a DEA Schedule 1 controlled substance (e.g., heroin, LSD—no currently accepted medical use—high potential for abuse—cannot be studied without extraordinary approvals and controls), although the U.S. Department of Justice just announced that it is looking at rescheduling

it to a Schedule 3 drug (e.g., Tylenol with codeine, testosterone—moderate to low potential for dependence—can study).

The Village Code currently does not specifically address marijuana use. State law limits the range of policy choices available for regulations. Municipalities are completely preempted from regulating processing or cultivating centers. Municipalities can either prohibit dispensing facilities (e.g., retail stores), or regulate them in the same manner as pharmacies/drug stores. The relevant statutory language follows:

Section 381.986. Medical use of marijuana.—

* * *

(11) PREEMPTION.—Regulation of cultivation, processing, and delivery of marijuana by medical marijuana treatment centers is preempted to the state except as provided in this subsection.

(a) A medical marijuana treatment center cultivating or processing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school.

(b)1. A county or municipality may, by ordinance, ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality. A county or municipality that does not ban dispensing facilities under this subparagraph may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality.

2. A municipality may determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, medical marijuana treatment center dispensing facilities located within the boundaries of that municipality. A county may determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, all such dispensing facilities located within the unincorporated areas of that county. Except as provided in paragraph (c), a county or municipality may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465. A municipality or county may not charge a medical marijuana treatment center a license or permit fee in an amount greater than the fee charged by such municipality or county to pharmacies. A dispensing facility location approved by a municipality or county pursuant to former s. 381.986(8)(b), Florida Statutes 2016, is not subject to the location requirements of this subsection.

(c) A medical marijuana treatment center dispensing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location through a formal proceeding open to the public at which the county or municipality determines that the location promotes the public health, safety, and general welfare of the community.

Drug stores are currently allowed as a conditional use in the Village's B Business District, which requires site plan review before approval. The B District also allows other, unspecified conditional uses if they are determined to have similar impacts and be compatible: "Other uses with similar impacts as may be permitted by the Village Council, after a public hearing, provided that such uses are compatible with and do not adversely affect the character of the "B" Business District." With the state law requiring that marijuana uses be treated similarly to drug stores, it is likely a marijuana use would argue it could seek approval following the process for drug stores, and avoid having to meet the compatibility standard applicable to "other uses."

Given the constitutional amendment and the expansion of marijuana uses that may follow its potential approval, the Administration presented a discussion item to the Village Council at its July meeting, and received a consensus to proceed with preparing this Ordinance to establish clear regulations. The Ordinance first defines terms in Section 21-1, as follows:

Marijuana. Any strain of cannabis or marijuana, in any form, that is authorized by State law to be dispensed or sold in the State of Florida. May also be referred to as "Medical Marijuana." Includes marijuana for adult personal use and any other marijuana that may be authorized by State law.

Marijuana retail center. A retail establishment, licensed by the Florida Department of Health or other agency of the State of Florida as a "medical marijuana treatment facility," "medical marijuana treatment center," "dispensing organization," "dispensing facility" or similar use, that sells and dispenses medical marijuana, marijuana for adult personal use, or marijuana of any kind.

It then establishes regulations in Section 21-79, prohibiting the use throughout the Village. The Ordinance also takes the opportunity to more specifically and clearly provide for how prohibited uses will be interpreted.

Sec. 21-79. - Prohibited uses.

(a) *Marijuana retail center.* In accordance with F.S. § 381.986, as it may be amended, it is hereby expressly provided that marijuana retail centers are prohibited within the Village in each and every zoning district.

(b) *Other prohibited uses.* Except as provided in any applicable zoning district regulations, any use not specifically identified as a permitted, conditional, accessory, or temporary use within a zoning district is prohibited in that zoning district.

THE BAL HARBOUR EXPERIENCE

The adoption of this Ordinance is aligned with the Village's stated mission through *the Bal Harbour Experience*.

CONCLUSION

The adoption of this Ordinance establishes a clear prohibition of marijuana retail uses in conformance with state law, in advance of the potential voter approval of Amendment 3 approving marijuana for adult personal use in Florida on November 5, 2024. I recommend approval of this item following consideration of the recommendation of the Local Planning Agency.

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 DEFINITIONS AND REGULATIONS APPLICABLE TO MARIJUANA USES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.

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

WHEREAS, the use of marijuana has become increasingly prevalent following changes in state laws regarding its medical and recreational use; and

WHEREAS, the Florida Supreme Court has approved the inclusion of a question regarding the legalization of adult personal use of marijuana on the ballot for the upcoming election in November; and

WHEREAS, should the legislation be approved by voters, the effective date of the legalization of adult personal use of marijuana will be six months after voter approval, allowing sufficient time for the necessary regulatory frameworks to be established; and

WHEREAS, current Village regulations do not address marijuana uses, requiring Village interpretation as to their potential enforcement; and

WHEREAS, clear and detailed regulations will promote compliance, enhance public safety, and support the responsible use of marijuana; and

WHEREAS, accordingly, the Village Council desires to amend the Village Code to establish requirements related to marijuana within the Village; and

WHEREAS, the Village seeks to amend its Chapter 21 "Zoning", Article III "District Regulations" to create Section 21-79 to establish definitions and regulations applicable to marijuana uses; and

WHEREAS, the Administration recommended approval of this Ordinance in its report for the July 16, 2024 Village Council meeting; and

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

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

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

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

Section 2. Village Code Amended - Chapter 21. That Chapter 21 “Zoning” of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:¹

CHAPTER 21. - ZONING

ARTICLE I. - IN GENERAL.

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

(a) For the purpose of this chapter, which shall be known as the Zoning Ordinance of Bal Harbour Village, Florida, words used in the present tense include the future; the singular number includes the plural, and the plural the singular; the words "used for" include the meaning "designed for"; the word "structure" includes the word "building"; the word "shall" is mandatory and not directory; and the word "lot" includes the words "plot" and "tract".

(b) Words and terms not defined in this section shall be interpreted in accord with their normal dictionary meaning and customary usage.

(c) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a

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.

different meaning:

* * *

Lot Width means the mean width of a Lot measured at right angles to its depth.

Marijuana. Any strain of cannabis or marijuana, in any form, that is authorized by State law to be dispensed or sold in the State of Florida. May also be referred to as "Medical Marijuana." Includes marijuana for adult personal use and any other marijuana that may be authorized by State law.

Marijuana retail center. A retail establishment, licensed by the Florida Department of Health or other agency of the State of Florida as a "medical marijuana treatment facility," "medical marijuana treatment center," "dispensing organization," "dispensing facility" or similar use, that sells and dispenses medical marijuana, marijuana for adult personal use, or marijuana of any kind.

Mechanical Equipment includes but is not limited to air conditioning compressors and condensers, heating-ventilation equipment, electrical transformers, and pool or spa equipment, ground-mounted or on pads.

* * *

ARTICLE III. - DISTRICT REGULATIONS.

* * *

Sec. 21-79. - Prohibited uses.

(a) *Marijuana retail center.* In accordance with F.S. § 381.986, as it may be amended, it is hereby expressly provided that marijuana retail centers are prohibited within the Village in each and every zoning district.

(b) *Other prohibited uses.* Except as provided in any applicable zoning district regulations, any use not specifically identified as a permitted, conditional, accessory, or temporary use within a zoning district is prohibited in that zoning district.

Secs. 21-7980–21-95. - Reserved.

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 and they shall

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

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

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

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

PASSED AND ADOPTED on first reading this 17th day of September, 2024.

PASSED AND ADOPTED on second reading this ___ day of _____, 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.

