

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: October 24, 2023

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB23-0630. Live Local Act Administrative Review Process.**

RECOMMENDATION

Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

HISTORY

On September 13, 2023, at the request of Mayor Gelber and Commissioners Alex Fernandez, Laura Dominguez, and Steven Meiner, the City Commission referred an amendment pertaining to the Live Local Act (the Act) to the Planning Board (C4 R). The purpose of this referral is for staff to draft ordinance amendments to clarify the requirements of the Act within the City's development regulations and to address potential inconsistencies with maximum building height provisions set forth in the Act.

REVIEW CRITERIA

Pursuant to Section 2.4.2 of the Resiliency Code, in reviewing a request for an amendment to these land development regulations (LDRs), the board shall consider the following when applicable:

- 1. Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Consistent – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan.

- 2. Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

Consistent – The proposed amendment does not create an isolated district unrelated to adjacent or nearby districts.

- 3. Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

Consistent - The proposed ordinance does not modify the scale of development, as such, it is not out of scale with the needs of the neighborhood.

4. Whether the proposed change would tax the existing load on public facilities and infrastructure.

Consistent – The proposed ordinance will not affect the load on public facilities and infrastructure as the maximum floor area ratio (FAR) is not modified.

5. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.

Not applicable – The proposed amendment does not modify district boundaries.

6. Whether changed or changing conditions make the passage of the proposed change necessary.

Consistent – The recent adoption of the Live Local Act by the Florida Legislature makes the passage of the proposed change necessary.

7. Whether the proposed change will adversely influence living conditions in the neighborhood.

Consistent – The proposed ordinance amendment will not adversely affect living conditions in the neighborhood.

8. Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.

Consistent – The proposed ordinance will not create or increase traffic congestion from what is currently permitted, as the maximum allowable intensity (FAR) in the applicable zoning districts is not being modified by this ordinance.

9. Whether the proposed change will seriously reduce light and air to adjacent areas.

Consistent – The proposed change will not impact light and air on adjacent areas.

10. Whether the proposed change will adversely affect property values in the adjacent area.

Consistent – The proposed change will not adversely affect property values in adjacent areas.

11. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.

Consistent – The proposed change will not be a deterrent to the improvement or

development of properties in the City.

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

Not applicable.

13. **Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

Not applicable.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 7.1.2.4 of the LDRs establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

Consistent – The proposal will not impact the resiliency of the City with respect to sea level rise.

- (3) **Whether the proposal is compatible with the City’s sea level rise mitigation and resiliency efforts.**

Consistent – The proposal is compatible with the City’s sea level rise mitigation and resiliency efforts.

BACKGROUND

On March 24, 2023, the Florida Legislature adopted Senate Bill 102, known as the “Live Local Act” which, in pertinent part, provides development incentives and overrides certain local zoning regulations for developments that provide 40% workforce housing in commercial, industrial, and mixed-use districts. Specifically, the Live Local Act amends section 166.04151, Florida Statutes, entitled “Affordable Housing,” to add the following text:

(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.

For reference, section 420.0004, 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 as indicated in subsection (9), subsection (11), subsection (12), or subsection (17).

(9) *“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.*

(11) *“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.*

(12) *“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.*

(17) *“Very-low-income persons” means one or more natural persons or a family, not including students, 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.*

The Live Local Act allows for development to provide housing for “Moderate-income persons,” which is for households with an income that is less than 120 percent of the *median annual adjusted gross income for households within the metropolitan statistical area (MSA)*. This definition is more closely related to the City of Miami Beach’s definition of workforce housing, which allows for incomes up to 140 percent of the median family income.

ANALYSIS

In accordance with the direction of the City Commission, as more expressly provided in the referral memo, an ordinance has been drafted to codify the applicable provisions of the Live Local Act (the Act) and how they will be applied within the City. The proposed ordinance provides a clear process that is consistent with the Act, and for which applicable projects will follow. In addition, the ordinance clarifies the applicable zoning districts that are subject to the provisions of the Act and that existing development criteria will continue to be applied as part of the site plan review process. (see attached map).

The proposed ordinance creates a defined process for the review of applicable projects in accordance with the pertinent provisions of the Comprehensive Plan and the Land Development Regulations of the City Code (LDR’s) including, but not limited to, all applicable review criteria.

Prior to an applicant submitting plans for a building permit, the Planning Director or designee will review the proposal in accordance with the Certificate of Appropriateness, Design Review, or Conditional Use Permit (CUP) criteria, as applicable.

The proposed ordinance also clarifies that all residential and non-residential components of a site plan be on the same lot or unified development site. Additionally, the residents of all units of a building, including affordable, workforce, and market rate units, must have access to all common areas and amenities, and such access be provided through the same principal entrance used by all dwelling units.

The Act requires that in cities that have designated less than 20 percent of their land area for commercial or industrial uses, that projects taking advantage of the Act be mixed-use. As approximately 11 percent of the city is located within a commercial or industrial district, the proposed ordinance requires that projects taking advantage of the Act be mixed-use.

SUMMARY

The proposed ordinance provides a clear road map for future projects that may seek to utilize the provisions of the Live Local Act. The proposed ordinance also ensures that such new development projects comply with all applicable provisions of the City Code.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

LIVE LOCAL ACT ADMINISTRATIVE REVIEW PROCESS

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE MIAMI BEACH RESILIENCY CODE, AT CHAPTER 2, ENTITLED “ADMINISTRATION AND REVIEW PROCEDURES,” ARTICLE V, “REZONINGS AND DEVELOPMENT APPROVALS,” TO ESTABLISH SECTION 2.5.5, ENTITLED “DEVELOPMENT APPROVALS UNDER THE LIVE LOCAL ACT,” TO ESTABLISH REGULATIONS AND PROCEDURES FOR THE REVIEW AND APPROVAL OF DEVELOPMENTS PURSUANT TO THE LIVE LOCAL ACT AS DEFINED IN CHAPTER 2023-17, LAWS OF FLORIDA; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Land Use and Housing Elements of the Miami Beach Comprehensive Plan include policies to incentivize the development and retention of workforce and affordable housing; and

WHEREAS, the City of Miami Beach (the “City”) finds that there is a shortage of affordable rentals within the City limits; and

WHEREAS, the Governor signed into law Senate Bill 102 “Live Local Act” codified at Chapter 2023-17, Laws of Florida, which is broad ranging legislation intended to streamline and incentivize affordable housing developments within the State of Florida (the “Act”); and

WHEREAS, the Act preempts certain use, density, and height regulations for qualifying developments that provide for the development of affordable multi-family rental housing in commercial, industrial, and mixed-use areas; and

WHEREAS, the City Commission supports affordable housing and finds it necessary to revise the City Code in order to establish equitable and respectful regulations for the development of mixed income developments as well as to implement the provisions of the Act; and

WHEREAS, the Act provides that, if a municipality has designated less than 20 percent of the land area within its jurisdiction for commercial or industrial use, it is only required to allow multi-family development pursuant to the Act as part of a mixed-use residential development; and

WHEREAS, approximately 11 percent of the land area within the City of Miami Beach is designated for commercial or industrial use; and

WHEREAS, given that less than 20 percent of the land area of the City is designated for commercial and industrial use, any development of land approved pursuant to the Act must consist of a mixed-use residential project as defined in the Act; and

WHEREAS, the Act requires that “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;” and

WHEREAS, the Miami Beach Resiliency Code provides reduced parking requirements for workforce and affordable housing units; and

WHEREAS, the Act provides that except as otherwise provided for within the Act development authorized under the Act must comply with all applicable state and local laws and regulations; and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.

SECTION 1. Chapter 2 of the Miami Beach Resiliency Code, entitled “Administration and Review Procedures,” Article 5, “Rezoning and Development Approvals,” is hereby amended to establish Section 2.5.5, entitled “Development Approvals Under the Live Local Act,” as follows:

Chapter 2 ADMINISTRATION AND REVIEW PROCEDURES

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ARTICLE V – Rezoning and Development Approvals

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2.5.5 Development Approvals Under the Live Local Act

2.5.5.1 Applicability

1. Generally. The provisions of this part shall apply to any application for the development of land authorized under Section 166.04151(7), Florida Statutes, known as the Live Local Act.
2. Applicability. Except as otherwise provided, any application for development approval shall comply with all applicable procedures and requirements of the City Code. Only properties within the zoning districts listed below are eligible to use the provisions of Section 166.04151(7), Florida Statutes:
 1. CD-1, Commercial, low intensity
 2. CD-2, Commercial, medium intensity
 3. CD-3, Commercial, high intensity
 4. MXE, Mixed use entertainment
 5. TC-1, North Beach Town Center core
 6. TC-2, North Beach Town Center mixed-use
 7. TC-C, North Beach Town Center-Central Core
 8. C-PS1, Commercial limited mixed use
 9. C-PS2, Commercial general mixed use

- 10. C-PS3, Commercial intensive mixed use
- 11. C-PS4, Commercial intensive phased bayside
- 12. RM-PS1, Residential mixed-use development
- 13. I-1, Industrial, light

2.5.5.2 AFFORDABILITY COMMITMENT.

Pursuant to Section 166.04151(7), Florida Statutes, at least 40 percent of the multi-family residential dwelling units shall remain affordable, as defined in Section 420.0004, Florida Statutes, for a period of at least 30 years. This requirement shall be incorporated as a condition into any administrative approval. Furthermore, as a prerequisite to the issuance of a building permit, the property owner shall execute and deliver to the City for recordation in the public records, on a form approved by the City Attorney, a covenant, declaration of restriction, or other deed restriction in favor of the City ensuring compliance with this affordability requirement.

2.5.5.3 SITE PLAN APPROVAL.

- a. Site Plan Approval Prior to Building Permit. Site plan approval for development that complies with Section 166.0451(7), Florida Statutes shall be required prior to the submittal of an application for a building permit.
- b. Administrative Review of Site Plans. Site plan approval for development that complies with Section 166.0451(7), Florida Statutes and the applicable City Code provisions shall be subject to administrative approval by the Planning Director. The Planning Director may issue an applicable Certificate of Appropriateness, Design Review Approval Order, or Conditional Use Permit, for projects that comply with the requirements of this section.
- c. Variances and Waivers. Developments that seek waivers or variances of the land development regulations shall not be eligible for administrative review of site plans by the Planning Director.
- d. Warrants. Developments that seek warrants from the City Commission shall not be eligible for administrative review of site plans by the Planning Director.
- e. Conditional Uses. Only conditional use permit applications for Neighborhood Impact Structures or Neighborhood Impact Lots shall be eligible for administrative review of site plans by the Planning Director. All other conditional uses shall require the review and approval of the Planning Board.

2.5.5.4 DENSITY.

Any Development that complies with Section 166.0451(7), Florida Statutes, shall not exceed the highest allowed density permitted under Section 166.04151(7), Florida Statutes.

2.5.5.5 HEIGHT.

Any Development that complies with Section 166.0451(7), Florida Statutes, shall not exceed the maximum Height permitted under Section 166.04151(7), Florida Statutes.

2.5.5.6 DEVELOPMENT STANDARDS AND CRITERIA.

Any Development that complies with Section 166.0451(7), Florida Statutes, shall comply with the following:

- a. Equivalent Treatment of all Dwelling Unit Requirements. All affordable and workforce dwelling units and market rate dwelling units shall be located within the same site. All common areas and amenities shall be accessible and available to all residents (both affordable and market rate dwelling units). Access to the required affordable dwelling units shall be provided through the same principal entrance(s) utilized by all other dwelling units in the development.
- b. Mixed-Use Residential. Any development that is administratively approved pursuant to this part shall consist of a mixed-use residential project in accordance with the provisions of Section 166.04151(7), Florida Statutes.
- c. Unified Lot. All residential and non-residential components of the site plan shall be located on the same lot or unified development site.
- d. Compliance with Land Development Regulations. No development shall be administratively approved unless and until the Planning Director has determined that the site plan complies with all applicable land development regulations that are not pre-empted by the Live Local Act.
- e. Compliance with Comprehensive Plan. No development shall be administratively approved unless and until the Planning Director has determined that the site plan complies with all applicable provisions of the Comprehensive Plan that are not pre-empted by the Live Local Act.
- f. Criteria. No development shall be administratively approved unless and until the Planning Director has determined that the site plan complies with the following:
 1. The design review or certificate of appropriateness criteria, as applicable;
 2. The conditional use criteria, as applicable;
 3. The sustainability and resiliency criteria, as applicable;
 4. Other criteria contained in the Resiliency Code, as applicable; and
 5. Other criteria contained in the Comprehensive Plan, as applicable.

2.5.5.7 APPEALS.

Appeals. Any appeal of the decision of the planning director shall be filed pursuant to the requirements of chapter 2, article IX of these land development regulations.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

SECTION 3. CODIFICATION.

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this _____ day of _____, 2023.

ATTEST:

Mayor

Rafael E. Granado, City Clerk

First Reading:
Second Reading:

Verified By: _____
Thomas R. Mooney, AICP
Planning Director