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MIAMI BEACH
PLANNING DEPARTMENT

Staff Report & Recommendation — PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: May 28, 2024

FROM: Thomas R. Mooney, AICP
Planning Director

DS for TRM

SUBJECT: **PB24-0675. Live Local Application Fees.**

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

HISTORY
On March 13, 2024, at the request of Commissioner Kristen Rosen Gonzalez, the Mayor and City Commission referred a proposal to establish applicable administrative review fees for live local act projects (Item C4 N) to the Land Use and Sustainability Committee (LUSC) and Planning Board. On May 1, 2024, the LUSC discussed the item and recommended that the Planning Board transmit an ordinance establishing administrative review fees related to the Live Local Act with a favorable recommendation to the City Commission.

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 at least 40% workforce housing in commercial, industrial, and mixed-use districts. The act provides that except for those regulations that are specifically pre-empted, all other provisions of local regulations apply.

On January 31, 2024, the City Commission adopted Ordinance No. 2024-4584, amending the Land Development Regulations of the City Code (LDRs) to create an administrative review process for development applications submitted under the Live Local Act. The Ordinance created section 2.5.5 in the LDRs, entitled "Development Approvals Under the Live Local Act", which provides for an application requirement, eligible districts, an affordability covenant, minimum public notice, detailed review criteria, as well as compliance with the applicable provisions of the LDRs and Comprehensive Plan. The ordinance also requires equivalent treatment, including equal access to amenities for affordable, workforce, and market-rate units.

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:

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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.**

   Not Applicable – The proposed ordinance does not create any district.

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

   Not Applicable – The proposed ordinance is not out of scale with the needs of any neighborhood.

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

   Not Applicable – The proposed ordinance will not affect the load on public facilities and infrastructure.

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 need to accommodate changes in the development review process due to state requirements make the passage of the proposed change necessary.

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

   Not Applicable – The proposed ordinance amendment does not affect living conditions.

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.**

   Not Applicable – The proposed ordinance will have no impact on traffic congestion or levels of service.

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

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Not Applicable – The proposed change will have no impact on light and air on adjacent areas.

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

Not Applicable – 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 certain 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.

Not applicable.

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

Not applicable.

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

Not applicable.

ANALYSIS

The attached ordinance establishes applicable fees for applications submitted under the Live Local Act, so that the City can recover the costs of review. The city has four (4) land use boards (LUBs):

- Design Review Board (DRB).

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- Historic Preservation Board (HPB).
- Planning Board.
- Board of Adjustment (BOA).

Currently, development applications are subject to the following fees, adjusted annually for consumer price index (CPI), when they are submitted for review and approval from the city's LUB's:

- Fee for public hearing: $3,125.00.
- Per square foot of floor area fee: $0.40 per square foot up to a maximum of $40,000.00 (DRB and HPB only).
- Fee per variance: $939.00.
- Mailing fee, per address within 375 feet: $6.08 per address.
- Board Order Recording: $128.00 per page plus $16.00 for every additional page.

Additional fees are assessed for newspaper advertising, courier of packets to board members, and site postings. All these fees are utilized to recover the cost of staff review and recommendations, complying with notice requirements, and hosting the public meetings. Currently, these fees are not applicable to Live Local Act Projects. The proposed ordinance applies fees similar to those noted above for LUB review and approvals, to projects submitted under the Live Local Act, for purposes of cost recovery.

However, section 2.2.3.5 of the LDRs currently exempts workforce and affordable housing developments from many of the land use board fees, including the application fee for public hearing and the per square foot of floor area fee. Consistent with the provisions of section 2.2.3.5, no review fees would be charged for the portions of a live local project that contain workforce housing units. The proposed fees would only be applicable to the non-workforce housing portions of a project.

For example, these review fees would be assessed for the market-rate apartments as well as any allowed accessory uses, such as retail, restaurants, and offices. Also, if a Live Local Act project sought a variance, the workforce and affordable housing portions of the project would be exempt from the applicable fees. Notwithstanding the foregoing, since Live Local Act projects will likely include a significant market rate component, this would offset the cost associated with any fees assessed.

The following is the draft fee structure proposed; the fee values will be established in Appendix A and will be subject to CPI adjustment:

Live Local Act – Required Fees:

- Site Plan Review: $3,125.00.
- Per square foot of gross floor area fee: $0.40 per square foot up to a maximum of $40,000. This per square foot fee shall only apply to the non-workforce and non-affordable housing portions of the project.
- Mailing fee, per address within 375 feet of the subject property: $6.08 per address.

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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 Application Fees

ORDINANCE NO. _____

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," AT SECTION 2.5.5, ENTITLED "DEVELOPMENT APPROVALS UNDER THE LIVE LOCAL ACT," TO ESTABLISH ADMINISTRATIVE FEES FOR THE REVIEW AND APPROVAL OF DEVELOPMENTS PURSUANT TO THE LIVE LOCAL ACT (INCLUDING SECTION 166.04151(7), FLORIDA STATUTES); AND BY AMENDING THE CITY CODE AT "APPENDIX A – FEE SCHEDULE," TO PROVIDE FOR ADMINISTRATIVE FEES FOR THE REVIEW AND APPROVAL OF DEVELOPMENTS UNDER THE LIVE LOCAL ACT; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, in 2023, the Governor signed into law Senate Bill 102, known as the "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, on January 31, 2024 the Mayor and City Commission adopted Ordinance No. 2024-4584, establishing administrative and review procedures for development approvals under the Act; and

WHEREAS, the Act requires that the site plan of qualified developments be reviewed for compliance by the Planning Director; and

WHEREAS, provided that projects submitted under the Act consist of at least 40% workforce housing units, projects may include market rate housing; and

WHEREAS, per Section 2.2.3.5 of the Resiliency Code, application fees for public hearing for workforce housing projects are exempt; and

WHEREAS, the City recognizes the need to recover costs associated with the review of portions of projects submitted under the Act that do not qualify as workforce housing units, ensuring that the financial burden of regulatory oversight is not unfairly borne by the taxpayers;

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, entitled "Administrative and Review Procedures", Article 5, entitled "Rezonings and Development Approvals," at Section 2.5.5, entitled "Development Approvals

Under the Live Local Act," is hereby amended as follows:

CHAPTER 2
Administrative and review procedures

* * *

ARTICLE V. – Rezonings and development approvals

* * *

2.5.5 Development Approvals Under the Live Local Act

2.5.5.1 Applicability

a. Generally. The provisions of this section shall apply to any application for the development of land authorized under Section 166. 04151(7), Florida Statutes, known as the Live Local Act. Except as otherwise provided, any application for development approval shall comply with all applicable procedures and requirements of the City Code and Land Development Regulations.
b. Affected areas. Only properties within the zoning districts listed below are eligible for the zoning incentives in 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 in a qualifying project 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 of 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, in a form approved by the City Attorney, a declaration of restrictive covenants 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 by the Planning Director for development that qualifies for the zoning incentives set forth in Section 166.0451(7), Florida Statutes, shall be required prior to the submittal of an application for a building
permit.

b. Minimum Notice Requirements. A minimum 30- day mail notice shall be required for all properties within 375 feet of the property that is the subject of the application. The applicant shall be responsible for satisfying this 30- day mail notice requirement (including all associated costs). Additionally, a copy of the application and all exhibits shall be transmitted electronically to all registered neighborhood association(s) in the affected area. For properties located within a local historic district, a copy of the application and exhibits shall be transmitted electronically to the Miami Design Preservation League (MDPL).

c. Administrative Review of Site Plans. Site plan approval for development that complies with Section 166.0451(7), Florida Statutes, this section, and all other applicable requirements of the Land Development Regulations and Comprehensive Plan 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.

d. Variances and Waivers. Any applicant that seeks a waiver or variance from the Land Development Regulations shall not be eligible for administrative review of a site plan by the Planning Director.

e. Warrants. Any applicant that seeks a warrant from the City Commission shall not be eligible for administrative review of a site plan by the Planning Director.

f. Conditional Uses. Only conditional use permit applications for Neighborhood Impact Structures or Neighborhood Impact Lots shall be eligible for administrative review of a site plan 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 qualifies for the zoning incentives in 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 qualifies for the zoning incentives in 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 qualifies for the zoning incentives in 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 (i.e. residents of 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 section 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 and 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 Land Development Regulations, except to the limited extent that any such provisions are preempted by Section 166.04151(7), Florida Statutes. For example, but without limitation, each site plan shall be subject to the maximum intensity (floor area and floor area ratio
for the underlying zoning district, and all other applicable requirements of the Land Development Regulations.

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, except to the limit extent that any such provisions are preempted by Section 166.04151(7), Florida Statutes. For example, but without limitation, each site plan shall be subject to public facility levels of service, concurrency review, and the City' s mobility - fee, and all other applicable requirements of the Comprehensive Plan.

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 Required Fees. Any applicant requesting a review of any application for the development of land authorized under Section 166.04151(7), Florida Statutes, known as the Live Local Act, shall pay, upon submission, the applicable fees below. The fees set forth herein, and as outlined in appendix A, are for the purpose of defraying expenses for public notices, and administrative costs associated with processing and analyzing each request or application. These fees shall be evaluated and adjusted annually based on the consumer price index for all urban consumers (CPI-U). No application shall be considered complete until all requested information has been submitted and all applicable fees are paid. The costs associated with notices are the responsibility of the applicant. There shall be no refund or adjustment of fees. Any unpaid fees shall become a lien against the property.

1. Application for site plan Review
2. Application for site plan review approval fee per gross square foot. This per square foot fee shall only apply to the non-workforce and non-affordable housing portions of the project.
3. Application for administrative review for Neighborhood Impact Structures or Neighborhood Impact Lots.
4. Mail Notice (per address)

~~2.5.5.7~~ 2.5.5.8 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. Appendix A, entitled "Fee Schedule," is hereby amended as follows:

FEE SCHEDULE

Pursuant to section 1-15 of this Code, this appendix includes all fees and charges established by the city commission that are referred to in the indicated sections of the Code of Ordinances. Certain specified fees and charges, as identified herein, shall be subject to annual adjustment by the city manager, pursuant to the provisions of section 1-15 and this Appendix "A". A schedule of all current city fees and charges as set forth in Appendix "A" shall be maintained on the city's website.

* * *

Section of this Code	Description	FY2024 Fee	Annual adjustment (References shown are defined at the end of this Appendix A)
	* * *		
	Subpart B. Land Development Regulations		
	Chapter 2. Administrative and Review Procedures		
	* * *		
2.5.5.7 RC	Live Local Required Fees		

	Application for site plan review	3,125.00	[A]
	Site plan review per gross square foot. This per square foot fee shall only apply to the non-workforce and non-affordable housing portions of a project	0.40, up to a maximum of $40,000	[B]
	Application for administrative review for Neighborhood Impact Structures or Neighborhood Impact Lots.	3,125.00	[A]
	Mail Notice (per address)	6.08	[B]
	* * *		

NOTES ON ANNUAL ADJUSTMENTS

[A] Indexed to CPI - Rounded up to the nearest dollar

[B] Indexed to CPI - Rounded up to the nearest cent

* * *

SECTION 3. REPEALER.

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

SECTION 4. 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 re-numbered or re-lettered to accomplish such intention; and that the word “ordinance” may be changed to “section” or other appropriate word.

SECTION 5. SEVERABILITY.

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

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this _____ day of _____, 2024.

Steven Meiner, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

First Reading: June 26, 2024
Second Reading: July 24, 2024

City Attorney Date

Verified By:
Thomas R. Mooney, AICP
Planning Director

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