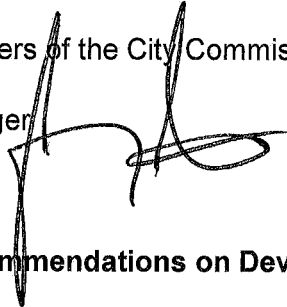


MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Jimmy L. Morales, City Manager 

DATE: January 16, 2019

SUBJECT: **DISCUSSION: FCWPC Recommendations on Developer Fees**

HISTORY/BACKGROUND

On December 14, 2018, the Finance and City Wide Projects Committee (FCWPC) discussed an item pertaining to developer fees.

ANALYSIS

The Finance Committee referred a discussion item to the January 16, 2019 Commission meeting to address the following:

1. **A referral to the Planning Board of an ordinance pertaining to City Commission referrals for Comprehensive Plan and Land Development Regulation Amendments.**

The attached draft ordinance, which was also recommended for referral to the Planning Board by the Land Use and Development Committee on May 23, 2018, modifies the provisions for Land Development Regulations and Comprehensive Plan Amendments. Specifically, all applications for zoning and comprehensive plan amendments would now be subject to the fees in appendix A that are currently only applicable to private applications. The LUDC also recommended that a 4/7 vote for City Commission waiver of such fees be included, and that the referral track the proposed fee modification pending before the Finance Committee.

The proposed draft ordinance also modifies the threshold requirement for amendments that propose to change the list of permitted, conditional, or prohibited uses in a zoning category, or the actual zoning map designation of a parcel or parcels of land or the future land use map or element of the comprehensive plan. In this regard, the requirement for such applications to be submitted by an owner with a majority of lot frontage in the area and that the area contain at least 400 feet of lot frontage on one public street or a parcel of not less than 80,000 square feet is proposed to be removed. The reason for this proposed change is to allow for small areas to be considered as a private application.

2. **Direction to the Administration to develop an outline for a process to**

implement administrative variances.

The Planning Department has put together a comprehensive list of variance applications that are common, and are due primarily to City Code regulations that are somewhat out dated. Amendments to the Land Development Regulations will be required to modify existing code requirements and remove the need for these types of common variances. In order to address this comprehensively, a separate referral to the Land Use and Development Committee is recommended.

Additionally, in order to create an administrative waiver or variance process for minor items such as small setback variations due to unforeseen construction issues or irregular lots, a clearly defined process will need to be created in the Land Development Regulations of the City Code. The City Attorney will need to opine on whether modifications to the Related Special Acts are also required. In order to address this comprehensively, a separate referral to the Land Use and Development Committee is recommended.

3. Direction to the Administration to provide background and outline information for an update to the Land Development Regulations of the City Code.

The Administration believes that there is an opportunity for the creation of a Resiliency Code, which maintains the requirements of the current code, and provides for much needed code updates and simplification. There are model resilience codes in other coastal communities (like Norfolk, VA) that staff can research as best practice. Additionally, direction on funding will be needed, particularly as we begin the budget process for FY 2019-2020. If there is consensus on this endeavor, it is recommended that it be further evaluated pursuant to a separate referral to the Land Use and Development and Finance Committees.

4. Amend Appendix A (fees) to impose a temporary cap on the per square foot fee associated with Land Use Board applications. The Committee recommended an initial cap of \$40,000.00 and asked the Administration to study further.

The Administration is analyzing the revenue impacts of the proposed cap on the per square foot fee for new development projects. In order to offset the loss of revenue associated with a cap, as well as revenue reductions potentially associated with a lesser number of variance applications, corresponding increases in fees associated with projects within historic districts are being considered.

The Administration believes that the creation of a cap on the per square foot fee should be implemented as part of a comprehensive fee adjustment. Such an adjustment, and corresponding revenue analysis, can be provided to the Commission on February 13, 2019. In the interim, and subject to City Commission authorization, the Administration can place a hold on per square foot fees that exceed \$40,000, until an amendment to appendix A is adopted at second reading.

5. Explore a framework for allowing future credits of fees paid in excess of the cap amount.

The Commission will need to have discussion to develop policy direction on this item,

particularly with regard to how the credits may be applied and how far they should go back. If there is consensus on exploring such a process, the Administration can bring back potential options at a subsequent Commission meeting, or at Commission Committee. Additionally, depending upon the extent and nature of any future credits, budgetary impacts will need to be considered.

CONCLUSION

In view of the foregoing analysis, the Administration recommends that the City Commission discuss the item and provide appropriate policy direction, as may be needed. Additionally, the following is recommended:

1. Refer the attached draft ordinance pertaining to City Commission referrals and private applications for LDR and Comprehensive Plan Amendments to the Planning Board.
2. Refer the following items to the February 2019 Commission Committees:
 - a. A referral to the Land Use and Development Committee regarding specific amendments to the Land Development Regulations of the City Code to address common variance requests.
 - b. A referral to the Land Use and Development Committee regarding the creation of an Administrative Variance procedure.
 - c. A referral to the Land Use and Development Committee and Finance and City Wide Projects Committee regarding an update of the Land Development Regulations of the City Code and the creation of a Resiliency Code.
3. Deliberate and provide policy direction to bring an amendment to Appendix A (Fees) to the City Commission for First Reading on February 13, 2019. Additionally, provide direction to the City Manager to allow for a hold on per square foot fees for Design Review and Historic Preservation Board applications that exceed \$40,000, until an amendment to appendix A is adopted at second reading. Such a hold would be applicable until a second reading adoption of an amendment to Appendix A, and any relevant development application would be required to acknowledge such.
4. Deliberate and provide policy direction regarding the creation of a process for applying future credits to previously paid Land Use Board fees in excess of an established cap on per square foot fees.

JLM/SMT/TRM

ATTACHMENT – Draft Referral Ordinance

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City Commission Sponsored Comprehensive Plan and LDR Amendments
ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED, "LAND DEVELOPMENT REGULATIONS," BY AMENDING CHAPTER 118, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE III, ENTITLED "AMENDMENT PROCEDURE," AT SECTION 118-162, ENTITLED "PETITION FOR CHANGES AND AMENDMENTS," TO CLARIFY WHO MAY SUBMIT AN APPLICATION FOR AN AMENDMENT TO THE COMPREHENSIVE PLAN/FUTURE LAND USE ELEMENT OR MAP, AND/OR THE CITY'S LAND DEVELOPMENT REGULATIONS; PROVIDING CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, who can submit an application for a land development regulation amendment or comprehensive plan amendment is regulated through Section 118-162, of the City's Land Development Regulations (LDRs); and

WHEREAS, the City Commission has become concerned by the number of private applicants/developers lobbying the City Commission to sponsor land development amendments on their behalf, thus making the City the applicant; and

WHEREAS, by having the City Commission sponsor the amendments, the applicants/developers do not have to pay the fees associated with the application, which means the private applicants/developers do not cover the City's staffing and other costs associated with creating the new legislation; and

WHEREAS, the City has determined that it did not collect \$585,256, in a two year period, in application fees for land development regulation and comprehensive plan applications, which have resulted in a direct benefit specific to the applicants/developers (that had requested City Commission sponsorship of the legislative changes to the zoning regulations); and

WHEREAS, the Mayor and City Commission seek to provide guidelines and rules relating to who can submit an application pursuant to Section 118-162, vis a vis when the Mayor and City Commission should be an applicant for a zoning modification, and when a private applicant/developer should be required to be the named applicant, and pay the associated application fees; and

WHEREAS, the below modifications shall assist the City in achieving the aforementioned goals.

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

SECTION 1. That Chapter 118 of the City Code of the City of Miami Beach entitled, "Administration and Review Procedures," Article III, entitled "Amendment Procedure," at Section 118-162, entitled "Petition for changes and amendments" is hereby amended, as follows:

CHAPTER 118

ADMINISTRATION AND REVIEW

PROCEDURES ARTICLE III. AMENDMENT PROCEDURE

Sec. 118-162. - Petition for changes and amendments.

(a) An application for a land development regulation amendment which would change the actual list of permitted, conditional, or prohibited uses in a zoning category, or the actual zoning map designation of a parcel or parcels of land or the future land use map or element of the comprehensive plan, may be submitted to the planning and zoning director by the city manager, city attorney, or upon an adopted motion of the city commission, planning board, board of adjustment, or historic preservation board (with regard to the designation of historic districts, sites or matters that directly pertain to historic preservation); or by an owner(s) or developers of property ~~a majority of lot frontage in the area which is the subject of the proposed change, provided that the area shall contain not less than 400 feet of lot frontage on one public street or a parcel of not less than 80,000 square feet.~~ Matters submitted by the city manager or city attorney shall first be referred to the City Commission, which referral shall also be approved by adopted motion of the City Commission. For purposes of this section, the submittal of an application for a land development regulation amendment or comprehensive plan amendment shall also be deemed to refer to and include the sponsorship and/or referral of an ordinance which seeks to amend the land development regulation and/or comprehensive plan.

The City Commission, planning board, board of adjustment, and/or historic preservation board shall not submit an application that: (1) is limited to a small (less than a five (5) acre) geographic area; or (2) does not impact the entirety of the applicable zoning district or overlay district. This shall not prevent the filing of an application to create a new zoning district or overlay district, regardless of size. If an application is filed by one or more property owners, the applicant(s) shall be required to pay all application filing fees and costs for any such application. Failure to pay the applicable fees and costs shall preclude scheduling and hearing of the application by the Planning Board or City Commission.

(b) The filing fees and costs in subsection (a) may be waived by a 4/7th vote of the City Commission based upon a finding of "good cause." "Good cause" shall be defined as:

(i) Upon written recommendation of the city manager, of a documented financial hardship of a property owner(s) or developer(s). Saving a property owner(s) or developer(s) the cost of doing business in the City by waiving the application fees and costs shall not be deemed a basis for claiming a financial hardship.

(ii) When requested, in writing, by a non-profit organization, neighborhood organization, or homeowner's association, and such request provides a

public benefit to the residents or businesses of the City, or an articulated public purpose is achieved by enacting the applicable amendment.

(iii) The City Manager determines, in writing, that modification of the City's code is necessary due to a change in federal law, state law, and/or best practices.

~~(b)~~(c) A request to amend these land development regulations or comprehensive plan which does not change the actual list of permitted, conditional or prohibited uses in a zoning category or change the actual zoning map designation of a parcel or parcels of land may be submitted by those eligible to submit an application pursuant to subsection (a) of this section, or by any person who owns property that is affected by the zoning regulations he wishes to amend.

Any applicant or his representative shall file an application with the planning ~~department, design and historic preservation division~~ in accordance with a form approved by the city attorney and shall supply all information pertinent to the proposed amendment as requested by the planning ~~department, design and historic preservation division~~.

~~(c)~~(d) Any applicant requesting a public hearing on any application pursuant to this section, shall pay, upon submission, the applicable fees in section 118-7 and Appendix A - Fee Schedule. No application shall be considered complete until all requested information has been submitted and all applicable fees paid.

~~(d)~~ (e) Upon receipt of a completed application, the planning and zoning director shall transmit the application, along with his analysis and recommendations, regarding the proposed amendment to the planning board for review.

SECTION 2. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

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 _____, 2019.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

First Reading: _____, 2019

Second Reading: _____, 2019

(Sponsored by Commissioner John Elizabeth Alemán)

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

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