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COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: February 13, 2019

SUBJECT: **ORDINANCE – AMENDMENT TO APPENDIX A PERTAINING TO A CAP ON THE PER SQUARE FOOT FEE FOR HPB, DRB AND STAFF DRY RUN REVIEWS**

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission approve the attached ordinance amending appendix A at first reading, and set a second reading public hearing for March 13, 2019.

HISTORY

On December 14, 2018, the Finance and City Wide Projects Committee (FCWPC) discussed an item pertaining to developer fees associated with land use boards. The Committee recommended that the City Commission 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 the figure further.

On January 16, 2019 the City Commission discussed a proposed amendment to appendix A (Fees) and directed the City Administration to bring back an ordinance amending appendix A (fees) to create a cap on the per square foot fees for certain land use boards for first reading on February 13, 2019. Additionally, the City Commission directed the City Manager to allow for a temporary 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. This hold is applicable until a second reading adoption of an amendment to appendix A, and any relevant development application has been required to acknowledge such.

BACKGROUND

In 2014 a review of the City's adopted Development Review Fee Schedule was conducted to determine if the fees were still at the appropriate rates 10 years after the prior review. With variations in economic conditions and increased rates for external costs, the fee schedule did not accurately represent the costs to the City, and following multiple presentations and favorable recommendations from, Finance and Citywide Committee, Land Use Development Committee, Planning Board, and four hearings at City Commission, the fees were adjusted in October of 2015, with the intent to recover costs associated with development. In consideration of ongoing projects, the new fees

were not implemented until May of 2016. Additionally, prior fees were honored for projects which had applied for board approval or building permit.

On April 26, 2017, the City Commission referred an item to the Finance and Citywide Projects Committee to discuss the fees charged to developers to appear before the city's land use boards. City staff conducted internal reviews and engaged the firm of Keith & Schnars to expand on the city's review, compare City of Miami Beach fees and processes to other cities as well as provide recommendations.

The fee review and analysis process included comparing the fee schedule in the City of Miami Beach with the fee schedules in the following municipalities: City of Delray Beach, City of Fort Lauderdale, City of Hollywood, Miami-Dade County, City of Miami, City of Coral Gables, and City of Key West. Meetings were held with city staff and stakeholders to gather background information and data on recent projects and some history on why the fees are not covering enough of the expenses that they are intended to cover. Stakeholder groups included the Miami Dade Preservation League and those who are in the development community, as members of the Chamber of Commerce.

In comparison with other municipal fee schedules, several fees had major variations (higher and lower), whereas others were approximately the same. However, the comparison is not straightforward. Each of those municipalities has different expenses that are intended to be covered by the fees, plus costs vary over time and it may depend on when their fee schedules were adopted. Most of the development review processes in other cities are subsidized by their general fund. Prior to CMB adjusting and updating the fee schedule in 2015, departments like Planning were being subsidized by the general fund by 72%. As such the fee structure that existed at the time was only capturing 28% of the costs associated with Plan review. After adoption in 2015 and implementation in May of 2016, the fee structure is designed to capture sufficient revenue to offset expense.

Another factor is the Consumer Price Index (CPI-U), which has increased annually in all but one of the past 10 years. A \$20,000 project in 2007 would cost \$23,633 today and a \$100,000 project in 2007 would cost \$118,165 today. CPI-U and other fee increases were not adjusted in the City's fee schedule until 2015 when the fees were analyzed, revised and a new fee schedule adopted.

FINANCE AND BUDGET ANALYSIS

Upon an extensive review of the City's projected revenues, the Administration does have some concerns with the impact that a uniform cap on the per square foot fee for certain Land Use Board applications will have on revenues. As such, in order to minimize the impact of modifications to the fee structure on revenues, the Administration is recommending that the per-square-foot fee also be applied to all types of development equally (with some exceptions), and that the fee be reduced from the current 0.50 per-square-foot fee to 0.30 per-square-foot.

<u>Current</u>	<u>Proposed</u>	<u>Difference</u>
.50 per square foot	.30 per square foot	.20
New construction only	New construction and renovations	Applies to both new construction and renovations

A comprehensive set of recommendations is being proposed, and is divided into categories based on implementation time. They can be implemented either immediately, in approximately six to eight months, or require a longer-term process to achieve results. The following is a summary of the recommendations:

RECOMMENDATIONS FOR IMMEDIATE ACTION

1. **Remove subsidized commissioner sponsorship.** Apply the same fee charged for private applications to those Code change amendments that are sponsored by the City Commissioner on behalf of a property owner or developer. There is an ordinance to effectuate this change pending before the Planning Board and it is expected to be considered by the City Commission for first reading on March 13, 2019.
2. **Temporary cap on fees.** Until the per-square-foot fee is lowered, as recommended, applications in process can have the per-square-foot fees capped at \$40,000. This is being brought to City Commission for first reading on February 13, 2019. The Commission indicated interest in exploration of a future credit for those which have recently paid in excess of \$40,000, to be deliberated at the February Finance and Citywide Projects Committee meeting. However, Sec. 118-7 provides that "There shall be no refund or adjustment of fees."

RECOMMENDATIONS FOR ACTION IN SIX TO EIGHT MONTHS

1. **Apply the per-square-foot fee to all types of development applications.** Currently there are multiple exemptions from the per-square-foot fee, particularly if it is not new construction. To lower the overall fee, it is recommended that the fee will be applicable to all types of developments, including redevelopment, remodels, and historic preservation projects. The only exceptions that will remain are applications for replacement railings, balconies, awnings, and carports.
2. **Reduce the per-square-foot fee.** The current fee is 0.50 per square foot. It is recommended that the fee be lowered to no less than 0.30 per square foot. By applying the fee to more application types, it has been noted to have only a minor impact on the overall department budget.
3. **Conditional Uses / Neighborhood Impact Establishments.** Conditional use applications are charged as regular applications except for the adult congregate living facilities which require an additional fee. However, the conditional use applications add to the review and staff time to prepare the report. Further, for those conditional uses which are Neighborhood Impact Establishments (NIE), additional review time for the studies (sound studies, etc.) and progress reports need to be considered. Based on the established fee of \$150 per hour for research, the Conditional Use / NIE fee should be in line with the average staff review of the average report/study for a conditional use. Using an estimate of 15 hours, and the additional board (Planning Board) that would review the project, an additional fee should be established at \$2,500 for a conditional use with an NIE.
4. **Resubmittal Fees / Excessive Review.** There are many applications which require six or more rounds of staff review before they are ready for a board, while they are only charged one \$2,500 review fee. Currently the fee schedule has a \$150 per hour fee for reviews in excess of four hours. It is difficult to track and assess this fee due to the number of staff in various departments who reviews the plans; therefore, it is recommended that the Excessive Review Fee be removed from the fee schedule. In

its place, a Resubmittal Fee of \$1,250 should be established to be charged after the second review of an application. Suggested is a resubmittal fee of \$1,250, which is half of the original \$2,500 new application fee.

5. **Variances.** Variances are mostly a result of an antiquated code, and can be addressed in three steps.
 - a) For the repetitive variance requests that are consistently granted, make text amendments to the Land Development Regulations to avoid the need for a variance. A discussion item pertaining to this subject is pending at the Land Use and Development Committee.
 - b) Revise the Land Development Regulations to establish an "administrative variance". This is structured so that certain types of variances, such as fence heights, driveway aisle widths and relocation of signs, (or up to a certain extent/measurement) for height and massing, could be addressed during permit review and approved by the Planning Director with no need for a board approval. Administrative variances may also be used for implementation of preferred design features that trigger the need for a variance due to the site conditions. Since an administrative variance would not require a board review or staff report, the proposed application would realize a significant savings. Such administrative review should remain at \$500. A discussion item pertaining to this subject is pending at the Land Use and Development Committee.
 - c) Finally, increase the fees for the remaining variance applications to encourage Land Development Regulation compliance. The fee of \$500 is about half of what is charged in the other municipalities that were reviewed in this process. An increase to \$750 is recommended. This will be part of the discussion at the Land Use and Development Committee.

RECOMMENDATIONS FOR LONG TERM ACTION

1. **Land Development Regulations.** It is recommended that the City consider a holistic update to address the structure and complexity of the Land Development Regulations. According to city staff, the complexity code adds to the time it takes for an application to be ready for Board review. Additionally, staff is limited in what can be approved administratively, adding time and cost to applicants. Consider simplification of the structure of the code for ease of understanding and applicability. Such modifications would provide predictability, facilitate design, reduce review time for the staff, and number of resubmittals. This also would reduce the external costs borne by the applicant (aside from city fees) by reducing the time to process the application. It is also recommended that administrative approvals be expanded to include adjustments necessary due to site conditions or preferred design elements. A discussion item pertaining to this subject is pending at the Land Use and Development Committee.
2. **Departmental Review Fees.** In addition to this review on land use board fees, it is recommended that the consultant be tasked with reviewing fees associated with the actual building permit (Building, Fire, Public works and Planning departments) and provide a recommendation as appropriate. This would provide an independent evaluation of the fees that would serve the best interests of the City.

FISCAL IMPACT

The impact on department revenue is estimated to be between \$125,000 and \$200,000 annually.

CONCLUSION

The Administration recommends that the City Commission approve the attached Ordinance at First Reading, amending Appendix A to establish a cap of \$40,000.00 on the per square foot fee, and schedule a Second Reading Public Hearing for March 13, 2019. Additionally, the Administration recommends that the City Commission provide direction to come back with a comprehensive fee ordinance that includes the following, as more specifically detailed above:

1. Application of the per-square-foot fee to all types of development applications.
2. Reduction in the per-square-foot fee.
3. A fee adjustment for Conditional Use and Neighborhood Impact Establishment applications.
4. Revisions to the resubmittal and excessive review fees.
5. The consultant for review fees shall be tasked with reviewing departmental fees (Building, Fire, Public Works and Planning) and provide a recommendation as appropriate.

JLM/SMT/TRM/CS

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