

# MIAMIBEACH

## PLANNING DEPARTMENT

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December 23, 2024

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**Subject: Request for Zoning Interpretation - Live Local Act Density and Height**

Dear Mr. Penn:

This correspondence is in response to your October 15, 2024, request (attached) for a written determination regarding the density and height for a development application filed under the Live Local Act. Specifically, you have requested a determination pertaining to the following:

1. The maximum residential density and the percentage of units within a project that must meet the definition of “affordable” under State law.
2. The maximum building height for a Live Local Act development for properties within one mile of the Miami Beach Marina site located at 300 Alton Road.

### **Background**

The Live Local Act (LLA), which was first signed into law on March 29, 2023, and amended in 2024, introduced State-mandated land use entitlements for eligible affordable housing developments in areas zoned for commercial, industrial, or mixed-use development. The LLA also preempts the City with respect to certain development regulations for qualifying projects, including maximum floor area ratio (FAR), density and building height.

### **Maximum Density**

The LLA prohibits cities from restricting the density of a qualifying project below the “highest currently allowed density on any land in the municipality where residential development is allowed under the municipality’s land development regulations.” See § 166.04151(7)(b), Fla. Stat. (2024). For purposes of the LLA, the term “highest currently allowed density” does not include the density of any building that met the requirements of Section 166.04151(7)(b) or the density of any building that has received any bonus, variance, or other special exception for density provided in the municipality’s land development regulations as an incentive for development. *Id.* Under that definition, the highest currently allowed density within the city, which is 150 residential units per acre, is applicable only to certain high intensity districts—specifically, the RM-3 and CD-3 zoning districts. Therefore, any eligible development application filed in accordance with the LLA would have an allowable density of up to 150 residential units per acre, regardless of the underlying zoning district in which the property is located.

The LLA (specifically, § 166.04151(7)(a), Fla. Stat.) also requires that a minimum of forty (40) percent of the total number of units be “affordable” rental units, as defined in § 420.0004, Fla. Stat. (2024), but does not specify a *maximum* percentage of affordable units. Therefore, the percentage of units within an eligible LLA project that are required to be “affordable” may be increased up to 100 percent of all units.

### **Density Bonus**

In addition to requiring municipalities to allow development at the maximum residential density allowed in the jurisdiction, the LLA also provides that eligible development may additionally receive applicable municipal density bonuses *if the proposed development satisfies the conditions in the local land development regulations to receive the bonus.* See § 166.04151(7)(j), Fla. Stat. To further incentivize the development of workforce and affordable housing, the City’s Comprehensive Plan was amended in 2017 to provide for additional density for the construction of such units. On February 1, 2023, these density bonuses were included in the Land Development Regulations of the City Code (LDRs) as part of a comprehensive update and the adoption of the Resiliency Code.

This density bonus in the City’s Comprehensive Plan allows for an eighty (80) percent density increase beyond the allowable density *applicable to the underlying district*, provided such bonus is only to be used to provide affordable or workforce housing units, as defined in Chapter 58 of the General Ordinances of the City Code. As such, this density bonus for affordable or workforce units would be based upon the density of the underlying district of the proposed development site, even if the maximum density in such district is less than 150 units per acre. For purposes of an eligible LLA project, the density bonus in the City’s Comprehensive Plan would not be based on the highest currently allowed density in the City (150 units per acre) unless the project was located within a CD-3 zoning district. Additionally, no portion of this additional local density bonus is permitted to be utilized for residential units not meeting the definition of affordable or workforce units and may not be used to satisfy the minimum required percentage of residential units under the Live Local Act (i.e. 40%).

The legislative intent of the Live Local Act is to increase the availability of affordable housing options for Florida residents who want to live in the communities they work in. In your October 15, 2024, request, you argue that the City’s approach to calculating density will thwart the statute’s intent by significantly limiting the number of market-rate units. Specifically, you claim that projects seeking density bonuses would not be allowed to count those bonus units toward the minimum required percentage of workforce units required by the Live Local Act. Your reasoning is incorrect. Allowing bonus units to count toward the required minimum percentage of affordable units would actually go against the purpose of the LLA, which is to increase affordable housing, not to boost the availability of market-rate or luxury units as you suggest.

Furthermore, a LLA project eligible for bonus units is not required to use the full bonus if doing so would make the project financially unviable. The bonus density is an option, not a requirement, and developers can choose to use as many or as few of the bonus units as they wish. It is not an all-or-nothing scenario.

You also reference Section 166.04151(7)(j)2 of the Florida Statutes, but it must be understood in the context of its counterpart, Section 166.04151(7)(j)1. The latter states that **a municipality can grant** additional bonuses or exceptions to height, density, or floor area ratio beyond those already outlined in the statute. This means a municipality can offer further incentives, like bonuses, to encourage developers to include even more affordable units in their projects than the required 40%.

Complementing the provisions in subsection (j)1, subsection (j)2 **allows developers to receive** bonuses “for height, density, or floor area ratio pursuant to an ordinance or regulation of the jurisdiction where the proposed development is located...”. Like its counterpart in subsection (j)1, the bonuses a developer may receive pursuant to subsection (j)2 is applicable to “a proposed development authorized under this subsection (i.e., a development that already qualifies as LLA project.” In short, the development must already meet the affordability requirements set forth in the LLA—meaning at least 40% affordable units must be included before a developer can take advantage of the bonus. Your interpretation of the LLA contradicts its clear language and its overall aim of increasing affordable housing.

### **Maximum Building Height**

The LLA prohibits cities from restricting the height of an eligible development below the “highest **currently allowed** height” for a commercial or residential building located within its jurisdiction and within one mile of the proposed development. See § 166.04151(7)(d)1., Fla. Stat. (2024). “Highest currently allowed height” does not include the “height of any building that met the requirements of [subsection (7)(d)1.] or the height of any building that has received any bonus, variance, or other special exception for height provided in the municipality’s land development regulations as an incentive for development.” *Id.*

The City-owned property located at 300 Alton Road, commonly referred to as the Miami Beach Marina (the “Marina Site”), has a zoning classification of Government Use (GU) and a future land use designation of Public Facility: Government Use (PF). In accordance with Section 7.2.16.3 of the LDRs in the Resiliency Code, the applicable height and other design requirements in any GU district are determined by taking the average of the requirements contained in the surrounding zoning districts, as determined by the Planning Director, which shall be approved by the City Commission. The highest currently allowed height for a commercial or residential building within the district where the Marina Site is located would be 85 feet, constituting the average of the C-PS4 (maximum height 150 feet), RPS-1 (maximum height 45 feet) and RMPS-1 (maximum height 60 feet) districts. As 150 feet is the maximum permitted building height in zoning districts within one (1) mile of the proposed development sites identified by you, the maximum allowable height for a qualifying LLA project on any of those properties is 150 feet.

Section 7.2.15.5(e) of the LDRs (the “Marina Project Ordinance”), referenced in your letter, referred to a height of 385 feet as an incentive for the development of a “public-private marina mixed-use [project] incorporating city-owned marina property, and including residential dwelling units and significant publicly accessible green open space” (the “Project”), which was subject to voter approval for the sale / long-term lease of the GU property commonly referred to as the Miami Beach Marina (the “Marina Property”). The Project, which failed to obtain voter approval and did not move forward, would have required the Marina Property to be rezoned from the current zoning of GU to C-PS4 in order to utilize the incentive height of 385 feet.

The Marina Project Ordinance is only applicable to properties located within a performance standard zoning district (R-PS or C-PS) that also has a corresponding future land use designation of PF. The Marina Project Ordinance is not applicable to properties located in a GU zoning district. As there are no properties located within a performance standard zoning district (R-PS or C-PS) that have a future land use designation of PF under the City’s Comprehensive Plan, Section 7.2.15.5.e—including the 385-foot height incentive set forth therein—does not, and cannot, apply to any property and is, therefore, null.

The Marina Project Ordinance does not apply to just any commercial or residential building; it applies solely to a project “**incorporating city-owned marina property** and including residential dwelling units **and significant publicly accessible green open space**”. Section 7.2.15.5(e) of the Resiliency Code (Emphasis added). Section 166.04151(7)(j)2 of the Florida Statutes allows a LLA project to take advantage of bonuses, but only **if the proposed development satisfies the conditions in the local land development regulations to receive the bonus.** Furthermore, Section 166.04151(7)(d)1, Florida Statutes, provides that a municipality may not restrict the height of a proposed LLA project below the “highest currently allowed height **for a commercial or residential building**”. However, it does not require any municipality to authorize, for an eligible LLA project, any height bonus or other special exception that may exist within municipal land development regulations as an incentive for a particular type of development. Specifically, the following is noted:

*(d)1.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 building located in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher. For purposes of this paragraph, the term “highest currently allowed height” **does not** include the height of any building that met the requirements of this subsection or the height of any building **that has received any bonus, variance, or other special exception for height** provided in the municipality’s land development regulations **as an incentive for development.***

Therefore, the height of 385 feet was only conceivably applicable to a development that satisfied the criteria for the bonus or other special exception that was specific to the proposed public-private marina redevelopment that incorporated a marina, a park and residential dwelling units. For reference purposes, the criteria for the height incentive is set forth in Section 7.2.15.5(e) of the LDRs, as follows (emphasis added):

#### 7.2.15.5 Additional Regulations (PS)

\* \* \*

- e. *Additional regulations for public-private marina mixed-use redevelopments. **Public-private marina mixed-use redevelopments incorporating city-owned marina property, and including residential dwelling units and significant publicly accessible green open space, which property is designated as "public facility (PF)" under the city's comprehensive plan,** may be developed as provided in this section; in the event of a conflict within this division, the criteria below shall control:*
  - 1. *Maximum building height: 385 feet. The maximum height for allowable height regulation exceptions for elevator and mechanical equipment shall be 30 feet above the height of the roofline of the main structure. Notwithstanding the foregoing, the design review board, in accordance with the applicable review criteria, may allow up to an additional 5 feet of height, as measured from the base flood elevation plus maximum freeboard, to the top of the second-floor slab.*
  - 2. *The setback requirements shall be as provided in section 7.2.15.3.f, except that the pedestal shall be subject to the following minimum setbacks:*
    - A. *Front: 5 feet.*
    - B. *Interior side: 20 feet.*
    - C. *Rear: 5 feet.*
  - 3. **All floors of a building containing parking shall incorporate residential or commercial uses along the eastern side fronting Alton Road; all other sides**

*of a building containing parking may incorporate alternative non-use screening such as landscape buffering and physical design elements.*

Three-hundred eighty-five (385) feet also far exceeds the maximum height generally allowed for a commercial or residential building within a mile of the subject properties, which is 150 feet. Under the express language of the statute, a Live Local project is not eligible to utilize “the height of any building **that has received any bonus, variance, or other special exception for height** provided in the municipality’s land development regulations **as an incentive for development.**” (Emphasis added). Clearly, the now void 385-foot height that would have been allowed for a marina/park project with residential units was intended as a “bonus” or “other special exception” to incentivize the redevelopment of the Marina Site.

**Conclusion**

Based upon the foregoing, the following is noted regarding the requested determination:

1. The maximum base density for a Live Local Act project is 150 dwelling units per acre, which is the highest currently allowed density on any land in the city where residential development is allowed under the City’s LDRs. In addition, pursuant to § 166.04151(7)(j), Fla. Stat., a qualifying Live Local Act project may also be eligible for any applicable bonus for density, height, or floor area ratio under the City’s LDRs—that is, the bonuses are not “precluded”—but the proposed development must satisfy the conditions to receive the bonus (except for any condition which conflicts with subsection 166.04151(7)(j)). The density bonus available pursuant to the City’s Comprehensive Plan and LDRs for affordable residential units is based on the maximum density permitted in the underlying zoning district. This additional local density bonus can only be based upon a maximum district density of 150 units per acre if the property is located within a district that currently allows for a maximum density of 150 units per acre.
2. The maximum building height permitted at the Marina Site located at 300 Alton Road is 85 feet. However, as 150 feet is the highest permitted height in zoning districts within one (1) mile of the proposed development sites, the maximum allowable height for a qualifying LLA project on any of those properties is 150 feet.

In accordance with section 2.9.1.(a) of the LDRs, this administrative determination will be published on the City’s website for at least 30 days. An eligible party, as defined in section 2.9.2.(b) of the Miami Beach Resiliency Code, shall have up to 30 days from the date of posting on the web page to appeal this administrative determination to the Board of Adjustment.

Sincerely,



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Planning Director



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## **VIA ELECTRONIC SUBMITTAL**

October 15, 2024

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Planning Department  
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1700 Convention Center Drive, 2nd Floor  
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RE: **Live Local Act Density and Height – Request for Formal Determination.**

Dear Tom:

As you know, our team represents several clients seeking to develop under Florida's Live Local Act within the City of Miami Beach. The applications we have filed to date collectively would bring over 340 workforce housing units to the City.

The City has recently issued verbal determinations on two topics related to the Live Local Act: (1) the maximum residential density and the percentage of units within a project that must be "affordable" under state law; and (2) the maximum building height for Live Local development for properties within one mile of the Miami Beach Marina site located at 300 Alton Road. This letter seeks a formal written determination on both topics. As you know, we believe the verbal determinations the Department has shared are not consistent with the City's Resiliency Code or state law.

The Live Local Act. The State of Florida's "Live Local Act," signed into law in 2023 and amended in 2024 (the "Act" or "LLA"), seeks to incentivize the development of affordable housing through a number of policy modifications to existing programs and the enactment of new policies at both the state and local level. Specifically, the Act requires the administrative approval of mixed-use

and multi-family residential development on land zoned for commercial, mixed-use, or industrial use, subject to certain conditions.

*Applicability and Land Use.* Municipalities, such as the City, are required to approve the development of multi-family housing, including mixed-use residential development that includes an affordable component, on any parcel zoned for commercial or industrial use, if a certain percentage of affordable housing is provided for the project. Specifically, 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 forty percent (40%) of the residential units in a proposed multifamily development are rental units that, for a period of at least thirty (30) years, are affordable as defined in s. 420.0004.” See §166.04151(7)(a), Fla. Stat. (2024).<sup>1</sup> This provision is self-executing and does not require the City Commission to adopt an ordinance or a regulation before using this approval process. Id.

*Density.* The Live Local Act prohibits cities from restricting the density of a qualifying affordable development below the “highest currently allowed density on any land in the municipality where residential development is allowed under the municipality’s land use regulations.” §166.04151(7)(b), Fla. Stat. (2024). The language of this subsection specifies that the “highest currently allowed density” must be as of right and attained without a bonus.

*Application of Bonus Density.* Beyond requiring municipalities to allow development at the maximum residential density allowed in the jurisdiction, the Act also requires cities to grant municipal density bonuses for developments that qualify and, if the municipal code-based factors are met, the bonuses must be granted administratively. §166.04151(7)(j), Fla. Stat. (2024). Specifically, the Act states:

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<sup>1</sup> “Affordable” as defined in F.S. §420.0004, means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed thirty percent (30%) of that amount which represents the percentage of the median adjusted gross annual income for the households. Resident eligibility for Florida’s state and federally funded housing programs is typically governed by area median income (AMI) levels. These levels are published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area. Generally, the upper level of affordable housing is 120 percent of the median annual adjusted gross income for households within the county.

Nothing in this subsection precludes a proposed development authorized under this subsection from receiving a bonus for density, height, or floor area ratio pursuant to an ordinance or regulation of the jurisdiction where the proposed development is located if the proposed development satisfies the conditions to receive the bonus except for any condition which conflicts with this subsection. If a proposed development qualifies for such bonus, the bonus must be administratively approved by the municipality and no further action by the governing body of the municipality is required.

§166.04151(7)(j), Fla. Stat. (2024) (emphasis added).

*Height.* Pursuant to the Act, the City may not restrict the height of a proposed development below the “highest currently allowed height” for a commercial or residential building located within its jurisdiction and within one mile of the proposed development. §166.04151(7)(d)1., Fla. Stat. (2024). “Highest currently allowed height” does not include the “height of any building that has received any bonus, variance, or other special exception for height.” *Id.* The Act does not require the “highest currently allowed height” to have been utilized in a development, allowed without further action by the City, or even be currently possible – the plain language requires only that the height must be the “highest currently allowed” without a bonus, variance, or other height relief.

Maximum Density in Miami Beach.

The highest applicable density in the City, as defined by Section 166.04151(7)(b), is 150 dwelling units per acre permitted in the RM-3 zone. See Figure 1, below. RM-3 allows an eighty percent (80%) bonus for workforce or affordable units.

DEVELOPMENT REGULATIONS TABLE (RM-3)	
Maximum FAR	
Lot area equal to or less than 45,000 square feet	2.25 (1) (2)
Lot area greater than 45,000 square feet	2.75 (1) (2)
Oceanfront lots with lot area greater than 45,000 square feet	3.0 (1) (2)
Maximum Density (Dwelling Units per acre)	150 DUA (80% bonus for workforce or affordable units)

**Figure 1, Excerpt of the City’s RM-3 Regulations**



Our review of the plain language of the City’s Comprehensive Plan and Resiliency Code, along with the relevant legislative history, resulted in a clear conclusion – the City’s workforce bonus is calculated based on the relevant applicable base density. In RM-3, the district relevant for the Live Local Act analysis, eighty percent (80%) of the maximum residential density of 150 units per acre is 120 units per acre.

*Policy RLU 1.2.5 Workforce Housing.* On October 18, 2017, the City Commission adopted Ordinance No. 2017-4147, which amended the Year 2025 City Comprehensive Plan to incentivize the development of workforce and affordable housing by providing for additional density for the construction of such units. See Exhibit A, Ordinance 2017-4147. The density increase allows an eighty percent (80%) density bonus beyond the underlying density to be used only for workforce or affordable units. See Exhibit B, Workforce Bonus Commission Memorandum. The Policy was included verbatim into the 2040 City Comprehensive Plan as Policy 1.2.5 Workforce Housing. On February 1, 2023, the Code was adopted, implementing the Comprehensive Plan policy.

The City’s interpretation of the bonus has been consistent. For example, on October 11, 2023, the Land Use and Sustainability Committee considered legislation, sponsored by Commissioner Ricky Arriola, titled “Increasing Allowable Floor Area Ratio for Workforce Housing.” The legislation’s backup included the following Development Scenarios utilizing the City’s existing density and FAR calculations (See Exhibit C, 2023 Legislation Backup):

Lot Information			Existing Density and FAR Calculations						
Zoning	Area (SF)	Area (AC)	Market Density (DU/AC)	Max Market Units	Workforce Bonus	Workforce Bonus Units	Total Units per Density	Base FAR	Base Max Floor Area (SF)
TH	5,000	0.11	30	3	80%	3	6	0.70	3,500
RO	7,500	0.17	56	10	80%	8	17	0.75	5,625
RM-1	5,650	0.13	60	8	80%	6	14	1.25	7,063
RM-2	16,724	0.38	100	38	80%	31	69	2.00	33,448
RM-3	70,958	1.63	150	244	80%	195	440	2.75	195,135
CD-1	23,798	0.55	60	33	80%	26	59	1.25	29,748
CD-2	41,850	0.96	100	96	80%	77	173	2.00	83,700
CD-3	26,640	0.61	150	92	80%	73	165	2.25	59,940
TC-C	25,000	0.57	150	86	80%	69	155	3.50	87,500

## Figure 2, Development Scenarios

*Allowable Density for 2024 LLA Projects in the City.* Based on the statutory language of the Live Local Act and City's Workforce Housing Bonus policy, the maximum dwelling units allowed per acre for a LLA development is 150 market rate units (the highest as of right density available in the City) plus the additional eighty percent (80%) workforce bonus units.

Consequently, according to the text of the Live Local Act and the City's Workforce Density Bonus policy, the maximum density for a LLA development is properly 150 market rate or workforce units per acre (the highest as of right density available in the City) plus an additional 120 workforce bonus units per acre, and the City is required to approve qualifying projects within these thresholds administratively.

Department's Position on Density. As we understand it, the City is taking the position that a development using the Live Local Act will be subject to different rules for calculating residential density than any other development in the City. The City's proposed two-step methodology – unique to the analysis of Live Local development - will thwart the statute's intent by significantly limiting the number of market rate units in a Live Local development.

Instead of the 150 units per acre of market rate units available to development within the City, a Live Local project would be capped at 90 market rate units per acre. For example, here is how a typical project under the City's traditional zoning would be analyzed as compared to a Live Local project:

Traditional zoning for a one-acre RM-3 site:

150 Market Rate Units  
Up to 120 workforce units

For another one-acre site in a commercial, industrial, or mixed-use district, development under the Act as interpreted by the City verbal interpretation:

90 Market Rate Units  
60 Workforce units  
Up to 120 bonus workforce units

While the number of units would be the same in both projects, the City's verbal interpretation would clearly thwart the intent of the statute. At a maximum buildout, the City's current position would require that workforce units be approximately 66% of the total units, the opposite of the intent of the Act. Projects will simply not be economically feasible if the majority of the units must be workforce units, which is why the Act requires 40% of the units to be affordable units.

We believe that the City's verbal interpretation would inappropriately prevent Live Local development from using the highest currently allowed density in the City. At bottom, we believe that the statute does not allow the City to treat Live Local development in a different, lesser, manner than other development in the City for calculation of density.<sup>2</sup> We urge the Department to memorialize a formal determination that treats the density of Live Local development on an equal basis to other development.

Utilization of Marina Height in South Beach. Section 7.2.15.5.e of the Resiliency Code, governing development in the City's C-PS4 zoning district, provides that "[p]ublic-private marina mixed-use redevelopments incorporating city-owned marina property, and including residential dwelling units and significant publicly accessible green open space, which property is designated as "public facility (PF)" under the [C]ity's [C]omprehensive [P]lan, may be developed" at up to 385 feet in height. Specifically, the Code provides: "[m]aximum building height: 385 feet." §7.2.15.e.1., City of Miami Beach Resiliency Code.

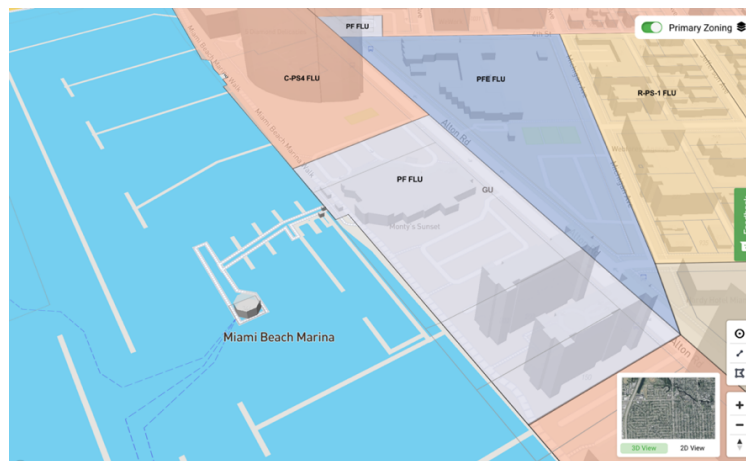
The relevant language does not use the words "bonus," "variance," or "special exception" as used in the Act to describe those types of comparator site height values that may not be used by a Live Local applicant. Instead, the Code permits the additional height for a certain development program. The language of Section 7.2.15.5.e is therefore analogous to code language that, for example, allowed hotel development at up to 200 feet in height, but office development at up to 250 feet. If a property owner chose to develop an office building instead of a hotel, they would not be receiving a "bonus," they would simply be developing according to the relevant general requirements. The same

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<sup>2</sup> The fact that Live Local development includes floor area ratio (FAR) and height benefits does not negate the City's obligation to provide development under the Act with the highest possible density and all available density bonuses for workforce or affordable housing.

holds here – Section 7.2.15.5.e of the Code establishes the standards for a particular type of development that is allowed to be developed at 385 feet in height.

The Miami Beach Marina site located at 300 Alton Road is designated for Public Facility use under the City’s Comprehensive Plan<sup>3</sup> (See Figure 3, below) and zoned Government Use (“GU”). The GU district’s development regulations are “the average of the requirements contained in the surrounding zoning districts as determined by the planning and zoning director.” The Department has consistently determined that the Miami Beach Marina site shall apply the C-PS4 standards.<sup>4</sup>



**Figure 3, Future Land Use Map Excerpt**

As such, 385 feet is the “highest currently allowed height” for a commercial or residential building for land in South Beach. Therefore, any land within one mile of the Miami Beach Marina site may be developed at the same height under the terms of the LLA.

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<sup>3</sup> Through Ordinance 2020-4349, the City modified the text of the “PF” Comprehensive Plan designation in anticipation of the Marina redevelopment. See Exhibit D, Ordinance 2020-4349.

<sup>4</sup> The fact that the C-PS4 regulations should form the applicable standards for the Miami Beach Marina property was made crystal clear by the City’s adoption of Section 7.2.15.5.e of the Resiliency Code, within the Performance Standard District regulations. Despite being nominally applicable to the C-PS4 zone, Section 7.2.15.5.3 is expressly intended to be utilized for the Miami Beach Marina property.

Department's Position on Height. As verbally explained to us, we understand the Department's position is that: (1) the Marina site, or a portion thereof, was always intended to be rezoned to C-PS4 to allow for private development; and (2) in the absence of the rezoning, the Marina site cannot be developed at up to 385 feet. We believe that this conclusion is inconsistent with the plain language of the City's regulations as well as the history of the 2020 process that created the current Comprehensive Plan and Resiliency Code language. We believe it is clear that the Marina site can be developed today at up to 385 feet.

Marina Project Approval Timeline. In the spring of 2020, the City Commission commenced the process for the review of a redevelopment plan for the Miami Beach Marina. As ultimately approved by the Commission, the redevelopment plan contemplated: (1) a new marina building and enhanced neighborhood retail uses on the site of the current Marina building, with a total of approximately 45,000 square feet of accessory restaurant, retail and office space, to upgrade the existing condition of the Marina facilities, which are dated and unattractive; (2) a private luxury residential tower that would include approximately sixty (60) residential units and approximately 275,000 square feet, with a maximum height of 385 feet; and (3) substantial green space, including a contiguous ground-level public park of at least one (1) acre which will be owned and controlled by the City and dedicated as a public park for the benefit of the general public

The legislative items necessary to accommodate the Marina redevelopment included Comprehensive Plan and Resiliency Code amendments that created the language outlined above. The amendments were approved on second reading on July 29, 2020 – at the same hearing as the approval of multiple companion items necessary for the contemplated Marina redevelopment plan, including a development agreement.

The legislative history associated with the 2020 Marina redevelopment clearly supports the conclusion that the Marina site was not intended to be rezoned to C-PS4 to accommodate the approved project. To the contrary, the City's position was consistent that the Comprehensive Plan and Resiliency Code changes were sufficient to accommodate height at up to 385 feet. There is no justification for the City's retreat from this conclusion.

Planning Analysis. The Marina redevelopment legislative items were accompanied by a planning analysis. See Exhibit E. The planning analysis noted that the Marina site had a zoning designation of GU. Under what is now Resiliency Code Section 7.2.16.3,

development regulations for the GU district are determined by averaging the regulations of surrounding zoning districts (including setbacks, FAR, signage, and parking). The adjacent zoning district, CPS-4, was identified as "Intensive Mixed-Use Phased Commercial." As such, staff concluded that C-PS4 district regulations should apply to the Marina Site.

The planning analysis reflected that the Marina project would require a lease amendment, land sale, development agreement approval, right of way vacation, as well as the Comprehensive Plan and Land Development Regulations text amendments. Nothing in the planning analysis suggested that a rezoning of the site to C-PS4 was necessary to implement the legislative changes on the Marina site. There is no mention in the planning analysis or any other document produced as part the Marina redevelopment that a rezoning was necessary, or even contemplated.

Development Agreement. The conclusion that no rezoning is necessary for the utilization of the additional building height on the Marina site is further supported by the terms of the 2020 Marina project's development agreement. The relevant portions of the agreement are attached as Exhibit F.

Exhibit M to the approved development agreement, entitled "Presently Permitted Development," provided as follows:

(a) Permitted Development and Uses. The [Marina] Development Site is currently located within the GU zoning district. The development regulations in the GU district are the average requirements contained in the surrounding zoning districts. The Development Site is surrounded by property zoned C-PS4, and as such, the C-PS4 zoning district regulations apply to the adjacent GU district.

The main permitted uses in the City's GU District are government buildings and uses, including but not limited to parking lots and garages; parks and associated parking; schools; performing arts and cultural facilities; monuments and memorials. Any use not listed above shall only be approved after the City Commission holds a public hearing. For the avoidance of doubt, no additional public hearing shall be required for approval of the uses authorized by the

Development Agreement, following the City Commission's approval, following two readings/public hearings, of the Development Agreement, which shall be deemed to satisfy the public hearing requirement in Section 142-422 of the City Code.

(b) Density, Building Heights, Setbacks and Intensities. The maximum density, heights, setbacks and intensities for any development on the Development Site shall be regulated by the City's Land Development Regulations, Comprehensive Plan and any Governmental Requirements. The maximum floor area ratio in the C-PS4 district is 2.5. Building height requirements are as follows: 385 feet maximum height. The development regulations (setbacks, floor area ratio, signs, parking, etc.) shall be the average of the requirements contained in the surrounding zoning districts as determined by the City's Planning and Zoning Director. Notwithstanding the foregoing, the permitted height for the Project shall not exceed 385 feet, measured from Base Flood Elevation plus maximum Freeboard (BFE + 5 feet) . . . .

(emphasis added)

As Exhibit M to the approved development agreement clearly establishes, the zoning regulations applicable to the Marina site are the C-PS4 district, the maximum building height on the Marina site is 385 feet, and, equally important, no additional public hearing approvals were necessary for the development. The approved development, as you know, always contemplated private development of the residential tower. The development agreement therefore directly contradicts the Department's verbal determination that the 385 foot building height is not available without a rezoning of the Marina site.

This conclusion is further supported by other portions of the development agreement. One of the required elements of a development agreement under state law is a comprehensive list of "all local development permits approved or needed to be approved for the development of the land." See Section 163.3227, Fla. Stat. Exhibit N to the approved development agreement includes the required information for the Marina

redevelopment project. Consistent with Exhibit M, Exhibit N contains no suggestion that any zoning action was necessary for the approved project.

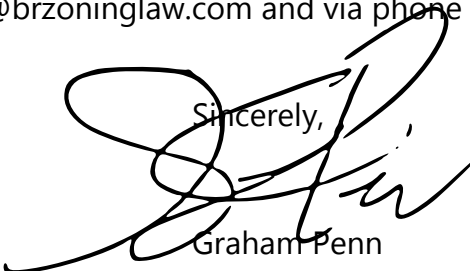
The materials associated with the 2020 Marina redevelopment plan are clear – at no point did the City contemplate that a rezoning would be necessary to accommodate the Marina redevelopment. Accordingly, the 385 foot height limit reflected in Section 7.2.15.e.1. of the Resiliency Code is available to the Marina site, and under the Live Local Act, is also available to parcels within one (1) mile of the Marina site.

Conclusion. We look forward to the Department’s formal determination. As noted above, we believe the Live Local Act and the City’s regulations are clear.

First, the City is not free to impose additional requirements on Live Local development that are not imposed on other development in the City. The Department’s suggestion that Live Local projects should be subject to a two-step analysis for density that is not applied to other development is not consistent with state law.

Second, the plain language of the City’s Resiliency Code and the extensive legislative history associated with the Marina redevelopment plan approved in 2020 make it clear that the Miami Beach Marina site can, without any change in zoning, be developed at up to 385 feet in height. This, in turn, will allow Live Local development at the same height for parcels within a mile of the Marina site. If you have any questions or concerns, I am available via email at [gpenn@brzoninglaw.com](mailto:gpenn@brzoninglaw.com) and via phone at (305) 377-6229.

Sincerely,

A handwritten signature in black ink, appearing to read 'Graham Penn', written over the typed name.

Graham Penn

cc: Michael Yanopoulos, Esq.