

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: March 26, 2024

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB24-0653. Conform to State Law the Fine Schedule for Violations of Prohibition of Commercial Uses in Single Family Districts.**

RECOMMENDATION

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

HISTORY

On January 31, 2024, at the request of Mayor Steven Meiner, the City Commission referred the proposed ordinance to the Planning Board.

REVIEW CRITERIA

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

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

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

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

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

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

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

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

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

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

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

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

Consistent – The need to ensure that land development regulations conform to statutory requirements makes passage of the proposed change necessary.

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

Consistent – The proposed ordinance amendment will not adversely influence living conditions in the neighborhood as it would allow for the enforcement of penalties for unauthorized commercial uses in residential neighborhoods as authorized in State law.

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

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

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

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

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

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

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

Consistent – The proposed change will not be a deterrent to the improvement or development of 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.**

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

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

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

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

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

ANALYSIS

The purpose of this amendment is to conform the penalties in the Resiliency Code to statutorily prescribed limits, in order to ensure that the City's prohibition on the commercial use of single-family homes is fully enforced with the maximum penalties allowed under Florida law.

In 2010, the City enacted Miami Beach Code Section 142-1111 (the "Ordinance"), prohibiting short-term rentals of apartment units or townhomes in specified zoning districts located within its boundaries. Property owners found in violation have been subject to mandatory fines, administered by special masters/magistrates, under the City's "alternate code enforcement system," which was expressly adopted pursuant to the authority of Part I of Chapter 162, Florida Statutes, also known as the "Local Government Code Enforcement Boards Act" (the "Act").

In 2018, a property owner filed a lawsuit in Circuit Court, challenging the City's Ordinance by alleging that the Ordinance conflicted with the Act by imposing fines in excess of the fines authorized by the Act. Following extensive litigation, the Third District Court of Appeal held that

the City could not lawfully impose fines in excess of the fines authorized under the Act, and therefore the City was bound to impose fines within statutorily prescribed limits.

An amendment to the fines set forth in Section 7.2.2.2(d) of the City's Resiliency Code is necessary to bring the Ordinance into full compliance with statutorily prescribed limits, in order to ensure that the City's prohibition on the commercial use of single-family homes is fully enforced with the maximum penalties allowed under Florida law.

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.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 7 OF THE MIAMI BEACH RESILIENCY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "DISTRICT REGULATIONS," BY AMENDING SECTION 7.2.2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS" BY AMENDING SUBSECTION 7.2.2.2, ENTITLED "USES (RS)" TO CONFORM THE FINE SCHEDULE FOR VIOLATIONS OF SUBSECTION 7.2.2.2 TO STATUTORILY PRESCRIBED LIMITS IN CHAPTER 162 OF THE FLORIDA STATUTES; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, In 2010, the City enacted Miami Beach Code section 142-1111 (the "Ordinance"), prohibiting short-term rentals of apartment units or townhomes in specified zoning districts located within its boundaries; and

WHEREAS, property owners found in violation were subject to mandatory fines, administered by special masters, under the City's "alternate code enforcement system," which was expressly adopted pursuant to the authority of Chapter 162, Florida Statutes; and

WHEREAS, in 2018, the City's Ordinance was challenged in the court of law, with allegations that the Ordinance conflicted with the Local Government Code Enforcement Boards Act ("Act") by levying fines in excess of those authorized by the Act; and

WHEREAS, following vigorous litigation, the Third District Court of Appeal held that the City could not lawfully levy fines in excess of those authorized under Act, and therefore City was bound to impose fines within statutorily prescribed limits; and

WHEREAS, an amendment to the fines set forth in Section 7.2.2.2 of the Miami Beach Resiliency Code is necessary to bring the Miami Beach Resiliency Code provision into full compliance with statutorily prescribed limits.

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

SECTION 1. That Section 7.2.2.2 of Chapter 7 the Miami Beach Resiliency Code, entitled "Zoning Districts and Regulations," is hereby amended as follows:

MIAMI BEACH RESILIENCY CODE

* * *

CHAPTER 7 ZONING DISTRICTS AND REGULATIONS

* * *

ARTICLE II. DISTRICT REGULATIONS

* * *

SECTION 7.2.2 RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS

* * *

Subsection 7.2.2.2. Uses (RS)

* * *

(d) Supplemental Prohibited uses Regulations (RS)

* * *

(1) Commercial use of single-family homes prohibited (RS)

* * *

(C) Regulations: Determination of commercial use.

* * *

(VII) *Enforcement.*

(1). Violations of this section shall be subject to the following fines. The special magistrate shall not waive or reduce fines set by this section.

i. If the violation is the first violation ~~\$25,000.00~~ \$1,000 per day, per violation

ii. If the violation is the second or greater violation ~~within the preceding 18 months~~ \$5,000 per day per violation

iii. However, if the special magistrate finds the violation to be irreparable or irreversible in nature, he may impose a fine not to exceed \$15,000.00 per violation.

~~c. If the violation is the third violation within the preceding 18 months....\$75,000.00~~

~~d. If the violation is the fourth or greater violation within the preceding 18 months....\$100,000.00~~

~~Fines for repeat violations shall increase regardless of location. The director of the code compliance department must remit a letter to the Miami-Dade Property Appraiser and Miami-Dade Tax Collector, with a copy of the special magistrate order adjudicating the violation, that notifies these governmental agencies that the single-family residential property was used for the purpose of holding a commercial party, event, assembly or gathering at the premises.~~

* * *

(IX) *Enhanced penalties.* The following enhanced penalties must be imposed, in addition to any mandatory fines set forth in subsection ~~142-109(d)~~ 7.2.2.2(d)(1)(C)(VII) above, for violations of section ~~142-109~~ 7.2.2:

(1) Enhanced penalties for this section:

- i. The commercial use must be immediately terminated, upon confirming a violation has occurred, by the Miami Beach Police Department and the code compliance department.
- ~~ii. If the offense is a second offense within the preceding 18-month period of time, and the total square footage of all building(s), accessory building(s), dwelling(s), or structure(s) exceed 5,000 total square feet, then the special magistrate must impose an additional fine of \$5,000.~~
- iii ~~ii~~. A certified copy of an order imposing the civil fines and penalties must be recorded in the public records, and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. The certified copy of an order must be immediately recorded in the public records, and the city may foreclose or otherwise execute upon the lien.

SECTION 2. REPEALER.

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

SECTION 3. SEVERABILITY.

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

SECTION 4. 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 Miami Beach Resiliency Code. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2024.

PASSED AND ADOPTED this _____ day of _____, 2024.

ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions

~~Strikethrough~~ denotes deletions

(Sponsored by Mayor Steven Meiner)