

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: April 30, 2019

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 19-0266. TC-C District – Height and Public Benefit Clarifications.**

REQUEST

PB 19-0266. TC-C DISTRICT – HEIGHT AND PUBLIC BENEFIT CLARIFICATIONS. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED “LAND DEVELOPMENT REGULATIONS,” BY AMENDING CHAPTER 142, ENTITLED “ZONING DISTRICTS AND REGULATIONS,” ARTICLE II, ENTITLED “DISTRICT REGULATIONS,” DIVISION 21, ENTITLED “TOWN CENTER-CENTRAL CORE (TC-C) DISTRICT,” TO MODIFY SECTION 142-747, ENTITLED “PUBLIC BENEFITS PROGRAM,” TO PROVIDE CLARIFICATIONS FOR THE ADDITIONAL HEIGHT PROVIDED BY THE PUBLIC BENEFITS PROGRAM, AND TO PROVIDE OPTIONS FOR NON-COMPLIANCE WITH THE LEED PLATINUM CERTIFICATION PUBLIC BENEFIT OPTION; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

RECOMMENDATION

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

HISTORY

On January 16, 2019 at the request of Commissioner John Elizabeth Aleman, the City Commission referred the discussion item to the Land Use and Development Committee (LUDC) (Item C4 Z).

On March 6, 2019 the LUDC discussed the item and recommended that the City Commission refer the ordinance to the Planning Board.

On April 10, 2019 the City Commission referred the item to the Planning Board (Item C4 S).

REVIEW CRITERIA

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, 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.**

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

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

Consistent - The proposed ordinance amendment is not out of scale with the surrounding 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.

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 clarify requirements for public benefits 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 affect living conditions in the neighborhood.

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 change will not create or increase traffic congestion from what is currently permitted.

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

Consistent – The proposed change will not reduce light and air to adjacent areas.

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

Consistent – The proposed change should not adversely affect property values in the 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 should not be a deterrent to the improvement or development of 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 133-50(b) of the Land Development Regulations 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.

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

Consistent – The proposal will not affect 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 does not diminish and is compatible with the City's sea level rise mitigation and resiliency efforts.

ANALYSIS

On November 14, 2018, the City Commission adopted ordinance 2018-4224, establishing the Town Center – Central Core (TC-C) zoning district. The ordinance implemented the voter approved FAR increase by allowing for additional height, along with additional urban design criteria. The ordinance also established a public benefits program which allows developers additional height beyond the base maximum height of 125 feet under certain circumstances.

At the adoption hearing an amendment was made to the ordinance that allowed lots greater than 50,000 SF and located north of 71st Street to have an additional 20 feet of building height,

for a maximum height of 220 feet, by participating in the public benefits program. As the public benefits program was contemplated with a maximum height of 200 feet, several of the options were drafted to provide an additional 75 feet beyond the base maximum height. As the sites over 50,000 SF located north of 71st Street now have the ability to go up to 220 feet in height, which is technically an additional 95 feet, the following correction for the public benefits options, which provides for additional height, is proposed:

“An ~~a~~ Additional 75 feet of height to achieve the “Public Benefit Maximum Height,” as described in section 142-743 (b)(2) above 125 feet shall be provided for this option.”

The ordinance also includes an alternative for the public benefits option related to LEED platinum certification. It incorporates an option that allows for the contribution to the public benefits fund at a rate of \$3 for each 0.5 square foot located above 125 feet, should the LEED platinum certification not be achieved by the time a temporary certificate of occupancy (TCO) is obtained. This change mirrors the provision in the public benefit option for providing off-site workforce or affordable housing. This would result in an applicant not having to post a bond in the amount of ten percent (10%) of the total construction valuation if they don't expect to achieve the LEED Platinum Certification and would instead require a higher per square foot rate for the public benefit contribution. If the developer does expect to achieve LEED platinum certification, they may proceed with posting the 10% bond and obtain a full refund at the later date.

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.

TRM/MAB/RAM

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TC-C DISTRICT – HEIGHT AND PUBLIC BENEFIT CLARIFICATIONS

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED “LAND DEVELOPMENT REGULATIONS,” BY AMENDING CHAPTER 142, ENTITLED “ZONING DISTRICTS AND REGULATIONS,” ARTICLE II, ENTITLED “DISTRICT REGULATIONS,” DIVISION 21, ENTITLED “TOWN CENTER-CENTRAL CORE (TC-C) DISTRICT,” TO MODIFY SECTION 142-747, ENTITLED “PUBLIC BENEFITS PROGRAM,” TO PROVIDE CLARIFICATIONS FOR THE ADDITIONAL HEIGHT PROVIDED BY THE PUBLIC BENEFITS PROGRAM, AND TO PROVIDE OPTIONS FOR NON-COMPLIANCE WITH THE LEED PLATINUM CERTIFICATION PUBLIC BENEFIT OPTION; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, on November 14, 2018, the City Commission adopted ordinance no. 2018-4224, which established the Town Center – Central Core (TC-C) district; and

WHEREAS, at the adoption hearing, modifications were made to the maximum allowable height that created some inconsistencies within the ordinance; and

WHEREAS, the proposed amendment will provide for consistency between the maximum allowable height and the public benefits ordinance; and

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 142, entitled “Zoning Districts and Regulations,” Article II, entitled “District Regulations,” Division 21, entitled “Town Center-Central Core (TC-C) District,” is hereby amended as follows:

Sec. 142-747. - Public benefits program.

Participation in the public benefits program shall be required for floor area that is located above 125 feet up to the maximum height. The following options or mix of options are available for participation in the public benefits program:

- (a) *Contribution to public benefits fund.* A contribution to the public benefits fund, in the amount identified in appendix A shall be required for each square foot of floor area located above the 125 feet, up to the public benefit maximum height as described in section 142-743 (b)(2). The payment shall be made prior to the development obtaining a building permit.
- (b) *On-site workforce or affordable housing.* Provide on-site workforce housing or housing for low and/or moderate income non-elderly and elderly persons pursuant to the

requirements of articles V and VI of chapter 58 of the City Code and certified by the community development department. Two square feet of floor may be built above 125 feet, up to the public benefit maximum height as described in section 142-743 (b)(2), for each square foot of workforce housing or housing for low and/or moderate income non-elderly and elderly persons provided onsite. The following regulations shall apply to such units:

- (1) There shall be no separate entrance or access for such units. Residents of such units shall be permitted to access the building from the same entrances as the market rate units, unless units are on the ground floor, in which case they shall have private entrances from the clear pedestrian path.
 - (2) Units shall comply with the minimum unit size requirements for affordable or workforce housing of this division.
 - (3) Only the square footage within the unit itself shall count for the square footage above the as of right height.
- (c) *Off-site workforce or affordable housing.* Provide off-site workforce housing or housing for low and/or moderate income non-elderly and elderly persons pursuant to the requirements of articles V and VI of chapter 58 of the City Code and certified by the community development department within the City of Miami Beach. One and one-half square feet of floor area may be built above 125 feet, up to the public benefit maximum height as described in section 142-743 (b)(2), for each square foot of workforce housing or housing for low and/or moderate income non-elderly and elderly persons provided off-site within the City of Miami Beach. The following regulations shall apply to such units:
- (1) Units shall comply with the minimum unit size requirements for affordable or workforce housing of this zoning district.
 - (2) Only the square footage within the unit itself shall count for the square footage above the as of right height.
 - (3) The housing shall be provided prior to the development obtaining a certificate of occupancy.
 - (4) If the housing cannot be provided prior to the development obtaining a certificate of occupancy, a contribution into the public benefits trust fund shall be made in the amount identified in appendix A for each one-half square foot of floor area that is above the as of right height.
- (d) *LEED platinum certification.* Obtain LEED platinum certification or international living future institute living building challenge certification. ~~An a~~ Additional 75 feet of height to achieve the public benefit maximum height as described in section 142-743 (b)(2) above 125 feet shall be provided for this option. This option shall be regulated per the green building program in chapter 133, Article I ~~division 1~~; however, it requires that the participant post a sustainability fee payment bond or issue full payment of the sustainability fee in the amount of ten percent of the total construction valuation of the building permit, as opposed to the five percent as required in section 133-6(a) and that the following compliance schedule be utilized:

Certification Compliance Schedule

Level of Certification Achieved	Sustainability Fee Reimbursement to Participant for Meeting Certain Green Building Certification Levels
Failure to obtain certification	Zero percent refund of bond or payment of sustainability fee
LEED certified	30% refund of bond or payment of sustainability fee
LEED silver certified	40% refund of bond or payment of sustainability fee
LEED gold certified or international living future institute petals or net zero energy certified	60% refund of bond or payment of sustainability fee
LEED platinum or international living future institute living building challenge certified	100% refund of bond or payment of sustainability fee

If this option is selected and LEED platinum or international living future institute living building challenge certification cannot be achieved prior to the development obtaining a certificate of occupancy (CO), the applicant may choose to provide a contribution into the public benefits trust fund in the amount identified in appendix A for each one-half square foot of floor area that is above 125 feet in height instead of complying with the revised Certification Compliance Schedule. If the applicant elects to provide the contribution into the public benefits fund and the bond has already been posted or the sustainability fee has been paid, the difference between the sustainability fee identified above and the sustainability fee identified in Chapter 133, Division 1 shall be refunded.

- (e) *Self-sustaining electrical and surplus stormwater retention and reuse.* Provide stormwater retention that is over and above the minimum requirements in order to accommodate offsite stormwater, including the reuse of such stormwater through purple pipes throughout the building, in a manner to be reviewed and approved by public works. Additionally, the entire building shall be fully self-contained in terms of electrical power through the use of solar panels and similar electricity generating devices. An additional 75 feet of height to achieve the public benefit maximum height as described in section 142-743 (b)(2) above 125 feet shall be provided for this option.
- (f) *Public recreation facilities.* Provide active recreation facilities that are available to the general public. Two square feet of floor area may be built above 125 feet, up to the public benefit maximum height as described in section 142-743 (b)(2), for each square foot of recreation facilities provided. The facilities shall serve a recreational need for the North Beach community, and consultation with the city's parks and recreation department shall be required prior to submitting an application for land use board approval in order to determine the types of facilities that are most in need for the area. The facilities can include, but are not limited to, soccer fields, football fields, basketball courts, tennis courts, gyms, pools, and playgrounds. Such facilities can be located on ground levels, rooftops, above parking garages, or within habitable buildings. An operating agreement shall be submitted to the city and approved by the city manager

or designee. The operating agreement shall contain minimum hours of operation, cost of admission to cover maintenance and operating costs, organized league information, signage to ensure the public is aware of the public nature of the facility, security requirements, reservation requirements, and other requirements as applicable. The agreement shall also ensure that residents of the building are not prioritized over the general public.

- (g) *Expedited development construction.* A contribution to the public benefits fund shall not be required for each square foot of floor area located above 125 feet, up to the public benefit maximum height as described in section 142-743 (b)(2), if the following development timeframes are adhered to:

- (1) Obtain a full building permit for a development project consisting of new construction in excess of 100,000 square feet within 21 months of the effective date of this division. The 21-month period shall not be eligible for any extension of time and cannot be tolled by extensions or modifications of board orders or state extension of development orders. If a full building permit is not obtained within 21 months, participation in an alternative option shall be required in order to achieve the additional height. Notwithstanding the foregoing, in the event that, with staffs favorable recommendation, the design review board (DRB) approval of the subject development project is continued by the board or appealed by a party other than the applicant, such 21-month period to obtain a full building permit shall be tolled until the conclusion of such action. Additionally, the city commission may toll the 21-month timeframe, at a duly noticed public hearing, by a four-sevenths affirmative vote for undue hardship. Undue hardship, does not include financial hardship, and shall require a showing by application of due diligence in processing the building permit; that the delays are not caused due to the negligence of the applicant, and/or that the extenuating circumstances are a result of a third party agency that has unduly delayed the issuance of the permit for the project.
- (2) Obtain a temporary certificate of occupancy (TCO) or certificate of occupancy (CO) within 30 months of approval of the building permit; however, state authorized extensions for states of emergency within Miami-Dade County may be utilized for the purposes of tolling of the TCO or CO time limit with notice and proof of the state of emergency provided to the planning department.

Failure to comply with any of the aforementioned timeframes shall require payment of the balance for the full public benefits fee or participation in an alternative public benefits option prior to obtaining a CO.

SECTION 2. Repealer.

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

SECTION 3. 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 renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

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.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

City Attorney

Date

First Reading: May 8, 2019

Second Reading: June 5, 2019

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

[Sponsor: Commissioner John Elizabeth Alemán]

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