

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: May 21, 2019

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 19-0286. Accessory Dwelling Units (ADU) Comprehensive Plan Amendment.**
PB 19-0287. Accessory Dwelling Units (ADU) Land Development Regulations.

REQUEST

PB 19-0286. ACCESSORY DWELLING UNITS COMP PLAN. AN ORDINANCE AMENDING THE CITY OF MIAMI BEACH YEAR 2025 COMPREHENSIVE PLAN, BY AMENDING CHAPTER 1, ENTITLED "FUTURE LAND USE ELEMENT," OBJECTIVE 1, ENTITLED "LAND DEVELOPMENT REGULATIONS," AT POLICY 1.2, "SINGLE FAMILY RESIDENTIAL CATEGORY (RS)," TO ALLOW FOR ACCESSORY AND CONDITIONAL USES AS PROVIDED FOR IN THE LAND DEVELOPMENT REGULATIONS AND TO PROVIDE THAT ACCESSORY DWELLING UNITS DO NOT COUNT TOWARDS MAXIMUM DENSITY LIMITS; AND AMENDING CHAPTER 3, ENTITLED "HOUSING ELEMENT," OBJECTIVE 1, ENTITLED "CREATION AND/OR PRESERVATION OF AFFORDABLE HOUSING" AND "OBJECTIVE 3," ENTITLED "ADEQUATE SITES AND DISTRIBUTION OF HOUSING FOR VERY LOW TO MODERATE-INCOME HOUSEHOLDS; AND ADEQUATE SITES FOR MOBILE AND MANUFACTURED HOMES," TO PROVIDE FOR THE DEVELOPMENT OF ACCESSORY DWELLING UNITS IN ORDER TO ENCOURAGE THE DEVELOPMENT OF HOUSING AT AN ATTAINABLE RATE; AND PROVIDING FOR INCLUSION IN THE COMPREHENSIVE PLAN, TRANSMITTAL, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

PB 19-0287. ACCESSORY DWELLING UNITS LDR. 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 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, ENTITLED "DEFINITIONS," TO ESTABLISH A DEFINITION FOR "ACCESSORY DWELLING UNIT" AND REMOVE THE DEFINITION OF "GUEST/SERVANTS QUARTERS"; AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 2, ENTITLED "ACCESSORY USES," SECTION 142-905, ENTITLED "PERMITTED ACCESSORY USES IN SINGLE-FAMILY DISTRICTS," TO REPLACE GUEST/SERVANTS QUARTERS WITH ACCESSORY DWELLING UNIT AS AN ALLOWABLE ACCESSORY USE FOR SINGLE-FAMILY DISTRICTS, AND PROVIDE

STANDARDS FOR THEIR DEVELOPMENT AND LEASING; AND AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 4, ENTITLED "SUPPLEMENTARY YARD REGULATIONS," SECTION 142-1132, ENTITLED "ALLOWABLE ENCROACHMENTS WITHIN REQUIRED YARDS," TO ALLOW FOR ACCESSORY DWELLING UNITS AS AN ALLOWABLE USE IN ACCESSORY BUILDINGS AND MODIFY THE MEASUREMENT OF HEIGHT FOR ACCESSORY BUILDINGS; 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 November 14, 2018, at the request of Commissioner Ricky Arriola, the City Commission referred a discussion item pertaining to accessory dwelling units (ADU's) in single family districts to the Land Use and Development Committee (Item C4 O). On February 20, 2019, the Land Use and Development Committee (LUDC) discussed the proposal and recommended that the administration draft an ordinance. The LUDC continued the item to the April 3, 2019 meeting.

On April 3, 2019, the LUDC discussed the proposed ordinances and recommended that the City Commission refer the ordinances to the planning board. On April 10, 2019 the City Commission referred the subject ordinances to the Planning Board (Item C4 AC).

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 LDR ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan as proposed to be amended.

The proposal supports Objective 1 of the Housing Element of the Comprehensive Plan and subsequent policies which encourage the creation and preservation of workforce and affordable housing throughout the City, as accessory dwelling units facilitate the development of units that are typically rented at a lower price point.

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 create workforce and affordable housing 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 allow for accessory structures to be measured from the base flood elevation (BFE) plus City of Miami Beach Freeboard and will improve 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

Accessory Dwelling Units (ADU's) are small living units that have their own kitchen and bathroom facilities and are on the same property as a single-family home. They are often rented out to provide a family with extra income or made available to a relative looking for additional privacy. Such units can either be attached or detached from the home. They may also be known as granny flats, cottage houses, or secondary dwelling units. It was popular to include such units as part of single-family homes in the early 20th century, including within Miami Beach. However, such units fell into disfavor after World War II when development patterns shifted to a more suburban style, and many cities began to prohibit them.

With rising housing costs in urban areas, many cities are reintroducing the ability to build ADU's in single family areas. This is intended to provide housing that is more attainable to the workforce and to provide homeowners an extra source of income which can help them maintain their homes. Some of the cities that currently allow ADU's include: *Austin, TX; Boulder, CO; Miami, FL (certain neighborhoods – ex. Buena Vista); Minneapolis, MN; Portland, OR; and Seattle, WA.* In addition, all cities in California are required to allow for the construction of ADU's.

City of Miami Beach

Section 142-905 of the Miami Beach Land Development Regulations (LDR's) permits

"Guest/servants quarters" as an accessory use in Single Family Districts. "Guest/servants quarters" are defined as:

living quarters within a detached or semi-detached accessory building located on the same lot with the main building for use by temporary guests or servants of the occupants of the premises. Such quarters shall not have separate utility meters, shall not be rented or otherwise used as a separate dwelling or have cooking facilities except as set forth in section 142-905.

A separate cooking facility is only allowed when the residence contains at least 3,600 square feet of floor area.

Many single-family homes in Miami Beach already contain guest/servant quarters, which are similar in scale and location to ADU's. The difference between the two is that guest/servant quarters cannot be rented out, and as such they do not provide income for homeowners, nor housing that more attainable to the City's workforce.

Currently, the City's Comprehensive Plan includes several incentives to develop workforce and affordable housing in multifamily areas, such as increased density, reduced unit sizes, and parking reductions. Allowing ADU's would be consistent and follow the same path as the previously approved incentives.

Florida Statutes

The Florida Legislature has recognized the benefits of ADUs at assisting to provide housing for low to moderate income persons within Florida Statute 163.31771. That statute provides that "Upon a finding by a local government that there is a shortage of affordable rentals within its jurisdiction, the local government may adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use." This provides that such units not count as an additional unit for the purposes of establishing density limits and levels of service.

Additionally, the statute requires that *an application for a building permit to construct an accessory dwelling unit must include an affidavit from the applicant which attests that the unit will be rented at an affordable rate to an extremely-low-income, very-low-income, low-income, or moderate-income person or persons.* For reference, the definition of "Moderate-income persons" per the statute is "one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater." According to data published by the Florida Housing Finance Corporation for 2018, the monthly rent for a loft-style unit could reach approximately **\$1,653** or for a one-bedroom unit, approximately **\$1,771**.

California Government Code

The State of California has gone further than the State of Florida in this regard and mandated that all local governments in the State allow ADUs to be built in all zoning districts that allow single-family uses. It provides for administrative approval of such units and allows local governments to establish setbacks, lot coverage, minimum and maximum unit sizes, and other requirements. However, it provides that parking requirements not exceed one space per unit or one bedroom, whichever is less, and no parking if the unit is within one-half mile of public

transit, or in an historic district. It also allows for such units to be detached from the primary home or converted from an existing garage. Additionally, the code allows a city the option of requiring owner occupancy of either the primary home or the accessory dwelling unit.

City of Miami Zoning Ordinance (Miami 21 Code)

The City of Miami underwent a process of creating and adopting a new zoning code, known as the Miami 21 Code, between 2005 and 2009. As part of the process, homeowners' associations in the City were consulted to determine if they had an interest in allowing ADU's. Several responded that they did want them, and those neighborhoods received a single-family zoning designation that also allowed for ADU's.

The T3-L (Sub-Urban Transect – Limited) district is the single-family district that allows for ADU's. The code provides that the ADU be a maximum size of 450 square feet, only be ancillary to single-family residences, must be architecturally harmonious with the primary home, that a minimum of one parking space be provided, and that any façade abutting another property only utilize clerestory windows along that façade to ensure that a neighbor's privacy is not impacted. Additionally, the Code requires that the principal dwelling be owner occupied in order to be able to allow for rental of the ADU.

SUMMARY

The Affordable Housing Advisory Committee recently passed a motion supporting the legalization of accessory dwelling units within the City to encourage workforce/affordable housing. Several cities are allowing ADUs in order to allow more housing options in light of increasing housing costs. Staff believes that ADU's would be a worthwhile and practical tool for addressing workforce and affordable housing in the City.

On February 20, 2019, the LUDC discussed the proposal and recommended that the administration draft an ordinance, which provided for the following, all of which are included in the attached amendment to the LDR's:

1. That ADU's be allowed in all single-family neighborhoods.
2. That the rental of ADU's be limited to homesteaded or owner-occupied properties.
3. That the rental of ADU's for over six months and one day.

The proposed ordinance allows for accessory dwelling units to be attached or detached from the primary home, provided it does not affect the single-family appearance of the residence. Additionally, it provides additional size limitations for ADU's that are consistent with the existing requirements for accessory buildings, with a minimum size requirement of 200 square feet. Staff believes that the 200 square foot minimum proposed will be sufficient as the actual size of the unit can be a percentage of the main home. This is the current regulation for accessory structures and it makes sense as the main home needs to be a minimum size to have a functional ADU.

Because such structures will be habitable, the amendment provides that the height of accessory buildings be measured from the base flood elevation (BFE) plus a freeboard of one (1) foot, to ensure that they are resilient to sea level rise and that they can comply with life-safety requirements of the Florida Building Code and the City Code.

There is also a provision in the proposed ordinance that would allow for the grandfathering of existing accessory structures, built prior to January 1, 2019, provided the ADU is not expanded in size. All applicable development regulations, including lot size and setbacks, are addressed within the accessory structure's development regulations.

A companion Comprehensive Plan amendment is attached which authorizes ADU's as an accessory use in the "Single Family Residential Category" within the Land Use Element and that such units will contribute to the City's efforts to encourage the development of workforce and affordable housing within the Housing Element.

Finally, when the City Commission referred the ordinances on April 10, 2019, direction was given to explore the feasibility of accommodating rental periods of less than six months for ADU's. The City Attorney is currently researching this and will advise the board of the findings at the time of the hearing.

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.

**ACCESSORY DWELLING UNITS (ADU)
COMPREHENSIVE PLAN AMENDMENT**

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CITY OF MIAMI BEACH YEAR 2025 COMPREHENSIVE PLAN, BY AMENDING CHAPTER 1, ENTITLED "FUTURE LAND USE ELEMENT;" OBJECTIVE 1, ENTITLED "LAND DEVELOPMENT REGULATIONS," AT POLICY 1.2, "SINGLE FAMILY RESIDENTIAL CATEGORY (RS)," TO ALLOW FOR ACCESSORY AND CONDITIONAL USES AS PROVIDED FOR IN THE LAND DEVELOPMENT REGULATIONS AND TO PROVIDE THAT ACCESSORY DWELLING UNITS DO NOT COUNT TOWARDS MAXIMUM DENSITY LIMITS; AND AMENDING CHAPTER 3, ENTITLED "HOUSING ELEMENT," OBJECTIVE 1, ENTITLED "CREATION AND/OR PRESERVATION OF AFFORDABLE HOUSING" AND "OBJECTIVE 3," ENTITLED "ADEQUATE SITES AND DISTRIBUTION OF HOUSING FOR VERY LOW TO MODERATE-INCOME HOUSEHOLDS; AND ADEQUATE SITES FOR MOBILE AND MANUFACTURED HOMES," TO PROVIDE FOR THE DEVELOPMENT OF ACCESSORY DWELLING UNITS IN ORDER TO ENCOURAGE THE DEVELOPMENT OF HOUSING AT AN ATTAINABLE RATE; AND PROVIDING FOR INCLUSION IN THE COMPREHENSIVE PLAN, TRANSMITTAL, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Land Use and Housing Elements of the Miami Beach Comprehensive Plan include policies to incentivize the development and retention of workforce and affordable housing; and

WHEREAS, The Florida Legislature has recognized the benefits of ADUs at assisting to provide housing for low to moderate income persons within Section 163.31771, Florida Statutes; and

WHEREAS, Section 163.31771, Florida Statutes provides that "Upon a finding by a local government that there is a shortage of affordable rentals within its jurisdiction, the local government may adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use; and

WHEREAS, the City of Miami Beach finds that there is a shortage of affordable rentals within the City limits; and

WHEREAS, the City of Miami Beach finds that allowing accessory dwelling units in single-family residential areas provides additional opportunities for workforce and affordable housing while providing an extra source of income to homeowners; and

WHEREAS, the City Commission finds that it is in the best interest of its residents, businesses, and visitors to adopt regulations to protect the public health, safety, welfare, and morals; 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. The following amendments to the City's 2025 Comprehensive Plan Future Land Use Element are hereby adopted:

* * *

CHAPTER 1

FUTURE LAND USE ELEMENT

* * *

OBJECTIVE 1: LAND DEVELOPMENT REGULATIONS

* * *

Policy 1.2

The land development regulations which implement this Comprehensive Plan shall, at a minimum, be based on and be consistent with s. 163.3202, F.S., and shall further be based on the following standards for land use category, land use intensity and land use:

* * *

Single Family Residential Category (RS)

Purpose: To provide development opportunities for and to enhance the desirability and quality of existing and new single family residential development.

Uses which may be permitted: Single family detached dwellings.

Other uses which may be permitted are accessory uses specifically authorized in this land use category, as described in the Land Development Regulations, including Accessory Dwelling Units, which are required to be subordinate to the main use; and conditional uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to go through a public hearing process as prescribed in the Land Development Regulations of the Code of the City of Miami Beach.

Density Limits: 7 residential units per acre. Accessory Dwelling Units shall not count towards the maximum density limit.

Intensity Limits: Intensity may be limited by such set back, height, floor area ratio and/or other restrictions as the City Commission acting in a legislative capacity determines can effectuate the purpose of this land use category and otherwise implement complementary public policy.

* * *

SECTION 2. The following amendments to the City's 2025 Comprehensive Plan Housing Element are hereby adopted:

* * *

CHAPTER 3

HOUSING ELEMENT

* * *

OBJECTIVE 1: CREATION AND/OR PRESERVATION OF AFFORDABLE HOUSING

* * *

Policy 1.9

The City shall provide for the development of Accessory Dwelling Units in the "Single Family Residential Category" future land use designation in order to encourage the development of housing that is affordable to the workforce, and very low to moderate-income persons, subject to the restriction in the Land Development Regulations.

* * *

OBJECTIVE 3: ADEQUATE SITES AND DISTRIBUTION OF HOUSING FOR VERY LOW TO MODERATE-INCOME HOUSEHOLDS; AND ADEQUATE SITES FOR MOBILE AND MANUFACTURED HOMES.

* * *

Policy 3.6

The City shall provide for the development of Accessory Dwelling Units in the "Single Family Residential Category" future land use designation in order to encourage the development of housing that is affordable to the workforce, and very low to moderate-income persons that is distributed throughout the City, subject to the restriction in the Land Development Regulations.

* * *

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 City Commission that this Ordinance be entered into the Comprehensive Plan, and it is hereby ordained that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word. The Exhibits to this Ordinance shall not be codified, but shall be kept on file with this Ordinance in the City Clerk's Office.

SECTION 5. TRANSMITTAL.

The Planning Director is hereby directed to transmit this ordinance to the appropriate state, regional and county agencies as required by applicable law.

SECTION 6. EFFECTIVE DATE.

This ordinance shall take effect 31 days after the state land planning agency notifies the City that the plan amendment package is complete pursuant to Section 163.3184(3), Florida Statutes.

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: _____, 2019
Second Reading: _____, 2019

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

[Sponsor: Commissioner Ricky Arriola]

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**ACCESSORY DWELLING UNITS (ADU)
LAND DEVELOPMENT REGULATIONS**

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 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, ENTITLED "DEFINITIONS," TO ESTABLISH A DEFINITION FOR "ACCESSORY DWELLING UNIT" AND REMOVE THE DEFINITION OF "GUEST/SERVANTS QUARTERS"; AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 2, ENTITLED "ACCESSORY USES," SECTION 142-905, ENTITLED "PERMITTED ACCESSORY USES IN SINGLE-FAMILY DISTRICTS," TO REPLACE GUEST/SERVANTS QUARTERS WITH ACCESSORY DWELLING UNIT AS AN ALLOWABLE ACCESSORY USE FOR SINGLE-FAMILY DISTRICTS, AND PROVIDE STANDARDS FOR THEIR DEVELOPMENT AND LEASING; AND AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 4, ENTITLED "SUPPLEMENTARY YARD REGULATIONS," SECTION 142-1132, ENTITLED "ALLOWABLE ENCROACHMENTS WITHIN REQUIRED YARDS," TO ALLOW FOR ACCESSORY DWELLING UNITS AS AN ALLOWABLE USE IN ACCESSORY BUILDINGS AND MODIFY THE MEASUREMENT OF HEIGHT FOR ACCESSORY BUILDINGS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Land Use and Housing Elements of the Miami Beach Comprehensive Plan include policies to incentivize the development and retention of workforce and affordable housing; and

WHEREAS, The Florida Legislature has recognized the benefits of ADUs at assisting to provide housing for low to moderate income persons within Section 163.31771, Florida Statutes; and

WHEREAS, Section 163.31771, Florida Statutes provides that "Upon a finding by a local government that there is a shortage of affordable rentals within its jurisdiction, the local government may adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use; and

WHEREAS, the City of Miami Beach finds that there is a shortage of affordable rentals within the City limits; and

WHEREAS, the City of Miami Beach finds that allowing accessory dwelling units in single-family residential areas provides additional opportunities for workforce and affordable housing while providing an extra source of income to homeowners; and

WHEREAS, the City Commission finds that it is in the best interest of its residents, businesses, and visitors to adopt regulations to protect the public health, safety, welfare, and morals; 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 114 of the City Code, entitled "General Provisions," section 114-1, entitled "Definitions," is hereby amended as follows:

**CHAPTER 114
GENERAL PROVISIONS**

* * *

Dwelling unit, accessory (ADU) means an independent living quarter that is accessory to a single-family detached dwelling. The ADU can be in an accessory building or attached to the single-family detached dwelling.

* * *

~~Guest/servants quarters means living quarters within a detached or semi-detached accessory building located on the same lot with the main building for use by temporary guests or servants of the occupants of the premises. Such quarters shall not have separate utility meters, shall not be rented or otherwise used as a separate dwelling or have cooking facilities except as set forth in section 142-905.~~

SECTION 2. Chapter 142, entitled "Zoning Districts and Regulations," Article IV, entitled "Supplementary District Regulations," Division 2, entitled "Accessory Uses," Section 142-905, entitled "Permitted accessory uses in single-family districts," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE IV. – SUPPLEMENTARY DISTRICT REGULATIONS

* * *

DIVISION 2. – ACCESSORY USES

* * *

Sec. 142-905. - Permitted accessory uses in single-family districts.

* * *

- (2) The planning and zoning director may approve a second set of cooking facilities if the residence contains at least 3,600 square feet of floor area and the arrangement of such facilities or conditions at the property shall not result in the creation of an apartment unit. No more than one electric meter shall be placed on the property and that portion of the residence having the second set of cooking facilities shall not be rented. Appeal of the director's decision shall be to the board of adjustment. This limitation shall not apply to an accessory dwelling unit (ADU).
- (3) ~~Guest/servants quarters.~~ An accessory dwelling unit (ADU) is permitted pursuant to the following requirements:
 - a. Maximum number. No more than one (1) ADU shall be permitted per single family lot.
 - b. Maximum area. The area of an ADU shall be included in the overall unit size calculation for the site. In no instance shall the total size of the ADU exceed 10 percent of the size of the main home on the subject site, or 1,500 square feet, whichever is less.
 - c. Minimum area. An ADU shall be a minimum of 200 square feet. However, this minimum standard shall not authorize exceeding the maximum area identified in subsection (c), above. If the minimum area requirement exceeds the maximum area requirement, an ADU shall be prohibited on the site.
 - d. Existing Accessory Structures. For existing accessory structures, built prior to January 1, 2019, the aforementioned maximum and minimum areas shall not be applicable to an ADU, unless the unit is expanded in size.
 - e. Location. An ADU may be attached to the primary residence with a separate entrance that is not visible from public rights-of-way, subject to the limitations for the primary structure of the Land Development Regulations. Additionally, the home shall maintain the external appearance of a single-family home. Alternatively, an ADU may be located in an accessory building, subject to the requirements and limitations for accessory buildings in single family districts identified in sub-section 142-1132 (a)(2).
 - f. Kitchens. An ADU may contain a full kitchen facility.
 - g. Utilities. A separate electric meter may be provided for an ADU.
 - h. Lease. Lease of an ADU shall be subject to the following requirements:
 - 1. The use of an ADU on a property that is not owner occupied shall be limited to the use of the family occupying the primary dwelling, temporary guests, or servants of the occupants of the primary dwelling, and shall not be rented or leased.

2. Lease of an ADU to a family unrelated to the family occupying the primary dwelling unit shall only be permitted on properties that are owner-occupied. Proof of homestead exemption shall be provided and maintained on the property. If a property ceases to be owner-occupied the renewal of a lease for an ADU shall be prohibited, and residents of the ADU shall vacate the premises upon termination of the lease. It shall be the responsibility of the applicant to notify the City if the status of a homestead exemption changes.
3. Lease of an ADU to a family (as defined in section 114-1) unrelated to the family occupying the primary dwelling unit for a period not less than six months and one day, including extensions for lesser periods of leases permitted under this subsection to original leaseholders, shall be prohibited.
4. Property owners seeking to allow for the lease of an ADU unit to a family unrelated to the family occupying the primary dwelling unit must obtain all applicable fire and building permits, certificate of use, and business tax receipt (BTR), as applicable, permitting the lease of the ADU, subject to the requirements listed above. The application shall provide proof of compliance with the requirements of this subsection. Additionally, the applicant shall provide an affidavit affirming their understanding of the requirements to lease the ADU.
5. Violation of these requirements shall be subject to the enforcement and enhanced penalty standards for leases of single-family homes described in subsection 142-905(b)(5).

(4) Home based business office, as provided in Section 142-1411.

- (5) Leases of single-family homes to a family (as defined in section 114-1) for not less than six months and one day, including extensions for lesser periods of leases permitted under this subsection to original leaseholders.

The advertisement, as defined in Section 142-109(b), of single-family homes for a period of less than six months and one day shall not be permitted for single-family districts, and shall be a violation of this Section 142-905(b)(5).

a. Enforcement.

1. Violations of subsection 142-905(b)(5) shall be subject to the following fines. The special master shall not waive or reduce fines set by this subsection.
 - A. If the violation is the first violation: \$20,000.00
 - B. If the violation is the second violation within the preceding 18 months: \$40,000.00
 - C. If the violation is the third violation within the preceding 18 months: \$60,000.00
 - D. If the violation is the fourth violation within the preceding 18 months: \$80,000.00
 - E. If the violation is the fifth or greater violation within the preceding 18 months: \$100,000.00

Fines for repeat violations by the same offender shall increase regardless of locations. The Director of the Code Compliance Department must remit a letter to the Miami-Dade Property Appraiser and the Miami-Dade Tax Collector, with a copy of the Special Master Order adjudicating the violation, that notifies these governmental agencies that the single-family residential property was used for transient rental or occupancy at the single-family residential premises.

2. In addition to or in lieu of the foregoing, the city may seek an injunction by a court of competent jurisdiction to enforce compliance with or to prohibit the violation of this section.
 3. Any code compliance officer may issue notices for violations of this section 142-905(5). Violations shall be issued to the owner, manager, real estate broker or agent, or authorized agent, or any other individual or entity that participates in or facilitates the violation of this section 142-905(5). In the event the record owner of the property is not present when the violation occurred or notice of violation issued, a copy of the violation shall be served by certified mail on the owner at its mailing address in the property appraiser's records.
 4. The advertising or advertisement for the transient rental or occupancy, short-term rental for period(s) of less than six months and one day of the residential property for the purpose of allowing such transient rental or occupancy, short-term rental or rental for period(s) of less than six months and one day at the residential premises is direct evidence that there is a violation of Subsection 142-905(b)(5), which is admissible in any proceeding to enforce Section 142-905(b)(5). The advertising or advertising evidence raises a rebuttable presumption that the residential property named in the Notice of Violation or any other report or as identified in the advertising or advertisement is direct evidence that the residential property was used in violation of Section 142-905(b)(5).
- b. Enhanced penalties. The following enhanced penalties must be imposed, in addition to any mandatory fines set forth in Subsection 142-905(b)(5)a, above, for violations of Subsection 142-905(b)(5):
1. Enhanced Penalties for violation of Subsection 142-905(b)(5):
 - A. The transient rental or occupancy must be immediately terminated, upon confirmation that a violation has occurred, by the Miami Beach Police Department and the Code Compliance Department.
 - B. If the offense is a second offense within the preceding eighteen (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 square feet, then the Special Master must impose an additional fine of \$25,000.00.
 - C. 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. Chapter 142, entitled "Zoning Districts and Regulations," Article IV, entitled "Supplementary District Regulations," entitled Division 4, "Supplementary Yard Regulations," Section 142-1132, entitled "Allowable Encroachments Within Required Yards," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE IV. – SUPPLEMENTARY DISTRICT REGULATIONS

* * *

DIVISION 4. – SUPPLEMENTARY YARD REGULATIONS

* * *

Sec. 142-1132. - Allowable encroachments within required yards.

* * *

- (2) In single-family districts the following regulations shall apply to accessory buildings within a required rear yard:
- a. *Lot coverage.* Accessory buildings that are not a part of the main building, shall be included in the overall lot coverage calculations for the site, and may be constructed in a rear yard, provided such accessory building (or accessory buildings) does not occupy more than 25 percent of the area of the required rear yard. Areas enclosed by screen shall be included in the computation of area occupied in a required rear yard lot but an open uncovered swimming pool shall not be included.
 - b. *Size.* The area of accessory buildings shall be included in the overall unit size calculation for the site. In no instance shall the total size of all accessory building(s) exceed ten percent of the size of the main home on the subject site, or 1,500 square feet, whichever is less.
 - c. *Two-story structures.* The second floor of an accessory building shall not exceed 50 percent of the first floor area.
 - d. *Building separation.* Accessory buildings shall be separated from the main home by a minimum of five feet. open to the sky with no overhead connections.
 - e. *Setbacks.*

1. *Single story.* A single story accessory building shall not be located closer than seven and one-half feet to an interior rear or interior side lot line, and 15 feet when facing a street. When facing a waterway, the minimum rear setback shall not be less than one-half of the required rear setback.
 2. *Two-story.* A two-story accessory building shall not be located closer than ten feet to an interior side lot line, or the required side yard setback, whichever is greater, 15 feet when facing a street, and a rear setback of 15 feet. When facing a waterway, the minimum rear setback shall not be less than one-half of the required rear setback, or 15 feet, whichever is greater.
- f. *Height.* Accessory buildings shall be limited to two stories. Height for accessory buildings shall be measured from the base flood elevation plus freeboard of (1) one foot. The maximum height ~~above adjusted grade~~ shall not exceed 12 feet for a one-story structure and 20 feet for a two-story structure. The allowable height exceptions of Section 142-1161 shall not apply to accessory buildings in single-family districts.
- g. *Uses.* Accessory buildings shall be limited to uses that are accessory to the main use, including, but not limited to, garage, carport, pergola, cabana, gazebo, ~~maid's or guest's quarters~~ or accessory dwelling units. Components of the main structure, such as detached bedrooms or any habitable area of the single-family structure shall not be considered accessory uses.
- h. *Utilities.* Accessory buildings may contain heating and air conditioning, washers and dryers, toilets, bar sinks and showers, but may not have full kitchen facilities. Notwithstanding the forgoing, an accessory dwelling unit may have a full kitchen facility. An outdoor built-in barbecue grill or similar cooking equipment shall be allowed as an accessory use, as may be permitted by the fire marshal and in accordance with the regulations contained in any applicable safety code or Florida Building Code.

SECTION 4. Repealer.

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

SECTION 5. 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 6. Severability.

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

SECTION 7. 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: _____, 2019

Second Reading: _____, 2019

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

[Sponsor: Commissioner Ricky Arriola]

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