

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**

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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.

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~~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**

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ARTICLE IV. – SUPPLEMENTARY DISTRICT REGULATIONS

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DIVISION 2. – ACCESSORY USES

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

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- (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 3. 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**

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ARTICLE IV. – SUPPLEMENTARY DISTRICT REGULATIONS

* * *

DIVISION 4. – SUPPLEMENTARY YARD REGULATIONS

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

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- (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 foregoing, 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.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

First Reading: June 5, 2019
Second Reading: July 17, 2019

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

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

5/28/19
Date

[Sponsor: Commissioner Ricky Arriola]

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