

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: November 19, 2019

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB 19-0327. Definition of Personal Service Establishment**

#### **REQUEST**

**PB 19-0327. 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, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, ENTITLED "DEFINITIONS," BY DELETING THE DEFINITIONS FOR "ADULT CONGREGATE LIVING FACILITY" AND "ADULT CONGREGATE LIVING FACILITY UNIT," AND BY CREATING A DEFINITION FOR "PERSONAL SERVICE ESTABLISHMENT"; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE

#### **RECOMMENDATION**

Transmit the proposed Ordinance to the City Commission with a favorable recommendation.

#### **HISTORY**

On September 18, 2019, the Land Use and Development Committee (LUDC) considered a proposed ordinance to expand the allowable types of accessory uses within bayfront apartment buildings in the RM-2 district. This ordinance was recently adopted by the City Commission on October 30, 2019. As part of the discussion of this bayfront accessory use ordinance, the LUDC recommended that the City Commission refer a separate ordinance to the Planning Board to amend the existing definition for personal service.

On October 16, 2019 the City Commission referred the item to the Planning Board for review and recommendation (item C4 O).

#### **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 define terms within the City code and remove terms no longer uses make the proposed changes 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 will 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 will 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 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 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 the City's sea level rise mitigation and resiliency efforts.

**ANALYSIS**

The current definition for personal service in chapter 114 of the Land Development Regulations of the City Code is as follows:

*Personal service* means any services in addition to housing and food service, which include, but are not limited to, personal assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating, supervision of self-administered medications, and assistance with securing health care from appropriate sources.

This definition, which has been in the City Code since 1989, was originally drafted to define personal services associated with adult living facilities and nursing homes. Following the adoption of Ordinance No. 2018-4170, which set forth comprehensive regulations pertaining to assisted living and medical uses in the City, regulations on adult living facilities and nursing homes were

consolidated. Because the term “personal service” is now referenced in the definitions for Hospital and Assisted Living Facility, in the context of the specialized use regulations for assisted living and medical uses, it is appropriate to retain the current definition for “personal service,” and create a new definition for “personal service establishment.”

In order to define the types of uses that comprise a personal service establishment outside of the medical realm, a new definition has been proposed in the attached draft ordinance. The proposed new definition in chapter 114 addresses the types of personal services typically permitted as both accessory and main permitted uses in commercial and multi-family zoning districts as follows:

*Personal service establishment means a licensed establishment providing non-retail, non-medical services, for persons, such as pedicures, manicures, hair styling, barber services, massages, facials, tailoring services, and similar person-oriented services, as determined by the planning director.*

Lastly, the ordinance deletes the terms “adult congregate living facility” and “adult congregate living facility unit,” as these terms are no longer used by the State of Florida for licensure purposes.

#### **RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the Planning Board:

1. Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation; and
2. Recommend that the ordinance be combined with a separate ordinance pertaining to prohibited uses along 71<sup>st</sup> Street (PB File No. 19-0328).

## Definition of Personal Service Establishment

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, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, ENTITLED "DEFINITIONS," BY DELETING THE DEFINITIONS FOR "ADULT CONGREGATE LIVING FACILITY" AND "ADULT CONGREGATE LIVING FACILITY UNIT," AND BY CREATING A DEFINITION FOR "PERSONAL SERVICE ESTABLISHMENT"; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the City's Land Development Regulations include definitions pertaining to allowable uses; and

**WHEREAS**, on October 1, 1989, the city adopted Ordinance No. 89-2665, which included new regulations on adult congregate living facilities (ACLFs); and

**WHEREAS**, on January 17, 2018, the Mayor and City Commission adopted Ordinance No. 2018-4170, which set forth comprehensive regulations pertaining to assisted living and medical uses in the City; and

**WHEREAS**, the term "adult congregate living facility" or "ACLF" is no longer used by the State of Florida for licensure purposes; and

**WHEREAS**, it is necessary and appropriate to remove outdated terms from the Land Development Regulations; and

**WHEREAS**, the current definition for "personal service" pertains more to necessary assistive services for individuals living in assisted living facilities; and

**WHEREAS**, additionally, the Land Development Regulations include references to the term "personal service establishment," which is not defined, but is intended to apply to a standalone or accessory use that is not related to, or part of, an assisted living facility; and

**WHEREAS**, in order to clarify the Land Development Regulations, it is necessary and appropriate to create a definition for personal service establishment.

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

**SECTION 1.** Chapter 114, "General Provisions" is hereby amended as follows:

### **CHAPTER 114 – GENERAL PROVISIONS**

#### **Sec. 114-1. – Definitions**

\* \* \*

~~Adult congregate living facility means any state licensed institution, building, residence, private home, boarding home, home for the aged, or other place whether operated for profit or not, which undertakes through its ownership or management to provide for a period exceeding 24 hours, one or more personal services for four or more adults, not related to the owner or administrator by blood or marriage, who require such services. A facility offering personal services for fewer than four adults shall be within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services.~~

~~Adult congregate living facility unit means any room, or inter-connected rooms with one main entrance, in an adult congregate living facility, containing one or more beds.~~

\* \* \*

~~Personal service means any services in addition to housing and food service, which include, but are not limited to, personal assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating, supervision of self-administered medications, and assistance with securing health care from appropriate sources. This definition shall only be applicable to assisted living facilities as defined in Article 5, Division 2 of Chapter 142.~~

~~Personal service establishment means a licensed establishment providing non-retail, non-medical services, for persons, such as pedicures, manicures, hair styling, barber services, massages, facials, tailoring services, and similar person-oriented services, as determined by the planning director.~~

\* \* \*

## **SECTION 2. Repealer.**

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

## **SECTION 3. 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 Code of the City of Miami Beach, Florida, as amended. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section" or other appropriate word.

## **SECTION 4. Severability.**

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

## **SECTION 5. Effective Date.**

This Ordinance shall take effect the \_\_\_\_ day of \_\_\_\_\_, 2020.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO FORM  
AND LANGUAGE  
AND FOR EXECUTION

First Reading: \_\_\_\_\_, 2019  
Second Reading: \_\_\_\_\_, 2020

City Attorney \_\_\_\_\_ Date \_\_\_\_\_

Verified by: Thomas R. Mooney, AICP  
Planning Director