

**Demolition by Neglect – Presumption Clause**

**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, FLORIDA, BY AMENDING CHAPTER 118, “ADMINISTRATION AND REVIEW PROCEDURES,” ARTICLE X, “HISTORIC PRESERVATION,” DIVISION 1, “GENERALLY,” BY AMENDING SECTION 118-503 THEREOF, ENTITLED “SCOPE, POLICIES AND EXEMPTIONS,” TO AMEND THE REGULATIONS APPLICABLE TO CONTRIBUTING BUILDINGS THAT ARE DEMOLISHED WITHOUT A CERTIFICATE OF APPROPRIATENESS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the demolition of contributing structures without obtaining a Certificate of Appropriateness from the Historic Preservation Board threatens the urban fabric, character, and integrity of the City’s historic districts; and

**WHEREAS**, City Code Section 118-503(b)(2) currently provides that “[t]he policy of the City of Miami Beach shall be that a contributing building demolished without obtaining a certificate of appropriateness from the historic preservation board, shall only be replaced with a new structure that incorporates the same height, massing and square footage of the previous structure on site, not to exceed the maximum FAR and height permitted under the City Code, with no additional square footage added”; and

**WHEREAS**, this Ordinance clarifies that the demolition of a contributing building without obtaining a Certificate of Appropriateness raises a *presumption* that any replacement structure shall be limited to the height, massing, square footage, and FAR of the demolished structure.

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

**SECTION 1.** Chapter 118, “Administration and Review Procedures”, Article X, “Historic Preservation”, Division 1, “Generally” is hereby amended as follows:

**CHAPTER 118  
ADMINISTRATION AND REVIEW PROCEDURES**

\* \* \*

**ARTICLE X. – HISTORIC PRESERVATION**

**DIVISION 1. – GENERALLY**

\* \* \*

**Sec. 118-503. - Scope, policies and exemptions.**

\* \* \*

(b) *Policies.*

(1) *After-the-fact certificates of appropriateness for demolition.* In the event any demolition as described above or in subsection (b) of this section should take place prior to historic

preservation board review, the demolition order shall be conditioned to require the property owner to file an "after-the-fact" application for a certificate of appropriateness for demolition to the historic preservation board, within 15 days of the issuance of the demolition order. No "after-the-fact" fee shall be assessed for such application. The board shall review the demolition and determine whether and how the demolished building, structure, landscape feature or the partially or fully demolished feature of the exterior or public interior space of a structure, shall be replaced. The property owner shall also be required, to the greatest extent possible, to retain, preserve and restore any demolished feature of a structure until such time as the board reviews and acts on the "after-the-fact" application. In the event the property owner fails to file an "after-the-fact" application for a certificate of appropriateness for demolition to the historic preservation board within 15 days of the issuance of an emergency demolition order, the city may initiate enforcement proceedings including proceedings to revoke the certificate of use, occupational license, any active building permit(s) or certificate of occupancy of the subject site, whichever is appropriate. Additionally, this article may be enforced and violations may be punished as provided in section 114-8 of this Code; or by enforcement procedures as set forth in the Charter and penalties as provided in section 1-14 of this Code.

(2) *Replacement of existing structures.* The policy of the City of Miami Beach shall be a presumption that a contributing building demolished without obtaining a certificate of appropriateness from the historic preservation board, shall only be replaced with a new structure that incorporates the same height, massing and square footage of the previous structure on site, not to exceed the floor area ratio (FAR) of the demolished structure, and not to exceed the maximum FAR and height permitted under the City Code, with no additional square footage added. This ~~policy~~ presumption shall be applicable in the event a building permit for new construction or for repair or rehabilitation is issued, and demolition occurs for any reason, including, but not limited to, an order of the building official or the county unsafe structures board. This ~~policy~~ presumption shall also be applicable to any request for an "after-the-fact" certificate of appropriateness. This ~~policy~~ presumption may be rebutted, and the historic preservation board may allow for the addition of more square footage, where appropriate, not to exceed the maximum permitted under the City Code, if it is established to the satisfaction of the historic preservation board that the following criteria have been satisfied:

- a. The proposed new structure is consistent with the context and character of the immediate area; and
- b. The property owner made a reasonable effort to regularly inspect and maintain the structure free of structural deficiencies and in compliance with the minimum maintenance standards of this Code.

(3) *Replication of demolished contributing structures.* The historic preservation board shall determine, on a case-by-case basis, whether the replication of an original, contributing structure is warranted. For purposes of this subsection, replication shall be defined as the physical reconstruction, including all original dimensions in the original location, of a structure in totality, inclusive of the reproduction of primary facade dimensions and public area dimensions with appropriate historic materials whenever possible, original walls, window and door openings, exterior features and finishes, floor slab, floor plates, roofs and public interior spaces. The historic preservation board shall have full discretion as to the exact level of demolition and reconstruction required. If a building to be reconstructed is nonconforming, any such reconstruction shall comply with all of the requirements of chapter 118, article IX, of these land development regulations.

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**SECTION 2. Repealer.**

All ordinances or parts of ordinances and all sections and parts of sections in conflict herewith 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

*[Signature]* 2-3-20  
City Attorney Date

First Reading: February 12, 2020  
Second Reading: March 11, 2020

*NK*

Verified by: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director