

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: November 17, 2020

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB20-0394, Post-disaster temporary zoning relief - in-person quorum requirement.**

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, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE II, ENTITLED "BOARDS," DIVISION 2, ENTITLED "PLANNING BOARD," AT SECTION 118-52, ENTITLED "MEETINGS AND PROCEDURES,"; DIVISION 3, ENTITLED "DESIGN REVIEW BOARD," SECTION 118-75, ENTITLED "QUORUM AND VOTING,"; DIVISION 4, "HISTORIC PRESERVATION BOARD," SECTION 118-106, ENTITLED "QUORUM AND VOTING,"; AND DIVISION 5, ENTITLED "BOARD OF ADJUSTMENT," AND SECTION 118-135, ENTITLED "MEETINGS AND RECORDS," TO ALLOW THE COMMISSION TO ALTER IN-PERSON QUORUM REQUIREMENTS DURING DECLARED LOCAL STATES OF EMERGENCY; AMEND REQUIREMENTS PERTAINING TO ATTENDANCE AND PARTICIPATION AT PUBLIC MEETINGS; BY AMENDING CHAPTER 118, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," CREATING ARTICLE XIII, TO BE ENTITLED "EMERGENCY TEMPORARY USES," TO ESTABLISH A PROCESS FOR THE AUTHORIZATION OF TEMPORARY USES DURING A DECLARED LOCAL STATE OF EMERGENCY; BY AMENDING CHAPTER 142 OF THE CITY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS," AT SECTION 142-106, ENTITLED "SETBACK REQUIREMENTS FOR A SINGLE-FAMILY DETACHED DWELLING," TO AUTHORIZE THE USE OF CAMPER TRAILERS OR RECREATIONAL VEHICLES AS TEMPORARY DWELLINGS DURING DECLARED LOCAL STATES OF EMERGENCY, WHERE A RESIDENCE HAS BEEN DEEMED UNINHABITABLE; AND BY AMENDING CHAPTER 142 OF THE CITY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 1, ENTITLED "GENERALLY," AT SECTION 142-874, ENTITLED "REQUIRED ENCLOSURES," TO AUTHORIZE THE LIMITED OUTDOOR SALE AND RENTAL OF HOME IMPROVEMENT PRODUCTS DURING DECLARED LOCAL STATES OF EMERGENCY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

#### **RECOMMENDATION**

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

## **BACKGROUND**

On December 11, 2019, at the request of Commissioner Mark Samuelian, the City Commission referred the item to the Sustainability and Resiliency Committee (Item C4C). The item was placed on the January 21, 2020 agenda of the newly created Land Use and Sustainability Committee (LUSC). The item was deferred to the February 18, 2020 LUSC meeting.

On February 18, 2020, the LUSC continued the item to May 6, 2020 for the development of an ordinance. On May 6, 2020, the LUSC deferred the item to the May 26, 2020 meeting. On May 26, 2020 meeting, the LUSC deferred the item to the June 30, 2020 meeting. On June 30, 2020 the LUSC recommended that the City Commission refer the attached ordinance to the Planning Board.

On July 29, 2020, the City Commission referred the proposed ordinance to the Planning Board for review and recommendation (Item C4 E).

On September 22, 2020, the Planning Board discussed the item and continued it to the October 27, 2020 meeting to allow the item to be renoticed. On October 27, 2020, the Planning Board continued the item to the November 17, 2020 meeting.

## **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.**

**Partially 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.**

**Consistent** – The proposed amendment does not change 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 as the maximum FAR is not modified.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

**Consistent** – The proposal does not modify district boundaries.

**6. Whether changed or changing conditions make the passage of the proposed change necessary.**

**Consistent** – The increased impacts from natural disasters due to climate change makes passage of 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 seriously 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 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 improve the resiliency of the City with respect to sea level rise by ensuring that the City has a better ability to recover after a natural disaster, which may have a stranger impact due to sea level rise.

**(3) Whether the proposal is compatible with the City’s sea level rise mitigation and resiliency efforts.**

**Consistent** – The proposal is compatible with and supports the City’s sea level rise mitigation and resiliency efforts.

**ANALYSIS**

The proposed ordinance includes provisions that are similar to a Miami-Dade County ordinance pertaining to the use of home improvement stores and RV’s subsequent to catastrophic weather events. Staff has also reviewed several of the recommendations in the Resilient 305, Bounce Forward 305 Resilient Urban Land Use Planning Toolkit and has incorporated recommendations that would be useful post-disaster.

Additionally, in response to the current public health emergency related to the Covid-19 pandemic, the Administration has developed a process to allow quasi-judicial hearings to proceed in a hybrid virtual/in-person format, consistent with social distancing guidelines. The proposed ordinance includes a procedure to allow such meetings of the Land Use Boards to proceed in a similar manner during a locally declared state of emergency, unless the in-person quorum requirement is suspended by the Governor or otherwise suspended pursuant to applicable law.

The proposed draft ordinance includes the following primary components, which would be applicable during a locally declared state of emergency:

- 1. Hybrid Virtual/In-person Land Use Board Meetings** – On March 20, 2020, the Florida Governor issued Executive Order 20-69, (i) suspending any Florida Statute that requires a quorum to be present in person or requires a local government body to meet at a specific public place, and (ii) permitting local government bodies to utilize communications media technology such as telephonic and video conferencing (“EO 20-69”). EO 20-69 expired on November 1, 2020. On October 28, 2020, the City Commission adopted Resolution No. 2020-31474 which, in pertinent part, approved a procedure for the City Commission and Land Use Boards to maintain a physically present quorum (consistent with Florida law) at meetings requiring action, with remaining board members who are not physically present to participate virtually, due to the extraordinary circumstances presented by the public health emergency.

The proposed ordinance includes a procedure to allow meetings of the Land Use Boards to proceed in a similar manner during a locally declared state of emergency that impacts a

board's ability to meet in person, unless the in-person quorum requirement is suspended by the Governor or otherwise suspended pursuant to applicable law.

The idea behind this component is that if sufficient members to constitute a quorum can participate at a physical meeting location, remaining board members could then participate remotely (i.e. using communications media technology, such as telephonic and video conferencing). For instance, in the case of the Planning Board, four members would need to be physically present at a meeting location, and up to three members could participate remotely.

2. **Temporary Uses** – Under this section of the proposal, the City Manager would be authorized to approve certain types of temporary uses during a declared Local State of Emergency that involves a catastrophic event, such as a tropical storm, hurricane, or pandemic. The temporary uses could occur on any parcel, regardless of zoning district, for a period of up to 120 days. The use would have to assist in the reconstruction or recovery of the area and the City Manager would have to find that the use does not negatively impact the surrounding area. Conditions to the use could be imposed to ensure that the quality of life of the surrounding area is maintained. As additional safeguards, the City Manager could limit the geographic areas for the uses and revoke the permit for any reason. Should there be a need for the use to continue beyond 120 days, the proposed ordinance allows the City Commission to extend the permits for up to an additional year by Resolution at a public hearing.

This is a recommendation from the Resilient 305, Bounce Forward 305 Resilient Urban Land Use Planning Toolkit. Several cities in California, including Los Angeles, have similar allowances for post-disaster temporary uses. As it is difficult to predict exactly what uses are necessary to assist in the recovery of an area, the proposed section grants the City the necessary flexibility, while providing sufficient safeguards to ensure that quality of life is protected.

3. **Authorize the use of Camper Trailers and Recreational Vehicles as a Temporary Dwelling** – The proposal would allow camper trailers and recreational vehicles to be used as a temporary dwelling in the event a disaster causes the principle residence on a parcel to be uninhabitable. The proposal requires that a Temporary Certificate of Use (TCU) be obtained authorizing the use of the vehicle as a dwelling. The TCU would only be valid for 120 days. An additional extension of 120 days is available if there is evidence of progress on repairs to the primary structure.

Currently regulations in section 142-106 allow such vehicles to be located in side or rear yards on paved, permanent surfaces and screened from view from the public right of way. The proposal waives the pavement and screening requirements and also allows the vehicle to be located in the front yard. The proposal also requires that the vehicle be licensed and ready for highway use so that it can be easily moved once the TCU expires.

This is a recommendation from Miami-Dade County Resolution to facilitate housing for victims of natural disasters. Since it is limited to properties where the home is uninhabitable and for limited periods of time, the proposal should not negatively impacts neighborhoods.

- 4. Authorize Outdoor Sale or Rental for Home Improvement Products** – The proposal is to allow businesses that sell or rent home improvement products to sell those products outdoors within the same lot in which the business is located. The ordinance allows the City Manager to authorize outdoor sales for specific geographic areas once a local state of emergency is declared. It recommends that this only be done for states of emergency where significant building damage is incurred. The proposal also requires that the outdoor sales cease once the state of emergency ends.

Currently section 142-874 requires commercial activity to take place in a substantially enclosed, permanent building. During a state of emergency in which substantial building damage occurs, there may be an increased need for home improvement products such as hardware, construction supplies, lumber, and tools. In order to facilitate meeting the demand, businesses that already sell those goods would be able to use outdoor areas to increase the area available for inventory.

This is a recommendation from Miami-Dade County Resolution to facilitate repairs and reconstruction after natural disasters. Since it requires authorization from the City Manager and must cease once the state of emergency ends, the proposal should not negatively impact surrounding areas.

#### **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.