

Post Disaster Temporary Zoning Relief

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, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE II, ENTITLED "BOARDS," DIVISION 2, ENTITLED "PLANNING BOARD," 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," SECTION 118-135, ENTITLED "MEETINGS AND RECORDS," TO 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," 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.

WHEREAS, the South Florida area is particularly vulnerable to natural disasters, especially tropical storms and hurricanes; and

WHEREAS, the City of Miami Beach has the authority to enact laws which promote and protect the public health, safety, and welfare of its residents; and

WHEREAS, these amendments 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, AS FOLLOWS:

Section 1. Chapter 118, entitled “Administration Review Procedures,” at Article II, entitled “Boards,” is hereby amended as follows:

**CHAPTER 118
ADMINISTRATION AND REVIEW PROCEDURES**

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ARTICLE II. – BOARDS

DIVISION 2. - PLANNING BOARD

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Sec. 118-52. - Meetings and procedures.

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(d) *Quorum and voting.* A quorum shall constitute four regular members for any matter that requires city commission approval. ~~A quorum of five regular members is required for conditional uses and any matter that does not require city commission approval.~~ An affirmative vote of four regular members shall be required to approve a request before the board that requires city commission approval. An affirmative vote of five regular members shall be required to approve a conditional use request or matter to approve any other request that does not require city commission approval. If an application is denied, the board shall provide a written statement in support of its finding.

As applicable to meetings held during a locally declared state of emergency that impacts the board’s ability to meet in person, a quorum of the board may attend the meeting in person, and remaining board members may attend and participate using communications media technology such as telephonic and video conferencing, unless the in-person quorum requirement has been suspended by the Florida Governor, by a court of competent jurisdiction, or otherwise suspended pursuant to applicable law.

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DIVISION 3. - DESIGN REVIEW BOARD

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Sec. 118-75. - Quorum and voting.

A quorum shall consist of four regular members. An affirmative vote of four regular members shall be required to approve an application for design review. Prior to a decision of the design review board, the ex officio members shall submit a recommendation for each item on the agenda. An affirmative vote of five regular members of the board shall be necessary to approve any variance request. In addition, the city attorney shall determine whether a request is properly before the board. If an application is denied, the board shall provide a written statement in support of its finding.

As applicable to meetings held during a locally declared state of emergency that impacts the board’s ability to meet in person, a quorum of the board may attend the meeting in person, and remaining board members may attend and participate using communications media technology such as telephonic and video conferencing, unless the in-person quorum

requirement has been suspended by the Florida Governor, by a court of competent jurisdiction, or otherwise suspended pursuant to applicable law.

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DIVISION 4. - HISTORIC PRESERVATION BOARD

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Sec. 118-106. - Quorum and voting.

The presence of a quorum shall be necessary to conduct a historic preservation board meeting. A quorum shall consist of four members of the board. A majority vote of the members present shall be necessary to approve all requests or to decide all issues coming before the board with the following exceptions:

- (1) Issuance of a certificate of appropriateness for demolition, recommendations for historic designation and reclassification of properties listed as "historic" in the historic properties database shall require five affirmative votes.
- (2) The issuance of a certificate of appropriateness pertaining to revisions to any application for a property where a certificate of appropriateness for demolition was previously issued, including an after-the-fact certificate of appropriateness for demolition, shall require five affirmative votes.
- (3) The approval of any variance request shall require five affirmative votes.
- (4) The issuance of a certificate of appropriateness pertaining to any application for new construction, renovation or rehabilitation, except as otherwise provided in this section, shall require four affirmative votes.
- (5) In the event of a tie vote on a motion on all requests or issues coming before the board, the motion shall be deemed denied.

As applicable to meetings held during a locally declared state of emergency that impacts the board's ability to meet in person, a quorum of the board may attend the meeting in person, and remaining board members may attend and participate using communications media technology such as telephonic and video conferencing, unless the in-person quorum requirement has been suspended by the Florida Governor, by a court of competent jurisdiction, or otherwise suspended pursuant to applicable law.

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DIVISION 5. - BOARD OF ADJUSTMENT

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Sec. 118-135. - Meetings and records.

Meetings of the board of adjustment shall be held at least once monthly, or at such other times as the board may determine, or upon call of the chairman. The board shall adopt its own rules or procedures and keep minutes of its proceedings showing its action on each question considered. A quorum shall constitute four regular members to conduct business.

As applicable to meetings held during a locally declared state of emergency that impacts the board's ability to meet in person, a quorum of the board may attend the meeting in person, and remaining board members may attend and participate using communications media technology such as telephonic and video conferencing, unless the in-person quorum requirement has been suspended by the Florida Governor, by a court of competent jurisdiction, or otherwise suspended pursuant to applicable law.

Section 2. Chapter 118, entitled "Administration Review Procedures," creating Article XIII, to be entitled "Emergency Temporary Uses," is hereby amended as follows:

ARTICLE XIII. – EMERGENCY TEMPORARY USES.

Sec. 118-820. – Purpose and intent.

It is the purpose and objective of this article to establish reasonable and uniform regulations to protect the public health, safety, and welfare, and to provide a streamlined method for review of applications for temporary use approvals and other land use approvals in the event of a catastrophic event, including, but not limited to, fire, tornado, tropical storm, hurricane, or other act of God.

Sec. 118-821. – Authorization of Temporary Uses

During a locally declared state of emergency for a natural disaster or other catastrophic event, including, but not limited to, fire, tornado, tropical storm, hurricane, pandemic, or other act of God, the City Manager may permit temporary uses for up to 120 days on any lot, regardless of the underlying zoning district, for any temporary use which will aid in the reconstruction or recovery of an area adversely impacted by the catastrophic event, pursuant to the following:

- (a) In approving the location of any temporary use, the City Manager must find that the temporary use will not have a significant effect on adjoining properties or on the immediate neighborhood.
- (b) The temporary use shall not be subject to the requirements of chapters 122 through 148 of the land development regulations, unless the City Manager determines that it is necessary to enforce a land development regulation against the temporary use in order to protect the peaceful and quiet enjoyment of nearby properties, or that enforcement of the land development regulation is required pursuant to the City Charter or State law.
- (c) The City Manager may impose conditions that may be necessary to protect the peaceful and quiet enjoyment of nearby properties.
- (d) Upon the expiration of the temporary use approval, the site must be returned to its pre-emergency state, unless a building permit is obtained to modify the site.
- (e) The City Manager may require the posting of a completion bond, or other security, satisfactory to the City Manager, to cover the cost of the removal of any improvements made to a site or cleaning of the site after termination of the approved temporary use.

- (f) The application for the temporary use must be made while the locally declared state of emergency is in effect, but (as applicable to a natural disaster such as a tropical storm or hurricane) only after the disaster for which the emergency was declared has ceased.
- (g) The City Manager shall have the sole and absolute discretion to revoke the temporary permit at any time.
- (h) The Planning Department shall maintain records of all temporary permits issued pursuant to this article.
- (i) The City Commission may, by resolution adopted following a duly noticed public hearing, authorize the City Manager to extend any or all temporary uses approved pursuant to this article for a period of up to one additional year.

Section 3. Chapter 142 of the City Code, entitled "Zoning Districts and Regulations," Article II, entitled "District Regulations, at Division 2, entitled "RS-1, RS-2, RS-3, RS-4 Single-Family Residential Districts," is hereby amended as follows:

CHAPTER 142 ZONING DISTRICTS AND REGULATIONS

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ARTICLE II. – DISTRICT REGULATIONS

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DIVISION 2. – RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS

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Sec. 142-106. - Setback requirements for a single-family detached dwelling.

- (b) Allowable encroachments within required yards.

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- (3) Boat, boat trailer, camper trailer or recreational vehicle storage. Accessory storage of such vehicles shall be limited to a paved, permanent surface area within the side or rear yards. No such vehicle shall be utilized as a dwelling, and any such vehicles shall be screened from view from any right-of-way or adjoining property when viewed from five feet six inches above grade.

Notwithstanding the foregoing, following the declaration of a local state of emergency, camper trailers or recreational vehicles maybe used as a dwelling, subject to the following:

- i. The vehicle is located on a property where the principal residence has been deemed by the City as uninhabitable as a result of a locally declared state of emergency.
- ii. A Temporary Certificate of Use (TCU) is obtained prior to using the RV for living purposes. The TCU shall be valid for 120 days. The TCU may be reissued for an additional 120 days if there is evidence that there is progress with the repairs to the principle structure.

- iii. The application for the TCU must be made while the locally declared state of emergency is in effect, but (as applicable to a natural disaster such as a tropical storm or hurricane) only after the disaster for which the emergency was declared has ceased.
- iv. In addition to the side or rear yards, the vehicle may be located in the front yard, provided it does not encroach into a public right-of-way. The vehicle need not be parked on a paved or permanent surface, nor screened from view from a right of way. Upon the expiration of the TCU, the vehicle must be relocated to comply with all applicable City regulations and can no longer be used as a dwelling, or must be removed from the property.
- v. The vehicle is fully licensed and ready for highway use.

Section 4. Chapter 142 of the City Code, entitled "Zoning Districts and Regulations," Article IV, entitled "Supplementary District Regulations," at Division 1, entitled "Generally," is hereby amended as follows:

ARTICLE IV. – SUPPLEMENTARY DISTRICT REGULATIONS

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DIVISION 1. - GENERALLY

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Sec. 142-874. - Required enclosures.

- (a) *Store enclosures.* In all use districts designated in these land development regulations, the sale, or exposure for sale or rent, of any personal property, including merchandise, groceries or perishable foods, such as vegetables and fruits, is prohibited, unless such sale, or exposure for sale, is made from a substantially enclosed, permanent building; provided, however, that nothing herein contained shall be deemed applicable to rooftop areas not visible from the right-of-way, filling stations, automobile service stations or repair shops; uses having revocable permits or beach concessions operated or granted by the city, newsracks or newspaper stands, or displays at sidewalk cafés as permitted in subsection 82-384, wherever such uses are otherwise permissible. Vehicles for rent or lease utilized in connection with the operation of an automobile rental agency as defined in section 102-356, and not located within a substantially enclosed permanent building, shall require conditional use approval from the planning board, provided that the exposure of the vehicles is on the same site at which the automobile rental agency is located, and that such exposed vehicles are screened from view as seen from any right-of-way or adjoining property when viewed from five feet six inches above grade, with appropriate landscaping not to exceed three feet in height from grade.

Notwithstanding the foregoing, following the declaration of a local state of emergency, the requirement for products to be sold or rented from substantially enclosed permanent buildings may be waived by the City Manager, subject to the following conditions:

1. The City Manager authorizes outdoor sales for specific areas of the City. The authorization shall be limited to emergencies where significant building damage has occurred.
2. Products sold or rented are limited to home improvement products, including, but not limited to hardware, construction supplies, electrical plumbing fixtures, lumber, tools, and lawn and garden supplies.
3. Businesses authorized for outdoor sales or rentals shall be limited to those that sold home improvement products immediately prior to the declaration of the local state of emergency.
4. The outdoor sales or rentals shall occur on the same lot as the primary business.
5. All accessible pedestrian circulation is maintained.
6. Vehicular circulation is not interrupted.
7. Accessibility parking spaces are not reduced.
8. The outdoor sales end when the local state of emergency is terminated.

SECTION 5. Repealer.

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

SECTION 6. 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 7. 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 8. Effective Date.

This Ordinance shall take effect ten days following adoption.

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: October 14, 2020
Second Reading: November 18, 2020

City Attorney

Date

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

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