

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 "TEMPORARY EMERGENCY USES," TO ESTABLISH A PROCESS TO AUTHORIZE TEMPORARY USES DURING A 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 A CAMPER TRAILER OR RECREATIONAL VEHICLE AS A TEMPORARY DWELLING DURING A STATE 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 A STATE 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 and 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

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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 state of emergency declared by the City, County, or State that applies to the City of Miami Beach and that impacts the board's ability to meet in person, a quorum of the board shall 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 state of emergency declared by the City, County, or State that applies to the City of Miami Beach and that impacts the board's ability to meet in person, a quorum of the board shall 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 state of emergency declared by the City, County, or State that applies to the City of Miami Beach and that impacts the board's ability to meet in person, a quorum of the board shall 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 of four members of the board.

As applicable to meetings held during a state of emergency declared by the City, County, or State that applies to the City of Miami Beach and that impacts the board's ability to meet in person, a quorum of the board shall 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," Article XIII, to be entitled "Temporary Emergency Uses," is hereby created as follows:

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ARTICLE XIII. TEMPORARY EMERGENCY 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 for streamlined review of applications for temporary uses and other land use approvals following a catastrophic event, including, but not limited to, a fire, tornado, flood, tropical storm, hurricane, or other natural disaster or act of God.

Sec. 118-821. Approval of temporary emergency uses.

During a state of emergency declared by the City in response to a natural disaster or other catastrophic event, including, but not limited to, a fire, tornado, flood, tropical storm, hurricane, or other natural disaster or act of God, the City Manager shall have the authority to approve temporary emergency use permits for a duration of up to 120 days on any lot, regardless of the underlying zoning district, for any temporary use which, as determined by the City Manager, will aid in the reconstruction or recovery of an area adversely impacted by the natural disaster or catastrophic event, subject to the following conditions:

- (a) Prior to approving the location of a temporary emergency use, the City Manager must find that the use will not have a significant effect on adjoining properties or on the immediate surrounding neighborhood.
- (b) The temporary emergency 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 use in order to protect the peaceful and quiet enjoyment of adjoining 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 additional conditions that may be necessary to protect the peaceful and quiet enjoyment of adjoining properties.

- (d) Upon the expiration of the temporary emergency use permit, the site must be fully restored and 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 guarantee in an amount that, at a minimum, would cover the cost of the removal of any improvements made to a site or cleaning/restoration of the site following the expiration of the approved temporary emergency use permit.
- (f) An application for a temporary emergency use permit must be made while the declaration of a state of emergency is in effect.
- (g) The City Manager shall have the sole and absolute discretion to revoke the temporary emergency use permit at any time.
- (h) The Planning Department shall maintain records of all temporary emergency use 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 emergency use permit 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, during a state of emergency declared by the City, a camper trailer or recreational vehicle may be used as a temporary dwelling, subject to the following conditions:

- i. The principal residence on the property where the vehicle is located has been deemed by the City to be uninhabitable as a result of the emergency.
- ii. A Temporary Certificate of Use (TCU) is obtained prior to the use of the vehicle as a dwelling. The TCU shall be valid for up to 120 days, but may be extended for up to an additional 120 days if an applicant demonstrates progress toward repairing the principal structure.
- iii. The application for the TCU must be made while the declaration of a state of emergency is in effect.
- iv. The vehicle may be located in the side or rear yard or, provided it does not encroach into a public right-of-way, in the front yard. 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 provisions in the City Code and may no longer be used as a dwelling. Alternatively, the vehicle must be removed from the property.
- v. The vehicle is fully licensed, in good condition, and ready for highway use.

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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

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, during a state of emergency declared by the City, the requirement that personal property be sold or rented from a substantially enclosed, permanent building may be waived by the City Manager subject to the following conditions:

1. The City Manager may, upon a finding that significant building damage has occurred, identify specific areas of the City where personal property may be sold or rented outdoors.
2. Items permitted to be sold or rented shall be limited to home improvement products including, but not limited to, hardware, construction supplies, electrical and plumbing fixtures, lumber, tools, and lawn and garden supplies.
3. Businesses eligible for a waiver pursuant to this section shall be limited to businesses that engaged in the sale or rental of home improvement products immediately prior to the declaration of a state of emergency.
4. All outdoor sales and rentals shall occur on the same property as the primary business.
5. All accessible pedestrian circulation shall be maintained.
6. Vehicular circulation shall not be interrupted.
7. The number of accessible parking spaces shall not be reduced.
8. The waiver shall expire upon the termination of the state of emergency.

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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:

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

Rafael E. Granado, City Clerk


City Attorney NK

12/01/2020
Date

First Reading: December 9, 2020
Second Reading: January 13, 2021

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