

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: July 26, 2022

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB22-0528. 4th Street Overlay LDR.**

RECOMMENDATION

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

HISTORY

On September 17, 2021, at the request of Commissioner Mark Samuelian, the City Commission referred a discussion item to the Land Use and Sustainability Committee (LUSC) pertaining to quality-of-life strategies for dealing with future and existing apartment hotels in the South of Fifth area (C4G). On October 19, 2021, the LUSC discussed and continued the item to the December 2021 LUSC meeting with the following direction:

1. The Administration shall further study potential strategic increases in FAR and height within the R-PS1 and R-PS2 districts for the limited purpose of incentivizing the conversion of existing apartment hotels to residential use.
2. The resident supervisor requirement for apartment hotels shall be fully enforced in conjunction with the Customer Service and Code Compliance Departments. An update will be provided to the LUSC.
3. The Administration will prepare a draft for a 4th Street Overlay.
4. In conjunction with the Parking and Police Departments, the code provisions regarding the use of handicap placards shall be enforced and an update will be provided to the LUSC.
5. A separate meeting with affected residents shall be scheduled with the Transportation Department to provide a status update on the traffic calming initiative for the South of Fifth Street area. The Transportation Department will look at how this traffic calming initiative may be accelerated, as well as temporary improvements such as bumps. An update will be provided to the LUSC.

6. A meeting will be organized with all applicable City Departments and affected stakeholders within the South of 5th area to further discuss ways to improve residents' quality of life and provide an update to the LUSC.

The December 2021 LUSC meeting did not take place, as Commission Committees had not been appointed. The item was automatically deferred to the first available LUSC meeting of 2022.

On February 11, 2022 the LUSC discussed the item and took the following action:

1. Recommended that the City Commission transmit the proposed LDR amendment pertaining to FAR and Height incentives for converting existing apartment hotels to residential to the Planning Board for review and recommendation. Additionally, the LUSC included a modification that the Ordinance include a sunset period and incorporate language for a voluntary covenant for short-term rentals.

On March 9, 2022 the City Commission referred the subject Ordinance to the Planning Board, including the revisions recommended by the LUSC. The Planning Board endorsed this Ordinance on April 26, 2022, and it was approved at First Reading on May 4, 2022, along with the corresponding ballot question for an increase in FAR. If the ballot question is approved by voters in August, Second Reading of this Ordinance would be set for the September 14, 2022 City Commission meeting.

2. Continued the remainder of the item to the April 8, 2022 LUSC meeting to discuss the following:
 - a. An update on the enforcement of apartment hotel provisions, including all violations issued to date, and recommendations for enhanced penalties.
 - b. Updated information on the maximum occupational load for hotel units under the Florida Building Code and Life-Safety Code.
 - c. The framework for a potential 4th Street overlay.

On April 8, 2022 the LUSC recommended that the proposal for a 4th Street Overlay be referred to the Planning Board, for consideration as an Ordinance Amendment. On May 4, 2022 the City Commission referred the proposed 4th Street Overlay to the Planning Board for review and recommendation (Item C4 V).

On June 21, 2022, the Planning Board deferred the item to the July 26, 2022 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.**

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 create an isolated district unrelated to adjacent or nearby districts.

3. Whether the change suggested is out of scale with the needs of the neighborhood or the city.

Consistent - The proposed ordinance is intended to better align the scale of development along the north side of the 4th Street corridor with the residential areas to the south of the 4th Street corridor. Therefore, the proposed amendment is not out of scale with the needs of the neighborhood or the city.

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 floor area ratio (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 proposed amendment does not modify district boundaries.

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

Consistent – Increased interest in the development of the 5th Street corridor makes passage of the proposed change 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, as the FAR is not being modified by this ordinance.

9. Whether the proposed change will seriously reduce light and air to adjacent areas.

Consistent – The proposed change reduces height limits within 100 feet of the north of side of 4th Street; as a result, the proposed change reduces impacts on air and light for proposed developments.

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, as the ordinance provides sufficient height for properties adjacent to the north side of 4th Street to develop appropriately.

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.

Partially Consistent – The proposal should not impact 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 is compatible with the City's sea level rise mitigation and resiliency efforts.

ANALYSIS

Attached is a draft Ordinance creating an overlay for properties zoned C-PS2 and located between 4th and 5th Streets. The following is a summary of the key provisions of the proposed

overlay along 4th Street, which would be prospective (existing uses and developments would be grandfathered):

Building Height

To address the potential future issues of context along the north side of 4th Street, maximum overall building height is proposed to be limited to 50 feet within the first 100 feet on the north side of 4th Street, regardless of use. A maximum height of 50 feet within this portion of the overlay would still allow for an appropriate and sensible distribution of the maximum FAR of 2.0. Additionally, under the certificate of appropriateness criteria in the Code, the Historic Preservation Board has significant latitude in requiring adjustments to overall building height, massing and the distribution of allowable building volume.

Staff does not recommend limiting building height to anything less than 50 feet within any portion of the proposed overlay, as it could disproportionately affect smaller lots and development sites that do not have enough area to distribute the maximum allowable FAR. In this regard properties within the C-PS2 district have a maximum FAR of 2.0. As such, some flexibility in terms of overall building height is needed to allow for adequate architectural latitude in the distribution of this allowable volume.

Alcoholic Beverage and Transient Use Restrictions

The following regulations would apply to properties located between 4th Street and 5th Street within the C-PS2 district, including more specific regulations for portions of properties within 100 feet of the north side of 4th Street:

- Outdoor ambient music and television sets would be prohibited within 100 feet of the north side of 4th Street, unless approved by the Planning Board, pursuant to the Conditional Use criteria.
- Access points to hotel uses, as well as food and beverage establishments serving alcohol, would be limited to side streets only, and would not be permitted on 4th Street. Additionally, a minimum setback from the north side of 4th Street, for all public entry points, is required.
- Certain nuisance uses have been added to a list of prohibited uses for the larger C-PS2 district. These uses include convenience stores, smoke/vape stores, package stores and the retail sale of alcohol for off premise consumption.

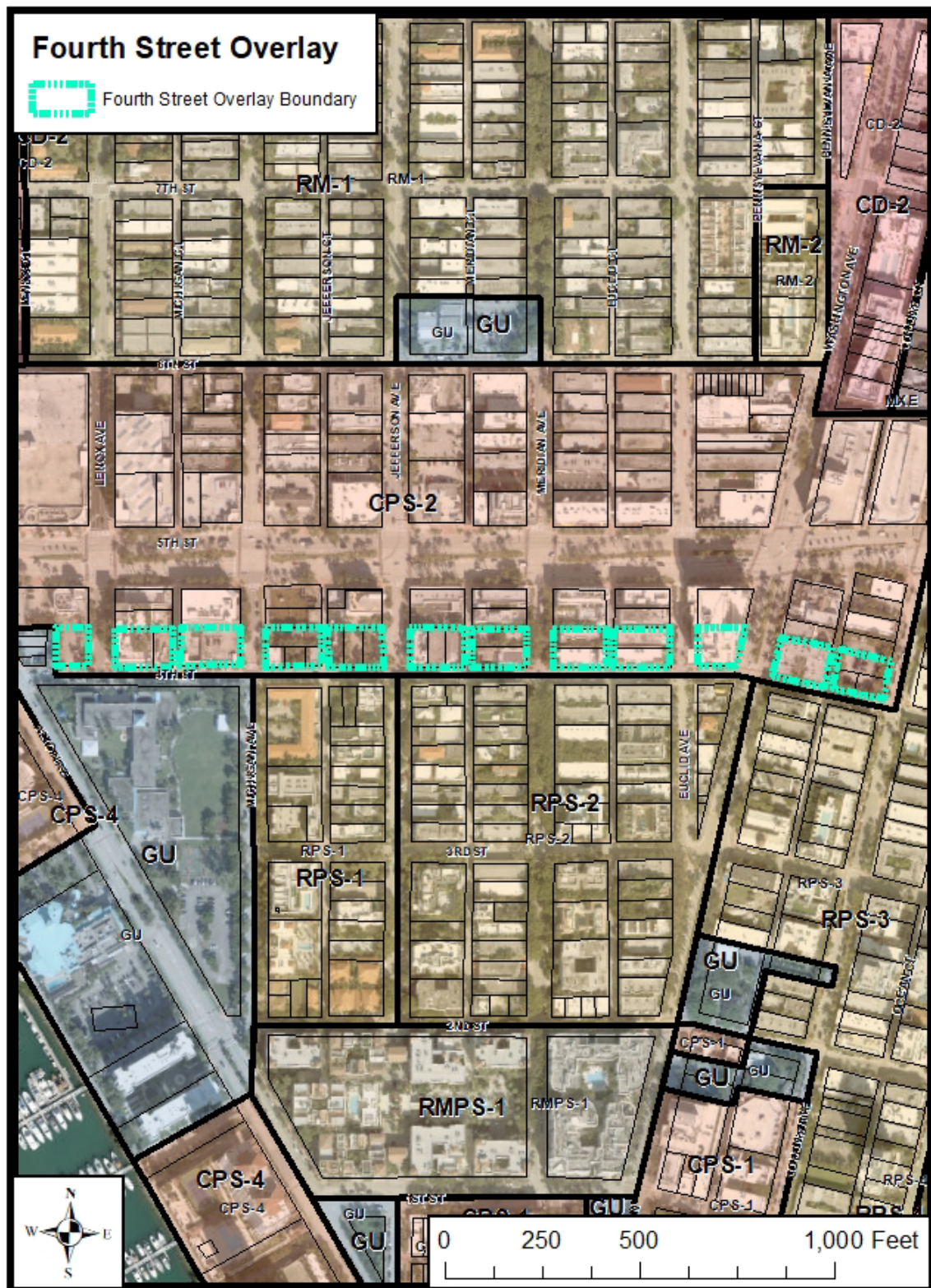
The regulations contained in the attached draft Ordinance are intended to create a buffer between the potentially more intense future uses permitted in the C-PS2 district on the north side of 4th Street and the lower scale residential uses on the south side of 4th Street. Staff believes the regulations in the proposed overlay represent a careful balance between tangible development within the C-PS2 district and providing a sensitive transition to the residential areas to the immediate south.

UPDATE

The Ordinance was slightly modified to clarify that the regulation of uses as part of this Ordinance only apply to the area south of 5th Street. There is a separate ordinance being considered by the LUSC that is intended regulate similar impacts for the area north of 5th Street.

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.



C-PS2 Development Regulations – 4th Street Overlay

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 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 18, ENTITLED "PS PERFORMANCE STANDARD DISTRICT," BY AMENDING SECTION 142-693, ENTITLED "PERMITTED USES," TO MODIFY AND AMEND PERMITTED, ACCESSORY AND CONDITIONAL USES WITHIN THE C-PS2 ZONING DISTRICT SOUTH OF FIFTH STREET; BY AMENDING SECTION 142-698, ENTITLED "COMMERCIAL PERFORMANCE STANDARD AREA REQUIREMENTS," BY AMENDING MAXIMUM PERMITTED HEIGHT WITHIN THE C-PS2 ZONING DISTRICT LOCATED SOUTH OF FIFTH STREET; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, on February 9, 2022 the Mayor and City Commission adopted Ordinance no. 2022-4471 which established height incentives for the purpose of developing Class A office buildings in an effort to diversify the city's economy; and

WHEREAS, the height incentives are most appropriate for the portions of properties that are located near 5th Street; and

WHEREAS, the City seeks to provide for an appropriate transition between the higher intensity commercial corridor along 5th Street and the lower intensity multifamily areas to the south; and

WHEREAS, the City seeks to protect the residential areas to the south of Fourth Street from the potential impacts of transient and entertainment uses; and

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

WHEREAS, the amendment set forth below is 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:

SECTION 1. Chapter 142, "Zoning Districts and Regulations," at Article II, entitled "District Regulations," at Division 18, entitled "PS Performance Standard District" of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

CHAPTER 142
ZONING DISTRICTS AND REGULATIONS

* * *

ARTICLE II. DISTRICT REGULATIONS

* * *

DIVISION 18. PS PERFORMANCE STANDARD DISTRICT

* * *

Sec. 142-693. Permitted uses.

(a) The following uses are permitted in the performance standard districts:

| General Use Category | R-PS 1, 2 | R-PS 3, 4 | C-PS 1, 2, 3, 4 | RM-PS1 |
|---|------------------------------------|--------------|---|------------------------------------|
| Single-family; townhome; apartment; apartment hotel pursuant to section 142-1105 of this chapter | P Apartment hotel not permitted | P | P | P Apartment hotel not permitted |
| Hotel and suite hotels pursuant to section 142-1105 of this chapter | N | P | P | N |
| Hostel, pursuant to section 142-1105 of this chapter | N | N | Not permitted in C-PS1, C-PS2; Permitted in C-PS3 and C-PS4 | N |
| Commercial | N | N | P | P 8% of floor area |
| Institutional | C | C | C | C 1.25% of floor area |
| Accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized | N | N | P* North of 5th Street only | N |

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|---|---|--|----|----|
| between 8:00 p.m. and 8:00 a.m. | | | | |
| Entertainment establishments, outdoor entertainment establishments, and open air entertainment establishments | N | N | N | N |
| Neighborhood impact establishments | N | N However, in the R-PS4 district, this use is permitted, as an accessory use in oceanfront hotels with 250 or more hotel units, as a conditional use. Access to the establishment entrance shall be only from the interior lobby of the hotel and not from the street. In addition, in the R-PS4 district, this use is also permitted as an accessory use to an oceanfront apartment building with more than 300 units that is adjacent to a park, as a conditional use, provided that the accessory use is located in a separate building from the primary use, and the accessory use is a minimum of 8,000 square feet in size. | C | N |
| Accessory | P* Alcoholic beverage establishments pursuant to the regulations set forth in chapter 6 are prohibited in the RPS-1 district, unless | P* | P* | P* |

| | | | | |
|---|----------------------|--|--|--|
| | otherwise specified. | | | |
| <u>Convenience stores, tobacco/vape dealer, package stores and the retail sale of alcohol for off-premises consumption.</u> | | | <u>Not permitted in C-PS2, south of Fifth Street</u> | |

P—Main permitted use C—Conditional use N—Not permitted

* — Accessory use only

Floor area in the RM-PS1 district refers to total floor area in project. Commercial uses in RM-PS1 limited to stores and restaurants.

- (b) For purposes of this section, a car wash, filling station and any use that sells gasoline, automobiles or automotive or related repair uses are considered as industrial uses and are not permitted within any PS district in the redevelopment area.
- (c) For purposes of this section, pawnshops and dance halls and entertainment establishments are not permitted as a main permitted or accessory use within any PS district south of Fifth Street.

* * *

(j). Reserved.

(k). The following additional regulations shall apply to properties located within the C-PS2 district that are within 100 feet of the north side of 4th Street. In the event of a conflict within this division, the following provisions shall control:

- (1) Outdoor music and television sets shall be prohibited within 100 feet of the north side of 4th Street, unless approved by the Planning Board as a conditional use, pursuant to chapter 118, article IV of this Code, at no greater than an ambient volume level (i.e. a volume that does not interfere with normal conversation).
- (2) Entrances/exits to/from hotels, apartment hotels, and suite hotels, as well as food and beverage establishments serving alcohol, shall be limited to side streets only, and shall not be permitted on 4th Street. Additionally, a minimum setback of 25 feet from the north side of 4th Street, for all public entrances to the aforementioned uses, shall be required.

* * *

Sec. 142-698. Commercial performance standard area requirements.

* * *

- (b) The commercial performance standard area requirements are as follows:

| | Commercial Subdistricts | | | |
|-------------------------|---|--|---|--|
| Performance Standard | C-PS1 | C-PS2 | C-PS3 | C-PS4 |
| Minimum lot area | 6,000 square feet | 6,000 square feet | 6,000 square feet | 6,000 square feet |
| Minimum lot width | 50 feet | 50 feet | 50 feet | 50 feet |
| Maximum building height | 40 feet; 75 feet for the Block 51 Properties, the Block 51 Swap Property, Block 52 Properties, and Block 1 Properties | 50 feet—East of Lenox Avenue 75 feet—West of Lenox Avenue | Non-oceanfront—80 feet Oceanfront—100 feet | 150 Notwithstanding the above, the design review board or historic preservation board, in accordance with the applicable review criteria, may allow up to an additional five feet of height, as measured from the base flood elevation plus maximum freeboard, to the top of the second floor slab. This provision shall not apply to existing historic districts or existing overlay districts (existing as of 7/26/2017), or commercial buildings immediately adjacent to residential district not separated by a street. However, an applicant may seek approval from the historic preservation board or design review board, as |

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| | | | | may be applicable, to increase height in accordance with the foregoing within any historic district or overlay district created after 7/26/2017 |
| Maximum floor area ratio | 1.0; 1.5 for the Block 51 Properties and Block 52 Properties, and 2.0 for the Block 1 Properties | 2.0 | 2.5 | 2.5 |
| Residential and/or hotel development | Pursuant to all R-PS2 district regulations, except maximum building height for residential and mixed use buildings shall be 75 feet | Pursuant to all R-PS3 district regulations, except maximum building height for residential and mixed use buildings shall be 75 feet | Pursuant to all R-PS4 district regulations except maximum floor area ratio shall be 2.5; on the Goodman Terrace and Hinson Parcels, the FAR shall be that necessary to achieve 305,500 sq. ft. (estimated at 3.2 FAR), and 300 ft. height maximum for the Goodman Terrace and Hinson Parcels, and open space ratio 0.60 measured at or above grade | Pursuant to all R-PS4 district regulations, except maximum floor area ratio shall be 2.5, and open space ratio 0.60 measured at or above grade |
| Minimum apartment unit size (square feet) | New construction—650 Rehabilitated buildings—400 Non-elderly and elderly low and | New construction—600 Rehabilitated buildings—400 Non-elderly and elderly low and | New construction—550 Rehabilitated buildings—400 Non-elderly and elderly low and | New construction—550 Rehabilitated buildings—400 Non-elderly and elderly low and |

| | | | | |
|---|---|---|---|---|
| | moderate income housing—400 Workforce housing—400 | moderate income housing—400 Workforce housing—400 | moderate income housing—400 Workforce housing—400 | moderate income housing—400 Workforce housing—400 |
| Average apartment unit size (square feet) | New construction—900 Rehabilitated buildings—550 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400 | New construction—850 Rehabilitated buildings—550 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400 | New construction—800 Rehabilitated buildings—550 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400 | New construction—800 Rehabilitated buildings—550 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400 |
| Minimum floor area per hotel unit (square feet) | 15% = 300—335 square feet; 85% = 335 + square feet in all districts. | | | |
| Minimum parking requirements | Pursuant to chapter 130 and section 142-702 requirement. | | | |
| Minimum off-street loading | Pursuant to chapter 130. | | | |
| Signs | Pursuant to chapter 138. | | | |

- (c) Notwithstanding the above height restrictions, existing structures within a local historic district are subject to section 142-1161.
- (d) Notwithstanding the above floor area ratio limits, 75 spaces of required parking located on Block 51 for the Retail Parcel pursuant to a covenant under section 130-36, shall not be counted as permitted floor area. Further, the floor area on the Block 51 Properties and the Block 51 Swap Property may be distributed among such properties by covenant in lieu of unity of title; and the floor area on the Block 1 Properties may be distributed among such properties within the block by covenant in lieu of unity of title.
- (e) Notwithstanding the building height regulations set forth above, for unified development sites in the CPS-2 district with a lot line on the south side of 5th Street, which are located west of Jefferson Avenue, the maximum building height for office buildings is 75 feet.
- (f) Notwithstanding the building height regulations set forth above, in the C-PS2 district, the maximum permitted height within 100 feet of the north side of 4th Street shall not exceed 50 feet, regardless of the use of the property. This paragraph shall not apply to unified development sites governed by subsection 142-698(e).

SECTION 2. REPEALER.

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

SECTION 3. CODIFICATION.

It is the intention of the City Commission, 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 as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this ____ day of _____, 2022.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk.

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

City Attorney

Date

First Reading: September 14, 2022

Second Reading: October 26, 2022

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