

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: **PB22-0547. RPS4 Amendment Accessory Uses.**

RECOMMENDATION

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

HISTORY

On May 25, 2022, the City Commission referred the subject Ordinance Amendment to the Land Use and Sustainability Committee (LUSC) and the Planning Board (item C4 B). The sponsor of the proposal is Commissioner Alex Fernandez.

On July 7, 2022, the LUSC recommended that the Planning Board transmit the item to the City Commission with a favorable recommendation.

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 amendment does not affect the scale of development, therefore, the proposal 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 does not modify allowable densities or intensities for new development, and therefore does not change the potential loads on public facilities and infrastructure.

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

Not Applicable –District boundaries are not proposed to be modified.

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

Consistent – The need to allow for the reuse of a commercial space in an existing building and changing client expectations for dining experiences 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, as it contains safeguards to minimize the impacts of any establishments taking advantage of the allowances in the proposed ordinance.

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 – Since the City is now a transportation concurrency exception area, the proposed change will not create or increase traffic congestion beyond the levels of service set forth in the Comprehensive Plan, or otherwise affect public safety. Additionally, the proposal does not increase the development potential beyond what currently exists.

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

Consistent – The proposed amendment does not modify the scale of development and as such will not reduce light and air to adjacent areas beyond what is currently permitted.

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.

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 will 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.

BACKGROUND

On November 18, 2020, the City Commission adopted Ordinance No. 2020-4379, which allowed for Neighborhood Impact Establishments (NIE) that do not contain entertainment to operate as an accessory use in the RPS-4 district under certain circumstances. This Ordinance provided that any outdoor restaurant seating above the ground floor cease by 8:00 PM.

On November 17, 2021, the Planning Board approved a Conditional Use Permit for a new restaurant with an NIE at 200 South Point Drive (File Number PB20-0392), pursuant to the regulations set forth in Ordinance No. 2020-4379. This restaurant subsequently went out of businesses.

PLANNING ANALYSIS

The proposed Ordinance would amend Section 142-693(i) of the LDR's, pertaining to additional regulations for alcoholic beverage establishments located south of 5th Street. Currently, accessory uses approved as a conditional use to oceanfront apartment buildings in the R-PS4 district have several additional restrictions. The following is a summary of the proposed amendments to accessory uses subject to these restrictions:

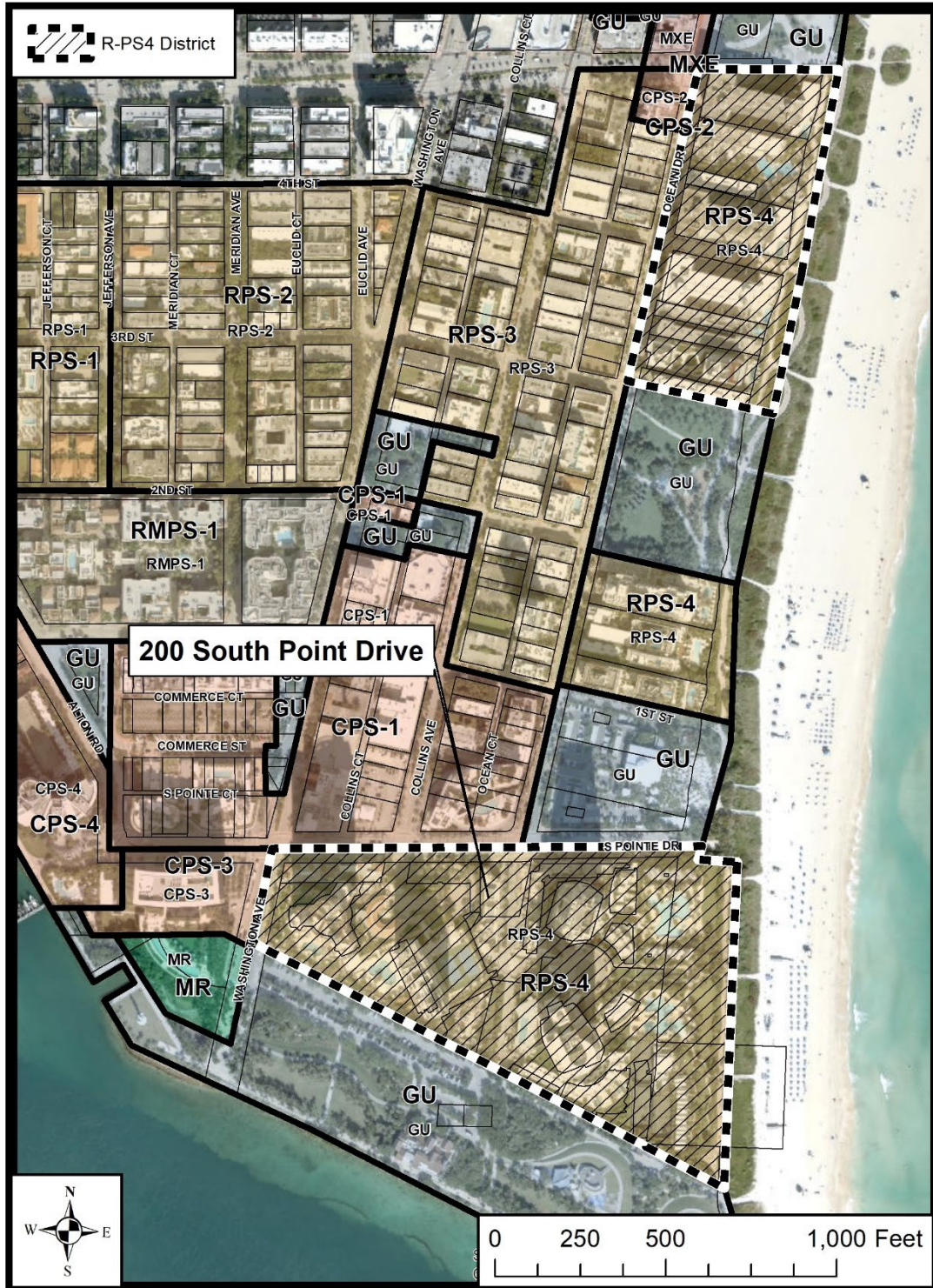
- The closing time for open levels above the ground floor, which were previously limited to 8:00 pm, seven (7) days a week, would now be 11:00 PM on weekdays (Sunday – Wednesday) and 12:00 AM on weekends (Thursday – Saturday). Provisions for an additional 30 minutes for cessation of operations (staff closing and clean-up) are also included.
- Recorded background music, played at a level that does not interfere with normal conversation, may be permitted, provided that a sound system with directional speakers and a digital tamper-resistant sound level limiter is used to minimize impacts to adjacent properties.

The proposed Ordinance would allow an existing restaurant space located at 200 South Point Drive to operate outdoor portions above the ground floor area later than 8:00 pm, as well as provide ambient level, recorded music within the outdoor areas. Given the safeguards included within the proposed Ordinance, staff has no objection to the proposed amendments.

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.

ZONING/SITE MAP



R-PS4 Amendment For Accessory Uses

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 OF THE CITY CODE 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 RESTRICTIONS APPLICABLE TO NEIGHBORHOOD IMPACT ESTABLISHMENTS INTENDED TO PREVENT IMPACTS ON NEIGHBORING RESIDENTIAL COMMUNITIES, AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

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

WHEREAS, the City seeks to encourage investment in restaurants and social dining; and

WHEREAS, the current R-PS4 regulations permit neighborhood impact establishments in a limited way; and

WHEREAS, the current R-PS4 Zoning District regulations require outdoor seating areas above the ground floor to close by 8:00 PM ; and

WHEREAS, the current R-PS4 Zoning District regulations prohibit ambient level background music in outdoor areas above the ground floor; and

WHEREAS, certain restaurant operators ("Operators") seek to open within the R-PS4 district;

WHEREAS, these Operators seek to utilize existing outdoor rooftop terraces until 11:00 PM on weekdays (Sunday – Wednesday) and 12:00 AM on weekends (Thursday – Saturday), with 30 additional minutes for cessation of operations each night; and

WHEREAS, these Operators seek to play ambient background level music on these existing outdoor rooftop terraces to improve the dining experience for their patrons while adhering to safeguards intended to prevent impacts on adjacent properties, including restricting sound levels to ambient background level music, utilizing a digital tamper-resistant sound level limiter, utilizing directional speakers, and other sound attenuation techniques; and

WHEREAS, the amendments set forth below 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:

SECTION 1. Chapter 142, "Zoning Districts and Regulations," at Article II, entitled "District Regulations," at Division 18, entitled "PS Performance Standard Districts" of the Land

Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

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	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	N	N	P* North of 5th Street only.	N

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 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	<p>N</p> <p>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-PS-4 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</p>	C	N

		primary use with a minimum square footage of 8,000 square feet.		
Accessory	P* Alcoholic beverage establishments pursuant to the regulations set forth in chapter 6 are prohibited in the RPS-1 district, unless otherwise specified.	P*	P*	P*

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 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 south of Fifth Street.
 - (d) In the R-PS1, 2, 3 and 4 districts, the number of seats for accessory restaurants or bars that serve alcohol shall be limited to a maximum of 1.25 seats per hotel or apartment unit for the entire site. The patron occupant load, as determined by the planning director or designee, for all accessory restaurants and bars that serve alcohol on the entire site shall not exceed 1.5 persons per hotel and/or apartment unit. For a hotel or apartment property of 20 units or more, but less than 32 units, the restaurant or bar may have a maximum of 40 seats in the aggregate on the site. The number of units shall be those that result after any renovation.
 - (e) Commercial and noncommercial parking lots and garages shall be considered as a conditional use in the R-PS1, 2, 3 and 4 districts.
 - (f) Video game arcades shall be considered as a conditional use in the C-PS1, C- PS2, C-PS3, and C-PS4 districts.
 - (g) New construction of structures 50,000 square feet and over in the C-PS1, 2 3, and 4 districts (even when divided by a district boundary line) shall be considered as a conditional use,

which review shall be the first step in the process before the review by any of the other land development boards.

- (h) Religious institutions in R-PS1-4 and C-PS1-4 districts shall be permitted as a matter of right up to 199 occupancy, and over that occupancy shall be a conditional use.
- (i) Additional regulations for alcoholic beverage establishments located south of 5th Street.
 - (1) The following additional regulations shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located south of 5th Street:
 - (i) Operations shall cease no later than 2:00 a.m., except as otherwise provided herein.
 - (ii) Operations in outdoor or open air areas of an alcoholic beverage establishment shall cease no later than 12:00 a.m., except as otherwise provided herein.
 - (iii) Alcoholic beverage establishments with sidewalk cafe permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served, shall cease sidewalk cafe operations no later than 12:00 a.m. (except as otherwise provided herein), and shall not be permitted to have outdoor speakers.
 - (iv) Outdoor bar counters shall be prohibited.
 - (v) No special events permits shall be issued.
 - (vi) The provisions of this subsection (i)(1) shall not apply, to the extent the requirements of this subsection are more restrictive, to an alcoholic beverage establishment with a valid business tax receipt that is in application status or issued prior to June 28, 2016; or an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired prior to June 28, 2016.
 - A. Existing sidewalk cafes issued a sidewalk cafe permit as of June 28, 2016, for alcoholic beverage sales after 12:00 a.m., with food service, may continue to be renewed, but shall not serve alcoholic beverages later than 1:30 a.m., and alcoholic beverages may not be consumed at sidewalk cafes after 2:00 a.m.
 - B. Should an alcoholic beverage establishment with a sidewalk cafe permit under (A), above, be delinquent in a payment obligation to the city, and/or receive two final adjudications of violations of section 12-5 (special event permit), section 46-152 (noise ordinance), or chapter 82, article IV, division 5 (sidewalk cafe ordinance), that alcoholic beverage establishment shall only be allowed to serve alcoholic beverages at its sidewalk cafe until 12:00 a.m. for a 12-month period.
 - (2) Notwithstanding the uses permitted in (a) and (d) above, in all districts except GU, Government Use District, no alcoholic beverage establishment, or restaurant, may be licensed or operated as a main permitted, conditional, or accessory use in any open area above the ground floor (any area that is not included in the FAR calculations) located south of 5th Street, Except that:
 - (i) Outdoor restaurant seating above the ground floor, not exceeding 40 seats, associated with indoor venues (except as provided under (iii) below) may be permitted until 8:00 p.m.
 - (ii) Outdoor music, whether amplified or nonamplified, and television sets shall be prohibited.

- (iii) Oceanfront hotels in the R-PS4 district. For purposes of this subsection (iii), eastward-facing oceanfront portions of an open-air seating area shall be limited to the open area 50 feet west of the eastern boundary of the above-ground structure.
- A. Oceanfront hotels in the R-PS4 district with at least 200 hotel units may have no more than 100 outdoor restaurant seats in open-air seating areas on one level that are located above the ground floor, of which at least half shall be located on eastward-facing oceanfront portions of an open-air seating area, at which patrons shall be seated no later than 12:00 a.m., and the seating area shall be closed to the public no later than 1:30 a.m. Patrons shall not be seated in the remainder of any open-air seating areas in a particular hotel later than 11:00 p.m., and such seating areas shall be closed to the public no later than 12:00 a.m. Seating on the main roof shall not be permitted under any circumstances.
- B. Oceanfront hotels in the R-PS4 district with at least 100 hotel units, but less than 200 hotel units, may have no more than 50 outdoor restaurant seats in eastward-facing oceanfront portions of open-air seating areas that are located on one level above the ground floor, at which patrons shall be seated no later than 12:00 a.m., and the seating area shall be closed to the public no later than 1:30 a.m. Seating on the main roof shall not be permitted under any circumstances.
- (iv) Oceanfront apartment buildings in the R-PS-4 district. Accessory uses approved as a conditional use to oceanfront apartment buildings with more than 300 units, located adjacent to a park and in a separate building from the primary use with a minimum square footage of 8,000 square feet shall be permitted subject to the following restrictions:
- a. A maximum patron-occupant load of no more than 250 individuals may be permitted on an open level above the ground floor. The patron-occupant load shall be determined by the Fire Marshall.
- b. The hours of operation for the open level above the ground floor shall be 11:00 PM Sunday thru Wednesday and 12:00 AM Thursday thru Saturday, with an additional 30 minutes for cessation of operations permitted each night. The additional 30 minutes for cessation of operations shall only be utilized for staff closing and clean-up. No patrons shall be served past 11:00 PM Sunday thru Wednesday and 12:00 AM Thursday thru Saturday. ~~not be occupied past 8:00 PM;~~
- c. Outdoor music and television sets, whether amplified or nonamplified, shall be prohibited in open levels above the ground floor. Notwithstanding the foregoing, recorded background music, played at a level that does not interfere with normal conversation, may be permitted, provided that a sound system with directional speakers and a digital tamper-resistant sound level limiter is used to minimize impacts to adjacent properties. Nothing in this subparagraph shall be construed to exempt or otherwise limit the applicability of Section 46-152 to the accessory uses permitted by this subsection.
- d. Outdoor bar counters shall be prohibited.
- e. Special event permits are prohibited.

- f. Notwithstanding the prohibition set forth in 142-693(i)(2), alcoholic beverages are permitted in this open level above the ground floor during the hours of operations permitted by this subsection. ~~until 8:00 PM; and~~
- g. Any open area above the ground floor shall only be open when the restaurant is open serving full meals.
- h. With regard to ground floor outdoor areas the following restrictions shall apply:
 - i. Outdoor bar counters shall be prohibited;
 - ii. There shall be no issuance of any special event permit for this area;
 - iii. This area shall not be occupied past 12:00 AM midnight.
- i. With regard to the interior area of this separate accessory use building, as defined herein, the following restrictions shall apply:
 - i. The area shall not be occupied past 2:00 AM;
 - ii. There shall be no issuance of any special event permit for this area.
- (v) Other than as permitted in subsection (i)(2)(iii) and (i)(2)(iv), no commercial activity may be permitted on areas as described in this subsection (i)(2) between the hours of 8:00 p.m. and 10:00 a.m.
- (vi) Nothing herein shall prohibit residents of a multifamily (apartment or condominium) building, or hotel guests and their invitees to use these areas as described in this subsection (i)(2), which may include a pool or other recreational amenities, for their individual, personal use.
- (3) Any increase to an alcoholic beverage establishment's approved hours of operation shall meet the requirements of this section.
- (4) Variances from this subsection (i) shall not be permitted. Special events shall not be permitted.

SECTION 2. REPEALER.

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

SECTION 3. SEVERABILITY.

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

SECTION 4. 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 Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____ 2022.

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

F:\PLAN\SPLB\2022\7-26-22\PB22-0547 - ORD - RPS4 Amendment Accessory Uses - ORD\PB22-0547 - RPS4 Amendment Accessory Uses - ORD 7-26-2022.docx