

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: February 28, 2023

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB22-0570. Comprehensive Plan Amendment – Voter Enacted Incentive for Replacing Transient Uses in R-PS4 District.**

**PB22-0571. LDR Plan Amendment – Voter Enacted Incentive for Replacing Transient Uses in R-PS4 District.**

#### **RECOMMENDATION**

Transmit the proposed Comprehensive Plan and Land Development Regulations (LDR) amendments to the City Commission with a favorable recommendation.

#### **HISTORY**

On July 20, 2022, at the request of Commissioner Alex Fernandez, the City Commission adopted Resolution 2022-32255, placing a ballot question regarding a floor area ratio (FAR) incentive to convert existing hotels into residential use in the R-PS4 district on the November 8, 2022 general election ballot (Item R7 U). On November 8, 2022, the ballot measure was approved by 65.66% of the voters.

On December 14, 2022, at the request of Commissioner Alex Fernandez, the City Commission referred the proposed ordinances to the Planning Board (item C4 Y).

#### **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 LDR amendment is consistent with the goals, objectives, and policies of the Comprehensive Plan, as proposed to be amended.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

**Consistent** – The proposed amendment does not amend district boundaries nor 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 increase the scale of development; however, the height limit and setbacks are not affected by the proposed ordinance. Additionally, it primarily affects sites that are already developed at the scale contemplated by this ordinance. All affected sites utilizing the incentives in this ordinance would have to be approved by the Historic Preservation Board (HPB), which would consider the potential impact of the scale. Therefore, the proposed changes should not be out of scale with the needs of the neighborhood.

**4. Whether the proposed change would tax the existing load on public facilities and infrastructure.**

**Partially Consistent** – While the proposed amendment could result in development that increases the load on public facilities and infrastructure due to the proposed change in floor area ratio (FAR), given the limited area that is affected by the amendment, the impact should be de minimis (See the Concurrency Analysis at the end of this report).

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

**Not applicable** – The proposed amendment does not modify district boundaries.

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

**Consistent** – The impacts of excessive tourism in the surrounding neighborhood makes passage of the proposed change necessary. The proposed change creates incentives to create housing for permanent residents, in exchange for a voluntary prohibition of short-term rental and hotel uses.

**7. Whether the proposed change will adversely influence living conditions in the neighborhood.**

**Consistent** – The proposed ordinance amendment should not adversely affect living conditions in the neighborhood as it is intended to incentivize redevelopment with uses that will not negatively impact the surrounding 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.**

**Partially Consistent** – The proposed change would allow for development that generates additional traffic from what is currently permitted, as the FAR is being slightly increased. However, given the limited area that is affected by the proposed ordinance, the potential

increase is di minimis (See the Concurrency Analysis at the end of this report).

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

**Consistent** – While the proposal allows for additional FAR, it does change does not modify height or setback requirements. Additionally, the proposal will primarily apply to sites that already have development at the higher scale contemplated by this ordinance. Any construction would have to be approved by the HPB, which would consider the potential impact on light and air to adjacent areas. Therefore, the proposed change should 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 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 increase the resiliency of the City with respect to sea level rise by encouraging the redevelopment of existing properties in a manner that will comply with the City's resiliency requirements.

**(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**

The purpose of the attached legislation is to incentivize the redevelopment of hotels within the RPS-4 zoning district, such as the Marriott Stanton, located at 161 Ocean Drive, into residential properties. The replacement of a hotel with residential uses would reduce the impact of transient hotel uses in the South of Fifth neighborhood.

The proposed Comprehensive Plan and LDR amendments would allow existing hotel properties in the RPS-4 district that voluntarily convert to a residential use to have a maximum floor area ratio (FAR) of 2.75, where currently the maximum FAR is 2.0. The main use of the building would be required to remain residential with allowable accessory uses in perpetuity.

The RPS-4 district includes those properties south of Fifth street, east of Ocean Drive, as well as the Continuum property (See Map at the end of this report). The subject ordinance applies to properties with a main use of hotel as of January 1, 2022, subject to the property owner's strict compliance with the following conditions:

1. The main use on the property shall be converted to residential and shall remain residential in perpetuity; hostel, hotel, apartment-hotel, and suite-hotel use shall be prohibited.
2. A new structure, consisting solely of main use residential and allowable accessory uses, may be constructed, in accordance with all applicable development regulations, with a maximum FAR of 2.75. Alternatively, the entire existing building may be converted to main-use residential and allowable accessory uses, including any repairs, alterations and modifications that may exceed the 50% rule, provided any alterations and modifications do not result in the building exceeding an FAR of 2.75.
3. A property shall only be eligible for the FAR incentive of 2.75 if the property owner elects, at the owner's sole discretion, to voluntarily execute a restrictive covenant running with the land, in a form approved by the city attorney, affirming that, in perpetuity, none of the residential units on the property shall be leased or rented for a period of less than six months and one day.
4. There shall be no variances from these provisions.

In addition to the Marriott Stanton, there are two other properties that have hotels in the R-PS4 district that could potentially take advantage of this FAR incentive, which are the Hilton Bentley Miami/South Beach located at 101 Ocean Drive and the Savoy Hotel & Beach Club located at 425 Ocean Drive (see arial map at the end of this report). Additional information would be needed to verify that the current main use of these properties is for hotel use to determine their eligibility. To date, these properties have not expressed any interest in utilizing this incentive.

The proposed legislation could effectively reduce density on an eligible site, as the conversion of an existing hotel to a residential apartment would require compliance with the underlying residential density limits. The city code does not regulate the amount of hotel rooms that may be provided within a hotel structure.

Additionally, section 142-696 (h) of the LDR's limits the residential density within R-PS4 zoning district within the Ocean Beach Historic District to 60 units per acre if the applicant wishes to utilize an existing height incentive that is applicable on lots that are over 100 feet in width in the Ocean Beach Historic District. This incentive provides a height limit of 60 feet for the first 60 feet of lot depth and 100 feet thereafter. Without this incentive, the maximum building height is limited to 35 feet for the first 60 feet of lot depth and 75 feet thereafter. Any future proposal to convert a hotel to residential, and apply the FAR incentives in the subject ordinances, would likely want to utilize the height incentives and, therefore, be subject to the 60 units per acre density limitation. In the case of the Marriott Stanton, the redevelopment of the site would transform the 226-room hotel to a residential structure of no more than 93 units, which equates to a 58% decrease in the number of units provided on that site.

As noted in the concurrency analysis at the end of this report, given the limited area covered by the proposal, the proposed increase in FAR is not expected to have a negative impact on transportation and mobility. In this regard, there is only a potential increase of 22 vehicle trips, due to the mixed-use nature of the area and existing access to public transportation and alternative transportation modes. The proposal does not modify the maximum residential density for the site; as such levels of service specific to residential population are not impacted. However, prior to the submittal of any building permits, a full concurrency review will be required to determine the actual impact and mitigation requirements of any proposed development.

### **CITY CHARTER ANALYSIS**

The proposal to modify the maximum FAR is affected by Section 1.03(c) of the City Charter, which partially states the following:

*The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zone floor area ratio as it exists on the date of adoption of this Charter Amendment (November 7, 2001), including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless such increase in zone floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach.*

The proposed ordinance would increase the zoned FAR for the affected parcels. As a result, the following question was submitted to the electors of the City of Miami Beach:

### **RPS4 District—South of Fifth Street** **FAR Incentive to Convert Existing Hotels into Residential Use**

*City Charter requires voter approval before increasing a property's floor area ratio ("FAR") (City's method of regulating building size).*

*The RPS4 district lies within the South of Fifth Neighborhood, which is predominantly residential.*

*Shall City increase maximum FAR from 2.0 to 2.75 in RPS4 District as an incentive for the conversion of existing hotel properties into residential use, if the property owner records a covenant prohibiting short-term rentals on the property?*

On November 8, 2022, the ballot measure was approved by 65.66% of the voters. Therefore, the proposed ordinances can be considered for adoption by the City Commission.

#### **COMPREHENSIVE PLANNING REVIEW PROCESS**

The proposal requires an amendment to the Comprehensive Plan. Under Section 163.3184(2), Florida Statutes, this amendment shall follow the expedited state review process for adoption of comprehensive plan amendments. This process requires a public hearing by the local planning agency (Planning Board), a public transmittal hearing before the City Commission, after which the amendment must be transmitted to several state agencies for a 30-day review period, and a final adoption public hearing before the City Commission. The amendment is effective 31-days after it is adopted if there are no appeals.

#### **RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed Comprehensive Plan and Land Development Regulations amendments to the City Commission with a favorable recommendation.



PLANNING DEPARTMENT

## Comprehensive Plan and Zoning Amendment Concurrency Analysis

Date Prepared: 2/14/2023

Name of Project: R-PS4 Transient Use Conversion Incentives

Address of Site: Three R-PS4 Transient Use Parcels on Ocean Drive

Concurrency Management Area: South Beach

Square Feet in the Amendment: 221,399

Acreage in the Amendment: 5.08

## Proposed FLUM Designation

Designation:

C-PS1 with First Street Overlay

Maximum Density		Maximum FAR
Units/Acre	102	2.70
Units	518	597,777 SF

	Residential (Units)	Hotel (Rooms)	Retail (SF)	Office (SF)	Industrial (SF)	Proposed Total
Peak Hour Trips Generated*	404	N/A	469	N/A	N/A	873
Residential Demand	1,295	0				1,295

\*Peak Hour Trips Calculated with ITE 9th Edition Trip Generation Manual Weekday PM Peak Hour Factors

Note: Estimate assumes Floor Area for Residential Units at 850 SF per Unit at Max Density, 15% of FAR for back of house uses, and remaining floor area for retail

## Existing FLUM Designation

Designation:

C-PS1

Maximum Density		Maximum FAR
Units/Acre	102	2
Units	518	442,798 SF

	Residential (Units)	Hotel (Rooms)	Retail (SF)	Office (SF)	Industrial (SF)	Existing Total
Peak Hour Trips Generated*	N/A	844	N/A	N/A	N/A	844
Residential Demand	0	570				570

\*Peak Hour Trips Calculated with ITE 9th Edition Trip Generation Manual Weekday PM Peak Hour Factors

Note: Estimate assumes Floor Area for Hotel Units at 330 SF per Room at Max FAR and 15% of FAR for back of house uses

## Vehicle Transportation Impact

New Trips Generated

29 Trips

Trip Allowances

Transit 15%

Pass-by 0%

Mixed-use (Internal) 10%

Total 25%

Net New Trips Generated:

22 Trips

## Parks and Recreation Concurrency

Net New Residential Demand:

725.0 People

Parks Facility Type	Concurrent
Recreation and Open Space Acreage	YES
Swimming Pool	YES
Golf Course	YES
Basketball Court	NO
Tennis Court	NO
Multiple Use Courts	YES
Designated Field Area	YES
Tot Lots	YES
Vista Course	YES
Boat Ramp	YES
Outdoor Amphitheater	YES
Activity Building for Multiple Uses	YES

Required Mitigation to be determined at Building Permit Application

## Potable Water Transmission Capacity

Proposed Demand: 103,830 Gallons Per Day

Existing Demand: 85,500 Gallons Per Day

New Demand: 18,330 Gallons

Concurrency to be determined at Building Permit Application

## Sanitary Sewer Transmission Capacity

Proposed Demand: 181,300 Gallons Per Day

Existing Demand: 79,800 Gallons Per Day

New Demand: 101,500 Gallons

Concurrency to be determined at Building Permit Application

## Solid Waste Collection Capacity

Proposed Demand: 1,651 Tons Per Year

Existing Demand: 727 Tons Per Year

New Demand: 924 Tons

Concurrency to be determined at Building Permit Application

## Storm Sewer capacity

Required LOS: One-in-five-year storm event

Concurrency to be determined at Building Permit Application

## Note:

This represents a comparative analysis of concurrency with maximum development potential of the site between the existing and proposed Future Land Use designations. Actual concurrency demands, required mitigation, and required capacity reservation will be determined at the time of Building Permit Application.



## Future Land Use



Location:  
R-PS4 District with Transient Uses



# Zoning



Location:  
R-PS4 District with Transient Uses



## Aerial



**Location:**  
 R-PS4 District with Transient Uses

**PB22-0570**  
**Comprehensive Plan Amendment**

**Comprehensive Plan Amendment  
Voter Enacted Incentive for Replacing Transient Uses in R-PS4 District**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY OF MIAMI BEACH YEAR 2040 COMPREHENSIVE PLAN, PURSUANT TO THE EXPEDITED STATE REVIEW PROCESS OF SECTION 163.3184(3), FLORIDA STATUTES, BY AMENDING THE “RESILIENT LAND USE & DEVELOPMENT ELEMENT,” GOAL RLU 1, ENTITLED “LAND USE,” OBJECTIVE RLU 1.1, ENTITLED “ESTABLISHMENT OF FUTURE LAND USE CATEGORIES,” AT TABLE RLU 1.1 AND POLICY 1.1.25, ENTITLED “HIGH DENSITY RESIDENTIAL PERFORMANCE STANDARD (R-PS-4),” BY CREATING VOLUNTARY DEVELOPMENT INCENTIVES, INCLUDING AN INCREASE TO THE MAXIMUM ALLOWABLE FLOOR AREA RATIO (“FAR”), NOT TO EXCEED 0.75 FAR, FOR THE REDEVELOPMENT OF HOTELS, IN THE R-PS-4 FUTURE LAND USE CATEGORY, INTO RESIDENTIAL USE, SUBJECT TO THE PROPERTY OWNER FIRST RECORDING A COVENANT PROHIBITING SHORT-TERM RENTALS ON THE PROPERTY; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, TRANSMITTAL AND AN EFFECTIVE DATE.**

**WHEREAS**, the City’s South of Fifth residential community is partly within the High Density Residential Performance Standard High Density (R-PS-4) land use category; and

**WHEREAS**, the South of Fifth residential community wishes to transition existing hotel uses to residential uses to minimize impacts of transient uses on the community; and

**WHEREAS**, to incentivize the construction of residential condominiums to replace existing hotels within the South of Fifth Neighborhood, it is necessary to amend the City’s Comprehensive Plan to provide existing hotel properties in the R-PS-4 land use category an FAR bonus for any residential conversion or redevelopment if no short-term rentals are provided; and

**WHEREAS**, Section 1.03(c) of the City Charter requires voter approval of certain “increases” to current zoned FAR; and

**WHEREAS**, on November 8, 2022, and pursuant to Resolution No. 2022-32255, a majority of the City’s voters approved the proposed FAR increase; and

**WHEREAS**, the City has the authority to enact laws that promote the public health, safety, and general welfare of its citizens; and

**WHEREAS**, the City seeks to amend the Comprehensive Plan to implement the vote of the residents relating to FAR in the City’s R-PS-4 land use category; and

**WHEREAS**, the amendments set forth below are necessary to accomplish all of the above objectives and the vote of the electorate.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** The following amendments to the City's 2040 Comprehensive Plan Resilient Land Use & Development Element are hereby adopted:

## RESILIENT LAND USE & DEVELOPMENT ELEMENT

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### GOAL RLU 1: LAND USE

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### OBJECTIVE RLU 1.1 ESTABLISHMENT OF FUTURE LAND USE CATEGORIES

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Table RLU 1.1

The following table is a reference guide that depicts the policy number, and maximum densities and intensities for each future land use map (FLUM) category.

(\* = Refer to policy for limits)

FLUM Category	Density Limits (Units Per Acre)	Intensity Limits (Floor Area Ratio)	Reference (Policy #)
Single Family Residential (RS)	7 units per acre	*	RLU 1.1.1
Townhouse Residential (TH)	30 units per acre	0.7	RLU 1.1.2
Fisher Island Low Density Planned Residential (RM-PRD)	25 units per acre	1.6	RLU 1.1.3
Allison Island Low Density Planned Residential Category (RM-PRD-2)	25 units per acre	1.45	RLU 1.1.4
Low Density Multi Family Residential (RM-1)	60 units per acre	1.25*	RLU 1.1.5
Medium Density Multi Family Residential (RM-2)	100 units per acre	2.0	RLU 1.1.6
High Density Multi Family Residential (RM-3)	150 units per acre	2.25*	RLU 1.1.7
Medium-Low Density Residential Performance Standard (R-PS-1)	57 units per acre	1.25	RLU 1.1.22
Medium Density Residential Performance Standard (R-PS-2)	70 units per acre	1.5	RLU 1.1.23
Medium-High Density Residential Performance Standard (R-PS-3)	85 units per acre	1.75	RLU 1.1.24
High Density Residential Performance Standard (R-PS-4)	102 units per acre	2.0*	RLU 1.1.25
Low Intensity Commercial (CD-1)	60 units per acre	1.0*	RLU 1.1.8
Medium Intensity Commercial (CD-2)	100 units per acre	1.5*	RLU 1.1.9
High Intensity Commercial (CD-3)	150 units per acre	2.0*	RLU 1.1.10
Urban Light Industrial (I-1)	N/A	1.0	RLU 1.1.21



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## **POLICY RLU 1.1.25 HIGH DENSITY RESIDENTIAL PERFORMANCE STANDARD (R-PS-4)**

*Purpose:* To provide development opportunities for and to enhance the desirability and quality of existing and/or new residential areas which accommodate a mix of different residential types developed in accordance with flexible design standards.

*Uses which may be permitted:* Single family detached dwellings, single family attached dwellings, townhouse dwellings, apartments, apartment hotels, hotels and institutional uses. Other uses which may be permitted are accessory uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to be subordinate to the main use; and conditional uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to go through a public hearing process as prescribed in the Land Development Regulations of the Code of the City of Miami Beach.

*Density Limits:* 102 dwelling units per acre.

*Intensity Floor Area Ratio Limits:* 2.0

Notwithstanding the foregoing FAR limitations, for properties with a main use of hotel as of January 1, 2022 within the R-PS-4 zoning district, a .75 FAR bonus shall be provided if the main use on the property is proposed to be converted to residential, in accordance with the following:

- 1) The main use on the property shall be converted to residential and remain residential in perpetuity; hotel, apartment-hotel, and suite hotel use shall be prohibited.
- 2) A new structure, consisting solely of main use residential and allowable accessory uses, may be constructed, in accordance with all applicable development regulations with the provision of a .75 FAR bonus. Alternatively, the entire existing building may be converted to main use residential and allowable accessory uses, including any repairs, alterations and modification that may exceed the 50% rule, provided any alterations and modifications do not result in the building exceeding a 2.75 FAR.
- 3) New development may only be eligible for the .75 FAR bonus if the property owner elects, at the owner's sole discretion, to voluntarily execute a restrictive covenant running with the land, in a form approved by the city attorney, affirming that, in perpetuity, none of the residential units on the property shall be leased or rented for a period of less than six months and one day.
- 4) There shall be no variances from this provision.

## **SECTION 2. CODIFICATION.**

It is the intention of the City Commission that this Ordinance be entered into the Comprehensive Plan of the City of Miami Beach, FL, and it is hereby ordained that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 3. REPEALER.**

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

**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. TRANSMITTAL.**

The Planning Director is hereby directed to transmit this ordinance to the appropriate state, regional, and county agencies as required by applicable law.

**SECTION 6. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED** and **ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Dan Gelber, Mayor

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

First Reading: March 27, 2023  
Second Reading: April 28, 2023

Verified by: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

**PB22-0571**  
**LDR Amendment**

**LDR Plan Amendment  
Voter Enacted Incentive for Replacing Transient Uses in R-PS4 District**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," AMENDING SECTION 142-696, "RESIDENTIAL PERFORMANCE STANDARD AREA REQUIREMENTS," BY CREATING VOLUNTARY DEVELOPMENT INCENTIVES, INCLUDING AN INCREASE TO THE MAXIMUM ALLOWABLE FLOOR AREA RATIO ("FAR"), NOT TO EXCEED 0.75 FAR, FOR THE REDEVELOPMENT OF HOTELS IN THE R-PS4 ZONING DISTRICT INTO RESIDENTIAL USE, SUBJECT TO THE PROPERTY OWNER FIRST RECORDING A COVENANT PROHIBITING SHORT-TERM RENTALS ON THE PROPERTY; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the High Density Residential Performance Standard High Density (R-PS4) zoning district is located within the South of Fifth neighborhood, which is primarily residential in character; and

**WHEREAS**, the South of Fifth residential community wishes to transition existing hotel uses to residential uses to minimize impacts of transient uses on the community; and

**WHEREAS**, to incentivize residential development to replace existing hotels within the South of Fifth Neighborhood, it is necessary to amend the City's land development regulations for the R-PS4 zoning district by creating a 0.75 FAR incentive for the residential conversion or redevelopment of an existing hotel, on the condition that a property owner first record a covenant prohibiting short-term rentals on the property; and

**WHEREAS**, pursuant to Section 1.03(c) of the City Charter, "the floor area ratio [FAR] of any property . . . within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists on the date of adoption of this Charter Amendment [November 7, 2001], . . . unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach"; and

**WHEREAS**, on November 8, 2022, and pursuant to Resolution No. 2022-32255, a majority of the City's voters approved the proposed FAR increase; and

**WHEREAS**, the City has the authority to enact laws that promote the public health, safety, and general welfare of its citizens; and

**WHEREAS**, the City seeks to amend its land development regulations to implement the vote of the residents relating to FAR in the City's R-PS4 zoning district; and

**WHEREAS**, the amendments set forth below are necessary to accomplish all of the above objectives and the vote of the electorate.

**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," Article II, "District Regulations," Division 18, "Performance Standard District," of the Land Development Regulations of the Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 142  
ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**ARTICLE II. – DISTRICT REGULATIONS**

\* \* \*

**DIVISION 18. – PERFORMANCE STANDARD DISTRICT**

\* \* \*

**Sec. 142-696. - Residential performance standard area requirements.**

a. The residential performance standard area requirements are as follows:

**Residential Subdistricts**

<i>Performance Standard</i>	<i>R-PS1</i>	<i>R-PS2</i>	<i>R-PS3</i>	<i>R-PS4</i>
Minimum lot area	5,750 square feet	5,750 square feet	5,750 square feet	5,750 square feet
Minimum lot width	50 feet	50 feet	50 feet	50 feet
Required open space ratio	0.60, See section 142-704	0.65, See section 142-704	0.70, See section 142-704	0.70, See section 142-704
Maximum building height*	45 feet Lots 50 feet wide or less—40 feet	45 feet Lots 50 feet wide or less—40 feet	50 feet Lots 50 feet wide or less—40 feet	Nonoceanfront—80 feet; Oceanfront—100 feet; Lots 50 feet wide or less—40 feet ( <u>Except as provided below</u> )
Maximum floor area ratio**	1.25	1.50	1.75	2.0 ( <u>Except as provided below</u> )
Minimum floor area per	New construction—700 Rehabilitated	New construction—650	New construction—600 Rehabilitated	New construction—550 Rehabilitated



<i>Performance Standard</i>	<i>R-PS1</i>	<i>R-PS2</i>	<i>R-PS3</i>	<i>R-PS4</i>
apartment unit (square feet)	buildings—400 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400	Rehabilitated buildings—400	buildings—400 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400	buildings—400 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400
Minimum average floor area per apartment unit (square feet)	New construction—900 Rehabilitated buildings—550 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400	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
Minimum floor area per hotel unit (square feet)	N/A	N/A	15% = 300—335 square feet 85% = 335+ square feet	15% = 300—335 square feet 85% = 335+ square feet
Minimum parking	Pursuant to chapter 130 and section 142-705 requirement.			
Minimum off-street loading	Pursuant to chapter 130, article III.			
Signs	Pursuant to chapter 138.			
Suites hotel	Pursuant to article IV, division 3 of this chapter.			

\*Notwithstanding the foregoing provisions regarding maximum building height, in the Ocean Beach historic district, as defined in subsection 118-593(e)(2)f., the maximum building height for a lot located in the R-PS1, R-PS2, or R-PS3 zoning districts:

- (i) With a lot exceeding 50 feet, and
- (ii) Upon which there exists a contributing structure which has not received a certificate of appropriateness for demolition (or any such approval has expired), shall be 40 feet.

1. Notwithstanding the above height restrictions, existing structures within a local historic district are subject to section 142-1161.
2. In the R-PS4 zoning district, within the Ocean Beach historic district, when an existing contributing structure is nonconforming with respect to the height regulations in section 142-696, such structure may be repaired, renovated or rehabilitated regardless of the cost of such repair, renovation or rehabilitation, notwithstanding the provisions of chapter 118, article IX, "Nonconformances."
3. Reserved.
4. Notwithstanding the above height restrictions, in the R-PS4 zoning district, within the Ocean Beach historic district, for lots 100 feet or more in width, the maximum height shall be 35 feet for the first 60 feet of lot depth, 75 feet thereafter, subject to the line-of-sight analysis of section 142-697(d). However, for residential apartment buildings, on lots 100 feet or more in width, the historic preservation board, in accordance with certificate of appropriateness criteria, may allow an increase in the overall height not to exceed 60 feet for the first 60 feet of lot depth, and 100 feet thereafter, and on lots 50 feet wide or less may allow an increase in overall height not to exceed 35 feet for the first 60 feet of lot depth, 60 feet thereafter, provided all of the following conditions are satisfied:
  - a. The property shall be an oceanfront lot;
  - b. The property shall not contain a contributing building;
  - c. The top level of the front portion of the new construction on lots 100 feet or more in width shall meet a line-of-sight, which for the purpose of this section, is defined as not being visible when viewed at eye-level (five feet six inches from grade) from the opposite side of the Ocean Drive right-of-way, and on lots 50 feet or less wide shall be subject to the line-of-sight analysis of section 142-697(d);
  - d. The proposed building shall be sited and massed in a manner that promotes and protects view corridors. At a minimum, a substantial separation of the tower portion of any structure shall be required;
  - e. For lots greater than 50 feet in width, the front portion of the structure shall incorporate a separation in the center of the structure, which is open to sky, and is at least ten feet in width and 25 feet in depth; the exact location of such separation shall be subject to the historic preservation board, in accordance with certificate of appropriateness criteria. Alternatively, the massing and architectural design of the front portion of the structure shall acknowledge the historic pattern of residential structures along Ocean Drive;
  - g. [Reserved;]
  - h. The maximum residential density is 60 units per acre;
  - i. All required off-street parking for the building shall be provided on site; required parking may not be satisfied through parking impact fees;
  - j. The owner restricts the property to permit only rentals that are no less than six months and one day per calendar year, through language in its condominium or cooperative documents, and by proffering a restrictive covenant, running with the land, or other similar instrument enforceable against the owner(s), acceptable to and approved as to form by the city attorney, which shall be executed and recorded prior to the issuance of a building permit, to ensure that the building remains solely as a residential apartment building for a minimum of 30 years, and that no uses under section 142-902(2)e. are permitted on the premises during that time period;
  - k. Accepting that the value in the increased height, and the incremental traffic burden and effect on aesthetics in the district are offset by the conveyance of

an easement for an extension of the beachwalk east of their structures, the owner provides an easement, acceptable to and approved as to form by the city attorney, for a public beachwalk on the easterly portion of its property, as more specifically provided in the plans on file with the city's public works department.

- c. Notwithstanding the foregoing FAR limitations, for properties with a main use of hotel as of January 1, 2022 within the R-PS4 zoning district, the maximum FAR may be increased to 2.75 as a voluntary development incentive, subject to the property owner's strict compliance with the following conditions:
1. The main use on the property shall be converted to residential and shall remain residential in perpetuity; hostel, hotel, apartment-hotel, and suite-hotel use shall be prohibited.
  2. A new structure, consisting solely of main use residential and allowable accessory uses, may be constructed, in accordance with all applicable development regulations, with a maximum FAR of 2.75. Alternatively, the entire existing building may be converted to main-use residential and allowable accessory uses, including any repairs, alterations and modifications that may exceed the 50% rule (as set forth in section 118-395), provided any alterations and modifications do not result in the building exceeding an FAR of 2.75.
  3. A property shall only be eligible for the FAR incentive set forth in this subsection, not to exceed a total FAR of 2.75, if the property owner elects, at the owner's sole discretion, to voluntarily execute a restrictive covenant running with the land, in a form approved by the city attorney, affirming that, in perpetuity, none of the residential units on the property shall be leased or rented for a period of less than six months and one day.
  4. There shall be no variances from this subsection (c).

## **SECTION 2. 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. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

## **SECTION 3. REPEALER.**

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

## **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 \_\_\_\_\_, 2023.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

First Reading: March 27, 2023  
Second Reading: April 28, 2023

Verified by: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

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