

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

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 AMENDING THE MAXIMUM ALLOWABLE FLOOR AREA RATIO ("FAR") FOR THE R-PS4 ZONING DISTRICT TO INCENTIVIZE THE REDEVELOPMENT OR CONVERSION OF HOTELS INTO RESIDENTIAL STRUCTURES, BY ALLOWING SUCH PROPERTIES TO RETAIN OR RECONSTRUCT NONCONFORMING FAR IF THE OWNER VOLUNTARILY PROFFERS A RESTRICTIVE COVENANT RUNNING WITH THE LAND THAT SHORT-TERM RENTALS SHALL NOT BE PERMITTED ON THE PROPERTY; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City's South of Fifth residential neighborhood includes the High Density Residential Performance Standard High Density (R-PS4) zoning district; and

WHEREAS, residents and neighborhood associations in the South of Fifth neighborhood wish to transition existing hotel uses to residential use to minimize the impacts of transient uses on neighborhood quality of life; and

WHEREAS, the City Commission desires to incentivize the construction of residential condominiums to replace existing hotels within the South of Fifth Neighborhood; 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, if the property owner voluntarily agrees to 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, because this Ordinance would permit the retention or reconstruction of non-conforming FAR, the approval of the City's voters is required under Charter Section 1.03(c); and

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

<i>Performance Standard</i>	<i>R-PS1</i>	<i>R-PS2</i>	<i>R-PS3</i>	<i>R-PS4</i>
Maximum floor area ratio**	1.25	1.50	1.75	2.0 (<u>Except as provided below</u>)
Minimum floor area per apartment unit (square feet)	New construction—700 Rehabilitated buildings—400 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400	New construction—650 Rehabilitated buildings—400	New construction—600 Rehabilitated buildings—400 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400	New construction—550 Rehabilitated 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. Voluntary FAR incentive for conversion from hotel to residential use. Notwithstanding the foregoing FAR limitations, for a property with a main use of hotel as of January 1, 2022, which, as built, exceeds an FAR of 2.0 and is located 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 voluntary agreement to strictly comply 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.

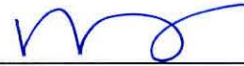
Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

First Reading: March 27, 2023
Second Reading: May 17, 2023

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION



City Attorney NK Date 3-15-23

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

(Sponsored by Commissioner Alex J. Fernandez)