



TO: Mayor Dan Gelber and Members of the City Commission

FROM: Commissioner Steven Meiner

DATE: May 17, 2023

SUBJECT: **REFERRAL TO THE LAND USE AND SUSTAINABILITY COMMITTEE AND PLANNING BOARD TO CONSIDER AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS TO REQUIRE A 6/7THS VOTE OF THE CITY COMMISSION PRIOR FOR ADOPTION OF ANY INCREASE IN A PROPERTY'S ZONED FLOOR AREA RATIO (FAR), THE METHOD THE CITY USES TO REGULATE THE SIZE OF A BUILDING.**

Since 1997, the City Charter has reflected the express mandate of the voters of the City of Miami Beach that a heightened approval requirement should apply to any increase in a property's zoned floor area ratio (FAR), the method the City uses to regulate the size of a building.

Specifically, prior to amending the City's Land Development Regulations to increase a property's FAR, for many years, the City Charter has first required approval of the proposed FAR increase by a majority of the voters voting in a City-wide referendum. If voters approve a proposed FAR increase, the FAR increase would thereafter be implemented via adoption of a City Land Development Regulation, on a 5/7ths vote of the City Commission.

Recently, on May 2, 2023, following approval by the Florida House of Representatives, the Florida Senate enacted Senate Bill 718, with significant new restrictions on zoning by referendum (the "New Bill"). The New Bill, if signed by the Governor, would take effect on July 1, 2023.

The New Bill provides that, except under very limited circumstances, "a referendum process in regards to any land development regulation is prohibited." As the City Charter cannot conflict with State law, the New Bill will likely narrow the applicability of the City's voter referendum requirement for FAR increases. I understand that the City Attorney's Office is preparing a detailed memorandum addressing the impacts of the New Bill on relevant provisions of the City Charter.

In anticipation of the New Bill restricting the City's ability to place many proposed FAR measures on the ballot, **I propose that the City Commission amend the current 5/7ths City Commission voting requirement for adoption of a Land Development Regulation, to require a 6/7ths vote of the City Commission for adoption of any future FAR increase.**

Given the limitations established by the Florida Legislature on zoning by referendum, I believe that increasing the City Commission voting requirement for future FAR increases may be the only way to give effect to the voter's strong mandate.

In addition, a 6/7ths voting requirement for approval of FAR increases would be consistent with the heightened approval requirement already reflected in the City Charter for other important City business. For instance, the City Charter currently provides that the sale or lease of certain City-owned properties, such as waterfront property, park property, or properties in specified areas of the City requires voter referendum approval.¹ However, for the sale or lease of all *other* City-owned properties that do not specifically require voter referendum approval, the City Charter currently requires a 6/7ths vote of the City Commission for the approval of the sale or lease of such property. Accordingly, there is strong existing precedent for a heightened 6/7ths voting requirement for FAR increases, similar to the approach already included in the City Charter for other important City business when a referendum requirement does not otherwise apply.

Moreover, the need for a heightened approval requirement for FAR increases is as important today as it was when it was first approved by the voters in 1997, given our residents' continued concerns with overdevelopment and traffic congestion in our City. Although the voter referendum requirement for FAR increases has been in place since 1997, it appears that no FAR increase was proposed until 2015.

As reflected below in the list of FAR-related ballot measures considered by the City's voters since 1997, there has been a very significant uptick in the number of FAR-related proposals in recent years. A heightened City Commission approval requirement for FAR increases will ensure that FAR proposals are carefully scrutinized, and that FAR increases are only approved if they obtain broad-based support by a supermajority of the City Commission.

¹ Importantly, the City Charter referendum requirements for the sale or lease of City-owned property are unaffected by the New Bill, as the New Bill only restricts holding a referendum on a land development regulation.

FAR Increases Considered by the Voters Since 1997

1. November 2022: Increase FAR to allow conversion of existing hotels in RPS-4 District in the South of Fifth neighborhood to residential use
2. November 2022: Increase FAR to incentivize office/residential along 1st Street and Washington Avenue
3. November 2022: Increase FAR for North Beach Oceanside Resort Overlay area (Deauville)
4. August 2022: Increase FAR to incentivize conversion of apartment hotels to residential use in RPS-1 and RPS-2 Districts in the South of Fifth neighborhood
5. August 2022: Increase FAR in Alton Road Gateway area to facilitate community health center
6. November 2020: Increase FAR by allowing reconstruction of original floorplates in historic buildings
7. November 2020: Increase FAR for Wolfsonian Arts District
8. November 2020: Increase FAR by excluding certain areas of building from calculation of floor area
9. November 2019: Increase FAR for CD-2 zoning districts along Washington Avenue and Alton Road
10. November 2019: Allow new floor area within historic buildings for adaptive reuse
11. November 2017: Increase FAR as part of rezonings for North Beach Town Center
12. November 2015: Increase FAR for Ocean Terrace Overlay District