

# MIAMI BEACH

## PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: May 23, 2023

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB23-0602. Improved Notice Requirements.**

### **RECOMMENDATION**

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

### **HISTORY**

On November 16, 2022, at the request of Commissioner Ricky Arriola, the City Commission referred a discussion (item C4 U) regarding improved notice requirements for property owners to the Land Use and Sustainability Committee (LUSC). On January 25, 2023, the item was continued to the February 15, 2023 LUSC meeting, with no discussion. On February 15, 2023, the LUSC discussed and concluded the item with direction to the Administration to draft an ordinance and recommended that the City Commission refer the ordinance to the Planning Board.

On April 28, 2023, the City Commission referred the item to the Planning Board (item C4 A).

### **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 does modify the scale of development, as such the 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.

**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 need to ensure that property owners are up-to-date on issues that may affect them 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.

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

**Consistent** – The proposed change will not affect 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 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.

### **BACKGROUND**

A robust public notice and review process currently exists for all applications for development approvals heard by the Design Review Board (DRB), Historic Preservation Board (HPB), Planning Board and Board of Adjustment. The City's Land Development Regulations set forth the process and minimum notice requirements for all Land Use Board (LUB) applications. Hearings before a LUB on an application for development approval are required to be noticed in accordance with the following provisions:

- a. *Advertisement.* At least 30 days prior to the public hearing date, a description of the request, and the date, start time of the meeting and location of the hearing shall be noticed in a newspaper of general circulation.
- b. *Mail notice.* At least 30 days prior to the public hearing date, a description of the request, and the date, start time of the meeting, and location of the hearing shall be given by mail

to the owners of record of land lying within 375 feet of the property subject to the application. Applicants shall submit all information and certifications necessary to meet this requirement, as determined by the Planning Department. Additionally, courtesy notice shall also be given to any Florida not-for-profit community organization which has requested of the Planning Director in writing to be notified of board hearings.

- c. *Posting.* At least 30 days prior to the public hearing date, a description of the request, and the date, time, and place of such hearing shall be posted on the property. Such posting shall be a minimum dimension of 11 inches by 17 inches and located in a visible location at the front of the property and shall not be posted on a fence or wall that would be obstructed by the operation of a gate.

### **ANALYSIS**

Currently, there are no minimum notice requirements for discussion items that may be taken up by the City's LUB's (DRB, HPB, Planning Board or Board of Adjustment). Generally, when a member of an LUB requests a particular matter be discussed, the practice has been for the Board to place such discussion on the next available agenda. At that point, the item is added to the City's online agenda system where it is available to the public.

While not common, there have been instances where a LUB discusses and provides a recommendation on an item that was not on a published agenda and without any type of notice. To increase transparency related to these types of discussion matters, at the request of the LUSC, the Administration has drafted the attached ordinance, which establishes the following minimum notice requirements for LUB discussion items:

1. At least 10 days prior to any discussion item being heard specific to a single property, a courtesy mail or email notice shall be sent to the owner of such property, and the title for such discussion shall be posted on the City's online agenda system.
2. At least 10 days prior to any discussion item being heard with respect to multiple properties, the title for such discussion shall be posted on the City's online agenda system.

To avoid conflict with the City's Charter provision regarding the powers and duties of the HPB, the above provisions are not applicable to HPB discussion items pertaining to the initiation of historic designation. While the Administration will continue to make every attempt to provide advance notice to a property owner, the following additional supplemental notice for HPB matters is included in the ordinance:

1. Within 10 days following an action by the HPB to initiate the historic designation of a single property or a district containing less than 10 properties, a mail or email courtesy notice shall be provided to such property owner(s).

It is important to note that the existing historic designation procedures currently require a minimum of five (5) public notices after the HPB votes to initiate the designation process. The designation of an individual property or an area less than 10 acres includes a mail notice to any affected property owner and all property owners within 375' prior to HPB review of a preliminary evaluation and prior to the initiation of zoning in progress.

In summary, staff believes that the proposed enhanced notice provisions for discussion items before the City's LUBs will serve to increase transparency and provide property owners with vital information with respect to their individual property.

**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.

**Notice Requirements for Discussion Items**

**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 2 OF THE CITY CODE, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE II, ENTITLED "GENERAL DEVELOPMENT APPLICATION AND HEARING PROCEDURES," SECTION 2.2.4, ENTITLED "PUBLIC HEARING", BY AMENDING SUB-SECTION 2.2.4.1, ENTITLED "PUBLIC NOTIFICATION" TO ESTABLISH NOTICE PROCEDURES FOR DISCUSSION ITEMS HEARD BY A LAND USE BOARD; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, The goal of the Property Rights Element of the 2040 Comprehensive Plan states that the City will respect judicially acknowledged and constitutionally protected private property rights; and

**WHEREAS**, The City Commission finds it in the best interest to increase transparency when items that affect property owners are discussed; and

**WHEREAS**, the City Commission finds that it is in the best interest of its residents, businesses, and visitors to adopt regulations to protect the public health, safety, welfare, and morals; 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 2, "Administration and Review Procedures," Article II, "General Development Application and Hearing Procedures" is hereby amended as follows:

**CHAPTER 2  
ADMINISTRATION AND REVIEW PROCEDURES**

\* \* \*

**ARTICLE II. – GENERAL DEVELOPMENT APPLICATION AND HEARING PROCEDURES**

\* \* \*

**SECTION  
2.2.4 – PUBLIC HEARING**

**2.2.4.1 Public Notification**

\* \* \*

d. Discussion items.

- i. At least 10 days prior to any discussion item being heard specific to a single property, a courtesy mail or email notice shall be sent to the owner(s) of record of such property and the title for such discussion shall be posted on the city's online agenda system. Such notice requirement shall not apply to historic designation proceedings.
- ii. At least 10 days prior to any discussion item being heard with respect to multiple properties, the title for such discussion shall be posted on the city's online agenda system. Such notice requirement shall not apply to historic designation proceedings.
- iii. Within 10 days following an action by the historic preservation board to discuss or initiate the historic designation of a single property or a district containing less than 10 properties, a mail or email courtesy notice shall be sent to the owner(s) of record of such properties.

**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 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:  
Second Reading:

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

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