

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: July 25, 2023

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB23-0613. FAR increases require 6/7th vote.**

RECOMMENDATION

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

HISTORY

On May 17, 2023, at the request of Commissioner Steven Meiner, the City Commission referred the proposal (C4 C) to the Land Use and Sustainability Committee (LUSC) and the Planning Board. The LUSC is scheduled to discuss the item on July 19, 2023 meeting. Staff will update the Planning Board as to the recommendations of the LUSC.

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 – Changes in state law limiting provisions of the City Charter regarding referendums have created the need for the proposed ordinance.

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 in accordance with existing regulations.

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; however, it may slow the City’s ability to make changes in the future.

- (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 May 2, 2023, the Florida Legislature passed Senate Bill (SB) 718, which prohibits local governments from requiring an initiative or referendum process for amendments to land development regulations. On June 28, 2023, the bill was signed by the Governor and became effective on July 1, 2023. The law pre-empts the provisions in the City Charter that currently require voter approval before increasing a property’s floor area ratio (FAR).

ANALYSIS

Currently, the Land Development Regulations of the City Code (LDRs) require an affirmative vote of 5/7ths of all members of the City Commission to enact any amendment to the LDRs. The attached ordinance would increase the approval threshold for LDR amendments related to an increase in FAR to an affirmative vote of 6/7ths of all members of the City Commission.

Generally, a 6/7ths threshold for approval is limited to significant matters of policy, such as the transfer or sale of public property. Although the proposal for a 6/7 vote of the City Commission is limited solely to increases in FAR, staff does have concerns regarding the proposed change, as it could have unintended consequences. Additionally, not all increases in FAR are controversial

or significantly impactful, and a 6/7ths threshold could make well intended amendments to modify FAR more challenging.

Staff has no objection to this proposal, as it is largely ministerial, in that it would simply increase the required voting threshold for future LDR amendments pertaining to FAR. Ultimately the City Commission will need to analyze all potential policy implications regarding the proposal.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with an favorable recommendation.

6/7 Vote Requirement for Future Increases in FAR

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE RESILIENCY CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 2, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE IV, ENTITLED "AMENDMENTS TO COMPREHENSIVE PLAN AND TO THE TEXT OF LAND DEVELOPMENT REGULATIONS," BY AMENDING SECTION 2.4.2, ENTITLED "AMENDMENT TO THE TEXT OF LAND DEVELOPMENT REGULATIONS," TO REQUIRE AN AFFIRMATIVE VOTE OF SIX-SEVENTHS OF ALL MEMBERS OF THE CITY COMMISSION PRIOR TO ANY FUTURE INCREASE IN THE FLOOR AREA OR FLOOR AREA RATIO (FAR) OF ANY PROPERTY IN THE CITY; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City's Land Development Regulations set forth the maximum allowable FAR for all zoning districts in the City; and

WHEREAS, the Land Development Regulations establish procedures for amendments to these regulations, including increases in maximum allowable FAR; and

WHEREAS, the City has the authority to enact laws which promote the public health, safety, general welfare, and morals of its citizens; 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, AS FOLLOWS:

SECTION 1. Chapter 2, entitled "Administration and Review Procedures," Article IV, entitled "Amendments to Comprehensive Plan and to the Text of the Land Development Regulations," is hereby amended in the Resiliency Code of the City of Miami Beach, Florida as follows:

CHAPTER 2
ADMINISTRATION AND REVIEW PROCEDURES

* * *

ARTICLE IV. – AMENDMENTS TO COMPREHENSIVE PLAN AND TO THE TEXT OF THE
LAND DEVELOPMENT REGULATIONS

* * *

2.4.2. Amendment to the text of land development regulations

* * *

d. Action by city commission; notice and hearings.

* * *

iv. An affirmative vote of five-sevenths of all members of the city commission shall be necessary in order to enact any amendment to these land development regulations. However, an affirmative

vote of six-sevenths of all members of the city commission shall be required in order to enact any amendment to these land development regulations that increases the floor area ratio (FAR) of any property or any zoning district in the City, including for any amendment that modifies the definition of "floor area" or the exceptions to the definition of "floor area" as set forth in Chapter 1 of these land development regulations in such a manner as to result in an increase to the FAR of a property or zoning district.

SECTION 2. REPEALER.

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

SECTION 3. CODIFICATION.

It is the intention of the City Commission, 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 as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

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.

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

City Attorney

Date

First Reading: _____, 2023

Second Reading: _____, 2023

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