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July 21, 2023

VIA E-MAIL

Chair Brian Elias and Members of the Planning Board
City of Miami Beach
1700 Convention Drive
Miami Beach, FL 33139

RE: Review of Future FAR Policy – PB23-0612

Dear Chair Elias and Members of the Planning Board:

At your meeting on Tuesday July 25, 2023, you will be considering an ordinance sponsored by Commissioner Fernandez creating new procedures for the consideration and adoption of FAR increases. This is an intelligent ordinance that will create a certain and predictable process for obtaining FAR increases that is fair and transparent to the community, neighborhood organizations, developers, and property owners. The proposed process will provide the Planning Board and City Commission with adequate information and input to make informed decisions on future FAR proposals.

Importantly, the Ordinance recognizes the central role of the Planning Board in this process. As you know, the State of Florida, under section 163.3174, *Florida Statutes* requires each local government to designate a “Local Planning Agency,” that is responsible for the preparation of the comprehensive plan, monitoring and overseeing the effectiveness of the Comprehensive Plan, and reviewing proposed changes to the Land Development Regulations and Comprehensive Plan in order to make recommendations to the local governing body. In Miami Beach, the Planning Board is the designated “Local Planning Agency.”

Further, the City's Resiliency Code authorizes the Planning Board to gather information and data as necessary for the presentation of suitable and appropriate plans for the comprehensive and systematic development of the City and to transmit the same for consideration by the City Commission. ***This is the highest and most important responsibility of the Planning Board.***

July 21, 2023

Page 2

I have some suggested changes to the draft you have received from City staff, which clarifies and strengthens some of the Ordinance's language and makes clear the role of the Planning Board and Planning Department in this process. The modified ordinance that includes my suggested changes is attached to this letter as **Exhibit "A"**. I would note that in the 1980's, when I was on the Planning Board, the Board routinely convened workshops with citizen and expert input before considering an item at a transmittal hearing.


Some of the key refinements and clarifications to the draft ordinance include:

- Clarifying, with specificity, who needs to receive notice of the workshops and hearings,
- Consolidating the Planning Board's Preliminary Review and Community Workshop into one meeting,
- Exempting minor proposals (that result in an increase of 10,000 square feet or less per impacted property) in non-residential neighborhoods from the process, and
- Delegating the organization of the City Commission's community workshop to the Planning Department.

I look forward to reviewing the Ordinance and this proposal with you during Tuesday's meeting.

Sincerely,

AKERMAN, LLP



Neisen O. Kasdin

CC: Thomas Mooney, City of Miami Beach Planning Director
Rogelio Madan, City of Miami Beach Chief of Community Planning & Sustainability

Exhibit "A"

Modified Ordinance with Suggested Changes

Process 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 7, ENTITLED “ZONING DISTRICTS AND REGULATIONS,” ARTICLE I, ENTITLED “GENERAL TO ALL ZONING DISTRICTS,” BY CREATING SECTION 7.1.10, ENTITLED “PROCEDURES FOR INCREASING ALLOWABLE FLOOR AREA AND FLOOR AREA RATIO (FAR),” TO ESTABLISH POLICIES, PROCEDURES AND REQUIREMENTS FOR THE INCREASE IN FLOOR AREA AND FLOOR AREA RATIO (FAR) CITYWIDE; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (“City”) recognizes that a more thorough and transparent process for increasing floor area and floor area ratio (FAR) is needed; and

WHEREAS, the City Land Development Regulations sets forth the maximum allowable FAR for all zoning districts in the City; 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 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 7, entitled “Zoning Districts and Regulations,” Article I, entitled “General to All Zoning Districts,” is hereby amended in the Resiliency Code of the City of Miami Beach, Florida as follows:

7.1.10 PROCEDURES FOR INCREASING ALLOWABLE FLOOR AREA AND FLOOR AREA RATIO (FAR)

7.1.10.1 INTENT

The regulations set forth under section 7.1.10 shall be in addition to the regulations set forth in Chapter 2, Article IV of this Resiliency Code. In the event of a conflict, the provisions set forth in section 7.1.10 shall control.

7.1.10.2 APPLICATION

Proposals to increase FAR or modify the definition of FAR included in Section 1.2.1 of this Resiliency Code that results in an FAR increase of 10,000 square feet or more per impacted property as well as all proposals to increase FAR in any RS district shall be required to follow the process outlined in this section. Depending on the applicant and nature of the request, applications shall be filed as follows:

- a. *Private applications.* For FAR increases specific to private properties, the property owner shall be required to file an application directly to the planning board. After the filing of an application to the planning board, a copy of the application and all exhibits shall be sent to any registered neighborhood association(s) in which there is an impacted property. Additionally, for applications located within a local historic district, a copy of the application and exhibits shall be sent to the Miami Design Preservation League (MDPL).
- b. *City Commission referral.* For FAR increases that apply citywide or to a defined district (e.g., more than one property owner), as well as modifications to floor area exceptions or creating FAR incentives, an amendment to the Resiliency Code shall be initiated by the City Commission. Such FAR increases would require a 5/7th vote of the City Commission to refer an FAR proposal to the Planning Board.

7.1.10.3 PLANNING BOARD REVIEW

The proposed FAR increase or modification to an exception to the definition of floor area shall be reviewed by the Planning Board as follows:

- a. *Step One – Planning Board Preliminary Review and Workshop.* The Planning Board, at a duly noticed public hearing, shall perform an initial review of the proposed FAR amendment, and host a community workshop to solicit input and feedback from the community, as well as for city staff to address any outstanding issues or questions related to the proposal. Notice for the Planning Board preliminary review and workshop shall be in accordance with the applicable provisions of Chapter 2, Article IV, and section 7.1.10.2 of the Resiliency Code. Further, a private applicant shall be required to provide a minimum of 30-day mail notice to any registered homeowners associations in which an impacted property sits within its boundaries, all property owners (as identified in the Miami-Dade County Property Appraiser's tax roll) with property within 375 feet of any parcel impacted by the FAR proposal, as well as published notice if the proposed amendment involves less than ten (10) contiguous acres.

Prior to the Planning Board's consideration of the FAR Proposal, the Board shall be provided with an impact analysis of the proposed FAR modification, which shall include, the following:

1. Calculations establishing the increase in square footage for all affected properties. Such calculation shall show the maximum allowable square

footage for residential, office, retail, hotel, or other uses resulting from the FAR increase.

2. An infrastructure analysis regarding potential impacts on traffic/mobility, parking, water, sewer, parks, and open space.
3. Massing studies, which illustrate the volume and location of the area associated with the FAR proposal.

If the FAR proposal is a private application, as defined in Section 7.1.10.2, then the applicant shall be responsible for providing all data and exhibits related to the analysis as part of their application package. For all other applications, the Administration, either internally or with the assistance of an outside consultant, shall be required to provide the Planning Board with all the data and exhibits required for the impact analysis.

- b. Step Two – Planning Board Transmittal. At a second duly noticed public hearing, which is separate and apart from the Planning Board Workshop, the Planning Board shall consider and transmit the FAR Proposal to the City Commission with a recommendation. Notice for the planning board transmittal hearing shall be in accordance with the applicable provisions of Chapter 2, Article IV of the Resiliency Code.

7.1.10.4 CITY COMMISSION REVIEW

The FAR Proposal shall require a 3-step process before the City Commission, as follows:

- a. Step One – First Reading Public Hearing. After the Planning Board transmits the FAR proposal, the City Commission shall hold a first reading public hearing. Notice for first reading shall be in accordance with the applicable provisions of Chapter 2, Article IV of the Resiliency Code. Additionally, a private applicant shall be required to provide a minimum of 30-day mail notice to any registered homeowners associations in which an impacted property sits within its boundaries, all property owners (as identified in the Miami-Dade County Property Appraiser's tax roll) with property within 375 feet of any parcel impacted by the FAR proposal, as well as published notice if the proposed amendment involves less than ten (10) contiguous acres.
- b. Step Two – Community Workshop. After the approval of the amendment at first reading, and prior to second reading, the Planning Department shall facilitate a community workshop. This additional community workshop shall be considered a courtesy meeting, and open for participation by all community stakeholders, including any adjacent areas, neighborhoods and properties that may be affected by the proposed FAR increase or modification to a floor area exception. Such community workshops may consist of virtual, in-person or hybrid formats, at the discretion of the Planning Department. Further, 20-day mail notice shall be provided to any registered homeowners associations in which an impacted property sits within its boundaries and to all property owners (as identified in the Miami-Dade County Property

Appraiser's tax roll) with property within 375 feet of any parcel impacted by the FAR proposal.

- c. Step Three – Second Reading / Adoption Public Hearing. After the community workshop described above, the City Commission shall hold a second reading public hearing to consider final adoption of the proposed amendment. Notice for second reading shall be in accordance with the applicable provisions in Chapter 2, Article IV of the Land Development Regulations.

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.

Alternative Legislative Proposal

PASSED AND ADOPTED this _____ day of 2023

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk.

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

First Reading: _____, 2023
Second Reading: _____, 2023

City Attorney Date

Verified by:
 Thomas R. Mooney, AICP
 Planning Director