MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Alina T. Hudak, City Manager

DATE: January 31, 2024

10:40 a.m. Second Reading Public Hearing

SUBJECT: FENCING REQUIREMENTS FOR VACANT AND ABANDONED LOTS
AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE MIAMI BEACH RESILIENCY CODE, AT CHAPTER 7, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE 5, "SUPPLEMENTARY DISTRICT REGULATIONS," SECTION 7.5.1, "GENERALLY (SUPPLEMENTARY DISTRICT REGULATIONS)," SECTION 7.5.1.6, ENTITLED "VACANT AND ABANDONED PROPERTIES AND CONSTRUCTION SITES," BY AMENDING AND EXPANDING EXISTING REGULATIONS FOR MINIMUM FENCE AND SCREENING REQUIREMENTS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

RECOMMENDATION

The Administration recommends that the City Commission adopt the subject ordinance.

BACKGROUND/HISTORY

On November 16, 2022, at the request of Commissioner Kristen Rosen Gonzalez, the City Commission referred a discussion (C4 AE) pertaining to minimum fencing requirements on vacant lots to the Land Use and Sustainability Committee (LUSC). On May 10, 2023, the LUSC recommended that the City Commission refer an ordinance amendment to the Planning Board based on the options identified in the LUSC memo.

On June 28, 2023, the City Commission referred the proposed ordinance to the Planning Board (Item C4 J).

The City Code currently requires fencing for vacant and abandoned lots pursuant to the regulations set forth in the Land Development Regulations (LDRs) of the City Code. These regulations govern size (i.e., height), materials, location, construction requirements, and access.

ANALYSIS

The following is a summary of current code requirements for securing and fencing vacant and abandoned properties, as well as the proposed amendments in the draft ordinance provided for First Reading:

Current Code Requirements:

• Height. There is no minimum height requirement for fences in single-family districts (maximum height of 7 feet and 5 feet along the water side). In all other districts the minimum and maximum fence height is 7 feet, except for portions of a site fronting a waterway, in which case the maximum height is 5 feet. If a property contains a building that is setback less than 5 feet from a property line, or there is an existing concrete block structure (CBS) wall that is at least 5 feet in height, the planning director, or designee, may waive the minimum fence requirements along those property lines, provided that the property is secure from trespassing. In the event that an abutting property has an existing fence along an interior side and/or rear property line, and such fence provides adequate securing of the property, the planning director, or designee, may waive the requirement for a fence along such property lines. Within single family, townhome, and all other residential districts, the fence shall be set back 4 feet from front and side street property lines.

• Materials. Along the front, street side and any waterway portions of the property line (including all required front yards, side street yards, and rear yards facing a street or waterway, an aluminum picket fence is required. Along interior property lines, as well as rear property lines not facing a waterway or street, black or green vinyl coated chain-link fencing, of permanent-quality construction, may be permitted, provided such fencing is not located within a required front yard, street side yard, or rear yard facing a waterfront.

• Construction requirements. All fences must be of permanent-quality construction.

• Access. Wherever there is a driveway approach to enter a lot, vehicular access onto the lot shall be required for maintenance purposes, with a locked gate.

Proposed Modified and Additional Requirements:

• Applicability. Clarify minimum fencing requirements are applicable to vacant lots in single family districts.

• Height. Clarify that overall height is measured from the yard elevation on which the fence is located. In single family districts, a new minimum height requirement of 4 feet would be established, with a maximum height of 7 feet, except for those sides of the property facing a waterway, in which case the maximum height would be 5 feet. In all other zoning districts, a minimum and maximum 7-foot-high fence would be required along all property lines, except those facing a waterway, in which case the minimum and maximum height shall be 5 feet.

• Height Exception. For non-single-family districts, the planning director may approve a fence height not to exceed 10 feet in height along all sides of the property if the property owner can substantiate security and trespassing issues.

• Materials. Along all property lines, including all required yards, an aluminum picket fence would be required. There would no longer be an option for a vinyl coated chain link fence along interior side and non-waterfront rear yards.

• Site conditions and landscape. The entire site shall be raised to sidewalk grade and sodded, in a manner to be approved by the Planning Director. Additionally, a landscape plan that includes shrubs and palm trees shall be required, subject to the approval of the Planning Director. Such landscape plan shall always allow unimpeded visibility into the site. All landscaping required

herein shall be installed and maintained as required by the permit and the city's landscaping code, until such time as new construction is authorized and commences.

Aluminum picket is considered the gold standard for perimeter fencing, as it allows for a high level of visibility into the vacant site and consists of a very high quality and durable material. Additionally, the proposed minimum landscape and site requirements will help address any long-term drainage and water retention issues, as well as improve the aesthetics of the vacant site.

PLANNING BOARD REVIEW

On July 25, 2023, the Planning Board held a public hearing and transmitted the proposed ordinance to the City Commission with a favorable recommendation (5-2). The Planning Board also recommended the following modifications:

1. Removal of the mandatory requirement for aluminum picket fencing on all sides of a vacant lot.

2. Removal of the mandatory requirement for a landscape plan that includes shrubs and palm trees, including the requirement that required landscape be installed and maintained as required by the permit and the city's landscaping code, until such time as new construction is authorized and commences.

The above noted recommendations were not included in the draft ordinance for First Reading. The Administration does not recommend either of the proposed modifications as they would result in a lesser degree of fencing and aesthetics for vacant lots.

UPDATE

The subject ordinance was approved at First Reading on December 13, 2023, subject to the inclusion of the following modifications:

1. Exceptions to the fence material and landscape requirements for properties located in single-family districts, as proposed more specifically in the proposed amendment from Commissioner Tanya K. Bhatt.

2. A requirement for lighting on commercial and multi-family properties meeting specified criteria.

3. The threshold for lots containing a structure that is subject to a permit that has been abandoned or expired has been increased from 30 days to 90 days in single-family districts.

All the above noted modifications are included in the revised ordinance for Second Reading.

Additionally, an exceptions provision for city owned lots has been incorporated into the revised ordinance for Second Reading, to address the future potential cost burdens associated with fencing and landscaping associated with public property. This exception provision is minor in scope and does not affect the title of the ordinance.

BUSINESS IMPACT ESTIMATE

In accordance with Section 166.041(4), Florida Statutes, the City of Miami Beach is required to assess whether a Business Impact Estimate is required for the subject ordinance. As noted in the attached, a Business Impact Estimate is not required for the subject ordinance as it

implements an amendment to the Land Development Regulations.

LOBBYIST DISCLOSURE

In accordance with Resolution 2023-32857, adopted by the City Commission on December 13, 2023, the following information has been requested from the primary item sponsor as it relates to the subject ordinance amendment:

1. Was the Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? **No**

2. If so, specify name of lobbyist(s) and principal(s): **Not Applicable**

SUPPORTING SURVEY DATA

N/A

FINANCIAL INFORMATION

No Fiscal Impact Expected

CONCLUSION

The Administration recommends that the City Commission adopt the subject ordinance.

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?	**Does this item utilize G.O. Bond Funds?**
Yes	No

Legislative Tracking

Planning

Sponsor

Vice-Mayor Kristen Rosen Gonzalez and Co-sponsored by Commissioner Tanya K. Bhatt

ATTACHMENTS:

Description

- BIE Statement (Published on 1/11/2024)
- Ordinance

MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

TO: Mayor Steven Meiner and Members of the City Commission

FROM: Alina T. Hudak, City Manager Rickelle Williams for

MEETING DATE: January 31, 2024

SUBJECT: **BUSINESS IMPACT ESTIMATE FOR:**

FENCING REQUIREMENTS FOR VACANT AND ABANDONED LOTS
AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE MIAMI BEACH RESILIENCY CODE, AT CHAPTER 7, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE 5, "SUPPLEMENTARY DISTRICT REGULATIONS," SECTION 7.5.1, "GENERALLY (SUPPLEMENTARY DISTRICT REGULATIONS)," SECTION 7.5.1.6, ENTITLED "VACANT AND ABANDONED PROPERTIES AND CONSTRUCTION SITES," BY AMENDING AND EXPANDING EXISTING REGULATIONS FOR MINIMUM FENCE AND SCREENING REQUIREMENTS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

Is a Business Impact Estimate Required?

☐ **Yes** **X No** *(If no, please check one of the boxes below)*

If one or more boxes are checked below, this means the City of Miami Beach has determined that a Business Impact Estimate for the above-referenced Ordinance is not required by State law.

☐ The proposed Ordinance is required for compliance with Federal or State law or regulation;

☐ The proposed Ordinance relates to the issuance or refinancing of debt;

☐ The proposed Ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;

☐ The proposed Ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the City;

☐ The proposed Ordinance is an emergency ordinance;

☐ The Ordinance relates to procurement; or

☒ The proposed Ordinance is enacted to implement the following:

a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;

b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;

c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

If none of the above exceptions apply, this Business Impact Estimate is hereby provided in accordance with Section 166.041(4), Florida Statutes.

1. A summary of the proposed Ordinance and its purpose is more fully set forth in the Commission Memorandum accompanying the Ordinance, as well as in the recitals to the Ordinance itself, which are attached hereto.

2. An estimate of the direct economic impact of the proposed Ordinance on private, for-profit businesses in the City of Miami Beach, if any:
(a) An estimate of direct compliance costs that businesses may reasonably incur;
(b) Any new charge or fee imposed by the proposed Ordinance or for which businesses will be financially responsible; and
(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

Not Applicable

3. Good faith estimate of the number of businesses likely to be impacted by the proposed Ordinance:

Not Applicable

4. Additional comments:

Fencing Requirements for Vacant and Abandoned Lots
Second Reading - Amended

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE MIAMI BEACH RESILIENCY CODE, AT CHAPTER 7, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE 5, "SUPPLEMENTARY DISTRICT REGULATIONS," SECTION 7.5.1, "GENERALLY (SUPPLEMENTARY DISTRICT REGULATIONS)," SECTION 7.5.1.6, ENTITLED "VACANT AND ABANDONED PROPERTIES AND CONSTRUCTION SITES," BY AMENDING AND EXPANDING EXISTING REGULATIONS FOR MINIMUM FENCE AND SCREENING REQUIREMENTS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission desires to amend and enhance the current requirements in the City Code pertaining to securing vacant lots and abandoned buildings; and

WHEREAS, a vacant lot that is not secured can become a dumping ground and/or public nuisance, the impacts of which can be difficult to control; and

WHEREAS, absent appropriate regulations, fences surrounding vacant lots and construction sites can negatively impact the visual character of neighborhoods and quality of life for surrounding residents and businesses; and

WHEREAS, the City of Miami Beach ("City") desires to strengthen the City's standards for construction fences and fences surrounding vacant/abandoned properties; and

WHEREAS, the regulations set forth herein will promote the general health, safety and welfare of the residents of the City; 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 7 of the Miami Beach Resiliency Code, entitled "Zoning Districts and Regulations," is hereby amended as follows:

CHAPTER 7
ZONING DISTRICTS AND REGULATIONS

* * *

ARTICLE 5. – SUPPLEMENTARY DISTRICT REGULATIONS

* * *

7.5.1 GENERALLY (SUPPLEMENTARY DISTRICT REGULATIONS)

* * *

7.5.1.6 Vacant and abandoned properties and construction sites.

a. *Vacant and abandoned properties in all districts.* The following minimum fence requirements shall apply to all vacant lots, lots containing a structure that is subject to a permit that has been abandoned or that has expired (for more than 90 days in single-family districts and for more than 30 days in all other applicable districts) and which structure is unfit for human habitation, and lots containing buildings unfit for human habitation.

i. *Applicability.* With the exception of city owned properties ~~single-family districts,~~ f~~F~~encing shall be required for all vacant and abandoned lots, as identified more specifically in subsection (a) above.

ii. *Height.* ~~There shall be no~~ The height of all fences identified in subsection (a) above shall be measured from the yard elevation where the fence is installed. The minimum height requirement for fences in single-family districts shall be 4 feet and ~~; however,~~ the maximum height in single-family districts shall not exceed 7 feet, except for those portions of a lot that face a waterway, in which case the maximum height shall be 5 feet. In all other zoning districts, a minimum 7-foot high fence shall be constructed along all property lines, except those facing a waterway, in which case the minimum and maximum height shall be 5 feet. Outside of single-family districts, the planning director may approve a fence height not to exceed 10 feet in height, if the property owner can substantiate that the fence would address security or trespassing issues on the property. If a property contains a building that is set back less than 5 feet from a property line, or there is an existing CBS wall that is at least 5 feet in height, the planning director, or designee, may waive the minimum fence requirements along those property lines, provided that the property is secure from trespassing. In the event that an abutting property has an existing fence along an interior side and/or rear property line, and such fence provides adequate securing of the property, the planning director, or designee, may waive the requirement for a fence along such property lines. Within single family, townhome, and all other residential districts, the fence shall be set back 4 feet from front and side street property lines.

iii. *Materials.* Along ~~the front, street side and any waterway portions of the~~ all property lines, including all required front yards, interior side yards, side street yards, and rear yards ~~facing a street or waterway~~, an aluminum picket fence ~~(or equivalent standard) with permanent-quality construction~~ shall be required; for properties in single-family districts, a black or green vinyl coated chain link fence may be permitted. ~~Along interior property lines, as well as rear property lines not facing a waterway or street, black or green vinyl coated chain-link fencing, of permanent-quality construction, may be permitted, provided such fencing is not located within a required front yard, street side yard, or rear yard facing a waterfront~~.

iv. *Construction requirements.* All fences required herein shall be of permanent-quality construction, including ~~concrete~~ foundations.

v. *Access.* Wherever there is a driveway approach to enter a lot, vehicular access onto the lot shall be required for maintenance purposes, with a locked gate.

vi. *Site conditions and landscape*. The entire site shall be raised to sidewalk grade and sodded, in a manner to be approved by the Planning Director. Additionally, with the exception of properties in single-family districts, a landscape plan that includes shrubs and palm trees shall be required, subject to the approval of the Planning Director, and such landscape plan shall allow unimpeded visibility into the site at all times. All landscaping required herein shall be installed and maintained as required by the permit and the city's landscaping code, until such time as new construction is authorized and commences.

vii. *Minimum lighting*. For properties with a lot area greater than 100,000 square feet, and located in multi-family residential or commercial districts, perimeter lighting shall be required in a manner consistent with all applicable city and State regulations.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith 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 _____, 2024.

_____
Steven Meiner, Mayor

ATTEST:

_____
Rafael E. Granado, City Clerk

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

_____ 1-23-24
City Attorney NK Date

First Reading: December 13, 2023
Second Reading: January 31, 2024

Double Underscore denotes language added for Second Reading

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

T:\Agenda\2024\1 January 2024\Planning\Fencing Requirements Vacant and Abandoned Lots - Second Reading ORD.docx