

ORDINANCE NO.

2016-4006

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 138 OF THE MIAMI BEACH CITY CODE, ENTITLED "SIGNS," ARTICLE IV ENTITLED "TEMPORARY SIGNS," AT SECTION 138-140 ENTITLED "VACANT STOREFRONT COVERS AND SIGNS" TO MANDATE THAT ALL VACANT STOREFRONT WINDOWS AND DOORS BE WRAPPED IN NON-COMMERCIAL PAPER DESIGNS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, on May 9, 2012, the City Commission enacted Ordinance No. 2012-3767, creating Section 138-140 of the City Code, as the Commission was concerned with the possible appearance of blight due to vacant storefront displays, and the Commission declared that it was in the interest of the public health, safety and welfare, and the interest of the citizens of Miami Beach, to establish policies, regulations, and standards relating to vacant storefront windows and doors; and

WHEREAS, the City Commission found that vacant storefronts create blighted economic and social conditions contrary to the viable and healthy economic, aesthetic, and social fabric that the City has cultivated and encouraged in its commercial zoning districts; and

WHEREAS, to encourage and regulate the screening of the interior of vacant storefronts with aesthetically compatible and attractive material, to obscure the deteriorated or deconstructed conditions of vacant storefronts, and to allow temporary signs to be included on this material, the City Commission created temporary sign criteria for wrapping and obscuring vacant storefronts from the community; and

WHEREAS, the City Commission believes it is in the best interest of the community to mandate the wrapping of vacant storefronts, rather than to leave this decision to the storefront owner; and

WHEREAS, the City Commission also believes it is in the best interest of the City to create an enforcement mechanism and penalties for violations of this requirement; and

WHEREAS, the City Commission desires to amend Chapter 138, Article IV, at Section 138-140 to accomplish the above objectives.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Chapter 138, entitled "Signs," Article IV entitled "Temporary Signs" at Section 138-140, entitled "Vacant storefront covers and signs," of the Miami Beach City Code is hereby amended as follows:

**CHAPTER 138
SIGNS**

ARTICLE IV. TEMPORARY SIGNS

* * *

Sec. 138-140. Vacant storefront covers and signs.

(a) *Purpose.* Vacant storefronts create blighted economic and social conditions contrary to the viable and healthy economic, aesthetic and social fabric that the city has cultivated and encouraged in its commercial zoning districts. The purpose of this section is to encourage and regulate the screening of the interior of vacant storefronts with aesthetically compatible and attractive material, to obscure the deteriorated or deconstructed conditions of vacant storefronts, and to allow temporary signs to be included on this material.

(b) *Definition.* For purposes of this section, a vacant storefront is any ground floor business establishment that is unoccupied.

(c) *Applicability.* The requirements of this section apply only to the ground floor windows and doors of vacant storefronts that face a public right-of-way. If a commercial property is vacant for more than 15 days, all glass surfaces visible to the public shall be kept clean, and the interior of such vacant store shall be screened from public view in one of the following ways, until the property is occupied:

- (1) All glass surfaces visible from the public right-of-way shall be covered as provided in subsection (e); or
- (2) All glass surfaces visible from the public right-of-way shall be covered as provided in subsection (f).

(d) *Storefront window cover ~~permitted~~ required for vacant storefronts.* Exterior ~~Windows~~ windows and doors on vacant commercial property ~~may~~ shall be completely substantially screened with an opaque material obscuring the interior. The materials used to satisfy this requirement shall be subject to review and approval by the planning department design review staff, in accordance with applicable design review and historic preservation criteria, and shall consist of 60-pound weight paper, or similar opaque material. Windows covered in accordance with this section shall ~~may~~ remain covered until issuance of a certificate of use or occupancy for the new occupant, whichever occurs first. If the owner of vacant

commercial property elects not to utilize one of the signs identified in subsection (e), the owner shall utilize the window covers identified in subsection (f).

(e) *Temporary signs permitted.* Material applied to windows in conformity with this section shall not contain general advertising signs or other prohibited sign types. Such material may contain applicable property access limitations, including no trespass provisions, as well as signs that comply with the regulations of this chapter, as follows:

- (1) Artistic or super graphics in accordance with section 138-204, which may cover 100 percent of the window; and
- (2) Other types of signage allowed by this chapter, including real estate signs in accordance with section 138-136, and construction signs in accordance with section 138-133; signage under this provision may be incorporated into artistic or super graphics as referenced in (1) above; however, the text of such signage shall be limited to no more than 25 percent of the total window area of the vacant storefront.
- (3) The design and material of all proposed signs under this subsection (e) shall require review by the planning department design review staff, in accordance with applicable design review and historic preservation criteria.

(f) *City-provided storefront cover.* The city ~~may also~~ shall produce and provide preapproved storefront covers, ~~for a charge with or without charge, to encourage the coverage of vacant storefronts not complying with subsection (d) above. Such covers may contain applicable property access limitations, including no trespass provisions.~~ Covers provided by the city shall also satisfy the requirements of this section.

(g) *Penalties and enforcement.* Each day of noncompliance shall constitute a separate offense. The code compliance department is empowered and authorized to require compliance with this section within 30 days of written notice to violators.

- (1) The following civil fines shall be imposed for a violation of this section:
 - a. First violation within a 12-month period: ~~\$250.00~~Warning;
 - b. Second violation within a 12-month period: ~~\$500.00~~ \$250.00;
 - c. Third violation within a 12-month period: ~~\$1,000.00~~ \$500.00;
 - d. Fourth or subsequent violation within a 12-month period: ~~\$5,000.00~~ \$1,000.00.

(2) Enforcement. The code compliance department shall enforce this section. The notice of violation shall inform the violator of the nature of the

violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(3) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.

a. A violator who has been served with a notice of violation must elect to either

i. pay the civil fine in the manner indicated on the notice of violation; or

ii. request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.

b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.

c. The failure to pay the civil fine, or to timely request an administrative hearing before a special master, shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.

d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. Three (3) months after the recording of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien, for the amount of the lien plus accrued interest.

e. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.

f. The special master shall not have discretion to alter the penalties prescribed in this section.

g. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

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 relettered 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 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 effect ten days following adoption.

PASSED AND ADOPTED this 13 day of April, 2016.

Philip Levine, Mayor

ATTEST:

Rafael E. Granado, City Clerk

First Reading: 4/25/16 March 9, 2016

Second Reading: April 13, 2016

Verified by: Thomas R. Moore, AICP
Planning Director

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

Underscore denotes new language

~~Strike-through~~ denotes deleted language

Underscore denotes language added pursuant to First Reading Approval

[Sponsored by Commissioner Michael Grieco]

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COMMISSION ITEM SUMMARY

Condensed Title:

An Ordinance amending Section 138-140 of the Land Development Regulations of the City Code in order to mandate that all vacant storefront windows and doors be wrapped in non-commercial paper designs.

Key Intended Outcome Supported:

Increase satisfaction with neighborhood character. Increase satisfaction with development and growth management across the City.

Supporting Data (Surveys, Environmental Scan, etc 48% of residential respondents and 55% of businesses rate the effort put forth by the City to regulate development is "about the right amount."

Item Summary/Recommendation:

SECOND READING – PUBLIC HEARING

The subject ordinance would modify the existing optional program for vacant storefronts and mandate that all vacant storefront windows and doors be wrapped in non-commercial paper designs. The ordinance also establishes penalties and enforcement standards.

On October 14, 2015, at the request of Commissioner Grieco, the City Commission referred the subject Ordinance amendment (Item C4B) to the Land Use and Development Committee and the Planning Board. On January 20, 2016, the Land Use and Development Committee recommended that the ordinance be approved with amendments.

On March 9, 2016, the City Commission: 1) accepted the recommendation of the Land Use and Development Committee via separate motion; and 2) approved the attached Ordinance at First Reading and set a Second Reading Public Hearing for April 13, 2016.

The Administration recommends that the City Commission adopt the ordinance.

Advisory Board Recommendation:

On January 26, 2016, the Planning Board transmitted the proposed ordinance with modifications to the City Commission with a favorable recommendation (vote 7 to 0).

Financial Information:

Source of Funds:		Amount	Account
<div style="border: 1px solid black; width: 40px; height: 40px; margin: 0 auto;"></div> OBPI	1		
	2		
	3		
	Total		

Financial Impact Summary:

In accordance with Charter section 5.02, which requires that the "City of Miami Beach shall consider the long-term economic impact (at least five years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long-term economic impact (at least five years) of this proposed legislative action, and determined that there will be no measurable impact on the City's budget.

City Clerk's Office Legislative Tracking:

Thomas Mooney

Sign-Offs:

Department Director	Assistant City Manager	City Manager
		

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MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: April 13, 2016

SECOND READING – PUBLIC HEARING

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 138 OF THE MIAMI BEACH CITY CODE, ENTITLED "SIGNS," ARTICLE IV ENTITLED "TEMPORARY SIGNS," AT SECTION 138-140 ENTITLED "VACANT STOREFRONT COVERS AND SIGNS" TO MANDATE THAT ALL VACANT STOREFRONT WINDOWS AND DOORS BE WRAPPED IN NON-COMMERCIAL PAPER DESIGNS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission adopt the ordinance.

BACKGROUND

On October 14, 2015, at the request of Commissioner Grieco, the City Commission referred the subject Ordinance amendment (Item C4B) to the Land Use and Development Committee and the Planning Board. On January 20, 2016, the Land Use and Development Committee recommended that the ordinance be approved with amendments.

ANALYSIS

Section 138-140 of the Land Development Regulations establishes regulations for ground floor storefronts that face the public right-of-way and are vacant. Currently the regulations provide property owners the option of screening such windows with an opaque film while the storefront is vacant. It further encourages the screening of such properties by allowing for the City to provide a screening material at no charge to the property owner.

Several property owners have not taken advantage of the program when their storefronts have become vacant, leaving storefronts with a blighted appearance visible to the public. As a result, the proposed Ordinance amendment modifies Section 138-140 by making vacant storefront screening mandatory, and establishes penalties for not complying.

The Ordinance proposes the following changes to Section 138-140:

- For vacant storefronts that face a public right-of-way, that are vacant for more than 15-days, all glass surfaces visible to the public shall be kept clean, and the interior of a vacant store shall be screened from public view through the two existing options.
- If the applicant is providing signage in their screening, the design and material of any signage shall require the review and approval of the Planning Department, in accordance with applicable design review and historic preservation criteria.

- If the applicant is electing to use a City-provided storefront cover, it will now be provided with a charge.
- Penalties and enforcement procedures for the requirements are established.
- Civil fines are established that range from \$250 for the first violation; \$2,000 for the second violation; \$3,000 for the third violation; and 5,000 for the fourth and subsequent violations within a 12-month period.

PLANNING BOARD REVIEW

On January 26, 2016, the Planning Board transmitted the proposed ordinance to the City Commission with a favorable recommendation with the modifications below identified with bold text:

(e) Temporary signs permitted. Material applied to windows in conformity with this section shall not contain general advertising signs or other prohibited sign types. Such material may contain signs that comply with the regulations of this chapter, as follows:

*(1) Artistic or super graphics in accordance with section 138-204, which **may shall** cover 100 percent of the window; and*

*(f) City-provided storefront cover. The city ~~may also shall~~ produce and provide preapproved storefront covers **which shall cover 100 percent of the window, for a charge with or without charge, to encourage the coverage of vacant storefronts not complying with subsection (d) above.** Covers provided by the city shall also satisfy the requirements of this section.*

The recommendations of the Planning Board were intended to ensure that 100 percent of a window be covered. However, given potential security issues with 100% coverage, particularly if the Police or Fire Departments need to be able to look inside a building, the Administration recommends that the language in the original ordinance, as referred by the Land Use Committee, be maintained.

SUMMARY / UPDATE

On March 9, 2016, the City Commission approved the proposed Ordinance at First Reading and set a Second Reading Public Hearing for April 13, 2016. The Commission also requested that the 'no trespassing' provision and flexibility for visual access into the vacant stores, as recommended by the Land Use Committee, be included in the approved ordinance. These changes and updates have been included in the revised text of the legislation for Second Reading.

FINANCIAL IMPACT

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least five years) of proposed legislative actions," this shall confirm that the City Administration City Administration evaluated the long term economic impact (at least five years) of this proposed legislative action. The proposed Ordinance is not expected to have a negative fiscal impact upon the City.

RECOMMENDATION

The Administration recommends that the City Commission adopt the ordinance.

JLM/SMT/TRM/RAM

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MIAMI BEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

April 13, 2016

NOTICE IS HEREBY given that the following public hearings will be held by the Mayor and City Commissioners of the City of Miami Beach, Florida, in the Commission Chambers, Third Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **April 13, 2016**, at the times listed, or as soon thereafter as the matter can be heard:

10:00 a.m.

An Ordinance Amending Chapter 138 Of The Miami Beach City Code, Entitled "Signs;" Article IV Entitled "Temporary Signs;" At Section 138-140 Entitled "Vacant Storefront Covers And Signs" To Mandate That All Vacant Storefront Windows And Doors Be Wrapped In Non-Commercial Paper Designs; Providing For Enforcement And Penalties; And Providing For Repealer, Codification, Severability, And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

10:05 a.m.

An Ordinance Amending The Land Development Regulations Of The Code Of The City Of Miami Beach, By Amending Chapter 142, "Zoning Districts And Regulations;" By Amending Article II, "District Regulations;" By Amending Division 3, "Residential Multifamily Districts;" By Amending Section 142-155 To Modify The Requirements For Minimum Hotel Room Size And Maximum Hotel Room Occupancy For Historic Hotels Within The RM-1 District; By Amending Section 142-217 To Modify The Requirements For Minimum Hotel Room Size And Maximum Hotel Room Occupancy For Historic Hotels Within The RM-2 District; By Amending Section 142-246 To Modify The Requirements For Minimum Hotel Room Size And Maximum Hotel Room Occupancy For Historic Hotels Within The RM-3 District; By Amending Chapter 142, "Zoning Districts And Regulations;" Article II, "District Regulations;" Section 142-306, "Development Regulations" To Modify The Requirements For Minimum Hotel Room Size And Maximum Hotel Room Occupancy For Historic Hotels Within The CD-2 District; And By Amending Section 142-337, "Development Regulations And Area Requirements" To Modify The Requirements For Minimum Hotel Room Size And Maximum Hotel Room Occupancy For Historic Hotels Within The CD-3 District; Providing For Codification; Repealer; Severability; And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

10:10 a.m.

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Amending Chapter 82 Of The Code Of The City Of Miami Beach, Entitled "Public Property;" By Amending Article IV, "Uses In Public Rights-Of-Way;" By Amending Division 5, "Sidewalk Cates;" By Amending Subdivision II, "Permit;" By Amending Section 82-382, Entitled "Application;" And Section 82-383, Entitled "Permit Fee; Penalties For Late Payment; Review Of Fee; Exception;" To Abate Sidewalk Cafe Permit Fees. Including Annual Permit Application Fees And Square Footage Fees, For Businesses On Washington Avenue From 6th Street To Lincoln Road, Until September 30, 2019; And Providing For Repealer, Codification, Severability, And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

10:15 a.m.

A Resolution Adopting The Fourth Amendment To The Capital Budget For Fiscal Year 2015/16. *Inquiries may be directed to the Office of Budget & Performance Improvement at 305.673.7510.*

10:25 a.m.

A Resolution Approving, By 5/7 Vote, Following A Duly Noticed Public Hearing, The Naming Of The Stage In The North Shore Park Bandshell In Honor Of Mr. Clark Douglas Burris. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:30 a.m.

A Resolution Seeking Three Waivers Of Development Regulations Pursuant To Section 142-425(d) Of The City's Code, By A 5/7 Vote Of The City Commission, For The Altos Del Mar Park Project, Located At 75th Street And Collins Avenue, Within The Harding Townsite/South Altos Del Mar Historic District And Within The Altos Del Mar Neighborhood; The First Waiver Is Of Section 142-802(3), Of The Code In Order To Reduce The Required Side Setback From 15 Feet To 10 Feet; The Second Waiver Is Sought To Reduce The Rear Setback Being Reduced To 1'4" To Construct The Proposed Bathroom And Storage Building; And The Third Waiver Is Sought To Waive Section 142-802(7), Of The Code, As The Existing Parking Lot And Proposed Bathroom Exceed The 50 Foot Open Area Requirement For The Oceanfront Overlay District. *Inquiries may be directed to the Capital Improvement Projects Office at 305.673.7071, or the Planning Department at 305.673.7550.*

Dr. Stanley Sutnick Citizen's Forum – Pursuant to Resolutions No. 2013-28440 and 2016-29337, the times for the Dr. Stanley Sutnick Citizen's Forum are **8:30 a.m.** and **1:00 p.m.**, or as soon as possible thereafter. Approximately thirty minutes will be allocated to each session, with individuals being limited to no more than three minutes or for a period established by the Mayor. No appointment or advance notification is needed in order to speak to the Commission during this Forum.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these items are available for public inspection during normal business hours in the Office of the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting, or any item herein, may be continued, and under such circumstances, additional legal notice need not be provided.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

Rafael E. Granado, City Clerk
City of Miami Beach