

MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber
Members of the City Commission

CC: Alina T. Hudak, City Manager
Rafael E. Granado, City Clerk

FROM: Rafael Paz, Acting City Attorney



DATE: July 28, 2021

SUBJECT: DISCUSSION AND REFERRAL TO THE PLANNING BOARD REGARDING A PROPOSED AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS RELATING TO EXISTING, NONCONFORMING RESIDENTIAL BUILDINGS, IN ORDER TO INCENTIVIZE STRUCTURAL, ELECTRICAL AND RELATED IMPROVEMENTS INTENDED TO COMPLY WITH THE FLORIDA BUILDING CODE.

At the request of Commissioner Micky Steinberg, the above discussion has been placed on the July 28, 2021 City Commission meeting agenda as a referral to the Planning Board. Recently, the City has undertaken a rigorous review of existing buildings in the City of Miami Beach, especially buildings undergoing a 40-year recertification under the Miami-Dade County Code.

Consistent with this endeavor, the purpose of this referral is to discuss a proposed amendment to the Land Development Regulations to incentivize the comprehensive repair and rehabilitation of existing, nonconforming residential buildings, as long as no new floor area is proposed. The amendment would be limited to work associated with structural, electrical, and related repairs intended to comply with the Florida Building Code, including as part of a 40-year recertification.

Chapter 118 of the Land Development Regulations, at Article IX, entitled "Nonconformances," governs nonconforming uses and buildings. With regard to the repair and rehabilitation of nonconforming buildings, Section 118-395 provides as follows (in pertinent part):

Sec. 118-395. Repair and/or rehabilitation of nonconforming buildings and uses.

(b) *Nonconforming buildings.*

(2) Nonconforming buildings which are repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official, shall be subject to the following conditions:

* * *

c. The entire building and any new construction shall comply with the current development regulations in the zoning district in which the property is located. No new floor area may be added if the floor area ratio is presently at maximum or exceeded.

* * *

Under Section 118-395, if the owner of a multifamily building or a condominium association submits plans to repair or rehabilitate an existing, nonconforming residential building, the Building Official is required to determine the value of the proposed improvements. If the value of the repair or rehabilitation work exceeds 50 percent of the value of the building, the entire building and any new construction is required to comply with the current development regulations (including the current maximum FAR) for the underlying zoning district.

This proposed amendment would exclude structural, electrical, and related repairs from counting toward the 50% rule, so as to incentivize owners and associations to implement those repairs, without losing the building's legal nonconforming status (including nonconforming FAR, height, setbacks, minimum and average unit size, and parking credits).

As the amendment would only apply to repair/rehabilitation work where no new FAR is proposed, both the Planning Department and City Attorney's Office have determined that City Charter Section 1.03(c) is not implicated.