

**Nonconforming Residential Buildings – Repairs Exceeding 50%**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," BY AMENDING ARTICLE IX, "NONCONFORMANCES," SECTION 118-395, "REPAIR AND/OR REHABILITATION OF NONCONFORMING BUILDINGS AND USES," TO AMEND THE REGULATIONS APPLICABLE TO THE REPAIR AND/OR REHABILITATION OF EXISTING NON-CONFORMING RESIDENTIAL BUILDINGS; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach (the "City") has adopted regulations pertaining to the maintenance and improvement of existing nonconforming structures; and

**WHEREAS**, the City Commission desires to amend the City's nonconforming building regulations to address the long-term safety of residential buildings located throughout the City; and

**WHEREAS**, specifically, the City Commission desires to clarify and enhance existing procedures and requirements for improvements to existing non-conforming residential structures in order to ensure any such structure is retained in a safe and secure manner; and

**WHEREAS**, the provisions of this Ordinance are intended to incentivize the comprehensive repair and rehabilitation of existing, nonconforming residential buildings; 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.** That Chapter 118, entitled "Administration and Review Procedures," Article IX, entitled "Nonconformances," of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

**CHAPTER 118  
ADMINISTRATION AND REVIEW PROCEDURES**

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**ARTICLE IX. NONCONFORMANCES**

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

\* \* \*

**(b) Nonconforming buildings.**

- (1) Nonconforming buildings which are repaired or rehabilitated by less than fifty (50) percent of the value of the building as determined by the building official shall be subject to the following conditions:

a. The building shall have previously been issued a certificate of use, certificate of completion, certificate of occupancy or occupational license by the city to reflect its current use.

b. Such repairs or rehabilitation shall meet the requirements of the city property maintenance standards, the applicable Florida Building Code, and the Fire Safety Code.

c. If located within a designated historic district, or an historic site, the repairs or rehabilitations shall comply substantially with the Secretary of Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures, as amended, as well as the certificate of appropriateness criteria in article X of these land development regulations. If the repair or rehabilitation of a contributing structure conflicts with any of these regulations, the property owner shall seek relief from the applicable building or fire safety code.

d. Any new construction shall comply with the existing development regulations in the zoning district in which the property is located, provided, however, that open private balconies, including projecting balconies and balconies supported by columns, not to exceed a depth of 30 feet from an existing building wall, may be permitted as a height exception. The addition of balconies may be permitted up to the height of the highest habitable floor for a building nonconforming in height, provided such balconies meet applicable FAR and setback regulations. Any addition of a balcony in a nonconforming building shall be subject to the review and approval of the design review board or historic preservation board, as may be applicable.

- (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:

a. All residential and hotel units shall meet the minimum and average unit size requirements for rehabilitated buildings as set forth in the zoning district in which the property is located.

b. The entire building and any new construction shall meet all requirements of the city property maintenance standards, the applicable Florida Building Code and the Life Safety Code.

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. Notwithstanding the foregoing, for multi-family residential structures, the existing floor area, height, setbacks, minimum and average unit size, open space, as well as any parking credits, may remain, if all of the following conditions are satisfied:

1. All portions of the entire building shall remain fully intact and retained, and no new floor area may be added.

2. The building shall meet or exceed the minimum structural, life-safety, and electrical requirements of the Florida Building Code.

3. Increases in the size of exterior window and door openings shall not be permitted unless required by the Florida Building Code.

d. Development regulations for buildings located within a designated historic district or for an historic site:

1. The existing structure's floor area, height, setbacks and any existing parking credits may remain, if the following portions of the building remain substantially intact, and are retained, preserved and restored:

i. At least 75 percent of the front and street side walls, exclusive of window openings;

ii. For structures that are set back two or more feet from interior side property lines, at least 66 percent of the remaining interior side walls, exclusive of window openings; and

iii. All architecturally significant public interiors.

2. For the replication or restoration of contributing buildings, but not for noncontributing buildings, the historic preservation board may, at their discretion, waive the requirements of subsection (b)(2)d.1. above, and allow for the retention of the existing structure's floor area, height, setbacks or parking credits, if at least one of the following criteria is satisfied, as determined by the historic preservation board:

i. The structure is architecturally significant in terms of design, scale, or massing;

ii. The structure embodies a distinctive style that is unique to Miami Beach or the historic district in which it is located;

iii. The structure is associated with the life or events of significant persons in the city;

iv. The structure represents the outstanding work of a master designer, architect or builder who contributed to our historical, aesthetic or architectural heritage;

v. The structure has yielded or is likely to yield information important in prehistory or history; or

vi. The structure is listed in the National Register of Historic Places.

Notwithstanding the above, for buildings over three stories in height, at least 75 percent of the front facade and 75 percent of any architecturally significant portions of the street side facades shall be retained and preserved, in order to retain any nonconforming floor area, height, setbacks or parking credits. If the historic preservation board does not waive the requirements of subsection (b)(2)d.1. above for any reason, including the inability of a reconstructed building to meet the requirements of the applicable building code, any new structure shall be required to meet all current development regulations for the zoning district in which the property is located.

3. The building shall comply substantially with the secretary of interior standards for rehabilitation and guidelines for rehabilitating historic structures, as amended, as well as the certificate of appropriateness criteria in article X of these land development regulations.

4. If the repair or rehabilitation of a contributing structure or historic site conflicts with any of the requirements (as amended) in the applicable Florida Building Code or the Life Safety Code, the property owner shall seek relief from such code.

5. Regardless of its classification on the Miami Beach Historic Properties database, a building may be re-classified as contributing by the historic preservation board if it meets the relevant criteria set forth in the City Code.

6. Contributing structures shall be subject to all requirements in section 118-503 of these land development regulations.

7. Existing non-contributing structures in a designated historic district or site shall be subject to the sustainability and resiliency requirements for new construction in chapter 133.

## **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 re-numbered or re-lettered 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 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Dan Gelber  
Mayor

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

First Reading: September 17, 2021  
Second Reading: October 13, 2021

Verified by: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

APPROVED AS TO FORM AND  
LANGUAGE AND FOR EXECUTION

   
\_\_\_\_\_  
City Attorney NK Date