

DISCONTINUANCE OF NONCONFORMING USES

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES", ARTICLE IX., "NONCONFORMANCES," TO ADD SECTION 118-390 "PURPOSE/APPLICABILITY," AND AMEND SECTION 118-394, "DISCONTINUANCE OF NONCONFORMING USES" TO DEFINE THE PROCESS FOR RETAINING LEGAL NON-CONFORMING USES AND ESTABLISH GUIDELINES FOR DETERMINING WHETHER THERE HAS BEEN AN INTENTIONAL AND VOLUNTARY ABANDONMENT OF A NONCONFORMING USE; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, over time, amendments to the City Code have made certain uses prohibited in zoning districts throughout the City; and

WHEREAS, due to amendments to the City Code, there are existing uses that have become legal non-conforming; and

WHEREAS, the City Code allows existing legal non-conforming uses to remain and change ownership and tenancy as long as the use remains active and does not become idle for a period of time set forth in the City Code; and

WHEREAS, the City Code lacks adequate specificity regarding the requirements for determining if a use has remained active or become idle; and

WHEREAS, the Mayor and the City Commission desire to standardize the time frame set forth in the City Code for legal non-conforming uses to obtain permits to repair or renovate their premises; 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 118, "Administration and Review Procedures," Article IX, "Nonconformances," is hereby amended as follows:

CHAPTER 118.

ADMINISTRATION AND REVIEW PROCEDURES

* * *

ARTICLE IX. NONCONFORMANCES

118-390 Purpose/Applicability.

1. Nothing contained in this article shall be deemed or construed to prohibit the continuation of a legally established non-conforming use, structure, or occupancy, as those terms are defined in Sections 114.1. The intent of this Section is to encourage nonconformities to ultimately be brought into compliance with current regulations. This section shall govern in the event of conflicts with other regulations of this code pertaining to legally established nonconforming uses, structures, and occupancies.

2. The term "nonconformity" shall refer to a use, building, or lot that does not comply with the regulations of this article. Only legally established nonconformities shall have rights under this section.

3. For purposes of this section, the term "expansion" shall mean an, addition, enlargement, extension, or modification to a structure that results in an increase in the square footage of the structure, an increase in the occupant content or an increase in the number of seats.

4. For the purposes of this section, "legally established" shall apply to the following circumstances:

- a. A lot that does not meet the lot frontage, lot width, lot depth, and/or lot area requirements of the current zoning district, provided that such lot met the regulations in effect at the time of platting.
- b. A site or improvement that is rendered nonconforming through the lawful use of eminent domain, an order of a court of competent jurisdiction, or the voluntary dedication of property.
- c. An existing use which conformed to the code at the time it was established.
- d. A building, use and/or site improvement that had received final approval through a public hearing pursuant to this chapter; or through administrative site plan review and had a valid building permit.
- e. There shall be no variance of the nonconforming use(s) section of this Article IX.

* * *

Sec. 118-394. Discontinuance of nonconforming uses.

~~No building, structure, equipment, fixtures or land, or portion thereof, used in whole or in part for a nonconforming use which remains idle or unused for a continuous period of six months, or for 18 months during any three year period whether or not the equipment or fixtures are removed, shall again be used, except in conformity with the regulations of the district in which such building or land is located.~~

(1) A nonconforming use may not be enlarged, extended, intensified, or changed, except for a change to a use permitted in the district in which the property is located.

(2) If there is an intentional and voluntary abandonment of a nonconforming use for a period of more than 366 consecutive days, or if a nonconforming use is changed to a conforming use, said use shall lose its nonconforming status. Thereafter, subsequent occupancy and use of the land, building, and/or structure shall conform to the regulations of the districts in which the property is located and any structural alterations necessary to make the structure or building conform to the regulations of the district in which the property is located shall be required. An intentional and voluntary abandonment of use includes, but is not limited to, vacancy of the building or structure in which the nonconforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such nonconforming use.

(3) The Planning Director or designee shall evaluate the evidence of an intentional and voluntary abandonment of a nonconforming use and determine the status of the nonconforming use. In order for a nonconforming use to retain a nonconforming status, the evidence, collectively, shall at a minimum demonstrate at least one of the following:

1. Continual operation of the use;
2. Continual possession of any necessary and valid state and local permits, building permits, licenses, or active/pending application(s) for approval related to prolonging the existence of the use.

Evidence of an intentional and voluntary abandonment of a nonconforming use may include, but shall not be limited to:

1. Public records, including those available through applicable City of Miami Beach, Miami-Dade County, and State of Florida agencies;
2. Utility records, including water/sewer accounts, solid waste accounts, and electrical service accounts;
3. Property records, including executed lease or sales contracts;

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 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 _____, 2017.

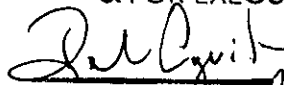
Philip Levine
Mayor

ATTEST:

Rafael E. Granado
City Clerk

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

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

1-19-17

Date

First Reading: February 8, 2017
Second Reading: March 1, 2017

(Sponsored by Commissioner Michael Grieco)

Underline denotes new language
~~Strikethrough~~ denotes removed language

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