***NONCONFORMING BUILDINGS SUSTAINABILITY INCENTIVES***

**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," TO CLARIFY AND UPDATE CERTAIN TERMS AND DESCRIPTIONS, AND TO PROVIDE MORE DEFINED PARAMETERS FOR WHAT CONSTITUTES A NONCONFORMING STRUCTURE, AND TO ESTABLISH REVISED STANDARDS FOR NON-CONFORMING STRUCTURES; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHERAS**, the Mayor's Blue Ribbon Panel on Flooding & Sea Level Rise has recommended that the nonconforming building regulations (as well as all related regulations) should be amended to address long term sustainability and resiliency city wide; and

**WHEREAS**, the City of Miami Beach continually seeks to update and clearly define the requirements of the Land Development Regulations of the Code of the City of Miami Beach as they pertain to nonconforming structures; and

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

**WHEREAS**, The City of Miami Beach desires to refine, clarify, expand and enhance existing procedures and requirements for improvements to existing non-conforming structures in order to ensure that a substantial portion of any such structure is retained and preserved; 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:

* * *

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. Repaired or rehabilitated residential and/or hotel units shall meet the minimum unit size requirements as set forth for the zoning district in which the property is located. The number of units in the building shall not be increased.~~

a~~b~~. 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~~c~~. 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~~d~~. 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~~e~~. 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 non-conforming 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 a~~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.

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

1. The existing structure's floor area may remain or be relocated within the building, and the existing 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 ~~facades;~~ walls, exclusive of window openings;

~~ii. At least 75 percent of the original first floor slab;~~

iii. 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

iv. 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 or replication 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 or replicate any non-conforming 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. The existing building shall comply with the sustainability and resiliency requirements for new construction of Chapter 133; however, notwithstanding the requirements in Chapter 133, for such buildings, the Sustainability Fee

shall be valued at two (2) percent the of the total construction valuation of the building permit and the certification compliance schedule in section 133-6 (a) shall be revised as follows:

Certification Compliance Schedule

| Level of Certification Achieved | Sustainability Fee Reimbursement to Participant for Meeting Certain Green Building Certification Levels |
|---|---|
| Failure to obtain Certification | 0% refund of bond or payment of Sustainability fee |
| LEED Certified | 100% refund of bond or payment of Sustainability fee |
| LEED Silver Certified | 100% refund of bond or payment of Sustainability fee |
| LEED Gold Certified or International Living Future Institute Petals or Net Zero Energy Certified | 100% refund of bond or payment of Sustainability fee |
| LEED Platinum Certified or International Living Future Institute Living Building Challenge Certified | 100% refund of bond or payment of Sustainability fee |

8. Replicated buildings shall be subject to the sustainability and resiliency requirements for new construction of Chapter 133.

e. Development regulations for buildings not located within a designated historic district and not an historic site.
   1. Buildings~~ constructed prior to 1965 and determined to be architecturally significant by the planning director, or designee,~~ may retain the existing floor area ratio, height, setbacks and parking credits, or relocate existing floor area within the building, 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 facades, exclusive of window openings;
      ~~ii. At least 75 percent of the original first floor slab;~~
      ~~iii. At least 50 percent of all upper level floor plates; and~~
      iv. At least 50 percent of the interior side walls, exclusive of window openings.
   2. For buildings satisfying the above criteria, ~~and whose lot size is less than 20,000 square feet,~~ the parking impact fee program may be utilized, provided that all repairs and rehabilitations, and any new additions or new construction is approved by the design review board and that any existing, required parking, that is conforming, shall not be removed.
   3. Buildings constructed prior to 1965 and determined to be architecturally significant by the planning director, or designee, shall comply with the sustainability and resiliency requirements for new construction of Chapter 133; however, notwithstanding the requirements in Chapter 133, for such buildings, the Sustainability Fee shall be valued at three (3) percent the of the total

construction valuation of the building permit and the certification compliance schedule in section 133-6 (a) shall be revised as follows:

Certification Compliance Schedule

| Level of Certification Achieved | Sustainability Fee Reimbursement to Participant for Meeting Certain Green Building Certification Levels |
|---|---|
| Failure to obtain Certification | 0% refund of bond or payment of Sustainability fee |
| LEED Certified | 75% refund of bond or payment of Sustainability fee |
| LEED Silver Certified | 100% refund of bond or payment of Sustainability fee |
| LEED Gold Certified or International Living Future Institute Petals or Net Zero Energy Certified | 100% refund of bond or payment of Sustainability fee |
| LEED Platinum Certified or International Living Future Institute Living Building Challenge Certified | 100% refund of bond or payment of Sustainability fee |

4. Buildings constructed in 1965 or thereafter, and buildings constructed prior to 1965 and determined by the planning director, or designee not to be architecturally significant, shall be subject to the sustainability and resiliency requirements for new construction of Chapter 133.

~~3~~5. For purposes of this subsection, the planning director, or designee shall make a determination as to whether a building is architecturally significant according to the following criteria:

   i. The subject structure is characteristic of a specific architectural style constructed in the city prior to 1965, including, but not limited to, vernacular, Mediterranean revival, art deco, streamline moderne, post-war modern, or variations thereof;
   ii. The exterior of the structure is recognizable as an example of its style and/or period, and its architectural design integrity has not been modified in an irreversible manner; and
   iii. Exterior architectural characteristics, features, or details of the subject structure remain intact.

   A property owner may appeal any determination of the planning director, or designee relative to the architectural significance of a building constructed prior to 1965 to the design review board, in accordance with the requirements and procedures set forth in article VI herein.

~~4. Buildings constructed in 1965 or thereafter, and buildings constructed prior to 1965 and determined by the planning director, or designee not to be architecturally significant, shall be subject to the regulations set forth in subsection (b)(2)a—c herein.~~

~~5. If there is a change in use, a building shall receive no parking credits and must either provide the required parking on-site, or within 500 feet of the site, or pay a parking impact fee~~.

f. Any new construction identified in subsections d. and e., above, 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 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.

(3) There shall be no variances from any of the provisions herein pertaining to maximum floor area ratio ~~and to parking credits~~.

~~(4) Single-family homes shall be treated the same as other buildings, in determining when an existing structures lot coverage, height and setbacks may remain.~~

(5) Notwithstanding the foregoing, in the event of a catastrophic event, including, but not limited to, fire, tornado, tropical storm, hurricane, or other act of God, which results in the complete demolition of a building or damage to a building that exceeds 50 percent of the value of the building as determined by the building official, such building may be reconstructed, repaired or rehabilitated, and the structure's floor area, height, setbacks and any existing parking credits may remain, if the conditions set forth in subsection (b)(1)a—d herein are met.

(6) The foregoing regulations shall not apply to any building or structure located on city-owned property or rights-of-way, or property owned by the Miami Beach Redevelopment Agency.

(7) Gasoline service stations.

a. Notwithstanding the foregoing provisions, a nonconforming gasoline service station that provides a generator or other suitable equipment that will keep the station operational, and which has been damaged, repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official pursuant to the standards set forth in the Florida Building Code may be repaired or rehabilitated, if the following conditions are met:

1. The entire building and any new addition shall meet all requirements of the city property maintenance standards, the applicable Florida Building Code and the Life Safety Code.
2. The entire building and any new addition shall comply with the current development regulations in the zoning district in which the property is located, including, but not limited to all landscape requirements. New monument-style signs shall be required. Pole signs shall be prohibited.
3. No new floor area may be added if the floor area ratio is presently at maximum or exceeded.

b. Necessary repairs to add an emergency electrical generator and related facilities to a nonconforming gasoline service station shall be permitted.

c. A nonconforming gasoline service station that provides a generator or other suitable equipment that will keep the station operational, may add new floor area (other than floor area strictly necessary to house an emergency electrical generator and related facilities), or convert existing floor area or land, to add new accessory uses, such as a convenience sales area or a car wash, subject to conditional use approval, notwithstanding the nonconforming status of the gasoline service station.

Sec. 118-396. - Intermittent or illegal uses.
The casual, intermittent, temporary, or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use and the existence of nonconforming use on a part of a lot or tract shall not be sufficient to establish a nonconforming use on the entire lot or tract.

Sec. 118-397. - Existence of a nonconforming building or use.

(a) The planning and zoning director shall make a determination as to the existence of a nonconforming use or building and in so doing may make use of affidavits and investigation in addition to the data presented on the city's building card, occupational license or any other official record of the city.
(b) The question as to whether a nonconforming use or building exists shall be a question of fact and in case of doubt or challenge raised to the determination made by the planning and zoning director, the question shall be decided by appeal to the board of adjustment after public notice and hearing and in accordance with the procedures set forth in section 118-134. In making the determination the board may require certain improvements that are necessary to insure that the nonconforming use or building will not have a negative impact on the neighborhood.

Sec. 118-398. - Building nonconforming in height, density, parking, floor area ratio or bulk.
Except as provided in chapter 118, article IX, herein, a nonconforming building shall not be ~~altered or~~ extended, unless such ~~alteration or~~ extension decreases the degree of nonconformity but in no instance shall the floor area requirements of any unit which is being ~~altered or~~ extended be less than the required floor area set forth in the applicable zoning district.

**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 _____, 2017.**

_____
Philip Levine, Mayor

**ATTEST:**

_____
**CITY CLERK**

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

_____
City Attorney Date

First Reading: , 2017
Second Reading: , 2017

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

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