

MIAMIBEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: April 25, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 17-0098. Sea Level Rise and Resiliency Review Criteria.**

REQUESTS

PB 17-0098. SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," AT ARTICLE III, "AMENDMENT PROCEDURE," ARTICLE IV, "CONDITIONAL USE PROCEDURE," ARTICLE VI, "DESIGN REVIEW PROCEDURES," ARTICLE VII, "DIVISION OF LAND/LOT SPLIT," ARTICLE VIII, "PROCEDURE FOR VARIANCES AND ADMINISTRATIVE APPEALS," AND ARTICLE X, "HISTORIC PRESERVATION," TO PROVIDE REFERENCES TO SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA FOR CONSIDERATION BY LAND USE BOARDS WHEN DECIDING ISSUES WITHIN THEIR JURISDICTION; BY AMENDING CHAPTER 130, "OFF-STREET PARKING," ARTICLE III, "DESIGN STANDARDS," BY PROHIBITING BELOW GRADE OFF-STREET PARKING IN THE CITY; BY AMENDING CHAPTER 133, "SUSTAINABILITY AND RESILIENCY," TO ESTABLISH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

RECOMMENDATION:

Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

HISTORY

On December 14, 2016, the City Commission, at the request of Commissioner John Elizabeth Alemán, referred this item (R9F) to the Land Use and Development Committee (LUDC) and the Planning Board.

On January 18, 2017, the LUDC recommend that the Planning Board transmit the proposal to the City Commission with a favorable recommendation.

On February 28, 2017, the Planning Board discussed the proposed ordinance and continued the item to the April 25, 2017 meeting.

REVIEW CRITERIA

In accordance with Section 118-163 (3), when reviewing a request for an amendment to these land development regulations, the Board shall consider the following where applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Consistent – The uses proposed modifications are consistent with the Goals, Objectives, and Policies of the Comprehensive Plan.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

Not Applicable – The proposed amendment does not modify district boundaries.

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

Not Applicable – The proposed Ordinance will not modify the scale of development.

4. **Whether the proposed change would tax the existing load on public facilities and infrastructure.**

Consistent – The proposed will not modify the intensity of development.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

Not Applicable – The existing boundaries are not proposed to be modified by the proposed Ordinance.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

Consistent – The need to enhance to address impacts related to Sea Level Rise and Climate Change makes passage of the proposed change necessary.

7. **Whether the proposed change will adversely influence living conditions in the neighborhood.**

Consistent – The proposed change will not adversely affect living conditions in the neighborhood, and is intended to safeguard commercial areas from potential impacts of sea level rise and climate change.

8. **Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.**

Consistent – The proposed change will not impact the levels of service set forth in the Comprehensive Plan.

9. ~~Whether the proposed change will seriously reduce light and air to adjacent areas.~~

Consistent – The proposal does not modify the scale of development and will not reduce light and air to adjacent areas.

10. Whether the proposed change will adversely affect property values in the adjacent area.

Consistent – The proposed change should not adversely affect property values in the adjacent areas.

11. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.

Consistent – The proposal will not be a deterrent to the improvement or development of adjacent property.

12. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.

Not applicable.

13. Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.

Not applicable.

ANALYSIS

The City has four Land Use Boards which are authorized to review and approve various types of development projects and make certain recommendations to the City Commission. These boards, with the assistance of City staff, utilize City Code mandated criteria to make their decisions and recommendations. The general duties of the four (4) Land Use Boards are as follows:

- Planning Board
 - Amendments to Comp Plan and Land Development Regulations
 - Conditional Use Permits
 - Division of Land/Lots Splits
- Design Review Board
 - Design Review Approval
- Board of Adjustment

- Variances and Administrative Appeals
- Historic Preservation Board
 - Historic Designation Recommendations
 - Certificates of Appropriateness

As the City is facing an increase in flooding due to Sea Level Rise, it is important that Land Use Boards incorporate criteria to mitigate the effects of sea level rise and improve the City's Resiliency. Additionally, the recently adopted amendment to the City's Comprehensive Plan related to "Peril of Flood," establish the City as an Adaption Action Area (AAA), which among other things, requires that the City incorporate strategies into the Land Development Regulations to improve the community's adaptability and resiliency capacities, with regards to the Sea Level Rise and Climate Change.

The attached draft ordinance amendment establishes Sea Level Rise and Resiliency Review Criteria within Chapter 133, entitled "Sustainability and Resiliency," of the Land Development Regulations. It also references these criteria within the individual review criteria for each board. The following is a summary of the draft criteria for the Land Use Boards when reviewing development applications:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
- (4) If resilient landscaping (salt and drought tolerant, native plants species) will be provided.
- (5) Whether adopted sea level rise projections, including a study of land elevation and elevation of surrounding properties were considered.
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.
- (7) Where feasible and appropriate, all critical mechanical and electrical systems will be located above base flood elevation.
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.
- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet and dry flood proofing systems will be provided.
- (10) Where reasonably feasible and appropriate, water retention systems shall be provided.

When considering ordinances, adopting resolutions, or making recommendations, the following criteria would apply:

- (1) Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.
- (2) Whether the proposal will increase the resiliency of the City with respect to sea level rise.
- (3) Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.

As part of the initial draft of this legislation, separate criteria pertaining to a prohibition on below grade vehicular storage was included. At the direction of the Land Use Committee, this was relocated to Chapter 130 of the Code (Off-Street Parking).

UPDATE

On February 28, 2017, the Planning Board discussed the proposed ordinance. The Board requested that there be further study on the prohibition of underground parking. In discussions with the City Engineer, below grade parking may pose issues as roadways are raised to mitigate the impacts of sea level rise because they require increased ramp length which could encroach into the public right-of-way. Additionally, they typically require continuous pumping of water to be kept dry. However, should the Planning Board wish to consider transmitting the proposed ordinance to the City Commission without the prohibition on underground parking, it would be suggested that criteria be incorporated to limit the impacts of the underground parking, including the following:

- That there be sufficient setbacks for ramping to ensure that there be sufficient space available to raise the public right-of-way without ramp encroaching into the public right-of-way.
- That the underground structure be setback to allow for permeable areas on the site to allow for natural drainage of stormwater.
- That there be sufficient pumping capacity to ensure that the facility remains dry without affecting surrounding properties.

The revised draft ordinance includes the following modifications:

- A modification to criteria (4) related to sea-level rise projections to clarify that the projections to be used are those adopted in the Southeast Florida regional Climate Action Plan.
- A modification to criteria (9) to clarify that wet or dry flood proofing shall be done in accordance with Chapter 54 of the City Code.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

TRM/MAB/RAM

SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," AT ARTICLE III, "AMENDMENT PROCEDURE," ARTICLE IV, "CONDITIONAL USE PROCEDURE," ARTICLE VI, "DESIGN REVIEW PROCEDURES," ARTICLE VII, "DIVISION OF LAND/LOT SPLIT," ARTICLE VIII, "PROCEDURE FOR VARIANCES AND ADMINISTRATIVE APPEALS," AND ARTICLE X, "HISTORIC PRESERVATION," TO PROVIDE REFERENCES TO SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA FOR CONSIDERATION BY LAND USE BOARDS WHEN DECIDING ISSUES WITHIN THEIR JURISDICTION; BY AMENDING CHAPTER 130, "OFF-STREET PARKING," ARTICLE III, "DESIGN STANDARDS," BY PROHIBITING BELOW GRADE OFF-STREET PARKING IN THE CITY; BY AMENDING CHAPTER 133, "SUSTAINABILITY AND RESILIENCY," TO ESTABLISH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, Comprehensive Plan Future Land Use Element Policy 3.6 requires that the City "Maximize unpaved landscape to allow for more stormwater infiltration. Encourage planting of vegetation that is highly water absorbent, can withstand the marine environment, and the impacts of tropical storm winds. Encourage development measures that include innovative climate adaption and mitigation designs with creative co-benefits where possible;" and

WHEREAS, Comprehensive Plan Conservation/Coastal Zone Management Element Policy 2.12 provides that "Salt tolerant landscaping and highly water-absorbent, native or Florida friendly plants shall continue to be given preference over other planting materials in the plant materials list used in the administration of the landscape section of the Land Development Regulations and the design review process;" and

WHEREAS, Comprehensive Plan Conservation/Coastal Zone Management Element Objective 13 provides policies to "Increase the City's resiliency to the impacts of climate change and rising sea levels by developing and implementing adaptation strategies and measures in order to protect human life, natural systems and resources and adapt public infrastructure, services, and public and private property;" and

WHEREAS, the Miami Beach Comprehensive Plan designates the entire City as an Adaptation Action Area (AAA) containing one or more areas that experience coastal flooding due to extreme high tides and storm surge, and that are vulnerable to the related impacts of rising sea levels for the purpose of prioritizing funding for infrastructure and adaptation planning; and

WHEREAS, Comprehensive Plan Conservation/Coastal Zone Management Element Policy 13.4 states that "the City will develop and implement adaptation strategies for areas vulnerable to coastal flooding, tidal events, storm surge, flash floods, stormwater runoff, salt water intrusion and other impacts related to climate change or exacerbated by sea level rise,

with the intent to increase the community's comprehensive adaptability and resiliency capacities;" and

WHEREAS, Comprehensive Plan Conservation/Coastal Zone Management Element Policy 13.8 states that the "City shall integrate AAAs into existing and future City processes and city-wide plans and documents which may include:...Land Development Regulations;" 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 III, "Amendment Procedure," Section 118-163, "Review by Planning Board," is amended as follows:

Before the city commission takes any action on a proposed amendment to the actual list of permitted, conditional or prohibited uses in zoning categories or to the actual zoning map designation of a parcel or parcels of land or to other regulations of these land development regulations or to the city's comprehensive plan, the planning board shall review the request and provide the city commission with a recommendation as to whether the proposed amendment should be approved or denied. In reviewing the application, the planning board may propose an alternative ordinance on the same subject for consideration by the city commission. The following procedures shall apply to the board's consideration of the request:

* * *

- (1) In reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

* * *

n. Whether the proposed change is consistent with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.

SECTION 2. Chapter 118, "Administration and Review Procedures," Article IV, "Conditional Use Procedure," Section 118-192, "Review Guidelines," is amended as follows:

- (a) Conditional uses may be approved in accordance with the procedures and standards of this article provided that:

* * *

(8) The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.

SECTION 3. Chapter 118, "Administration and Review Procedures," Article VI, "Design Review Procedures," Section 118-251, "Design Review Criteria," is amended as follows:

- (a) Design review encompasses the examination of architectural drawings for consistency with the criteria stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure and physical attributes of the project in relation to the site, adjacent structures and surrounding community. The board and the planning department shall review plans based upon the below stated criteria, criteria listed in neighborhood plans, if applicable, and design guidelines adopted and amended periodically by the design review board and/or historic preservation board. Recommendations of the planning department may include, but not be limited to, comments from the building department and the public works department. If the board determines that an application is not consistent with the criteria, it shall set forth in writing the reasons substantiating its finding. The criteria referenced above are as follows:

* * *

- (19) The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.

SECTION 4. Chapter 118, "Administration and Review Procedures," Article VII, "Division of Land/Lot Split," Section 118-321, "Purpose, standards and procedure," is amended as follows:

- B. *Review criteria.* In reviewing an application for the division of lot and lot split, the planning board shall apply the following criteria:

* * *

- (7) The structures and sites will comply with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.

SECTION 5. Chapter 118, "Administration and Review Procedures," Article VIII, "Procedure for Variances and Administrative Appeals," Section 118-353, "Variance Applications," is amended as follows:

- (d) In order to authorize any variance from the terms of these land development regulations and sections 6-4 and 6-41(a) and (b), the applicable board shall find that:

* * *

- (8) The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.

SECTION 6. Chapter 118, "Administration and Review Procedures," Article X, "Historic Preservation," Division 3, "Issuance of Certificate of Appropriateness/Certificate to Dig/Certificate of Appropriateness for Demolition," Section 118-564, "Decisions on certificates of appropriateness," is amended as follows:

- (3) The examination of architectural drawings for consistency with the criteria stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure, public interior space and physical attributes of the project in relation to the site, adjacent structures and properties, and surrounding community. The historic preservation board and planning department shall review plans based upon the below stated criteria and recommendations of the planning department may include, but not be limited to, comments from the building department. The criteria referenced above are as follows:

* * *

- g. The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.

SECTION 7. Chapter 118, "Administration and Review Procedures," Article X, "Historic Preservation," Division 4, "Designation," Section 118-592, "Criteria for Designation," is amended as follows:

- (c) The historic preservation board shall consider if the historic buildings, historic structures, historic improvements, historic landscape features, historic interiors (architecturally significant public portions only), historic sites, or historic districts comply with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.

SECTION 8. Chapter 130, "Off-Street Parking", Article III, "Design Standards," is amended, as follows:

Sec. 130-60. – Prohibition on below grade off-street parking.
All off-street parking provided, whether required parking or not, shall be located at or above current sidewalk grade. Below grade, basement or subterranean parking shall be prohibited.

SECTION 9. Chapter 133, "Sustainability and Resiliency," is amended as follows:

ARTICLE I. – GREEN BUILDINGS

ARTICLE DIVISION I. – IN GENERAL

* * *

ARTICLE DIVISION II. – GREEN BUILDING REQUIREMENTS

* * *

ARTICLE DIVISION III. – SUSTAINABILITY FEE PROGRAM

Sec. 133-5. - Generally.

A Sustainability Fee will be assessed for all eligible participants. The calculation of the fee, provisions for refunding all or portions of the fee, its purpose, and eligible uses are detailed within this article division.

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ARTICLE II. – SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Sec. 133-50. – Criteria

The City's Land Use Boards shall consider the following when making decisions within their jurisdiction, as applicable:

(a) Criteria for development orders:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.
- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet and or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.
- (10) Where feasible and appropriate, water retention systems shall be provided.

(b) Criteria for ordinances, resolutions, or recommendations:

- (1) Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.
- (2) Whether the proposal will increase the resiliency of the City with respect to sea level rise.
- (3) Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.

SECTION 10. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

SECTION 11. 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 12. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 13. 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

First Reading: _____, 2017
Second Reading: _____, 2017

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

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