MIAMIBEACH

Land Use and Development Committee Meeting
City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
September 28, 2018 - 1:30 PM

Commissioner John Elizabeth Aleman, Chair
Commissioner Michael Gongora, Vice-Chair
Commissioner Kristen Rosen Gonzalez, Member
Commissioner Ricky Arriola, Alternate

LAND USE AND DEVELOPMENT COMMITTEE MEETING AGENDA
COMMISSION CHAMBERS 1700 CONVENTION CENTER DRIVE 3RD FL.

Friday, September 28, 2018, 1:30 PM

ACTION ITEMS

1. NORTH BEACH TOWN CENTER CORE (TC-C) ZONING DISTRICT

Commissioners John Elizabeth Aleman and Ricky Arriola
December 13, 2017, Item C4AA (Continued From July 31, 2018)

2. 500 – 700 ALTON ROAD - APPLICABLE DRAFT ZONING ORDINANCES TO EFFECTUATE A PROPOSED DEVELOPMENT

Mayor Dan Gelber
July 25, 2018, Item C7 AQ

DISCUSSION ITEMS

3. DISCUSSION PERTAINING TO A COMPREHENSIVE PLAN FOR RIDE SHARE LOCATIONS CITYWIDE

Commissioner Kristen Rosen Gonzalez
January 17, 2018 Item R5 C (Deferred from July 31, 2018)
Item to be automatically withdrawn per Resolution No. 2013-28147 if not heard

4. TELECOMMUNICATIONS ROW - ORD DRAFT (GELBER)

Mayor Dan Gelber
February 14, 2018 Item C4 AB (Continued from February 21, 2018)

5. DISCUSSION REGARDING ADAPTIVE REUSE ALONG THE TATUM WATERWAY.

Commissioner Ricky Arriola
April 26, 2017 Item C4 X (Deferred from June 20, 2018)

6. DISCUSSION ON THE CREATION OF A PINK ZONE.

Commissioner Ricky Arriola
October 18, 2017 Item C4 L (Deferred from June 20, 2018)

7. DISCUSSION: POSSIBLE AMENDMENT TO THE WASHINGTON AVENUE OVERLAY (CD-2 FROM 6TH-17TH STREETS)

Commissioner Michael Gongora

VERBAL REPORTS

8. DISCUSSION ON EMPTY STOREFRONTS AND HOW THE CITY CAN INCENTIVIZE LANDLORDS TO FIND TENANTS TO ACTIVATE OUR STREETS.

Commissioner Kristen Rosen Gonzalez

March 7, 2018 Item C4 G (Deferred from July 31, 2018) To be heard at FCWPC prior to LUDC

9. DISCUSSION TO REVIEW THE ROLE OF LAND USE BOARDS IN NEIGHBORHOOD IMPROVEMENT PROJECTS.

Commissioner Mark Samuelian

April 11, 2018 C4 N (Continued from May 23, 2018)

10. DISCUSSION REGARDING ESTABLISHING A HISTORIC PRESERVATION FUND.

Commissioner Ricky Arriola

April 11, 2018 C4 O (Deferred from July 31, 2018)

11. DISCUSSION REGARDING AN AMENDMENT TO CITY CODE SECTION 142-546(B) (THE “OCEAN DRIVE SPEAKER ORDINANCE”).

Commissioner Ricky Arriola

July 25, 2018, C4 J

12. DISCUSSION REGARDING PROPOSED HISTORIC DESIGNATION OF INTERNATIONAL INN AT 2301 NORMANDY DRIVE.

Commissioner Ricky Arriola

July 25, 2018, C4 K

13. DISCUSSION REGARDING A PROPOSED CITY-WIDE SIX MONTH MORATORIUM ON NEW HOTEL USES.

Commissioner Kristen Rosen Gonzalez

September 12, 2018 C4 D

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **NORTH BEACH TOWN CENTER CORE (TC-C) ZONING DISTRICT**

HISTORY:

On December 13, 2017, at the request of Commissioner Ricky Arriola, a discussion pertaining to the recent voter approval of an increase in FAR (to 3.5) for the Town Center district was referred to the Land Use and Development Committee (Item C4AA). A similar discussion pertaining to the North Beach Master Plan recommendations for the Town Center (TC) zoning districts, which was previously pending before the Land Use and Development Committee (LUDC), was continued at the June 14, 2017 LUDC meeting to the January 2018 LUDC.

On February 7, 2018, the LUDC discussed the general parameters of a proposed FAR overlay for the first time and continued the item to a date certain of March 14, 2018, with direction to staff to prepare a draft overlay Ordinance. Subsequent to the February 7, 2018 LUDC meeting, Commissioner John Elizabeth Aleman requested to be a co-sponsor of the item.

On March 14, 2018 the LUDC continued the item to the May 23, 2018 meeting at the request of the sponsor. On May 23, 2018 the Administration made a PowerPoint presentation on the broad points of the proposed overlay. The Land Use and Development Committee discussed the item and continued it to the June 13, 2018 meeting.

On June 13, 2018 the LUDC discussed the item and recommended that the Draft Ordinance be referred to the Planning Board and that a Letter to Commission (LTC) be drafted summarizing the discussion of the LUDC. Additionally, the LUDC continued the item to their July 31, 2018 meeting, in order to review the Transmittal Recommendation of the Planning Board and to make a formal recommendation prior to First Reading at the City Commission.

On June 26, 2018, the Planning Board discussed the proposed ordinance.

On July 2, 2018, the City Commission referred the proposed Comprehensive Plan and Land Development Regulations (LDR) amendments to the Planning Board. Additionally, the City Commission requested that the Planning Board specifically discuss and provide recommendations on the following:

1. Building Height;
2. Parking;
3. Number of Hotel Units;
4. Co-living and Micro Units;
5. Affordable Housing Component; and
6. Public Benefits.

On July 24, 2018, the Planning Board transmitted the proposed amendments to the Comprehensive Plan and LDRs, with modifications, to the City Commission with favorable recommendations as described below.

On July 31, 2018, the Land Use and Development Committee reviewed the proposed Ordinance Amendment, including the specific recommendations of the Planning Board. The Land Use Committee continued the discussion of the item to their September 2018 meeting to discuss the following three pending items:

1. Maximum Building Height;
2. Co-Living Units; and
3. Public Benefits.

On September 12, 2018, the City Commission approved the ordinance with modifications on First Reading.

Analysis

PLANNING BOARD RECOMMENDATION

On July 24, 2018, the Planning Board held a public hearing regarding proposed amendments to the Comprehensive Plan and Land Development Regulations regarding the establishment and designation of the Town Center – Central Core (TC-C) future land use category and zoning district.

The Planning Board transmitted the proposed Comprehensive Plan Amendment to the City Commission with a favorable recommendation by a vote of six (6) to zero (0). Subsequently, the Planning Board transmitted the proposed amendment to the Land Development Regulations to the City Commission with a favorable recommendation by a vote of six (6) to zero (0) with the following amendments and specific recommendations:

1. Building Height – Recommend that the maximum height be modified to 220 feet from the proposed 200 feet.

2. Parking – Remain as proposed in the attached ordinance.

3. Number of Hotel Units – Remain as proposed in the attached ordinance

4. Co-living and Micro Units – 1) Modify the requirement for a minimum percentage of the gross floor area to be dedicated to amenity space to 10 percent from the proposed 20 percent. 2) Modify the requirement for amenity space that is “physically connected to and directly accessed from the co-living units without the need to exit the parcel” to be “on the same site.”

5. Affordable Housing Component – Remain as proposed in the attached ordinance.

6. Public Benefits – Provide an additional option that requires no contribution for projects that obtain a full building permit within three (3) years of the effective date of the ordinance.

Additionally, the Planning Board recommended that hours for sidewalk and outdoor cafes be made consistent with the general citywide standards, which are 8 am to 2 am.

CITY COMMISSION FIRST READING

On September 12, 2018, the City Commission approved the proposed Comprehensive Plan Amendment at First Reading. The City Commission also approved the amendment to the Land Development

Regulations with the following modifications:

1. Maximum Building Height – The maximum height should not exceed to 200 feet. Additionally, a tiered approach to overall height, based upon lot size, should be considered for second reading, based upon the following, which was discussed by the Land Use Committee:
Lots under 25,000 square feet: Max height of 125 feet;
Lots between 25,000 and 50,000 square feet: Max height of 165 feet; and
Lots greater than 50,000 square feet: Max height of 200 feet.

2. Co-Living Units – The requirement for amenity space shall be a minimum of 20% of the floor area and co-living units shall be limited to no more than ten (10%) percent of the total number of allowable residential units.

3. Public Benefits – That the timeframe for obtaining additional height without paying into the public benefits height shall be within 15 months of the effective date of the proposed ordinance. Additionally, it was requested that an additional qualifier tied to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy, whichever comes first, be included.

Second Reading / Adoption of both Ordinances is scheduled for November 14, 2018.

SUMMARY / PLANNING ANALYSIS
On July 31, 2018 the LUDC made 2 separate motions regarding this item:

MOTION 1: Direct the Administration to request a report on current capacity and improvement plans for the Virginia Key Treatment Plant by Acclamation.

City staff has been in contact with officials from DERM and WASA and will provide a verbal report at the LUDC meeting.

MOTION 2: Continue the item to the September 5, 2018 LUDC Committee meeting and request that the Administration provide recommendations regarding the following:

1. Height: Provide a tiered approach to overall building height in accordance with the following parameters:

- For Lots under 25,000 SF: Max Height of 125 feet
- For Lots between 25,000 and 50,000 SF: Max Height of 165 feet
- For Lots greater than 50,000 SF: Max Height of 200 feet

The Administration will further study and provide recommendations on the tier height limits based on lot aggregation, with specific recommendations as to the location of where the highest buildings should be located.

2. Co-Living and Micro-Units: Capping the number of co-living units to 10% of the total number of residential units in the TC-C district and maintaining the 20% minimum amenity space requirement.

3. Public Benefits: Finalize and define the public benefits program, including the proposed fees and allowing additional height by obtaining a full building permit within 15 months of adoption of the TC-C regulations. Providing a public benefit would be required for height above 125 feet if a permit is not obtained within 15 months.

For ease of review, the Administration has put together the attached chart, which outlines the

aforementioned remaining issues pending for consideration before the Land Use and Development Committee. The chart also includes specific recommendations from City staff.

CONCLUSION:

The Administration recommends that the LUDC discuss the remaining items noted on the attached chart and provide appropriate policy direction. If there is consensus on the item, it is further recommended that the LUDC recommend that the City Commission adopt the LDR ordinance on November 14, 2018 with the recommended changes.

ATTACHMENTS:

Description	Type
NB TCC - CHART	Memo
Public Benefits - Consultant Report	Memo

North Beach Town Center Central Core (TC-C) District – LUDC Pending Issues

Topic	LUDC Direction on July 31, 2018	Analysis	Staff Recommendation
1. Height:	The Administration will further study and provide recommendations on the tier height limits based on lot aggregation, with specific recommendation as to the location of where the highest buildings should be located. Provide a tiered approach to overall building height in accordance with the following parameters: • For Lots under 25,000 SF: Max Height of 125 feet • For Lots between 25,000 and 50,000 SF: Max Height of 165 feet • For Lots greater than 50,000 SF: Max Height of 200 feet	As it relates to the location of buildings exceeding 125' in height, staff analyzed potential development sites south of the proposed 70th Street Paseo. The current recommendation to address taller buildings south of 71st Street is to have an upper level setback from 69th Street of *50 feet* between an elevation of 55 feet and 125 feet and *85 feet* above an elevation of 125 feet, in order to move the larger mass of buildings to the north. For these sites, an analysis was performed to determine how the potential for increased height on these sites could be moved even further north than initially recommended, in order to further limit the impact to the lower-scale neighborhoods to the south of 69th Street without creating the potential for substandard development. To achieve this, staff recommends increasing the tower setbacks from 69th Street to the maximum possible that still allows those sites to develop to their full potential, given the tower length limit of 165 feet. In this regard, it is suggested that the tower setback form 69th Street be increased to 125 feet. As it relates to Implementing a minimum lot size in order to exceed 125' in heights staff has analyzed different scenarios, including those proposed by the LUDC, and has concluded that it could create difficulties in the aggregation of such lots and to develop viable projects. Such a regulation could encourage the property owner of the final lot necessary for such an aggregation to demand significantly more than fair-market value because of the power that it wields over the viability of a potential project; potentially keeping beneficial developments from getting off the ground. Additionally, the FAR limitations naturally limit height due to square footage limitations. With the proposed increase in the required setback from 69th Street, staff believes that this will ensure that taller structures will be limited to just south of and to the north of 71st Street. Accordingly, staff would not recommend a tiered approach to building height based on lot size. Should the committee find tiers to be desirable, staff believes that the tiers should be modified as a result of the following analysis. Pursuant to recorded plats, a standard lot should measure 6,250 SF. Accordingly 25,000 SF should result in 4 lots and 50,000 SF should result in 8 lots. However, actual lot measurements vary from the measurements indicated at the time of platting (years 1923 to 1925) due to technological limitations and corner radii that result in a slightly reduce lot size from what was originally indicated. 4 lots actually result in approximately 24,892 SF and 8 lots in approximately 49,890 SF; however, this can vary slightly by block. A revised range is suggested that generally provides for the same minimum number of lots to achieve the suggested heights while allowing for some flexibility due actual site measurements.	**Staff recommends that the minimum tower setbacks from 69th Street be increased as follows:** • Minimum setback at elevation of 55 feet to max height: 125 feet ○ Allowable encroachments: 5 feet **Staff recommends that tiered height limits pursuant to lot size NOT be incorporated into the ordinance. However, should the committee find tiers to be desirable, the following tiers would be suggested:** • For Lots under 20,000 SF: Max Height of 125 feet • For Lots between 20,000 and 45,000 SF: Max Height of 165 feet • For Lots greater than 45,000 SF: Max Height of 200 feet
2. Co-Living & Micro-Units:	Capping the number of co-living units to 10% of the total number of residential units in the TC-C district and maintaining the 20% minimum amenity space requirement.	Staff has no objection to capping the number of co-living units in order to better understand the impact of the use. The TC-C area as whole will allow for approximately 3,125 residential units to be developed. 10% results in 312 co-living units. As a typical block can accommodate no more than 258 market rate units due to density limits, this cap would essentially allow for one co-living project to be built within the district. However, in order to simplify tracking, staff recommends that a number be incorporated as opposed to a percentage. Staff continues to recommend maintaining a 20% minimum of amenity space for co-living units. The maximum density would limit co-living units to occupy approximately 46% of a development's floor area, leaving 54% of the available floor area for other uses which could be considered amenities. Therefore, compliance with this requirement should not be problematic for a mixed-use co-living development.	**Should the committee find that a cap of co-living units is desirable, staff recommends that a cap of 312 co-living units be incorporated into the ordinance.** **Staff recommends that the 20% minimum amenity space be maintained.**
3. Public Benefits:	Finalize and define the public benefits program, including the proposed fees and allowing additional height by obtaining a full building permit within 15 months of adoption of the TC-C regulations.	Staff recommends that one of the public benefit options for achieving height be to obtain a building permit within 15 months of the effective date of the ordinance for projects consisting of new construction in excess of 100,000 square feet. However, because there is the potential for board orders to be held up by appeals or continuances due to unforeseen circumstances, it is recommended that a provision be included that the tolls the 15 month period until the conclusion of the appeal. As it relates to a fee for the public benefits program, a report from an economic consultant that analyses what the City could reasonably charge as it relates to the additional height is attached. Additionally, pursuant to the direction of the City Commission on September 12, 2018, staff was directed to study an additional step for this option, which would require that a TCO or CO, whichever comes first, also be obtained within a specified time-frame. Specific time-frames are being studied to determine a date that is achievable, and will be presented to the LUDC at the hearing. Other options may include establishing timeframes to allow for the payment of a reduced public benefits fee, such as a fee equal to half of the fee identified in the report. Failure to comply with the timeframes would require payment of the full public fee, prior to the issuance of a TCO.	**Staff recommends that the public benefit option to obtain a building permit within a certain timeframe be modified as follows:** *Obtain a full building permit for a development project consisting of new construction in excess of 100,000 square feet within 15 months of the effective date of this ordinance. An additional 75 feet of height shall be provided for this option. The 15 month period shall not be eligible for any extension of time and cannot be tolled by extensions or modifications of board orders or state extension of development orders. If a full building permit is not obtained within 15 months, participation in an alternative option shall be required in order to achieve the additional height. Notwithstanding the foregoing, in the event that, with staff's favorable recommendation, the Design Review Board (DRB) approval of the subject development project is continued by the Board or appealed by a party other than the applicant, such 15 month period to obtain a Full Building Permit shall be tolled until the conclusion of such action. In addition a Temporary Certificate of Occupancy (TCO) or Certificate of Occupancy (CO) shall be obtained within X months of approval of the building permit; however, state authorized extensions may be utilized for the purposes of tolling of the TCO or CO time limit. Failure to comply with any of the aforementioned timeframes shall require payment of the full public benefits fee or an alternative public benefits option.* **Staff recommends that the Committee incorporate the recommendations in the attached Public Benefits Fee Study into the proposed ordinance.**

MIAMIBEACH

OFFICE OF THE CITY MANAGER

NO. LTC# **490-2018**

LETTER TO COMMISSION

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: September 10, 2018

SUBJECT: **Proposed Public Benefits Fee – North Beach Town Center Central Core (TC-C)**

The purpose of this LTC is to share the economic analysis for the Public Benefits Fee in the proposed North Beach Town Center Central Core (TC-C) district in anticipation of First Reading of the ordinance on September 12, 2018. The attached report was prepared by Miami Economic Associates, Inc. (MEAI) for consideration by the Mayor and City Commission and includes a recommended fee structure for developers seeking to develop buildings above 125 feet in height.

It is expected that the findings in the report will be discussed in detail at the September 28, 2018 Land Use and Development Committee (LUDC) meeting. Because the companion Comprehensive Plan amendment requires a 30-day review period from various State agencies, consideration for adoption of the ordinance at Second Reading is expected to take place on November 14, 2018.

JLM/SMT/TRM/MCS/RAM

Attachments

C: Rafael Granado, City Clerk

F:\PLAN\$ALL\CM_RESP\2018\LTC - Report Proposed Public Beneftis Fee.docx

September 5, 2018

Mr. Thomas R. Mooney, AICP
Planning Director
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

Subject: Proposed Public Benefits Fee
North Beach Town Center Central Core

Dear Mr. Mooney,

Miami Economic Associates, Inc. (MEAI) has reviewed the draft land development regulations being proposed by the City of Miami Beach Planning and Zoning Department for the Central Core of the North Beach Town Center area for the purpose of providing recommendations to the Department with respect to a method for calculating the Public Benefits Fee proposed therein and the rate at which the fee should be charged. Under the Public Benefit Program set forth in Section 142-747 of the draft regulations, payment of a Public Benefits Fee into the North Beach Public Benefits Fund would allow a developer building a new building in the Central Core to increase the height of the structure from the "by-right" limit of 125 feet to up to 200 feet. Payment of such as fee would be in lieu, either all or in part, of undertaking any of the public benefit initiatives that are identified in subsections (b) though (f) of the cited section.

In summary, the findings of MEAI's analysis are as follows:

- Adoption the draft land development regulations would result in no more than 11 --- and more likely, 8 or fewer --- buildings being developed to a height of 200 feet in the Central Core of the North Beach Town Center during the next 3 to 5 years. Further, if the draft regulations are amended to include a proposal made by Commissioner Michael Gongora at a meeting of the City's Land Use Committee on July 31, 2018, that ties increased height to lot size, the number may not exceed 3 with the remaining buildings in the area that are taller than the by-right limit of 125 feet being no taller than 165 feet in height.

- To the extent that buildings taller than the by-right limit of 125 feet are constructed in the Central Core area, up to six of them would be located in the portion of the area north of 71st Street and they would all front on either that artery, Collins Avenue or 72nd Street, where they will face a park rather than any existing residential structures. Two of the five potentially taller buildings in the portion of the Central Core south of

71st Street would also front on Collins while one would front on Indian Creek Drive where buildings taller than 125 feet already exist

- The provision in the draft land development regulations that would allow buildings of up 200 feet to be constructed in the Central Core area in return for the provision of specified public benefits and/or the payment of a Public Benefits Fee is predicated on a belief of City's Planning Department --- with which we concur --- that it, when coupled with requirements contained in the draft regulations with respect to setbacks, would result in better individual projects as well as better pedestrian environments being created. Most specifically, the provision would allow more natural light to reach the surface of the street while making the buildings appear less massive. However, that provision will also redound to the financial benefit of the developers who decide to take advantage of it by enabling them to potentially reduce their overall cost of construction as well as costs of financing and to enjoy premium revenues on the space they develop above the by-right height. Accordingly, MEAI believes that the amount of the Public Benefits Fee should be set at a level that will enable the City to share in the enhanced financial performance enjoyed by the developers of projects that exceeds the by-right height to the point that it can collect significant amounts of money to address community needs, however, we also believe that the amount of the fee should be viewed as an add-on to the increased ad valorem taxes that the prospective project can be expected to produce by virtue of its enhanced revenue potential, thus also set at a level that will not run risk of deterring them from building structures that are taller than the by-right height on the sites that can accommodate such structures

- MEAI believes that calculation of the proposed Public Benefits Fee should be based solely on the square footage of rentable or saleable space on the floors within a structure above the by-right height

- As a result of the analysis MEAI performed, we suggest that the Public Benefit Fee should be paid at a rate of $3 per square foot of rentable or saleable space above the by-right level. This suggestion assumes the land development regulations are adopted as currently drafted by the Planning Department rather than in accordance with previously referenced proposal by Commissioner Gongora at the Land Use Committee meeting on July 31, 2018

The materials that follow begin by providing an expanded description of the proposed Public Benefits Program and its fee component. They then provide further detail regarding the number and locations of the sites on which the Public Program Benefits Program is likely to be utilized over the next three to five years based on current property ownership patterns in the Central Core. Following that, the bases of MEAI's recommendations with respect to the Public Benefits Fee are presented

Description of the Proposed Public Benefits Program

On October 19, 2016 the Mayor and City Commission of Miami Beach adopted the North Beach Master Plan prepared by Dover, Kohl and Partners, Inc which identified the North Beach Town Center as needing redevelopment and revitalization It further recommended increasing the FAR to 3 5 in Town Center Zoning Districts TC-1, TC- 2 and TC 3 to allow for the development of larger buildings and to encourage the emergence of 71st Street as a "main street" for the North Beach area On May 16, 2018, after Miami Beach voters approved the recommended increase in FAR for the referenced zoning districts, the City Commission modified the City's Comprehensive Plan and Land Development Regulations to provide for a 3.5 FAR for in those districts. The proposed Land Use Regulations that MEAI has reviewed as part of its work seek to establish the mechanism for achieving a 3 5 FAR by replacing the existing zoning districts with a new one TC-C (Town Center – Central Core) It also establishes the uses that will be permitted in the new zoning district as well as the manner in which they can be developed in terms of such parameters as height, minimum unit sizes, density setbacks, etc. The proposed TC-C Zoning District would be bounded by 72nd Street on the North, Collins Avenue on the east, 69th Street on the south and Indian Creek Drive and Dickens Avenue on the west The intended purpose of the requirements of the TC-C Zoning District include, but are not limited to, the following:

- To encourage the area's redevelopment and revitalization,
- To promote a compact pedestrian-oriented town center consisting of a high-intensity employment center, mixed-use areas and residential living environments with compatible office and neighborhood-oriented commercial services;
- To permit uses that will be able to provide economic development in light of changing economic realities due to technology and e-commerce and
- To promote a diverse mix of residential educational, commercial, cultural and entertainment activities for workers, visitors and residents

As discussed in the introductory paragraph of this letter, the Public Benefits Fee proposed in the draft land development regulations for the TC-C Zoning District would allow a developer constructing a new building in the Central Core to increase the height of the structure from the by-right limit of 125 feet to up to 200 feet by paying a Public Benefits Fee into the North Beach Public Fund Payment of that fee would be in lieu, either all or in part of undertaking any the community benefit initiatives that are identified in subsections (b) though (f) of Section 142-747 of the draft regulations The community benefit initiatives identified in the proposed regulations are as follows.

- Provision of on-site affordable or workforce housing units
- Provision of off-site affordable or workforce housing units
- LEED Platinum Certification
- Self-sustaining electrical and surplus stormwater retention and reuse
- Provision of public recreation facilities

Under the current TC-1 TC-2 and TC-3 Zoning Districts that apply to various portions of what will become the TC-C Zoning District, the height limit varies between 45 and 125 feet depending on the specific zoning district in which a particular parcel is located A height limit of 125 feet is applicable in TC-1 The height limits in TC-2 and TC-3 are 50 and 45 feet, respectively. Appendix 1 shows the portions of North Beach Town Center currently designated TC-1 TC-2 and TC-3 on the map labeled "Existing" It also shows on that map labeled "Proposed" that under the draft regulations for the proposed TC-C Zoning District, the limit would be 125 feet by right increasing to up to 200 feet if the developer of a new building commits to participate in the Public Benefits Program in some manner including either all or in part through the payment of a Public Benefits Fee

According to the land development regulations being proposed for the TC-C Zoning District, Public Benefits Fees paid by developers into the North Beach Public Benefits Fund as well as the interest earned on those payments if any, shall be utilized for the following purposes.

- Sustainability and Resiliency grants for properties in the North Beach Historic Districts;
- Uses identified for the Sustainability and Resiliency Fund as identified in Section 133-8(c) for North Beach.
- Improvements to existing parks in North Beach*
- Enhancements to public transportation and alternative modes of travel, including rights of ways and roadways that improve mobility in North Beach,
- Acquisition of new parkland and environmental and adaptation areas in North Beach; and
- Initiatives that improve the quality of life for North Beach residents.

The recommendation to increase the height limits in the TC-2 and TC-3 Zoning Districts from 50 and 45 feet, respectively to 125 feet relates to the fact that a 3.5 FAR cannot be achieved under the current height limits. That level of FAR can potentially be achieved within the context of a 125-foot height limit assuming a parcel of appropriate size and dimensions, however as shown in Appendix 2, not in the context of a single structure if the width of the building width is limited to 165 feet within 50 feet of the property line as proposed in the draft land development regulations for the TC-C Zoning District. The purpose of that proposal, in turn, is prevent the so-called "wall effect" (illustrated in Appendix 3) which denigrates the pedestrian environment by decreasing the amount of natural light reaching the street but it can only work if the height limit is increased to 200 feet. In order to ensure that the increase in height does not produce a different but still undesirable outcome from the point of view of pedestrians, i.e. the sense of that the buildings are looming over them the draft land development regulations for the proposed TC-C Zoning District require as shown in Appendix 4, additional setbacks above 55 feet for all structures on Class A Streets except Indian Creek Drive including 71st Street, 72nd Street and Collins Avenue. The Class A streets just enumerated are the

* The purpose of this paragraph North Beach is defined as the area of the City of Miami Beach located north of 63rd Street, excluding the La Gorce La Gorce Island and Allison Island

primary pedestrian corridors in the Central Core That requirement would also be applied on 69th Street a Class B Street, between Harding and Indian Creek Drive

The provision in the draft land development regulations that would allow buildings of up 200 feet to be constructed in the Central Core area in return for the provision of specified public benefits and/or the payment of a Public Benefits Fee is predicated on a belief of City s Planning Department --- with which we concur --- that it when coupled with requirements contained in the draft regulations with respect to setbacks, would result in better individual projects as well as better pedestrian environments being created. Most specifically, the provision would allow more natural light to reach the surface of the street while making the buildings appear less massive However, the Department also recognized that the provision will redound to the financial benefit of the developers who would be able to collect premium revenues on the space they develop above the by-right height Accordingly it included the concepts of a Public Benefits Program and a Public Benefits Fee in the draft regulations to enable the City inclusive of its residents, to share in the enhanced financial performance that developers of projects that exceed the by-right height would enjoy at level beyond what the City would otherwise get in the form of the increased ad valorem taxes.

Since beginning our work, we have met with a contractor familiar with the economics associated with building high-rise structures in Miami-Dade County generally and Miami Beach specifically In response to our questions, he estimated that construction of a 200-foot building rather than one 125 feet high might cost between 5 and 10 percent more He further indicated that while portions of the additional costs would relate to structural and mechanical systems, the major reason would be increased project overhead due to the fact that the project timetable would likely attenuate. We then showed him the material in Appendix 2 which shows that development of a 3.5-FAR project at a height of 125 feet and width of 165 feet would require the construction of two buildings rather a single structure, resulting in the need for two lobbies and service areas, potentially more elevators and an increased amount of "skin" inclusive of additional fenestration. In the absence of sets of plans, he was unable to estimate with any precision whether, if at all, the two-structure plan would cost more than the plan with one taller structure but it was our distinct impression from our conversation that it would. Reduced construction costs up front would also result in lower financing costs and interest expenses once construction of the project has been completed On that basis, we believe the Department may have underestimated that extent to which developers would benefit from being able to potentially increase project heights from 125 feet up to 200 feet when developing projects with the intensity of a 3 5 FAR

Applicability of the Public Benefits Program

As indicated in the preceding section of this report, the draft land development regulations for the TC-C Zoning District will raise the height limit for all parcels of land within the District to 125 feet Further, it would allow that height limit to be increased to 200 feet on all parcels if 1) one or more of the various public benefits enumerated in Section 142-747 (including the payment either all or in part, of a Public Benefit Fee)

is/are provided, and 2) development to that height could be achieved within confines of the other development parameters set forth in the draft regulations. However, as a practical matter, not all parcels have the size and dimensions to be able to accommodate buildings up to 200 feet within the parameters for development set forth in the draft land development regulations and many may not even be able to accommodate buildings of up to 125 feet in a way that is either economical and/or utilitarian. Accordingly, as part of MEAI's review of the draft land development regulations, we have attempted to assess the applicability of the Public Benefits Program over the next three to five years based on current land ownership patterns in the proposed TC-C Zoning District.

In conducting the analysis referred to above, we took into consideration a proposal offered by Commissioner Michael Gongora at the Land Development Committee hearing chaired by Commissioner John Elizabeth Aleman on July 31, 2018. Under his proposal, a height of 200 feet would continue to be allowed (assuming provision of at least one of public benefits enumerated in Section 142-787) on sites 50,000 square feet or greater. However, no height increase above 125 feet would be permitted on sites smaller than 25,000 square feet and height increases on sites between 25,000 and 49,999 square feet would be limited to 165 feet.

Table 1, on Page 7, provides the results of the analysis that MEAI performed. As evidenced in the table, we found a total of 9 privately-owned lots or assemblages of lots that are 25,000 square feet in size or greater. Of these, only two are currently 50,000 square feet or greater although there are reasons to believe that one assemblage currently below that size could increase to that size.[2] We also found two situations were assemblages that could exceed 25,000 square feet in size may be easily achievable. However, it should also be noted that of current plans for three of the parcels between 25,000 and 49,999 square feet do not anticipate buildings exceeding 125 feet in height.[3]

Accordingly, our analysis indicates that no more than 11 --- probably 8 or fewer --- buildings 200 feet in height are likely to be built in the proposed TC-C Zoning District over the next 3 to 5 years if the draft land development regulations MEAI reviewed are adopted in their current form. Further, if Commissioner Gongora's proposal to tie building height increase to lot size, the number of 200-foot buildings may not exceed 3.

In reviewing Table 1, it also should be noted that 6 of the 11 potential sites for taller buildings, including all of those either currently or potentially 50,000 square feet in size, are located north of 71st where the buildings will probably front on either 71st Street, Collins Avenue or 72nd Street where they will face a major City Park rather than existing residential structures.

---

[2] An assemblage of land of 50,000 square feet or more could potential occur in the block north of 71st Street between Abbott and Byron. Such as assemblage would include the parcel 25,000 to 49,999 square foot parcel shown on Table for the block.

[3] This sentence refers to development proposed on an assemblage land referenced on Table 1 at the corner of Collins and 72nd Street and the parcels shown on Table 1 on the blocks south of 71st Street between Byron and Abbott and Abbott and Harding.

Table 1
Parcels 25,000 SF and Larger
Proposed TC-C Zoning District

	Parcel Size *	
	25,000 to 49,999 SF	50,000 SF and greater
71st to 72nd Street		
Collins to Harding	2	0
Harding Avenue to Harding Court	0 **	0
Harding Court to Abbott	0	0
Abbott to Byron	1	0
Byron to Carlisle	0	1 ***
Calisle to Dickens	0	1 ***
71st to 69th Street		
Indian Creek to Carlisle	0 **	0
Carlisle to Byron	0	0
Byron to Abbott	1 ****	0
Abbott to Harding	1 ****	0
Harding to Collins	2	0

* The term parcel refers to individual properties or assemblages of multiple properties
** Additional asssemblage possible
*** Outparcel(s) appear to exist
**** Block with proposed North Beach Town Center Project (plans currently do not assume additional height)

Source Miami Beach Planning and Zoning Department, Miami-Dade County Property Appraiser; Miami Economic Associates, Inc

With respect to the 4 potential sites for taller buildings south of 71st Street, 2 also would front on Collins Avenue while 1 would front on Indian Creek Drive where buildings taller than 125 feet have already been developed With respect to the area south of 71st Street, the map in Appendix 5 shows that there are considerable portions of this area that are currently owned by the City of Miami Beach itself (colored in blue) Further, considerable portions of the block between Collins and Harding as well as the block between Byron and Carlyle are comprised of small lots generally under 6,500 square feet in size making future assembly of parcels capable of accommodating economical and/or utilitarian taller buildings within the context of draft land development regulations for the proposed TC-C Zoning District very difficult, if not impossible, in other than extraordinary circumstances

Setting a Rate of the Proposed Public Benefits Fee

Based on MEAI s knowledge of the Central Core area and the market forces on which future development in that area are likely to be based, we expect that any development that exceeds the by-right 125-foot height limit will be residential in nature with new rental apartments rather condominium units most likely pre-dominating Further, it has been our experience that the economics of rental apartment development are typically more difficult to navigate through successfully Based on those assumptions, we undertook the analysis which is summarized on Table 2 on Page 9

By the way of explanation regarding the structure of Table 2 the following points are noted:

- The analysis shown on the table is predicated on the proposition that a developer making a Public Benefits Fee payment does so in order to reduce the cost of construction upfront and, more importantly, to collect the increased income stream that constructing a building taller than the by-right 125 height limit would provide to him as he collects premium rents on the units on floors above that height. The table is set up to calculate the present value of that increased income stream over a 30-year period. In calculating the present value it was assumed that that income would inflate at a rate of 2 percent per year and that a discount rate of 5 percent would be appropriate given the level of risk associated with collecting the increased income and the current environment in terms of interest rates

Table 2
Public Benefits Fee Analysis
Rental Apartment Units

Column No.	1	2	3	4	5	6	7	7	8	9	10	11	12
Floor	Monthly Increase Per Unit	Annual Increase Per Unit	Total Units (8/floor)	Total Units Inflated 2% 30 Years	Discount Rate	Present Value	Floor	Monthly Increase Per Unit	Annual Increase Per Unit	Total Units (8/floor)	Total Units Inflated 2% 30 Years	Discount Rate	Present Value
12	10	120	960	9,600	1	9,600	12	10	120	960	34,560	1	34,560
13	20	240	1,920	9,792	0.95238	9,326	13	20	240	1,920	35,251	0.95238	33,573
14	30	360	2,880	9,988	0.91575	9,146	14	30	360	2,880	35,956	0.91575	32,927
15	40	480	3,840	10,188	0.88053	8,970	15	40	480	3,840	36,675	0.88053	32,294
		1,200	9,600	10,391	0.84666	8,798	16	50	600	4,800	37,409	0.84666	31,673
				10,599	0.8141	8,629	17	60	720	5,760	38,157	0.8141	31,064
				10,811	0.78279	8,463	18	70	840	6,720	38,920	0.78279	30,466
				11,027	0.75268	8,300	19	80	960	7,680	39,699	0.75268	29,880
				11,248	0.72373	8,140			4,320	34,560	40,493	0.72373	29,306
				11,473	0.6959	7,984					41,302	0.6959	28,742
				11,702	0.66913	7,830					42,128	0.66913	28,189
				11,936	0.64339	7,680					42,971	0.64339	27,647
				12,175	0.61865	7,532					43,830	0.61865	27,116
				12,419	0.59485	7,387					44,707	0.59485	26,594
				12,667	0.57198	7,245					45,601	0.57198	26,083
				12,920	0.54998	7,106					46,513	0.54998	25,581
				13,179	0.52882	6,969					47,443	0.52882	25,089
				13,442	0.50848	6,835					48,392	0.50848	24,607
				13,711	0.48893	6,704					49,360	0.48893	24,134
				13,985	0.47012	6,575					50,347	0.47012	23,669
				14,265	0.45204	6,448					51,354	0.45204	23,214
				14,550	0.43465	6,324					52,381	0.43465	22,768
				14,841	0.41794	6,203					53,429	0.41794	22,330
				15,138	0.40186	6,083					54,498	0.40186	21,901
				15,441	0.38641	5,966					55,588	0.38641	21,479
				15,750	0.37154	5,852					56,699	0.37154	21,066
				16,065	0.35725	5,739					57,833	0.35725	20,661
				16,386	0.34351	5,629					58,990	0.34351	20,264
				16,714	0.3303	5,521					60,170	0.3303	19,874
				17,048	0.3176	5,414					61,373	0.3176	19,492
				389,454		218,401					1,402,033		786,243
	Bonus fee at $2 per entable square foot (32,000 SF)					$96,000		Bonus fee at $3 per entable square foot (64,000 SF)					$192,000
	Percentage of Present Value					44.0%		Percentage of Present Value					24.4%

Source: Miami Economic Associates, Inc.

- Based on the material contained in Appendix 2, it was assumed that a building 11 stories in height could be developed within the 125-foot by-right height limit. Columns 1 through 6 assume that if a building is constructed to a height 165 feet, it would have a total of 15 stories, or 4 stories above the by-right height. Columns 7 through 12 assume that if a building is constructed to a height of 200 feet, it would have a total of 19 stories, or 8 stories above the by-right height. Both scenarios assume a building that is 165 feet wide and that each floor above the by-right height would have 8,000 square feet of rentable space, or eight units at an average of 1,000 square feet each. Accordingly, the 165-foot building would have a total 32 units with 32,000 rentable square feet above the by-right height while the 200-foot building would have 64 units at 64,000 square feet above the by-right height.

- Review of recently built high-rise rental apartment projects in Downtown Miami and Coral Gables showed that buildings are generally increasing the rents per unit per month by between $8 and $12 per floor. Accordingly, in the case of 165-foot building, the analysis presented in the table assumes that the rents on the 12th floor per unit would be $10 higher per month than those on the 11th floor while those at the 15th floor would be $40 higher. In that building, $9,600 in additional rent would be collected in the first year of building operations (Column 3) and that amount would be inflated by 2 percent a year for 30 years, with the result that at the end of 30 years additional rent would be collected in the amount of $389,454 on an undiscounted basis (Column 4). As shown in Column 6, the present value of that amount, assuming a discount rate of 5 percent, would be $218,401. Columns 9 through 12 provide the same analysis for the 200-foot building, with the present value of the increased rent on the 64 units above the by-right height totaling $786.243.

- At the bottom of the table, a calculation is provided that shows that is if a Public Benefits Fee of the $3 per square foot were charged on the rentable square feet above the by-right height, the fee in the case of the 165-foot building would be approximately 44 percent of the discounted value of the increased rents collected over the 30-year analysis period while in the case of the 200-foot building, it would be approximately 24.4 percent.

In reviewing Table 2, the following points should be kept in mind:

- The decision to use a 30-year analysis period for the table was primarily based on facilitating its presentation. However, even at the end of 30 years, the present value figure is still more than 30 percent of the undiscounted figure. In actuality, positive discounted values would continue to exist for 50 or more additional years assuming the building remains in service.

- If the buildings assumed in the analysis had the same number of total units but all of those units were units were on floors within the by-right height of 125, they would not all be on the 11th floor. Rather they would be scattered throughout all the floors of the

building Therefore, the annual rent differentials would be greater than shown on Table 2

- When the factors discussed in the preceding two bullets are taken in combination, it is clear that discounted values of the increased cash flow in both scenarios would be significantly greater than shown on Table 2 and the Public Benefit Fees as percentages of the discounted values smaller

- Finally, we believe that the table demonstrates two things, which are as follows

  - Limiting height on certain size parcels to 165 feet as Commissioner Gongora has proposed would significantly reduce the amount of the Public Benefits Fees that the City will be able to collect, and

  - Under Commissioner Gongora's proposal, payment of the Public Benefits Fees will be more onerous to the developer and increase the probability that more of them will not seek to increase the height of their building, which, in turn, could result in less attractive individual new buildings and environments for pedestrians

Closing

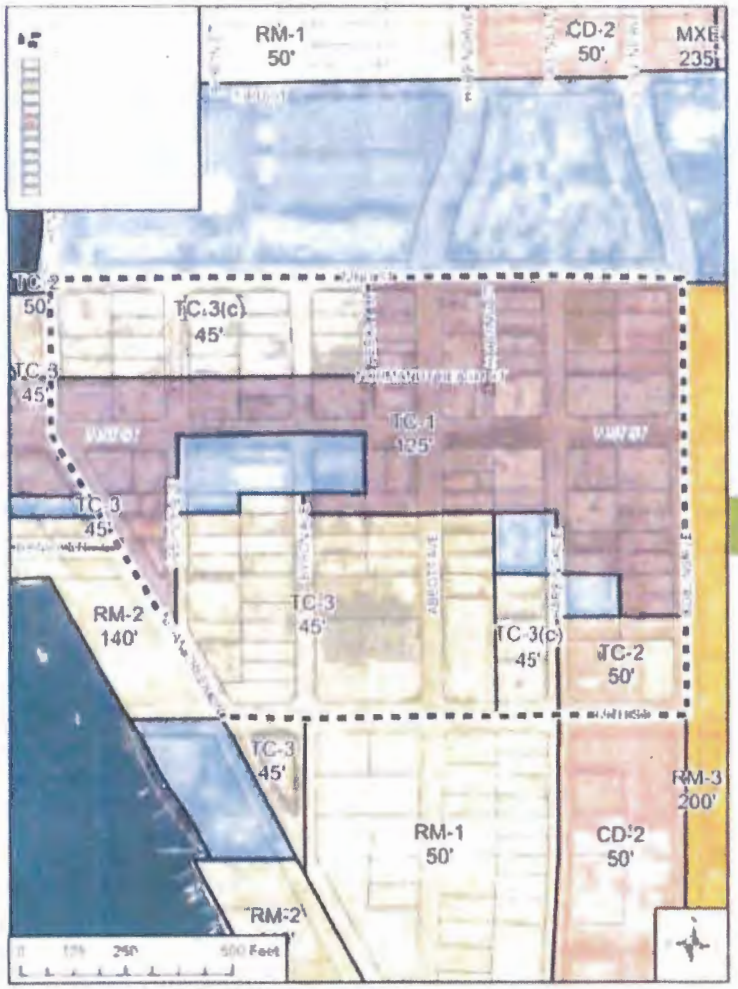
MEAI has appreciated having the opportunity perform the analysis summarized in this report We will make ourselves available, if requested, available to present our findings to the appropriate City Committees and the City Commission

Sincerely
Miami Economic Associates, Inc

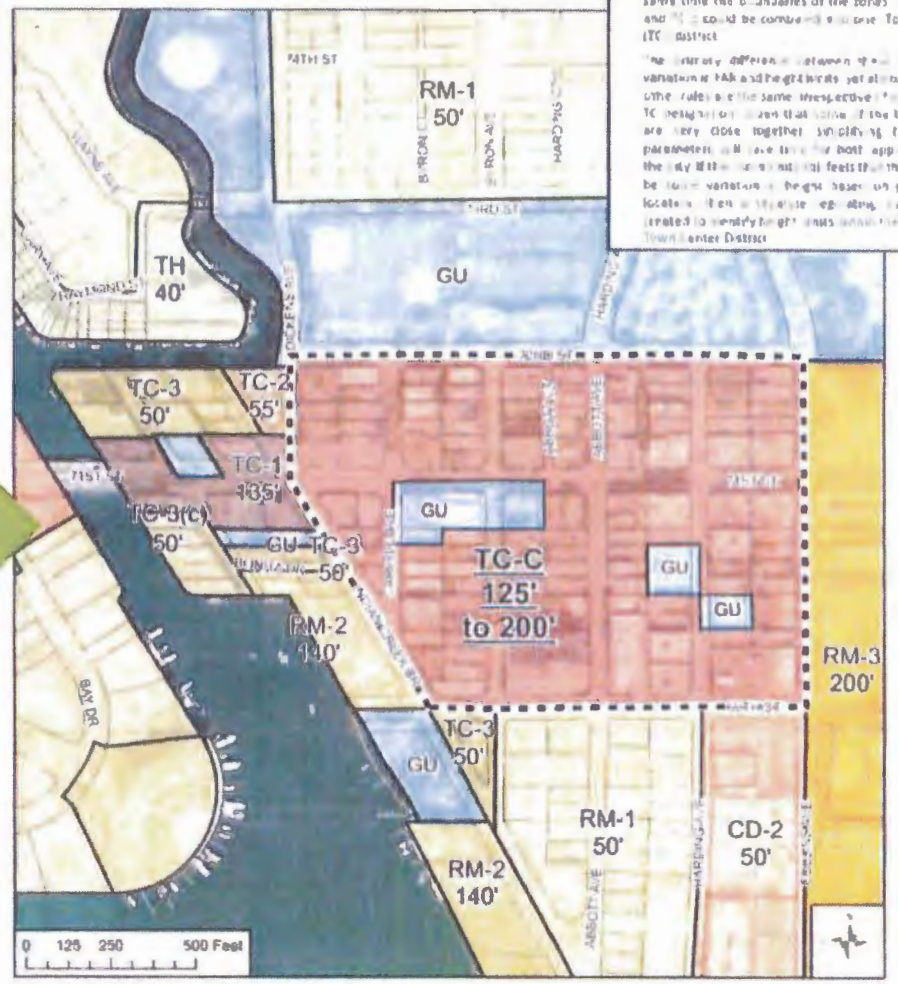
Andrew Dolkart
President

Appendix 1

Existing and Proposed Zoning



Existing

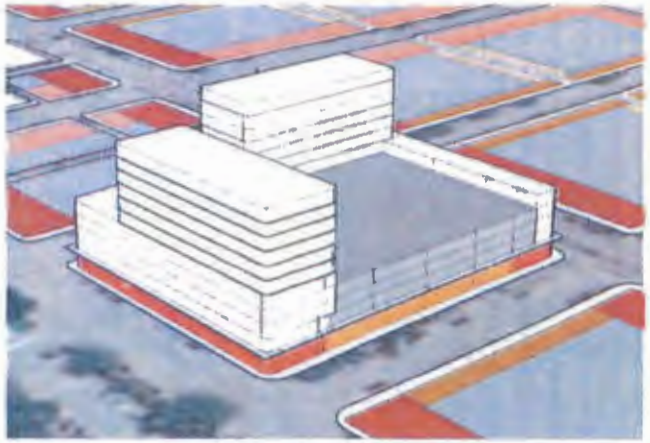


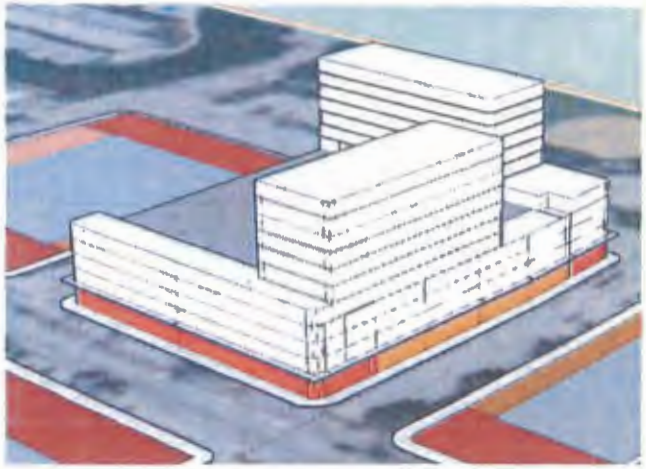
Proposed

Appendix 2

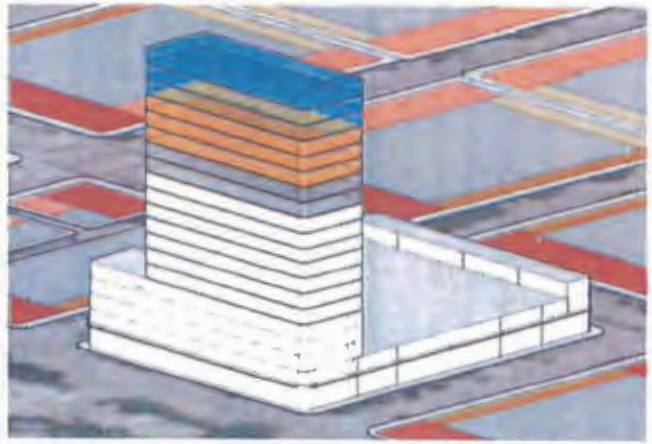
Maximum FAR Distribution

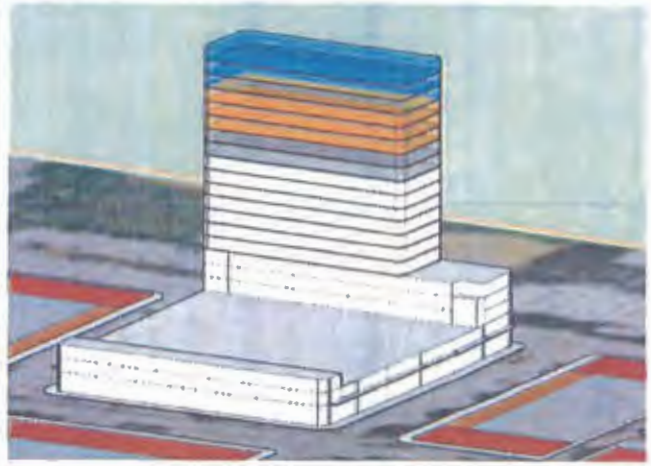
Without Public Benefits





With Public Benefits





- **(White)**
  Up to 125 FT
  ~11 stories
- (Gray)
  125-145 FT
  ~13 stories
- (Orange)
  145-175 FT
  ~16 stories
- **(Turquoise)**
  175-200 FT
  ~19 stories

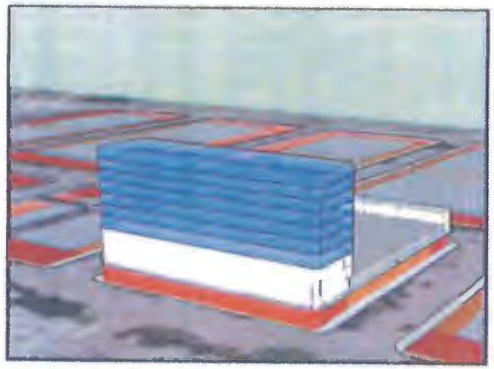
Appendix 3

What **NOT** to Do

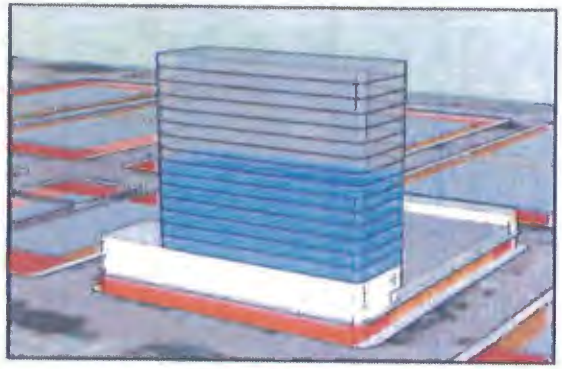
Wall effect

Proposed limitations on tower width of 165 feet for portions of towers within 50 feet of property line to prevent wall effect

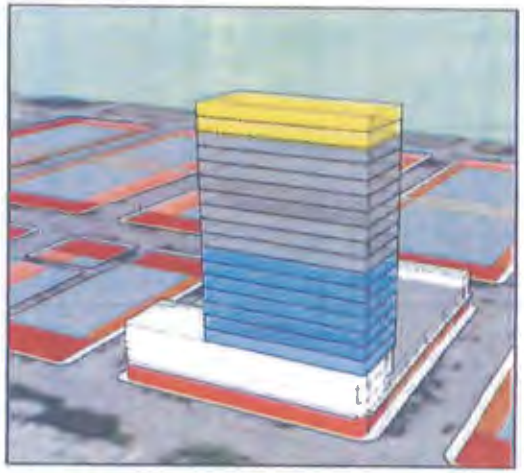
Wall Effect and Height



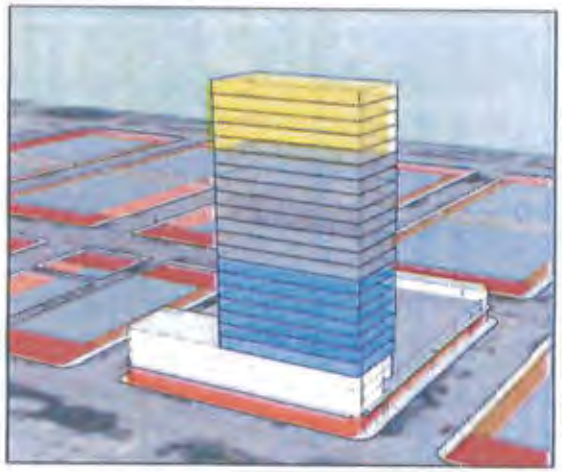
Tower Width: 225' – Height :125'
(wall effect, not desirable)



Tower Width: 165' – Height 200
(Proposed)

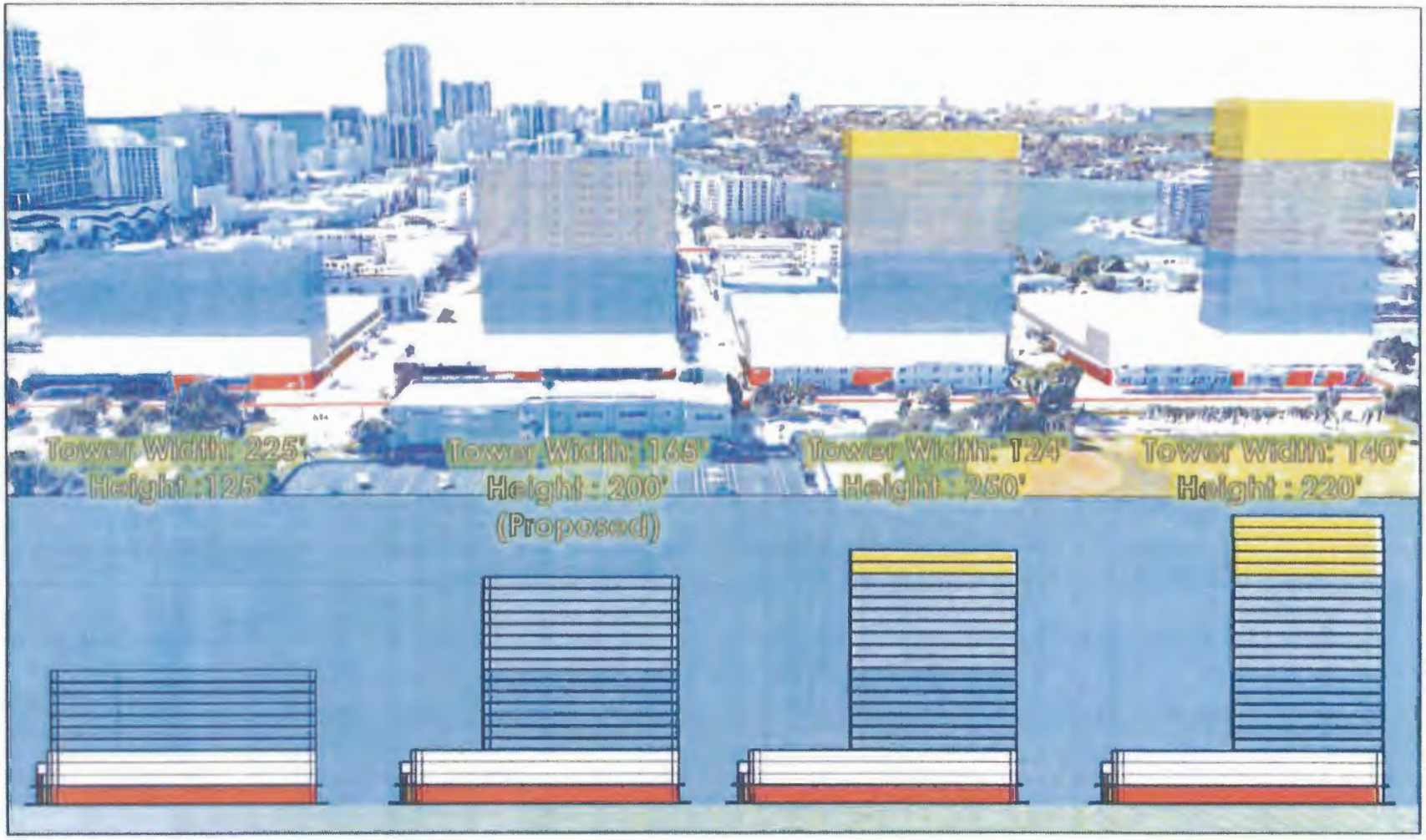


Tower Width: 140' – Height : 220'



Tower Width: 124' – Height 250'
(out of scale)

Wall Effect and Height



Appendix 4

b. Micro-Hotel – 175 SF provided that a minimum of 20 percent of the gross floor area of the building consists of amenity space that is physically connected to and directly accessed from the micro-hotel units without the need to exit the parcel. Amenity space includes the following types of uses, whether indoor or outdoor, including roof decks: restaurants; bars; cafes; hotel business center; hotel retail; screening rooms; fitness center; spas; gyms; pools; pool decks; and other similar uses customarily associated with a hotel uses whether operated by the hotel or another operator. Bars and restaurants shall count no more than 50 percent of the total amenity space requirements. These amenities may be combined with the amenities for Co-Living Units, provided residents and hotel guests have access. No variances are permitted from these provisions.

(d) The maximum residential density: 150 units per acre.

(1) The maximum residential density of may be increased by up to 80 percent beyond the maximum residential density if the development incorporates certified workforce or affordable housing units. The additional density may only be utilized for workforce or affordable housing units.

~~(e) The following floor to ceiling height limits shall apply to floors located above 55 feet in height:~~

~~(1) Residential and Hotel Uses – 12 feet~~

~~(2) Commercial Uses – 14 feet~~

Sec. 142-744. - Setbacks and Encroachments.

Setbacks and Allowable Encroachments into Setbacks shall be as per Table A below. For the purposes of new construction in this zoning district, heights shall be measured from the City of Miami Beach Freeboard of five (5) feet, unless otherwise noted.

Table A

Street Class	Property line abutting	Building Height at which Setback occurs	Minimum Setback from property line	Allowable Habitable Encroachments into setback
Class B	69th Street Between Collins Avenue and Harding Avenue	Grade to 125 feet	10 feet	5 feet
		125 feet to max height	35 feet	5 feet
Class B	69th Street Between Harding Avenue and Indian Creek Drive	Grade to 55 feet	10 feet	5 feet
		55 feet to 125 feet	50 feet	0 feet
		125 feet to max height	85 feet	0 feet
Class D	70th Street Alley Line	Grade to max height	10 feet	3 feet
Class	71st Street	Grade to 55 feet	10 feet	0 feet

A		55 feet to max height	25 feet	5 feet
Class A	72nd Street	Grade to max height	20 feet from back of curb line; curb line location shall be at the time of permitting; however, it shall be no less than 5 feet from the property line	5 feet
Class A	Collins Avenue	Grade to 55 feet	10 feet	5 feet
		55 feet to 125 feet	20 feet	5 feet
		125 feet to max height	35 feet	5 feet
Class A	Indian Creek Drive	Grade to max height	10 feet	5 feet
Class B	Abbott Avenue and Dickens Avenue	Grade to max height	10 feet	5 feet
Class C	Byron Avenue, Carlyle Avenue, and Harding Avenue	Grade to max height	10 feet	~~5~~7 feet
N/A	Interior Side	Grade to 55 feet	0 feet	0 feet
		55 feet to max height	30 feet	10 feet
N/A	Rear abutting an alley (Except 70th Street Alley)	Grade to 55 feet	5 feet	0 feet
		55 feet to max height	20 feet	10 feet
N/A	Rear abutting a parcel	Grade to 55 feet	0 feet	0 feet
		55 feet to max height	30 feet	10 feet

Sec. 142-745. –Street Frontage, Design, and Operations Requirements.

The development regulations and street frontage requirements for the TC-C district are as follows:

(a) The following regulations shall apply to all frontages:

(1) ***Tower Regulations.*** The tower shall be considered the portion of a building located above 55 feet, excluding allowable height exceptions as defined in section 142-1161. Towers shall comply with the following:

a. That portion of a tower located within 50 feet of a public right-of-way shall not exceed 165 feet in length between the two furthest points of the exterior face of the tower.

Appendix 5

Unified Land Ownership

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **500 – 700 ALTON ROAD - APPLICABLE DRAFT ZONING ORDINANCES TO EFFECTUATE A PROPOSED DEVELOPMENT**

HISTORY:
On July 25, 2018, at the request of Mayor Dan Gelber, the City Commission referred the items to the Land Use and Development Committee (Item C7AQ). On September 12, 2018, a request to refer the items to the Planning Board was deferred to the October 17, 2018 City Commission meeting (Item C4F).

Analysis
BACKGROUND
The properties along the 500-700 block of Alton Road and West Avenue are currently located within three separate zoning districts (CPS-2, CD-2 and RM-2). The 500 block is separated from the 600-700 block by a dedicated public right-of-way (6th Street). Currently there is an active, approved mixed use development project for the 500-700 blocks, which is broken down as follows:

Lot Sizes: 500 Block: 85,348 SF
600 Block: 138,842 SF
700 Block: 49,000 SF

Approved Height: 500 Block: 75 Feet (DRB 22959)
600 Block: 120 Feet (Existing South Shore Hospital) and 60 Feet (DRB 22959)
700 Block: 60 Feet (DRB 23126)

Approved FAR: 500 Block: 170,696 SF / 2.0 (DRB 22959)
600 Block: 277,684 SF/ 2.0 (DRB 22959)
700 Block: 98,000 SF/ 2.0 (DRB 23126)

Approved FAR for Overall Project: 546,380 SF / 2.0

Approved Residential Units: 500 Block : 163 Units (DRB 22959)
600 Block: 281 Units (DRB 22959)
700 Block: 66 Units (DRB 23126)

Approved Residential Units for Overall Project: 510

Recently, a group of area residents, condominium unit owners and affected stakeholders (Gateway Community Alliance) began a dialogue with the property owner for the 500-700 Blocks (Crescent

Heights). At the May 23, 2018 Land Use Committee meeting, separate proposals pertaining to the 500-700 blocks of Alton Road, one from the Gateway Alliance and the other from the property owner, Crescent Heights, were discussed. The LUDC discussed the proposals again on July 31, 2018 and concluded the item with no action.

On July 25, 2018 the City Commission referred separate discussion items to both the Finance and City Wide Projects Committee (FCWPC) and the Land Use Committee pertaining to the proposed development project at 500 – 700 Alton Road.

On July 27, 2018 the FCWPC discussed the development proposal prepared by the property owner and developer, Crescent Heights. The Committee directed the City Attorney to begin drafting a Development Agreement and Vacation of 6th Street, in order to facilitate the creation of a Unified Development Site within the 500-700 blocks between Alton Road and West Avenue.

In order to effectuate a Unified Development Site, as proposed, a rezoning and change in future land use classification of certain parcels within the proposed unified site, as well as corresponding amendments to the Land Development Regulations, are required. These proposed draft amendments are currently pending before the LUDC, pursuant to the July 25, 2018 referral by the City Commission.

DRAFT ORDINANCE SUMMARY

The following is a summary of the three zoning amendments, attached:

Re-Zoning and FLUM Amendments:

Currently, the property encompasses the 500 Block and most of the parcels on the 600-700 blocks between Alton Road and West Avenue. The 500 Block has a Zoning and Future Land Use Classification of CPS-2 and a portion of the 600-700 block has a Zoning and Future Land Use Classification of RM-2 (See attached map).

The proposal is to change the designation of all properties to CD-2, which would be consistent with the predominant zoning designation along Alton Road. The properties immediately to the north have an RM-2 and CD-2 designation, the properties to the east have a CD-2 and CPS-2 designation, the properties to the west have an RM-3 and CPS-4 designation and the properties to the South have a CPS-4 designation. Therefore the CD-2 district would provide for an appropriate transition between the higher intensity uses to the west and same intensity areas to the east.

The proposed FLUM amendment does not increase the maximum residential density of the site. However, final site plan approval is contingent upon meeting Public School Concurrency requirements and the applicant will be required to obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. Such Certificate will state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed prior to the issuance of a Building Permit.

The request for modifications to the Comprehensive Plan Future Land Use Map and Zoning Atlas are also consistent with City Charter Section 1.03 (c), related to FAR. In this regard, the RM-2, CPS-2 and CD-2 zoning designation have a maximum F.A.R. of 2.00 for residential projects. As the proposed zoning change to CD-2 does not increase the established F.A.R. for the subject parcels, the requested amendment complies with the requirements of the referenced Charter provision.

LDR Amendments:

The proposed amendments to the Land Development Regulations (LDR's) would amend Chapter 142, Article II, Division 5, pertaining to the CD-2 development regulations, by establishing 'Alton Road

Gateway Area Development Regulations.' Additionally, Chapter 130, pertaining to off-street parking, would be amended to extend the boundaries of parking district No. 6 westward, to include the east side of West Avenue from 5th to 8th Streets. The following is a summary of the proposed modifications to the Land Development Regulations:

Prohibited Uses.
In addition to the current prohibited uses identified in the CD-2 district, a number of additional prohibited uses have been added. This is to address those uses prohibited in the CPS-2 and RM-2 districts.

Minimum Setbacks.
The setbacks established in section 142-307 would be modified as follows:

a. Minimum setback from Alton Road: 10 feet for residential and non-residential buildings.
b. Minimum setback from West Avenue: 35 feet.
c. Minimum setback from 5th Street/Mac Arthur Causeway: 20 feet.

Clear Pedestrian Path.
A minimum 10 foot wide "clear pedestrian path," free from obstructions, including but not limited to outdoor cafes, sidewalk cafes, landscaping, signage, utilities, and lighting, shall be maintained along all frontages as follows:

a. The "Clear Pedestrian Path" may only utilize public sidewalk and setback areas.
b. Pedestrians shall have 24-hour access to "Clear Pedestrian Paths."
c. Clear Pedestrian Paths shall be well lit and consistent with the City's lighting policies.
d. Clear Pedestrian Paths shall be designed as an extension of the adjacent public sidewalk.
e. Clear Pedestrian Paths shall be delineated by in-ground markers that are flush with the Path, differing pavement tones, pavement type, or other method to be approved by the Planning Director or designee.
f. An easement to the city providing for perpetual public access shall be provided for portions of Clear Pedestrian Paths that fall within the setback area.

Maximum Building Height.
Currently the maximum height is 60 feet for CD-2 and RM-2 areas, and 75 feet for CPS-2 areas. The draft ordinance contains a maximum building height of 440 for residential buildings south of 6th Street and 25 feet for structures north of 6th Street.

Maximum Floor Plate.
Currently there is no maximum floor plate limit within the CD-2, RM-2 or CPS-2 areas. The draft ordinance limits the floor plate size for the tower portion of a residential building to 17,500 square feet, including balconies. Alternatively, a limitation could also be placed on the FAR portion of the floorplate, which would result in a maximum FAR of 13,800 square feet per floor.

Parking Level Activation.
Main use residential buildings containing parking, located south of 6th Street, would not be required to provide residential or commercial uses at the first level along every façade facing a street or sidewalk. However, the first level shall be architecturally treated to conceal parking, loading, and all internal elements, such as plumbing pipes, fans, ducts, and lighting from public view.

Minimum Green Space.
A minimum of 3.2 acres of open green space shall be located to the north of the residential tower, and shall be adjacent to commercial uses. Green space shall mean open areas that are free from pavilions, buildings, structures, parking, driveways or underground structures. Such areas shall consist primarily of landscaped open areas, pedestrian and bicycle pathways, plazas, playgrounds, and other recreational

amenities. Such green space shall be open to the public at a minimum between the hours of 7 am and 9 pm.

PLANNING AND ENVIRONMENTAL ANALYSIS

The proposed ordinance amendments have been drafted as part of an overall development proposal, which includes a separate Development Agreement and the proposed vacation of 6th Street between Alton Road and West Avenue. While the Development Agreement and Roadway Vacation are separate parts of the overall development apparatus, all 3 are anticipated to be considered together by the City Commission.

The proposed re-zoning and FLUM ordinances herein are fairly straightforward. However, the proposed LDR amendments do include significant modifications to the maximum allowable building heights, as well as, potentially, modifications to allowable uses.

Allowable Uses

As it pertains to uses, the following is a summary of uses currently prohibited within existing RM-2 and CPS-2 districts, but would be permitted within a CD-2 district:

CPS-2:
Under the CPS-2 zoning (currently the underlying zoning district for the 500 block), entertainment establishments, outdoor entertainment establishments, and open air entertainment establishments are prohibited

RM-2:
Under the RM-2 zoning (currently the underlying zoning district for the northwest portion of the 600-700 block), hotels, commercial uses, entertainment establishments, outdoor entertainment establishments, and open air entertainment establishments are prohibited.

CD-2:
Under the CD-2 regulations, pursuant to Sec. 142-310 of the LDR', there are a number of regulations pertaining to alcoholic beverage establishments, including limits on hours, outdoor bars and entertainment.

The entertainment and commercial uses currently permitted in the CD-2 district, to the knowledge of staff, have not been contemplated as part of the overall development proposal. As such the Administration believes that it would make sense to place limits on these uses as part of any legislation moving forward, particularly given the proximity of the site to established residential districts.

Maximum Building Height

The current maximum building height within the boundaries of the 500-700 blocks varies from 60 feet to 75 feet. The proposal herein would, potentially, allow for 440 feet in building height. As proposed in the Development Agreement, the increased building height would be limited to the 500 block, and primarily within the northeast quadrant of the block. This is based upon draft, conceptual plans, prepared by the developer in July of 2018. It should be noted that under the City Code, height is measured from base flood elevation plus allowable freeboard (BFE plus 5').

From a contextual standpoint, there are 2 ways to analyze the increase in overall building height proposed within the 500 block:

Context 1 – Properties Located Between Alton Road and West Avenue.
This contextual approach would use the established heights of existing buildings and allowable maximum heights for new construction, for land locked properties between Alton and West Avenue, from

5th to 17th Street. In this regard the established context is consistent with what is permitted under the current code (60'-75'). This lower height also provides a more gentle transition to the low scale RM-1 properties (Flamingo Park) to the immediate east and north east.

Context 2: Bayfront Properties.
As shown on the attached map, the context of Bayfront properties consists of much taller, hi-ride residential towers. Since the 500 block is surrounded by a flyover, and the proposed additional height would be limited to that site, it is reasonable to apply context 2 for height purposes. The heights of the towers along West Ave (north of 5th Street) and Alton Road (South of 5th Street) vary widely. In this regard, a tower height that is consistent with the height of Murano to the south would be contextually compatible, in this particular instance, given the unique location of the 500 block, and its proximity to Murano. However, it is hard to conclude that a building in excess of 500 feet in overall height is contextually compatible with the larger area, as it would be almost twice the height of its other closest neighbor, the Bentley Bay.

As indicated in previous memos to the Land Use Committee, the 500-700 blocks between Alton Road and West Avenue present some significant challenges as it pertains to property access and water retention. In one of the lowest areas of the City, these sites present both a challenge and an opportunity from a land use and sustainability standpoint.

From a climate resiliency strategy standpoint, the ability to acquire low lying areas in the City, for adaptation purposes, will be critical in the long term. One of the biggest constraints the City faces in this regard is land value and the high cost of acquiring underutilized and blighted property that is vulnerable. Another constraint is the limit on planning tools to acquire vulnerable sites, such as transfer of development rights, density and height. As such, the City must evaluate opportunities for acquiring and establishing adaptation areas on a case-by-case basis.

As it pertains to the 500-700 block proposals, a development opportunity has presented itself that could, potentially, align with the adaptation area goals of the City's long term climate strategy. While the most ideal scenario would be for the City to purchase all of the land area in the 500-700 blocks outright, and construct a passive, eco-park, the cost of such an endeavor, including land acquisition, design, permitting and construction, would be prohibitive. As such, the next best scenario would be for an allowable development project to partner in the creation of a passive, eco-park.

In this regard, the Administration continues to believe that it will be critical for any future proposal on the 500-700 blocks to have limited parking pedestal footprints, and little to no below grade or basement parking. Specifically, for the City's overall resilience, both the development agreement and the LDR Amendments to allow for a taller residential tower at the NE corner of the 500 block should include the following:

1. A significant portion of the western half of the 500 block should consist of dedicated, fully pervious open space.

2. No less than 3.2 acres of the 600 – 700 block shall consist of dedicated, open green space, from the ground down and ground up (no surface, structured or basement parking).

3. The parking required for the Floridian (700 block facing West Avenue) should be minimized in terms of its impact on the open space areas. In this regard, such parking could be incorporated within a limited, 2-story pedestal on the north side of the 700 block facing West Avenue.

As noted previously, there is ample room within the 500 block to accommodate all required parking for the proposed residential tower. The Administration believes that providing parking within the 600-700

blocks is not necessary for the following reasons:

1. There is a fully accessible, public parking facility immediately across the street at 5th and Alton, as well as a publicly accessible parking structure less than 2 blocks to the north at 9th and Alton.

2. The site is located within Parking District No. 6, which has no parking requirements for smaller, neighborhood uses.

3. The park and limited commercial uses should be designed to promote and accommodate non-vehicular forms of modality such as walking, cycling and transit.

4. Surface parking is completely incongruous with a sustainable, urban park. Additionally, structured parking, either above or below limited commercial buildings, create design and access limitations, particularly for non-vehicular modes of transportation.

In conclusion, the LUDC should discuss these ordinances in the context of the recent ULI and Harvard report findings, and at this turning point of our storm water approach through the broader resilience lens. The Administration believes that if properly executed, a joint approach to the 500-700 blocks could be a way of integrating creative place making into the City's resilience program, with co-benefits for multiple stakeholders.

CONCLUSION:

The Administration recommends the LUDC discuss the proposed ordinance amendments and provide appropriate policy direction. If there is consensus on the item, it is further recommended the ordinances be sent to the full City Commission for referral to the Planning Board.

ATTACHMENTS:

	Description	Type
🗋	Re-Zoning ORD	Memo
🗋	FLUM ORD	Memo
🗋	500-700 AR - MAPS	Memo
🗋	500-700 AR Height Radius MAP	Memo
🗋	LDR - ORD	Memo

REZONING – 500-700 Alton Road

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE OFFICIAL ZONING DISTRICT MAP, REFERENCED IN SECTION 142-72, "DISTRICT MAP," OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, PURSUANT TO SECTION 118-162, "PETITIONS FOR CHANGES AND AMENDMENTS," BY CHANGING THE ZONING DISTRICT CLASSIFICATION FOR LOTS 8 THROUGH 14, BLOCK 2, OF THE AMENDED FLEETWOOD SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 28, PAGE 34, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, FROM THE CURRENT DESIGNATION OF "RM-2 RESIDENTIAL MULTIFAMILY, MEDIUM INTENSITY," TO "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT;" AND FOR THE PROPERTIES BOUNDED BY 6TH STREET ON THE NORTH, ALTON ROAD ON THE EAST, 5TH STREET/MAC ARTHUR CAUSEWAY/STATE ROAD A1A ON THE SOUTH, AND WEST AVENUE ON THE WEST, FROM THE CURRENT DESIGNATION OF "C-PS2 GENERAL MIXED USE COMMERCIAL PERFORMANCE STANDARD DISTRICT," TO "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT;" PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

WHEREAS, changing the zoning classification of the subject parcel as provided herein is necessary to ensure the development of the sites will be compatible with development in adjacent and surrounding areas, and will contribute to the general health and welfare of the City; and

WHEREAS, the City of Miami Beach has determined that changing the zoning classification of the subject parcel as provided herein will ensure that new development is compatible and in scale with the built environment, and is in the best interest of the City; and

WHEREAS, the change of zoning classification of the subject parcel will not result in an increase in floor area permitted on the parcel; and

WHEREAS, the amendment set forth below is 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. ZONING MAP AMENDMENT The following amendment to the City's zoning map designation for the property described herein is hereby approved and adopted and the Planning Director is hereby directed to make the appropriate change to

the zoning district map of the City:

1. For lots 8 through 14, of the Fleetwood Subdivision, according to the plat thereof recorded in Plat Book 28, page 34, of the public records of Miami-Dade County, Florida, consisting of approximately 49,000 square feet (0.125 acres), as depicted in Exhibit "A," from the current designation of "RM-2 Residential Multifamily, Medium Intensity," to "CD-2 Commercial, Medium Intensity District," and

2. For the properties bounded by 6th Street on the north, Alton Road on the east, 5th Street/Mac Arthur Causeway/State Road A1A on the south, and West Avenue on the west, consisting of approximately 87,140 square feet (2.0 acres), as depicted in Exhibit "A," from the current designation of "C-PS2 General Mixed Use Commercial Performance Standard District," to "CD-2 Commercial, Medium Intensity District."

SECTION 2. REPEALER

All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY

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

SECTION 4. CODIFICATION

It is the intention of the City Commission that the Official Zoning District Map, referenced in Section 142-72 of the Code of the City of Miami Beach, Florida be amended in accordance with the provisions of this Ordinance.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect 10 days after adoption.

PASSED AND ADOPTED this _____ day of _____, 2018.

_____
Dan Gelber, Mayor

ATTEST:

_____
Rafael E. Granado, City Clerk

APPROVED AS TO FORM

AND LANGUAGE
AND FOR EXECUTION

_____
City Attorney Date

First Reading: _____, 2018

Second Reading: _____, 2018

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

M:\$CMB\CCUPDATES\Land Use and Development Committee\2018\September 28, 2018\500-700 AR - ORD Rezoning - Sep 28 2018 LUDC.docx

Comprehensive Plan Amendment – 500-700 Alton Road

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN BY CHANGING THE FUTURE LAND USE CATEGORY PURSUANT TO SECTION 118-166 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA AND SECTION 163.3187, FLORIDA STATUTES, BY CHANGING THE FUTURE LAND USE DESIGNATION FOR LOTS 8 THROUGH 14, BLOCK 2, OF THE AMENDED FLEETWOOD SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 28, PAGE 34, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, FROM THE CURRENT DESIGNATION OF "MEDIUM DENSITY MULTI FAMILY RESIDENTIAL CATEGORY (RM-2)," TO THE FUTURE LAND USE CATEGORY OF "MEDIUM INTENSITY COMMERCIAL CATEGORY (CD-2);" AND FOR THE PROPERTIES BOUNDED BY 6TH STREET ON THE NORTH, ALTON ROAD ON THE EAST, 5TH STREET/MAC ARTHUR CAUSEWAY/STATE ROAD A1A ON THE SOUTH, AND WEST AVENUE ON THE WEST, FROM THE CURRENT DESIGNATION OF "GENERAL MIXED USE COMMERCIAL "PERFORMANCE STANDARD" CATEGORY (C-PS2)," TO THE FUTURE LAND USE CATEGORY OF "MEDIUM INTENSITY COMMERCIAL CATEGORY (CD-2);" PROVIDING FOR INCLUSION IN THE COMPREHENSIVE PLAN; TRANSMITTAL; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, changing the comprehensive plan designations of the subject parcel as provided herein is necessary to ensure the development of the sites will be compatible with development in adjacent and surrounding areas, and will contribute to the general health and welfare of the City; and

WHEREAS, the City of Miami Beach has determined that changing the designation of the subject parcel as provided herein will ensure that new development is compatible and in scale with the built environment, and is in the best interest of the City; and

WHEREAS, changing the comprehensive plan designations of the subject parcel, as provided herein, is necessary to ensure the development of the site will be compatible with development in adjacent and surrounding areas and will contribute to the general health and welfare of the City; and

WHEREAS, the City of Miami Beach has determined that the rezoning of the property as provided herein will ensure that new redevelopment and renovation of existing structures are compatible and in scale with the built environment and is in the best interest of the City; and

WHEREAS, the amendment set forth below is 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. COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT
The following amendment to the City's Future Land Use Map designation for the property described herein is hereby approved and adopted and the Planning Director is hereby directed to make the appropriate changes to the City's Future Land Use Map:

1. Lots 8 through 14, of the Fleetwood Subdivision, according to the plat thereof recorded in Plat Book 28, page 34, of the public records of Miami-Dade County, Florida, consisting of approximately 49,000 Square Feet (0.125 Acres), as depicted in Exhibit "A," from the current designation of "Medium Density Multi Family Residential Category (RM-2)," to the future land use category of "Medium Intensity Commercial Category (CD-2)," and

2. For the properties bounded by 6th Street on the north, Alton Road the east, 5th Street/Mac Arthur Causeway/SR A1A on the south, and West Avenue on the west, consisting of approximately 87,140 Square Feet (2.0 Acres), as depicted in Exhibit "A," from the current designation of "General Mixed Use Commercial "Performance Standard" Category (C-PS2)," to the future land use category of "Medium Intensity Commercial Category (CD-2)."

SECTION 2. REPEALER
All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. INCLUSION IN COMPREHENSIVE PLAN
It is the intention of the City Commission that the Comprehensive Plan's Future Land Use Map be amended in accordance with the provisions of this Ordinance.

SECTION 5. TRANSMITTAL
The Planning Director is hereby directed to transmit this ordinance to the appropriate state, regional and county agencies as required by applicable law.

SECTION 6. EFFECTIVE DATE
This ordinance shall take effect 10 days after adoption.

PASSED AND ADOPTED this _____ day of _____, 2018.

_____
Dan Gelber, Mayor

ATTEST:

_____
Rafael E. Granado, City Clerk

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

_____
City Attorney Date

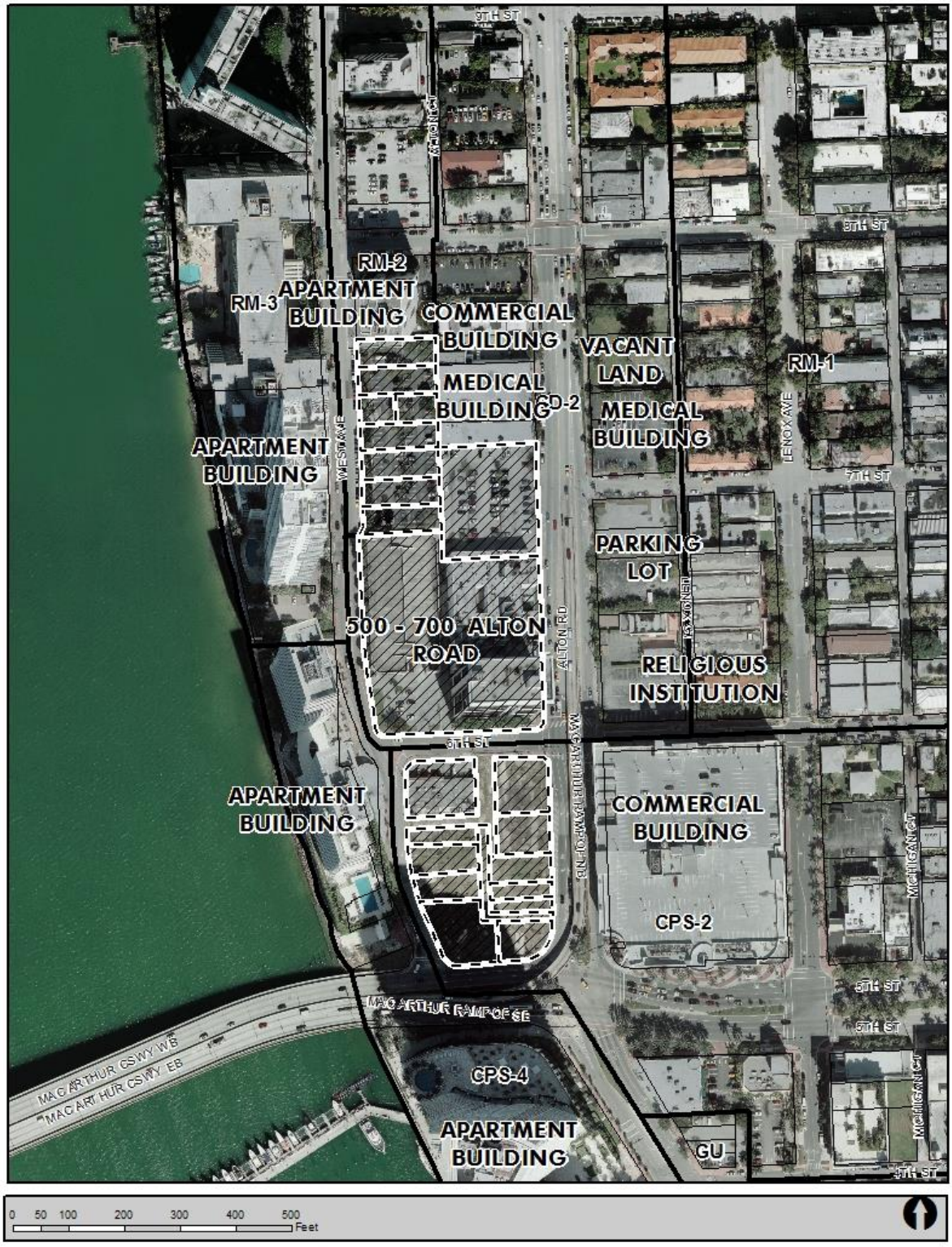
First Reading: _____, 2018

Second Reading: _____, 2018

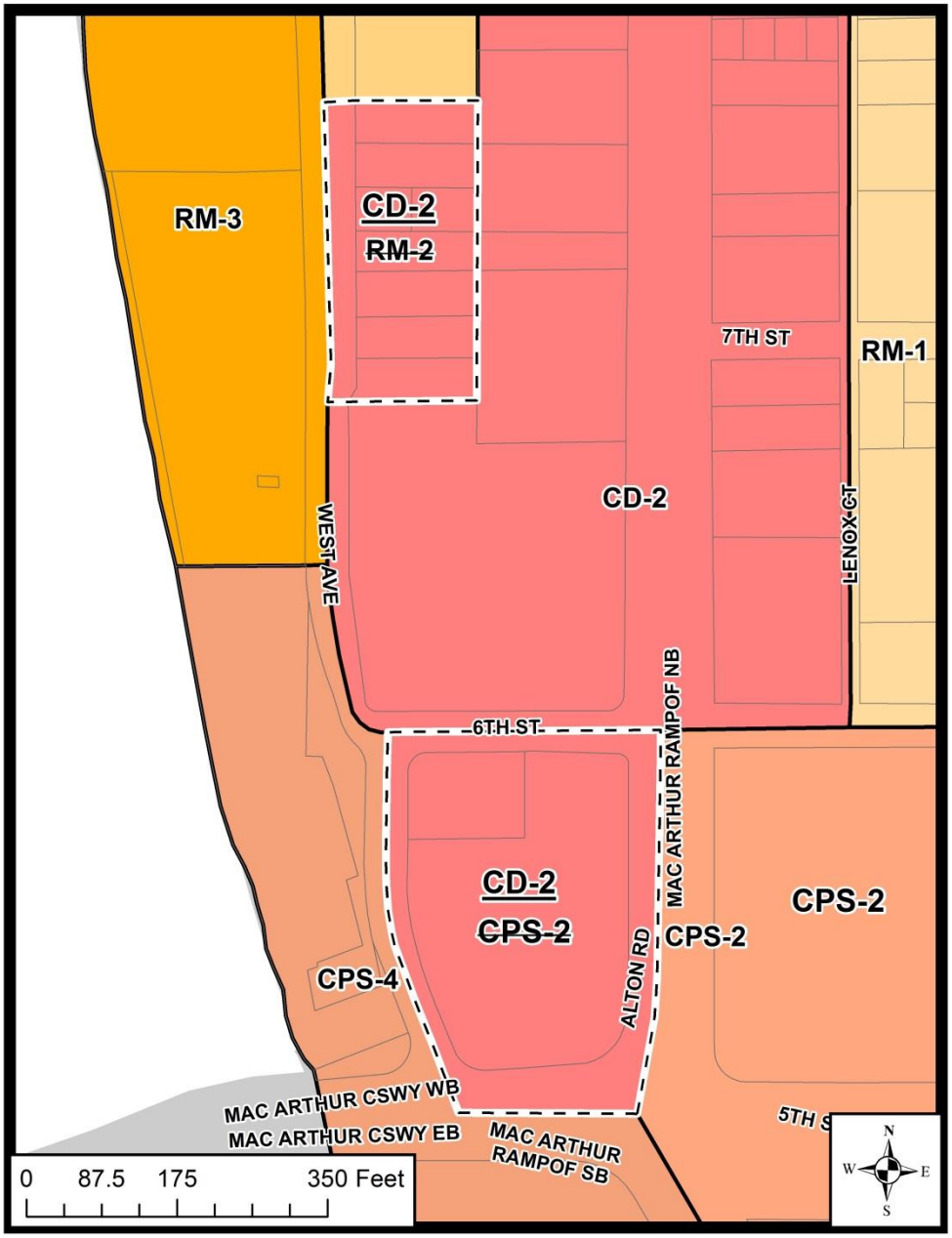
Verified by: _____
Thomas R. Mooney, AICP
Planning Director

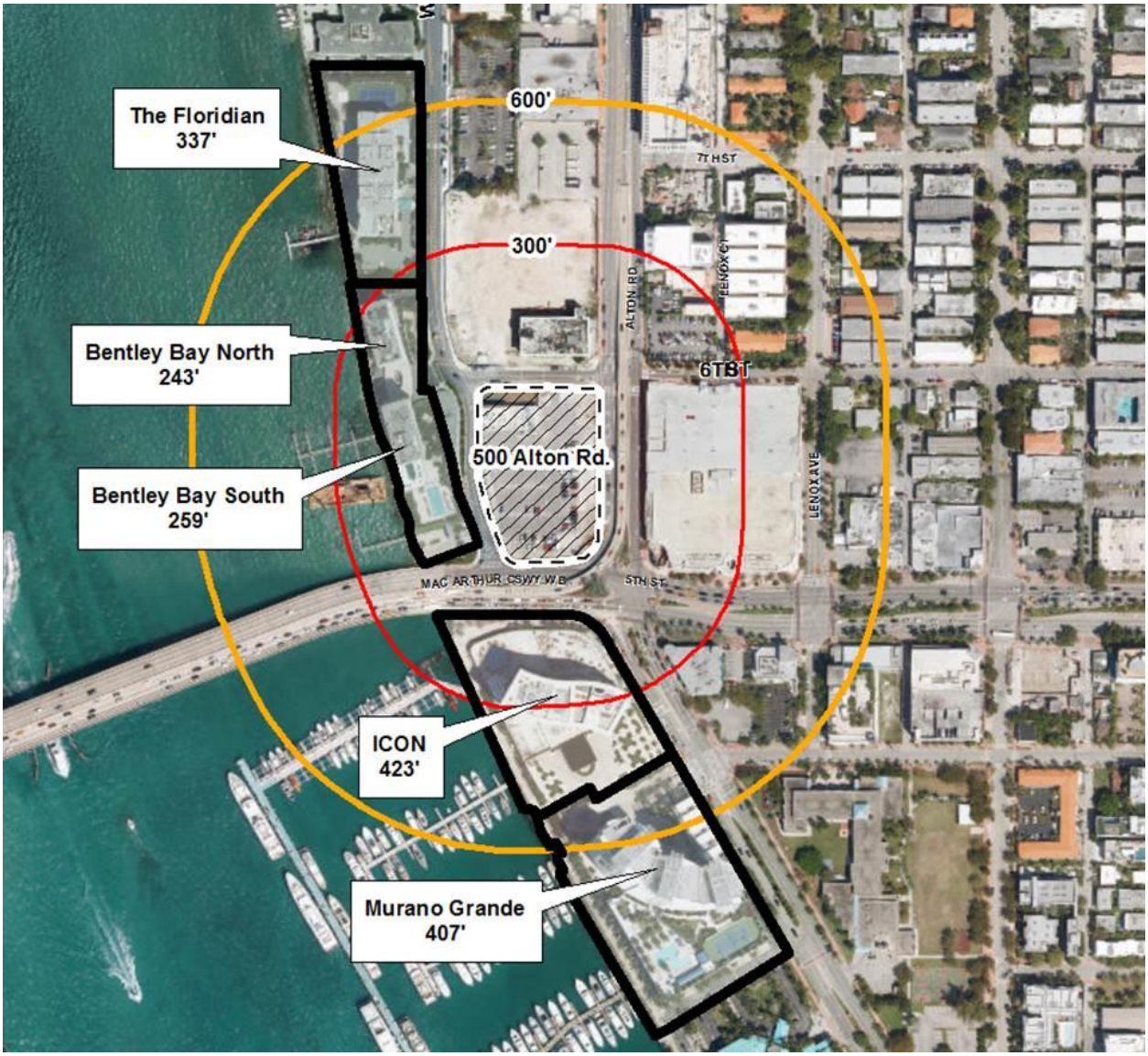
M:\$CMB\CCUPDATES\Land Use and Development Committee\2018\September 28, 2018\500-700 AR - ORD FLUM Amendment - Sep 28 2018 LUDC.docx

ZONING/SITE MAP



Proposed Zoning




The Floridian
337'
600'
300'
Bentley Bay North
243'
Bentley Bay South
259'
500 Alton Rd.
ICON
423'
Murano Grande
407'
7TH ST
6TH ST
5TH ST
ALTON RD.
LENOX CT
LENOX AVE
MAC ARTHUR CSWY W/B

ALTON ROAD GATEWAY AREA DEVELOPMENT REGULATIONS – LDR AMENDMENTS

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 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II "DISTRICT REGULATIONS," DIVISION 5, "CD-2 COMMERCIAL, MEDIUM INTENSITY," SECTION 142-311, TO BE ENTITLED "ALTON ROAD GATEWAY AREA DEVELOPMENT REGULATIONS," IS HEREBY AMENDED TO ESTABLISH THE "ALTON ROAD GATEWAY AREA," INCORPORATING THE PROPERTIES BOUNDED BY 8TH STREET ON THE NORTH, ALTON ROAD THE EAST, 5TH STREET/MAC ARTHUR CAUSEWAY/SR A1A ON THE SOUTH, AND WEST AVENUE ON THE WEST, EXCLUDING LOTS 15 THROUGH 22, BLOCK 2, OF THE AMENDED FLEETWOOD SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 28, PAGE 34, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; EXPANDING THE LIST OF PROHIBITED USES, MODIFY THE APPLICABLE SETBACKS, PROVIDE FOR CLEAR PEDESTRIAN PATHS, INCREASE THE ALLOWABLE HEIGHT LIMIT FOR MAIN USE RESIDENTIAL BUILDINGS, TO LIMIT THE MAXIMUM FLOOR PLATE SIZE OF THE TOWER PORTION OF NEW BUILDINGS, ESTABLISH MINIMUM REQUIREMENTS FOR GREEN SPACE AND GREEN ROOFS, AND MODIFY DESIGN REQUIREMENTS WITHIN THE ALTON ROAD GATEWAY AREA, INCLUDING BUT NOT LIMITED TO, DESIGN REQUIREMENTS APPLICABLE TO BUILDING FLOORS CONTAINING PARKING SPACES; AMENDING CHAPTER 130, "OFF-STREET PARKING," SECTION 130-31, "PARKING DISTRICTS ESTABLISHED," TO MODIFY THE BOUNDARIES OF PARKING DISTRICT NUMBER 6 TO INCORPORATE THE ENTIRE ALTON ROAD GATEWAY AREA; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, the entrance to the South Beach neighborhood of the City of Miami Beach via the Mac Arthur Causeway provides an important first impression to residents, guests, and workers; and

WHEREAS, the City intends to create an attractive entrance into the City of Miami Beach adjacent to the Mac Arthur Causeway; and

WHEREAS, Objective 4, entitled "Open Space," of the Recreation and Open Space Element of the City of Miami Beach 2025 Comprehensive Plan is "To require open space in conjunction with every new public and private sector development project…;" and

WHEREAS, Policy 4.2, of the Recreation and Open Space Element of the City of Miami Beach 2025 Comprehensive Plan provides that "The Land Development Regulations of the City Code shall continue to provide some open space in conjunction with all new commercial development projects through setbacks or other requirements;" and

WHEREAS, the City seeks to encourage development of significant public green spaces for the South Beach neighborhood; and

WHEREAS, Policy 5.2, entitled “Pedestrian Safety,” of the Transportation Element of the City of Miami Beach 2025 Comprehensive Plan provides that “The City shall provide curb cuts and barrier free walkways enabling all pedestrians, specific the elderly and handicapped, to cross intersections, safely and easily;” and

WHEREAS, Policy 5.8, entitled “Beachwalk and Baywalk Projects,” of the Transportation Element of the City of Miami Beach 2025 Comprehensive Plan provides that “The City shall continue the implementation of the…Baywalk Projects in order to further the City’s vision of having a continuous on grade recreational path…;” and

WHEREAS, Objective 10, entitled “Public Shoreline Access,” of the Transportation Element of the City of Miami Beach 2025 Comprehensive Plan provides that “Increase the amount of public access to the beach or shoreline consistent with the estimated public need;” and

WHEREAS, the City seeks to find creative ways to improve the pedestrian environment of the South Beach Neighborhood; and

WHEREAS, the City seeks to Enhance public access to Biscayne Bay; and

WHEREAS, there are existing non-conforming structures adjacent to the Mac Arthur Causeway and its ramps which create blight and negatively impact surrounding areas; and

WHEREAS, the City seeks to encourage the removal of existing non-conforming structures within the boundaries of the Alton Road Gateway area; and

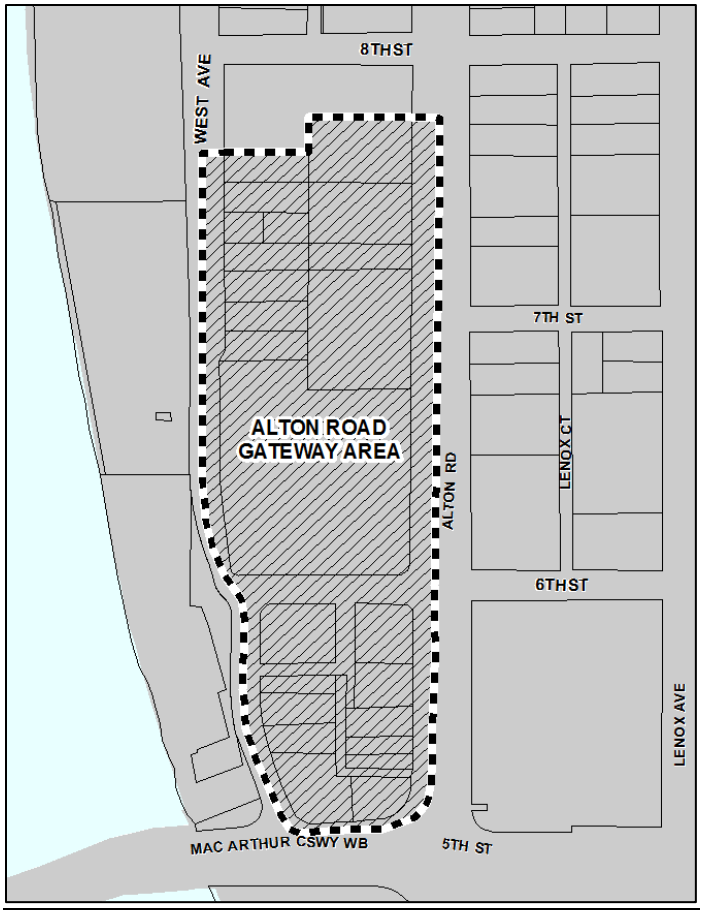
WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Chapter 142, Article II, Chapter 142, "Zoning Districts And Regulations", Article II "District Regulations,” Division 5, “CD-2 Commercial, Medium Intensity,” Section 142-311, is hereby amended as follows:

Sec. 142-311 – Alton Road Gateway Area Development Regulations.

(a) The Alton Road Gateway Area incorporates the parcels bound by 8th Street on the north, Alton Road the east, 5th Street/Mac Arthur Causeway/SR A1A on the south, and West Avenue on the west; excluding lots 15, 16, and 17 of the Fleetwood Subdivision, according to the plat thereof recorded in Plat Book 28, page 34, of the public records of Miami-Dade County, Florida; as depicted in the map below:



(b) The following regulations shall apply to the properties located within the Alton Road Gateway Area; where there is conflict within this division, the regulations below shall apply:

(1) ***Prohibited uses.*** In addition to the prohibited uses identified in section 142-305, the following uses shall also be prohibited: accessory outdoor bar counters, hostels, hotels, apartment hotels, suite hotels, outdoor entertainment establishments, neighborhood impact establishments, open air entertainment establishments, bars, dance halls, entertainment establishments as defined in section 114-1 of this Code, exterior alcoholic beverage service after 12:00 a.m., interior alcoholic beverage service after 2:00 a.m., package stores, any use selling gasoline, storage and/or parking of commercial vehicles on site other than the site at which the associated trade or business is located, in accordance with Section 142-1103, pawnshops, secondhand dealers of precious metals/precious metals dealers, check cashing stores, convenience stores, occult science establishments, souvenir and t-shirt shops, and tattoo studios.

(2) ***Setbacks.*** The setbacks established in section 142-307 are modified as follows:

a. Minimum setback from Alton Road: 10 feet for residential and non-residential buildings.

b. Minimum setback from West Avenue: 35 feet.

c. Minimum setback from 5th Street/Mac Arthur Causeway: 20 feet.

(3) ***Clear Pedestrian Path***. A minimum 10 foot wide "clear pedestrian path," free from obstructions, including but not limited outdoor cafes, sidewalk cafes, landscaping, signage, utilities, and lighting, shall be maintained along all frontages as follows:

a. The "Clear Pedestrian Path" may only utilize public sidewalk and setback areas.

b. Pedestrians shall have 24-hour access to "Clear Pedestrian Paths."

c. Clear Pedestrian Paths shall be well lit and consistent with the City's lighting policies.

d. Clear Pedestrian Paths shall be designed as an extension of the adjacent public sidewalk.

e. Clear Pedestrian Paths shall be delineated by in-ground markers that are flush with the Path, differing pavement tones, pavement type, or other method to be approved by the Planning Director or designee.

f. An easement to the city providing for perpetual public access shall be provided for portions of Clear Pedestrian Paths that fall within the setback area.

(4) ***Height.*** The maximum height for a main use residential building: *440* feet. The maximum height for non-residential structures: 25 feet.

(5) ***Floor plate.*** The maximum floor plate size for the tower portion of a residential building is *17,500* square feet, including projecting balconies, per floor.

(6) ***Residential Buildings Containing Parking.*** Main use residential buildings containing parking, are not required to provide residential or commercial uses at the first level along every façade facing a street or sidewalk as required in section 142-308(a); however, the first level shall be architecturally treated to conceal parking, loading, and all internal elements, such as plumbing pipes, fans, ducts, and lighting from public view.

(7) ***Green space.*** A minimum of 3.2 acres of open green space shall be located to the north of the residential tower, and shall be adjacent to commercial uses. For purposes of this section, green space shall mean open areas that are free from buildings, structures, pavilions, driveways, parking spaces, and underground structures. Such areas shall consist primarily of landscaped open areas, pedestrian and bicycle pathways, plazas, playgrounds, and other recreational amenities. Such green space shall be open to the public at a minimum between the hours of 7 am and 9 pm.

SECTION 3. That Chapter 130, “Off-Street Parking,” Article II, "Districts; Requirements,” Section 130-31, "Parking districts established" is hereby amended as follows:

Sec. 130-31. - Parking districts established.

(a) For the purposes of establishing off-street parking requirements, the city shall be divided into the following parking districts:

* * *

(1) *Parking district no. 6*. Parking district no. 6 includes those properties between Alton Court (alley) and Lenox Court (alley) or with a lot line on Alton Road, where an alley does not exist, from 5 Street on the south to Dade Boulevard on the north, with the exception of properties included in parking district no. 2, as depicted in the map below:

SECTION 4. CODIFICATION.
It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 5. REPEALER.
All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 6. SEVERABILITY.
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 7. EFFECTIVE DATE.
This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this ____ day of _____, 2018.

ATTEST:

_____
Dan Gelber, Mayor

_____
Rafael E. Granado City Clerk

First Reading: _____ __, 2018
Second Reading: _____ __, 2018

(Sponsor: Mayor Dan Gelber)

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

Underscore denotes new language
~~Strikethrough~~ denotes removed language

M:\$CMB\CCUPDATES\Land Use and Development Committee\2018\September 28, 2018\500-700 AR - ORD Alton Gateway LDR - Sep 28 2018 LUDC REVISED 9-20.docx

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **DISCUSSION PERTAINING TO A COMPREHENSIVE PLAN FOR RIDE SHARE LOCATIONS CITYWIDE**

HISTORY:

On January 17, 2018, at the request of Commissioner Kristen Rosen Gonzalez, the City Commission referred the item to the Land Use and Development Committee (LUDC) for consideration and recommendation (Item R5 C).

On February 07, 2018, the LUDC continued the item to a date certain of March 14, 2018. On March 14, 2018, the item was continued to the April 4, 2018 LUDC meeting.

On April 4, 2018, the Land Use Committee discussed the item, The LUDC directed staff to explore what other cities are doing for rideshare services; including the possibility of converting existing loading and taxi zones to allow for rideshare drop-off, and continued the item to the June 13, 2018 meeting.

On June 13, 2018 the item was deferred to July 31, 2018 due to the length of the agenda. On July 31, 2018 the item was deferred to September 05, 2018 due to the length of the agenda. The September 5, 2018 meeting was rescheduled for September 28, 2018.

Analysis

At the April 4, 2018 LUDC, the Committee requested that Planning staff confer with the Parking Department and provide the following for a future discussion:

1. The feasibility of using taxi stands, loading and parking spaces, as well as bike share spaces for ride share access. This could include using freight loading zones on a shared basis.

2. Researching best practices in terms of what other cities are doing for ridesharing services.

At the request of the LUDC, the Planning Department researched what other cities throughout the country are implementing to alleviate the congestion problems that Uber and Lyft often cause within the right of way. As rideshare services are becoming commonplace across the country, several cities are taking initiatives to alleviate traffic congestion caused by the loading and unloading of passengers.

Staff found four cities that have altered the way that their on street parking and passenger curb loading occurs. Fort Lauderdale and San Francisco have implemented different color curb paintings. Seattle and Washington D.C. have repurposed existing parking spaces to allow for passenger loading, or as exists in Seattle, spaces that can be used for different types of loading. Three of the Cities identified are in their pilot phase. Seattle has made amendments to clearly define how they are to use their parking

spaces. The following is a more detailed summary of each of the four programs.

• Washington D.C. The DC Department of Transportation has implemented a one-year nightlife parking demonstration / pilot program. The program reserves four street segments for pick-up and drop-off zones, taking 60 parking spaces out of commission in the area around DuPont Circle bars and restaurants, known for heavy pick-up and drop-off activity from 10pm Thursday night through 7am Sunday morning.

• Fort Lauderdale, FL. The City, in partnership with Lyft, Uber, and yellow cab, has launched a six-month safety demonstration project on E. Las Olas Boulevard to indicate rideshare pick-up and drop-off zones in three locations. They have amended their code to designate the passenger curb loading zones and have allotted drivers 5 minutes or less to complete the loading and unloading of passengers. The loading zones will be operational from 5pm to 3am, Monday through Thursday, and Fridays from 11am to 3am.

• San Francisco, CA. The City has implemented a pilot program, painting white curbs as passenger loading and unloading zones in an effort to eliminate the illegal stopping taking place in lanes meant for other forms of transportation. The Municipal Transportation Agency, the Mayor's office, and private partners have facilitated this program's conception and have introduced geo-fencing to limit customer pick-ups in highly congested areas, transferring them to safer, less congested streets. The concept of geo-fencing can only be implemented with the assistance and guidance of rideshare companies.

• Seattle, WA. Seattle's Department of Transportation is utilizing curb spaces and parking lanes as "flex zones." These spaces are in high demand by the public, so the City's Comprehensive Plan establishes policies that set priority for the flex zone usage by function. In 2018, they updated their parking code to create a new commercial use category, "flexible-use parking," which allows for multi-unit residential, commercial, industrial, and mixed-use development to share parking. In designated areas, drivers can expeditiously load and unload passengers for up to 3 minutes.

The LUDC also requested that staff explore the feasibility of using loading, parking and taxi spaces for ride share usage, including potential locations for a pilot project to maximize the use of those spaces. In discussions with the Parking Department, Staff identified 2 locations where they City could convert existing Freight Loading, Commercial Loading and Taxi Zones to a 'Flex Zone', which will help to address the congestion impacts caused by rideshare companies. The following options can be used in the implementation of a pilot program:

• Existing Freight Loading Zone (FLZ) space locations, as more specifically identified by the Parking Department, along southbound Washington Avenue, just south of Lincoln Road (see map attached).

• Existing Freight Loading Zones and Taxi Zones, as more specifically identified by the Parking Department, at the western edge of Lincoln Road, along northbound Alton Road (see map attached).

If authorized for a pilot program, during implementation hours it is suggested that the city provide Code or Parking Enforcement at the nearest programmed intersections to encourage the use of the spaces and discourage stopping within lanes of traffic. It is also recommended that additional signage be included to increase visibility for these spaces from the travel lanes (see attached image).

The implementation of these pilot programs can serve as a litmus test for further development of Flex Zones within other highly congested areas of the City, or City-Wide. Additionally, if successful, criteria for rideshare pick-up and drop-off for private property can be added to the applicable review criteria for City Land Use Boards.

Finally, the Planning and Parking Departments have had separate meetings with representatives from Uber and Lyft regarding the most frequented pick-up and drop-off locations. Both Uber and Lyft have agreed to do their part for the implementation of designated pick up and drop off locations, by communicating to their drivers' new and existing regulations and by urging drivers to use the assigned pick up and drop off spaces. The attached map, which shows general usage areas for Lyft on Miami Beach, is reflective of the limited information provided by the ride share companies, but provides a good basis for where flex zones can potentially be located.

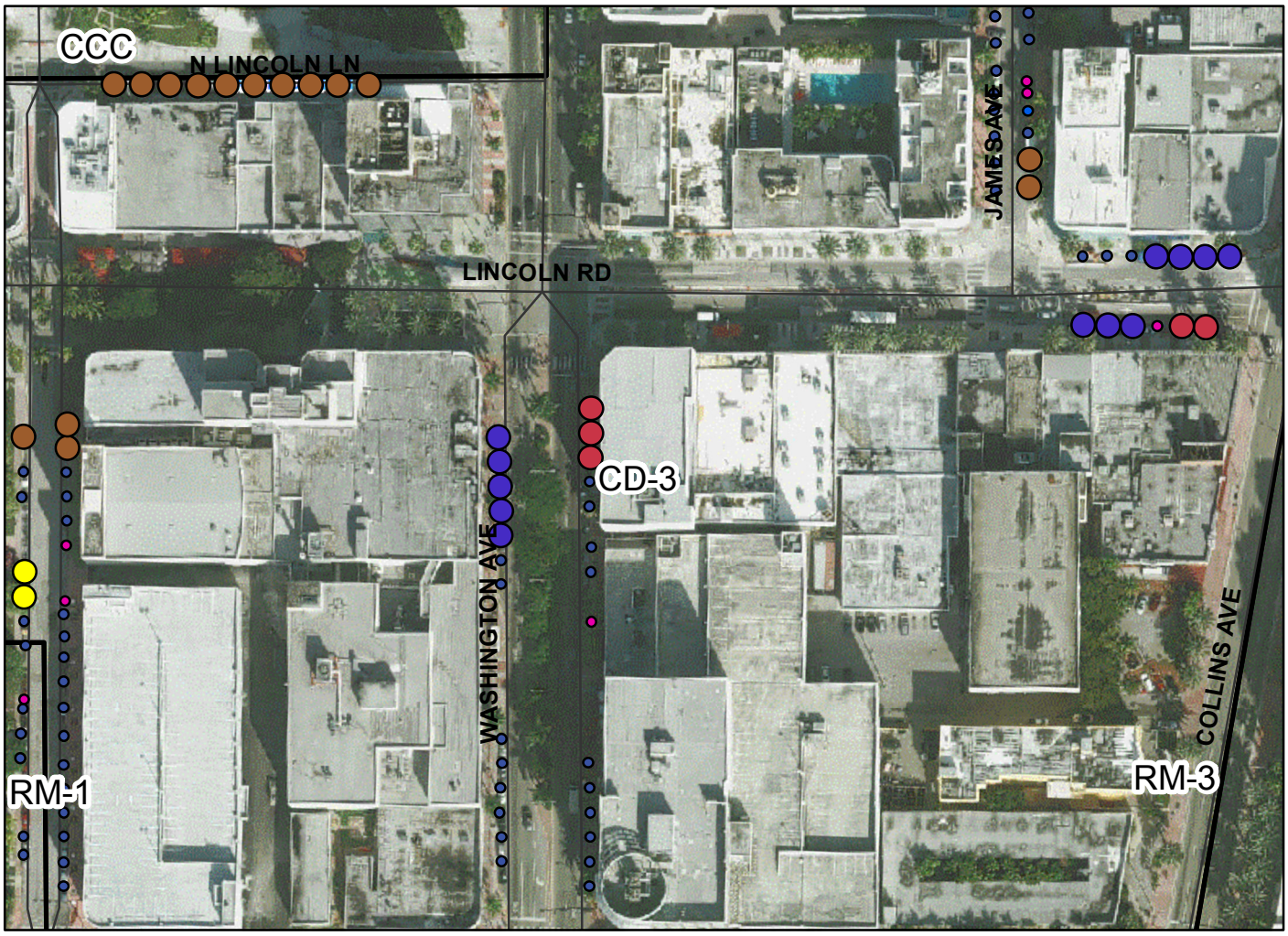
CONCLUSION:

The Administration recommends the LUDC discuss the item and provide appropriate policy direction. If there is consensus on the item, it is further recommended that it be sent back to the full City Commission, with a recommendation to authorize a pilot program in accordance with the above noted parameters.

ATTACHMENTS:

	Description	Type
🗋	Flex Zone Map - Washington Ave	Memo
🗋	Flex Zone Map Alton Rd	Memo
🗋	Rideshare Signage	Memo
🗋	Rideshare Usage - LYFT	Memo

Fexible Use of Freight Loading Zonez, Commercial Zones and Taxi Zones



0 125 250 500

Feet

N

W E

S

Legend

STREETS

ZONING DISTRICT

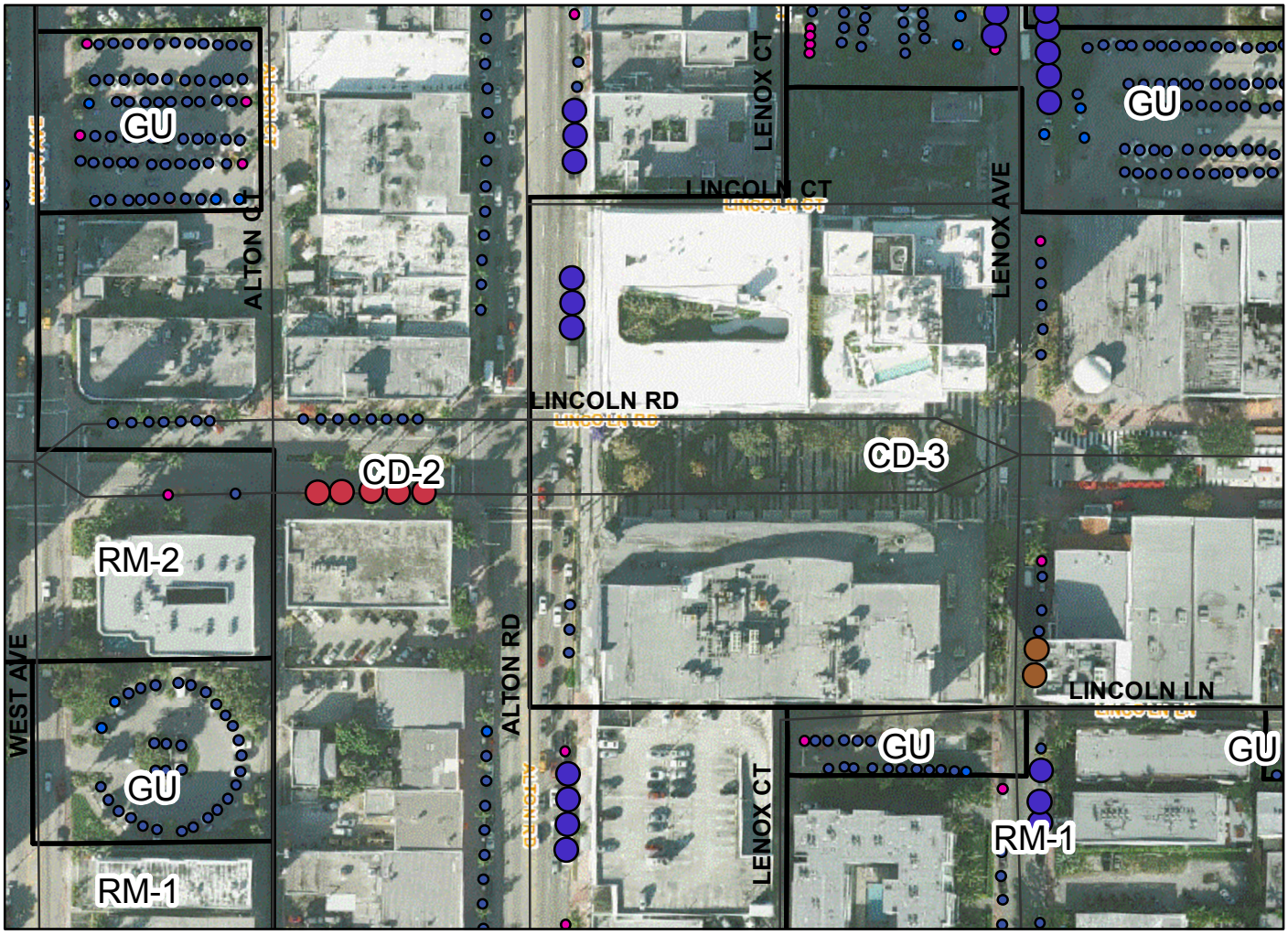
PARKING_SPACES

TYPE

- Commercial Loading Zone
- Freight Loading Zone
- Taxi Zone
- Passanger Loading Zone
- Guest Loading Zone
- Handicapped Parking
- Motorcycle Only
- Other
- Parking Space
- Under Construction

All data used in these maps are created by and maintained by the City of Miami Beach. This map was created for informational purposes only and for the sole use of the Planning Department
The purpose of this map is to show the location of parking spaces noted as Commercial, Freight Loading, Passenger Loading and Taxi Zones.

Fexible Use of Freight Loading Zonez, Commercial Zones and Taxi Zones



0 125 250 500

Feet

N

W E

S

Legend

STREETS

ZONING DISTRICT

PARKING_SPACES

TYPE

- Commercial Loading Zone
- Freight Loading Zone
- Taxi Zone
- Passanger Loading Zone
- Guest Loading Zone
- Handicapped Parking
- Motorcycle Only
- Other
- Parking Space
- Under Construction

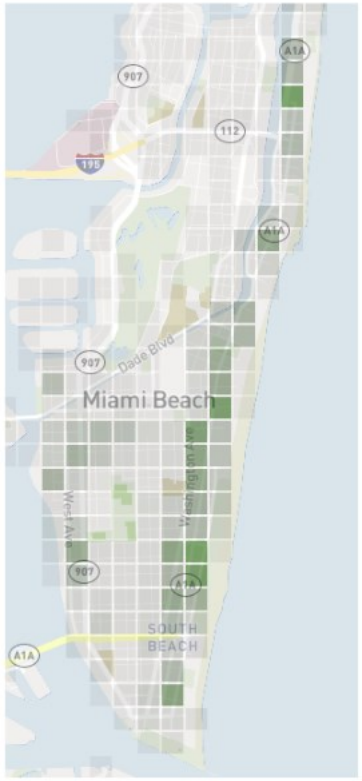
All data used in these maps are created by and maintained by the City of Miami Beach. This map was created for informational purposes only and for the sole use of the Planning Department The purpose of this map is to show the location of parking spaces noted as Commercial, Freight Loading, Passenger Loading and Taxi Zones.

RIDE-SHARE PICK UP LOCATION

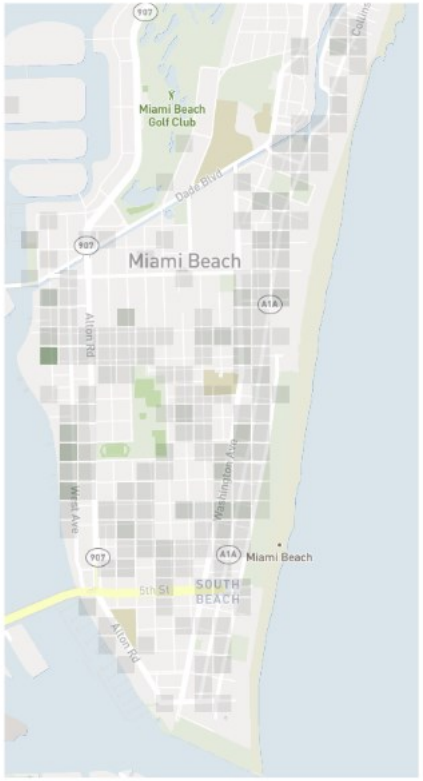
TRANSPORTATION NETWORK COMPANIES

UBER

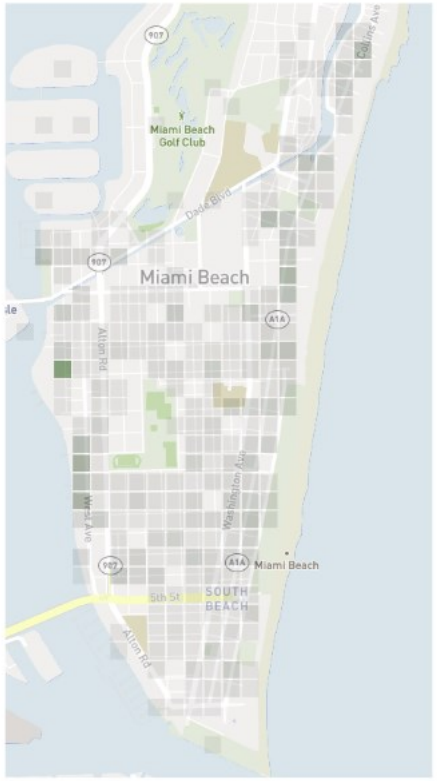
LYFT Heat Map (Amount of Rides)



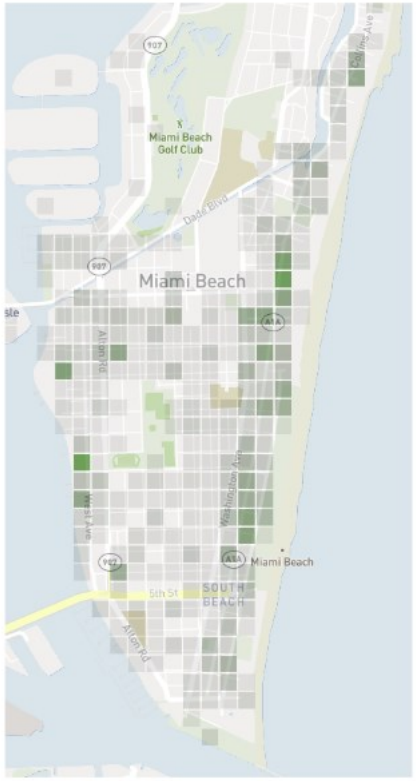
All day



6m-9am



9am-12pm



12pm-3pm

Highest Lowest

Item 4.

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Eve A Boutsis, Cheif Deputy City Attorney

DATE: September 28, 2018

TITLE: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE, CHAPTER 104, ENTITLED, "TELECOMMUNICATIONS," ARTICLE I, ENTITLED "COMMUNICATIONS RIGHTS OF WAY," BY AMENDING CHAPTER 104, TO BE CONSISTENT WITH STATE LAW, SECTION 337.401, FLORIDA STATUTES RELATING TO THE USE OF RIGHTS-OF-WAY FOR UTILITIES SUBJECT TO REGULATION; PERMITS; AND FEES; PROVIDING FOR REGULATIONS RELATING TO SMALL CELL COMMUNICATIONS CONSISTENT WITH STATE LAW; REQUIRING DESIGN AND APPROPRIATENESS REVIEW AND APPROVAL BY PLANNING STAFF; REMOVING REVIEW BY THE DESIGN REVIEW BOARD BY MODIFYING SECTION 118-71, ENTITLED, "POWERS AND DUTIES," AND SECTION 118-252, ENTITLED, "APPLICABILITY AND EXEMPTIONS"; AND CONTINUING HISTORIC PRESERVATION BOARD REVIEW UNDER THE CERTIFICATE OF APPROPRIATENESS CRITERIA FOUND AT SECTION 118-102, ENTITLED, "POWERS AND DUTIES," SECTION 118-251, ENTITLED "DESIGN REVIEW CRITERIA," AND SECTION 118-564, ENTITLED, "DECISIONS ON CERTIFICATES OF APPROPRIATENESS"; WHICH HISTORIC DISTRICT REVIEW IS CONSISTENT WITH STATE LAW; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY AND AN EFFECTIVE DATE.**

HISTORY:

Please see Memorandum attached.

ATTACHMENTS:

	Description	Type
🗋	LUDC Memo on Telecommunications Ordinance Draft 20	Memo
🗋	Miami Bch Table of Violations provider chart of comments	Other
🗋	Telecommunications ROW 2017 revisions draft 20	Ordinance

Land Use and Development Committee Memorandum

TO: Land Use and Development Committee

FROM: Eve A. Boutsis, Office of City Attorney

DATE: September 28, 2018

SUBJECT: **Draft Telecommunications Ordinance**

TITLE: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE, CHAPTER 104, ENTITLED, "TELECOMMUNICATIONS," ARTICLE I, ENTITLED "COMMUNICATIONS RIGHTS OF WAY," BY AMENDING CHAPTER 104, TO BE CONSISTENT WITH STATE LAW, SECTION 337.401, FLORIDA STATUTES RELATING TO THE USE OF RIGHTS-OF-WAY FOR UTILITIES SUBJECT TO REGULATION; PERMITS; AND FEES; PROVIDING FOR REGULATIONS RELATING TO SMALL CELL COMMUNICATIONS CONSISTENT WITH STATE LAW; REQUIRING DESIGN AND APPROPRIATENESS REVIEW AND APPROVAL BY PLANNING STAFF; REMOVING REVIEW BY THE DESIGN REVIEW BOARD BY MODIFYING SECTION 118-71, ENTITLED, "POWERS AND DUTIES," AND SECTION 118-252, ENTITLED, "APPLICABILITY AND EXEMPTIONS"; AND CONTINUING HISTORIC PRESERVATION BOARD REVIEW UNDER THE CERTIFICATE OF APPROPRIATENESS CRITERIA FOUND AT SECTION 118-102, ENTITLED, "POWERS AND DUTIES," SECTION 118-251, ENTITLED "DESIGN REVIEW CRITERIA," AND SECTION 118-564, ENTITLED, "DECISIONS ON CERTIFICATES OF APPROPRIATENESS"; WHICH HISTORIC DISTRICT REVIEW IS CONSISTENT WITH STATE LAW; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY AND AN EFFECTIVE DATE.**

BACKGROUND:

On February 11, 2015, the Mayor and City Commission adopted ordinance No. 2015-3924, which updated the City Code Chapter 104, relating to "Telecommunications" in order to be consistent with updates in federal and state law.

Effective July 1, 2017, the state of Florida enacted new updates to its telecommunications laws, particularly as it relates to Section 337.401, Florida Statutes, entitled "Use of right-of-way for utilities subject to regulation; permit; fees." Additionally, effective July 1, 2018, the State

Legislature also updated Section 202.24, Florida Statutes, entitled "Limitations on local taxes and fees imposed on dealers of communications."

On February 14, 2018, based upon the foregoing amendments, the Mayor referred to the Land Use and Development Committee an ordinance relating to telecommunications that would update the City Code and Land Development Regulations to be consistent with updates and preemptions created by the State Legislature.

The Office of the City Attorney hired, outside counsel, Joe Belisle, an expert in telecommunications law, to assist the City in updating the City's Code to be consistent with state and federal law updates.

APPLICABLE LAWS GUIDING DRAFTING OF ORDINANCE:

State law relating to telecommunications:

The principal State statutes pertaining to the City's oversight of communications facilities placed or maintained in the public rights-of-way (ROW) are Sections 202.24, 337.401 and 365.172 Florida Statutes. As previously noted, in 2017, the State legislature adopted further amendments to Chapter 337, of the Florida Statutes, entitled "Contracting; Acquisition, Disposition and Use of Property," creating a new regulatory framework for "small wireless" facilities and further limiting the powers of municipalities and counties over communications facilities in the ROW. Amendments to both Section 202.24 and Section 337.401 created new restrictions on the security that can be required of a provider of communications services' against destruction of public roads and sidewalks and on the fees that may be charged for the use of City light poles in the ROW. Amendments to Section 337.401 also reduced the City's ability to review the placement of certain classes of telecommunications equipment (notably small wireless facilities and micro wireless facilities) within the City ROW.

Section 337.401, Florida Statutes is the main state statute addressing municipal control over utility access to public ROWs. It authorizes "providers of communications services," "pass through providers," and "wireless infrastructure providers" to place communications facilities within the public ROW. With respect to providers of communications services, Section 337.401(3)(a) seeks to foster competition by requiring municipalities to treat providers in a nondiscriminatory and competitively neutral manner in imposing rules or regulations governing placement or maintenance of communications facilities in the ROW.

Under Section 337.401(3)(b), Florida Statutes, cities still retain their police power to regulate and manage municipal rights-of-way. However, any rules adopted by a City to govern the occupation of the public ROW by providers of communications services must be related to the placement or maintenance of facilities in the ROW, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the ROW. Section 337.401(7)(d)12 specifically authorizes municipal ordinances regulating communications facilities in the ROW to address such issues as insurance, indemnification, force majeure, abandonment, municipal liability and municipal warranties. However, the Florida Legislature has largely eliminated municipalities' ability to require a security fund covering work performed by providers of communications services in the ROW. See Section 202.24(b)(1), Florida Statutes.

Section 337.401(3)(g), Florida Statutes prevents a City from using municipal regulation or control over the ROW to exercise regulatory control over a provider of communications services

with respect to matters within the exclusive jurisdiction of the Florida Public Service Commission or the Federal Communications Commission including the operations, systems, qualifications, services, service quality, service territory or prices of a provider of communications services. This is significant because over the past several years, several Commissioners have asked about improving the quality of service by telecommunication providers. In Section 337.401(3)(g), the State Legislature has preempted the City's ability to enhance or regulate telecommunication provider services.

Importantly Section 337.401(7)(k),Florida Statutes states, in pertinent part: "An authority may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area designated by the state or authority. An authority may enforce pending local ordinances, administrative rules, or regulations applicable to a historic area designated by the state if the intent to adopt such changes has been publicly declared on or before April 1, 2017." Accordingly ordinance provisions regarding review by the City's Historic Preservation Board of construction of communications facilities within historic districts have not been modified for all the Historic Districts, **except the Tatum Waterway Expansion which occurred after April 1, 2017**. The Tatum Waterway will be reviewed by the Planning Staff, administratively. Notice provisions for telecommunications facilities have been modified as there is not address for a right-of-way, and as part of the review, the location can be moved. Solely newspaper advertising shall be required. There are, however, changes to Section 337.401 which create a truncated time table for review and approval of small wireless facilities in the ROW. These changes are inconsistent with timely review of proposals by the Design Review Board and Design Review Board approval of these proposals has been eliminated from the City Code.

With respect to small wireless facilities, Section 337.401, Florida Statutes, creates a streamlined process for approving small wireless facilities in the ROW. The dimensions of a small wireless facility are such that antenna facilities can be in an enclosure of no more than 6 cubic feet in volume, and all other wireless equipment associated with the facility can be no more than 28 cubic feet in volume. The state strictly controls the process for City approval or denial of the placement of small wireless facilities in the ROW, and the City is precluded from requiring placement of multiple antenna systems on a single utility pole. Nor may a City require proponents of small wireless facilities to make in-kind contributions, like reserving fiber, conduit, or pole space for the City. The City is also precluded from requiring a minimum distance separation between antennas. Cities are permitted to propose alternative location(s) for a proposed small wireless installation by notifying the communications service provider filing the ROW permit application of the City's request to negotiate. This notice must be given within 14 days of filing the ROW permit application. If the City and provider fail to reach an agreement to relocate the facilities within 30 days after the request to negotiate, then, the City must grant or deny the provider's ROW permit application within 90 days after the date it was filed. In the absence of the City requesting negotiation of an alternative location for proposed small wireless facilities, the City is required to grant or deny a ROW permit for a small wireless facility within 60 days after receipt of the application. Applications rejected on the basis of incompleteness, however, must be rejected within 14 days after filing. The decision to deny a ROW permit application must be in writing and must state the basis for denial and the specific code provisions on which denial was based. The provider then has thirty days to revise and resubmit the application, which the City must grant or deny within 30 days of resubmission.

The City of Miami Beach's light poles are a maximum of 40 feet in height. However, under Fla. Statute 337.401(7)(d)5, a small wireless facility may extend to 10 feet above the utility pole upon which the small wireless facility is to be collocated, to a maximum of 50 feet.

Under Section 337.401(7)(d)11,, Florida Statutes, the City may deny an application for a ROW permit for a small wireless facility, if the proposed facility:

(a) Materially interferes with the safe operation of traffic control equipment.
(b) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
(c) Materially interferes with compliance with the ADA or similar federal or state standards regarding pedestrian access or movement.
(d) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.
(e) Fails to comply with applicable codes.

In exchange for the use of the City's rights-of-way, the City may continue to collect the local communications services tax under Section 202.20, Florida Statutes. Section 337.401(c)1.a limits the maximum permit fee the City can collect from any provider of communications services to $100.00 and requires an offsetting reduction in the rate of the local communications services tax. Under Section 202.24 municipality is also precluded from seeking a tax, fee, or other charge or imposition from "dealers of communications services" for occupying its roads or rights of way. This prohibition embraces "any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services…." Similar restrictions are found in Section 337.401(3)(f), Florida Statutes.

Under Section 337.401(6), a City may charge a "pass-through provider," (person who places or maintains a communications facility in the right-of-way of the City but does not remit local communications services taxes) an annual fee of no more than $500, per linear mile. Were the City to charge someone other than a provider of communications services a fee to place a small wireless facility on a City light pole, the fee may not exceed $150, per pole, annually. See Section 337.401(7)(f)4, Florida Statutes.

State law also requires, 10 day prior written notice of any updates to the City's telecommunications code, be provided to the Secretary of State. The City will issue the notice in compliance with Section 337.401(3)(d), Florida Statutes.

Section 365.172(13), Florida Statutes, is a statute aimed at streamlining approval for construction of multiple wireless communications facilities at the approved site of existing wireless communications facilities. It is not limited to wireless communications facilities in the ROW and it is difficult to see how the proponent of a small wireless facility would benefit from its application. To the extent providers of communications services were authorized to locate large facilities in the ROW, similar to the types of wireless towers commonly placed on private property, Section 337.172 could limit City review of proposals to add to or modify the facilities on those towers. However the process of approving these types of additions or modifications would likely be governed by federal law instead of by Section 365.172(13). Federal law in this area is found in 47 U.S.C. §1455 and 47 C.F.R. §1.40001.

Federal laws relating to telecommunications:

The principal federal laws relating to siting wireless communications facilities in the public ROW are 47 U.S.C. Section 253, 47 U.S.C. Section 332(c)(7), 47 U.S.C. Section 1455(a) and 47 C.F.R. Section 1.40001.

The main concerns addressed by 47 U.S.C. Section 253 are (a) the possibility that excessively restrictive State or local regulation may have the effect of prohibiting an otherwise-qualified entity from providing an interstate or intrastate telecommunications service and (b) that state or local government might fail to manage ROW access on a competitively neutral and nondiscriminatory basis. Accordingly, the statute prohibits these perceived regulatory abuses.

47 U.S.C. Section 332(c)(7), while entitled "Preservation of Local Zoning Authority" is, in fact, a limitation on zoning authority. Subsection 332(7)(B) contains the following limitations on local regulation of the placement, construction and modification of wireless facilities:

> **(B)** Limitations.
> **(i)** The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--
> **(I)** shall not unreasonably discriminate among providers of functionally equivalent services; and
> **(II)** shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
> **(ii)** A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
> **(iii)** Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
> **(iv)** No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
> **(v)** Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

Finally, 47 U.S.C. Section 1455 (a) requires a State or local government to approve certain categories of requests to modify an existing wireless tower or base station, if the requested modification "does not substantially change the physical dimensions" of the tower or base

station. These "eligible facilities requests" include requests for modification of existing wireless towers or base stations that involve:

--collocation of new transmission equipment
--removal of transmission equipment or
--replacement of transmission equipment.

The FCC, in 47 C.F.R. Section 1.40001, clarified certain aspects of 47 U.S.C. Section 1455(a), including the definitions of "base station" and "tower." This rule set out a series of facility modification scenarios that defined the limits of what constitutes substantial changes to the physical dimensions of a tower or base station. The rule also established a 60 day deadline for State or local action on applications seeking approval of eligible facility requests. The only facts to be considered in evaluating these requests are facts related to (a) whether the proposal falls into the three categories of "eligible facilities requests" and (b) whether or not the proposal involves a substantial change in the dimensions of the tower or base station.

No Local Consideration of RF Radiation Hazards:

As previously noted, 47 U.S.C. Section 332(c)(7) precludes local governments from considering the environmental effects of radio frequency (RF) radiation in evaluating the placement construction or modification of wireless facilities, if the facilities comply with FCC regulations concerning such emissions. The City needs to rely on the FCC's determinations with respect to a facility's compliance with RF exposure standards.

The FCC's environmental regulations exclude certain categories of facilities from routine environmental processing, and that has given rise to the false belief that the FCC will not evaluate the environmental effects of RF radiation from such facilities. However, that review is through the FCC, and not through the City. The FCC's environmental rules allow review of any facility that poses a risk of human exposure to hazardous levels of RF radiation. The means of bringing such a hazard to the FCC's attention are set out in 47 C.F.R. Section 1.1307(c), which states:

> If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall submit to the Bureau responsible for processing that action a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process. (See §1.1313). The Bureau shall review the petition and consider the environmental concerns that have been raised. If the Bureau determines that the action may have a significant environmental impact, the Bureau will require the applicant to prepare an EA (see §§1.1308 and 1.1311), which will serve as the basis for the determination to proceed with or terminate environmental processing.

Even if there were no explicit provision for environmental review of RF exposure set out in Rule 1.1307(c), 47 C.F.R. Section 1.3 allows the provision of any FCC rule to be waived upon a showing of good cause. Therefore, regulatory relief can be had whenever mechanical application of an FCC rule is inimical to the public interest, provided the application is made directly to FCC and substantiated.

Shot Clocks

Many of the State and federal statutes discussed above place time limits within which State and local authorities are required to act on wireless facility siting requests. This “shot clock” concept was first developed in the context of determining when to permit the filing of a court action under the provisions of 47 U.S.C. 337(c)(7), seeking relief from regulatory delay. There, the FCC decided that a reasonable time for State or local regulatory action on a wireless facility’s siting request was: (1) 90 days for review of a completed application for collocation; and (2) 150 days for other completed applications. Failure to meet these "shot clock" deadlines creates a legal presumption that the zoning agency "failed to act" under federal law and gives an applicant the ability to bring legal action, in an expedited process, within 30 days of the deadline having passed.

State law provides two different shot clocks, one for approving small wireless facilities under Florida Statutes Section 337.401(7) and one for approving additions to and modifications of existing facilities under Florida Statutes Section 365.172(13). Under Subsection 337.401(7)(d)7, the City has 14 days to determine the completeness of a permit request and to notify the registrant via email whether the request is complete. During this same 14 day period, Subsection 337.401(7)(d)4 allows the City to request that the registrant relocate a proposed small wireless facility to a different site in the ROW.

A relocation request under Subsection 337.401(7)(d)4 triggers a 30 day negotiation period. At the end of this period, if the registrant accepts the relocation proposal, the permit request is deemed granted for the new location and for all other locations in the application. Subsection 337.401(7)(d)10 allows registrants to specify up to 30 small wireless facilities in a single consolidated ROW permit application and allows, but does not require, the City to consider individual facilities separately for purposes of assessing completeness.

Under Subsection 337.401(7)(b)2, a registrant’s request for waiver of design standards must be acted upon within 45 days of the request. Subsection 337.401(7)(d)(8), requires City action on a complete ROW permit request within 60 days after receipt of the application. Otherwise the ROW permit is deemed granted. This time frame for action is altered if the City requests to negotiate relocation of a small wireless facility under Subsection 337.401(7)(d)4. In that case the City must grant or deny the original application within 90 days after the date the application was filed. Regardless of the applicable timeframe for action, if a request for a ROW permit application is denied, Subsection 337.401(7)(d)9 affords the registrant 30 days after notice of denial to resubmit the application and cure deficiencies identified in the denial. The City then has 30 days to act on the resubmitted permit request, or it is deemed granted.

Subsection 337.401(7)(f)5.c. imposes an additional deadline on the City in cases where (a) an applicant files to collocate a small wireless facility on a City utility pole that does not support an aerial facility used to provide communications services or electric services and (b) make-ready work or pole replacement is needed to support the proposed collocation. Under those circumstances, the City has 60 days from receipt of a complete application to provide the applicant with a good faith estimate of the costs of any make-ready work or the costs of any pole replacement needed to enable the pole to support the collocation.

The shot clock established by Florida Statutes Section 365.172(13) distinguishes between applications proposing joint location of wireless facilities (which joint location is called a “collocation” in this statute) and applications for “any other wireless communications facility.”

Under Subsection 365.172(13)(d)1, an application proposing a "collocation" must be acted upon within 45 business days after the application is determined to be properly completed. Subsection 365.172(13)(d)2 requires action on all other applications for a wireless communications facility, i.e. action on applications that are not a "collocation", be completed no later than 90 business days after the application is determined to be properly completed. Applications which are not acted upon within the time frames of Subsections 365.172(13)(d)1 and 2 are deemed granted.

In calculating dates for completeness, an application is submitted or resubmitted on the date it is received by the City. Subsection 365.172(13)(d)3a, gives the City 20 business days to notify an applicant that its application is incomplete. Otherwise, the application is deemed complete. An incomplete application may be resubmitted within reasonable timeframes established by the City, and the City again has 20 business days to rule on its completeness (or the application is deemed complete).

The shot clock established by 47 C.F.R. Section 1.4001 applies to consideration of applications for approval of "eligible facilities requests" under 47 U.S.C. Section 1455(a). 47 C.F.R. Section 1.40001, specifies a 60-day shot clock for processing eligible facilities requests. This 60-day period begins when a permit request is filed and is subject to tolling if the request is incomplete.

In this connection, the information to be provided in request for ROW permit for an eligible facilities request is limited to documentation or information "reasonably related to determining whether the request meets the requirements [of 47 C.F.R. Section 1.40001.]" The City has 30 days to provide the registrant written notice of the permit request's incompleteness, delineating all missing documents and information. When this written notice is issued, the running of the 60-day period stops until the registrant files a supplemental submission. Thereafter, the City has ten days to provide a second or subsequent notice of incompleteness, which halts the running of the 60 day period until a second or subsequent supplemental submission it submitted.

The remedy for a failure to act on an eligible facilities request within the 60 day period is that the request is deemed granted. However the remedy is not effective until the registrant notifies the City in writing that the request is deemed granted and the City may bring claims related to the request in any court of competent jurisdiction.

DRAFT ORDINANCE:

Below is a synopsis of the material modifications proposed to the telecommunications ordinance.

1. Modifications to our code to be consistent with the new requirements of Sections Fla. Stat. 337-401, and 202.24. The material modifications to State law, identified above at pages 2-4, above, are incorporated into the City's telecommunications ordinance.

2. The City's time tables for review are modified to comply with the more limited, narrow review time required by state law. Due to the time constraints, review by the Design Review Board has been removed. Design Review BOard and Public Works shall administratively review applications outside of historic districts. Historic Preservation Board review has not been modified, see below.

3. As both state and federal law continue to recognize historic districts created prior to April

1, 2017, review by the Historic Preservation Board remains as currently drafted. Additionally, due to the City's Charter, Section 1.06, entitled "Public vote required prior to enacting reduced powers and duties for Historic Preservation Board, or less stringent historic preservation standards or regulations," no modifications were made to the powers and duties of the Historic Preservation Board. Some telecommunications providers argue that state law, as the City's review of an application supersede the powers of the Board. As an application and review by the Board often requires at least 90 days prior to a hearing is obtained, and requires a 30 day notice of the public hearing on the application, no modifications were made to the review by the Board.

4. Removal of the City's mandatory 500 foot distance requirement between antennas of small wireless facilities.

5. All fees and permitting provisions have been modified to be consistent with state and federal law.

6. Removal of security bond requirement to be consistent with 202.24, Florida Statutes.

Industry Meetings and Issues that remain in dispute:

Please note, that the City has conducted several meetings with industry groups, including but not limited to representatives of Crown Castle, Verizon, AT&T, Hotwire, T-Mobile, and Mobilitie. The City has modified the draft ordinance based upon the industry meetings. However, several industry requests were not made to the draft ordinance, particularly, as it relates to review by the Historic Preservation Board (due to the City's Charter Section 1.06, and the state recognition of Historic Districts created prior to April 1, 2017). The areas that the City has not agreed to the requests of the industry are as follows:

1. An industry member believes they should own replaced poles. Per, Fla. Stat. Section 337.401(7)(f)5c, the state law provides that the poles remain the City's property.

2. At Section 104-4(h), the industry objects to providing an inventory, alleging that their equipment may be targeted for attack or damage. However, their applications are not confidential and the information is readily available to anyone in the public. The inventory simply makes City staff have ready access to the information versus searching for the information, should a pole need to be moved, replaced, or maintained.

3. At Section 104-6(c)(8), Crown Castle, which is often considered a pass-through provider, leases out space within the poles it places on the ROW. The City has a right to know who the lease provider is, as the lessee is required to pay the City the Communications Tax. One way of checking to ensure payments are occurring is to know who is leasing the poles. Crown Castle, as a pass through provider does not pay communications tax, but, would pay the $500/ per linear mile, fee under Florida Statutes Section 337.401.

4. At Section 104-6(h), the industry objected to the restatement of State law. No edits were made to the City's draft.

5. At Section 104-6(t), the industry objected to paying the filing fee for going to the Historic Preservation Board or paying the associated advertising and notice fees. State law does

over all limit fees and reimbursements, due to the Communications Tax, rationalizing that the City is collecting that tax. However, the state has also recognizing the powers of Historic District Regulations. Our City has a Historic Preservation Board, and notice required under that Board's rules, which require advertising, posting, and mailing to those within 375 feet. As such, the City should not be required to foot the bill for the telecommunications companies. Moreover, the application fee, is now for 1-30 applications (and not just one application), thus, reducing the costs to the providers. We have removed the mailed notice and posting requirement, as there is no street address, no building. The notice would be easy to lose, and is very costly. The advertising remains a requirement. We have also accommodated, at one hearing, up to 30 applications. Currently the Board only hears 14 – 16 items during a meeting. Allowing a provider to have 30 applications (consistent with state law) in one hearing, is a huge accommodation to the providers. The City must cover its costs for holding the hearing, and the provider should pay for the costs associated with the advertising.

6. At Section 104-6A(1), the Industry objected to identifying structures in the ROW, when applying for permits to locate small wireless facilities in the ROW. The City's expert recommends leaving this language in the draft code. It would assist staff in deciding whether to negotiate an alternate site for the proposed small wireless facility of for assessing the impact on historic districts.

7. At Section 104-6A(p), the Industry objected to the limiting of Board review at 30 small wireless facilities. No change was made. The Board cannot review more applications in one meeting. Other applications would not be heard.

8. At Section 104-14, the Industry objected to the City's Limited Guarantee by the provider of $50,000. The state removed the municipal right to obtain a security fund. Accordingly, the City is seeking additional protection, should the streets, utilities, or public injured. This is above any Insurance requirements. It is a safeguard for the City.

9. At Section 118-102, the Industry objected to complying with the City's schedule for Historic Preservation Board hearings. The state has recognized the City's right to continue to respect and have special regulations for historic districts. The City's volunteer board meets once a month. Moreover, it takes time to provide adequate notice to the community, via advertising (posting and mailing removed) but the 30 day advertising and the "Resident's Right to Know" shall be complied with. The time frame for telecommunications is consistent with the requirements for all other applicants to the Board. Additionally, it would be impossible for staff to reduce or shorten the time period for review, as there are numerous applications pending before staff.

10. The Industry would like to eliminate some of the Criteria for the Historic Preservation Board's review. Some of the criteria, when analyzed by staff, are found to be "inapplicable" as it relates to a telecommunications application. Nevertheless, removal of the criteria would diminish the power and authority of the Board, inconsistent with the City's Charter, Section 1.06, entitled: "Public vote required prior to enacting reduced powers and duties for Historic Preservation Board, or less stringent historic preservation standards or regulations," and which provides:

> Any change to City Code Chapter 118, Article II, Division 4, "Historic Preservation Board," or City Code Chapter 118, Article X, Divisions 1—4,

"Historic Preservation," which, whether through amendment, exemption, repeal, or otherwise, reduces the powers and duties of the City's Historic Preservation Board, or creates less stringent historic preservation standards or regulations, shall, before becoming effective be approved by a majority of the voters in a Citywide referendum.

MIAMIBEACH

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

OFFICE OF THE CITY ATTORNEY
Tel: 305-673-7470, Fax: 305-673-7002

September 28, 2017

Enclosed are the industry comments to the draft ordinance. In bold, and red, are the City's responses to their position. In some cases, we modified the draft to accommodate the requests made by the industry. When the accommodation was not made, the reason for the City's decision not to change a provision is provided, in bold, and red.

Thank you.

Eve A. Boutsis
Chief Deputy City Attorney

MIAMI BEACH ORDINANCE – CURRENT PROPOSED DRAFT 15 received 8-15-2018
TABLE OF MAJOR VIOLATIONS OF STATE LAW

Ordinance Section # & page reference	Ordinance language	Statute language it violates	Notes
Sec. 104-4(h) p.11 **Unlawful inventory requirement**	Registrant shall renew its registration with the City each year, on or before October 1. The registration renewal shall include an inventory of the communications facilities, poles, towers, underground lines and equipment cabinets registrant installed in public rights-of-way in the City during the period from June 30 of the previous year to the July 1 immediately preceding the registration renewal filing. Additionally, the registration renewal shall include an inventory of the communications facilities, poles, towers, underground lines and equipment cabinets registrant abandoned in the public rights-of-way in the City during this same June 30 to July 1 period. These inventories shall identify the individual items and their locations [or, for abandoned items which have been removed, their prior locations] with sufficient detail to enable the City to verify the identity and location of each item on the inventories. Within 30 days of any change in the information required to be submitted	337.401(3)(a): "a municipality or county may require a providers of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the municipality or county and to provide the name of the registrant; the name, address, and telephone number of a contact person for the registrant; the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission, the Federal Communications Commission, or the Department of State; and proof of insurance or self-insuring status adequate to defend and cover claims." 337.401(7)(c) "Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way. 337.401(7)(h) Except as provided in this section or specifically required by state law, an authority may not adopt or enforce any regulation or placement or operation of communications facilities in the rights-	Inventory requirement exceeds the materials that the City can require in association with registration under Section 337.401(3)(a), F.S. **This statute is not a limitation on the City's ability to enforce reasonable rules under Section 337.401(1)(a).** Such inventory requirement is not expressly stated in either Section 337.401(3)(a) or 337.401(7) and thus the City is not authorized to regulate and require such information pursuant to 337.401(7)c) and (7)h). **Inventory required Reasonable rule relating to abandonment of equipment. Section 337.401(7)(a)(12).** In addition, such information exceeds the information necessary to determine whether or not the communications facility complies with Applicable Codes and thus such inventory requirement violates 337.401(7)(b)2. **There is no specific prohibition. They do not want to provide a list to the City – but the City needs the information for facility of use purposes. In short, ultimately, these locations are placed into GIS**

	pursuant to subsection (c) hereof, a registrant shall provide updated information to the City. Failure to renew a registration may result in the City restricting the issuance of additional permits until the lapsed registrant has complied with the registration requirements of this Article. If equipment is abandoned it must be removed by the registrant from the rights-of-way, as delineated in this Article.	of-way by a provider . . . " 337.401(7)(d)2: "An applicant may not be required to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified the application."	**anyway, so their concern is a non-concern. What the list allows is for an easy way to look under the location and be able to easily contact the company to say, the light is out or the pole is down, and you must fix the situation immediately, per our code**.
104-6(c)(5) at p.14 **As applied through 104-6A(a)(1) definition of Applicable Codes at pp. 24-25** **Unlawful request for excessive information**	(5) For purposes of assessing impact on right of way resources, effects on neighboring properties and potential for including multiple wireless facilities or repurposed structures, information on the ability of the public rights-of-way to accommodate the proposed facility, including both information that identifies all above-ground ground structures (including light poles, power poles, equipment boxes and antennas), currently existing in the public rights-of-way in the City within a 500-foot radius of the proposed facility and information that identifies all below-ground structures currently existing in the public rights-of-way in the City within a 50-foot radius of the proposed facility, if available (such	337.401(7)(d)2: "An applicant may not be required to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified the application." **Under state law [Section 337.401(7)(d)(5)] the provider can be as tall as any other poll within 500 feet. We are using same criteria as providers are utilizing under state law, and gives City a better understanding of the street scape, street furniture and heights. It ensures compliance with the existing infrastructure and compliance with the heights.**	Industry objects to the extent applied to SWFs, particularly those located within the public ROW as violating Section 337.401(7)(d)2 by requesting information that exceeds what is relevant to determine compliance with Applicable Codes. The typical jurisdiction requests information 25-50' from the proposed site with one exception - Information regarding the nearest pole up to 500' to determine max height allowed. **The City disagrees. The City has a right to know what is in the ground and be able to inspect. Moreover, aesthetics are important and the comparison in height of structures is important to the aesthetic of the City. There is no hardship or impingement of any right.**

	information may be provided without certification as to correctness, to the extent obtained from other registrants with facilities in the public rights-of-way);		
104-6(h) at p.17 **Unlawful mandatory undergrounding requirement of SWFs**	Removal or relocation at the direction of the City of a registrant's communications facility in public rights-of-way shall be governed by the provisions of Florida Statutes Section 337.403 and 337.404, as they may be amended from time to time. Subject to the aforementioned Florida Statutes Section 337.403 and 337.404 and other provisions of law, whenever existing overhead utility distribution facilities are converted to underground facilities pursuant to Article V of Chapter 110 of this Code, any registrant having communications facilities on poles that are to be removed shall arrange for the conversion to underground facilities on the same terms and conditions as the other utilities that are being converted to underground facilities. This underground conversion requirement is subject to any waiver that may be granted pursuant to Florida Statutes Section 337.401(7)(i).[i]	337.401(1)(a) and (3)(a) provides general access to communications facilities including small wireless facilities.	Mandatory undergrounding of SWFs and micro wireless facilities that have the effect of denying public ROW access for installation of SWFs and micro facilities is unlawful even when allowing for a waiver process which by its nature is subjective and opens up the City to inconsistent implementation that could give rise to discrimination claims. See attached Industry April 2018 White Paper re limitations on undergrounding small wireless facilities. **The City has explained this already to the providers already. If capable of being undergrounded, then it is. If the technology does not support it, then it can't be undergrounded. Section 337.401(7)9i), provides for a waiver under State law. So, how can they argue discriminatory when the state law provides a waiver. Moreover, if the equipment does not work underground, then obviously it can't be undergrounded. We have no district in the City that requires all utilities to be underground. City is contemplating**

			undergrounding electricity, but, not requiring all utilities to be underground. I believe this is a fear of nothing in real application.
104-6(t)(5) **Unlawful fees**	Registrants are required to locate wireless or facilities within rights-of-way in a manner that minimizes their impact in the City, including without limitation Miami Beach Historic Districts. Whenever a registrant applies for a permit to locate a wireless facility in a right-of-way within a Miami Beach Historic District, a copy of the permit application shall be simultaneously served on the City of Miami Beach Historic Preservation staff, along with the required filing fee. In this connection, Historic Preservation review fees are fees of general applicability unrelated to placement of facilities in the public rights-of-way and may be charged pursuant to Florida Statutes Section 202.24(2)(c)6. Within a historic district, registrant must obtain the approval of the Historic Preservation Board for the design and location of the wireless facility or communications facility, in accordance with the board's appropriateness criteria. The City reserves the right to condition the grant of any permit to locate a wireless	337.401(7)(h) expressly states that the local government may not "impose or collect any tax, fee, or charge not specifically authorized under state law.""	In addition, 337.401(7)(k) that allows local government "to enforce historic preservation zoning regulations" subject to certain limitations, such delegation of authority does not grant the City authority to charge fees for such enforcement of those historic preservation zoning regulations. To interpret otherwise would create a direct conflict with 337.401(7)(h) and 202.24 F.S. See attached Industry May 16, 2018 White Paper re permissible and impermissible fees relating to ROW permits for small wireless facilities. **The State recognizes the existing Historic Districts and review by those boards. Moreover, the application cost is the same for all applicants. This is fair, non-discriminatory application fee. It would otherwise be an unfair advantage to small cell wireless providers. Telecommunications small cell facilities are getting up to 30 applications – heard – under one application. The time and expense of staff reviewing the applications needs to be covered and not subsidized by the City. There is no recommended change in the fee. The**

	facility communications within the right-of-way upon the registrant taking such reasonable measures, consistent with the City's jurisdiction, as the City may determine are necessary to mitigate the impact of the wireless facility on a Miami Beach Historic District. Installation of a pole or tower under this Chapter shall not interfere with a clear pedestrian path, at a minimum the width required by the Americans with Disabilities Act and Florida Building Code.		**noticing requirements, however, have been reduced tremendously, and will overall substantially reduce the cost to the provider as there is no posting or mailed notice required. There would be one advertisement for all 30 locations.**
104-6A(o) at p. 27 **Unlawful limits on permit applications**	(o) At no time shall a registrant hold unconstructed permits for more than ~~thirty (~~30~~)~~ small wireless facilities or for more than ~~thirty (~~30~~)~~ utility poles for the collocation of small wireless facilities. An application will not be accepted (or if inadvertently accepted will be dismissed) if grant of the proffered application, together with grant of all other pending applications of the applicant, would cause the applicant to exceed this limit on unconstructed permits.	337.401(1)(a) and (3)(a) establishes general access to the ROW for communications facilities including small wireless facilities. 337.401(7)(c) and (h) limits the authority delegated to the local government to regulate small wireless facilities within the ROW to those regulatory requirements and limits expressly enumerated within state law. 337.401(7)(c) "Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way. 337.401(7)(h) Except as provided in this	Nothing contained in 337.401(1), 337.401(3) or 337.401(7) limits the number of "open" or unconstructed permits at any given point in time. **To be able to track the work being done and extent of work – this requirement is recommended. Moreover, if not installed, and just a "place holder" that can cause more friction with other providers – as another applicant may want to use same location. The law does not require colocation (use of same pole), so, that means more street furniture for the placement of another pole in same general area, if not almost on top of the other. This is a practical matter. And, if an applicant Completes the work done, then, the applicant can process another**

		section or specifically required by state law, an authority may not adopt or enforce any regulation or placement or operation of communications facilities in the rights-of-way by a provider . . . "	**30 applications. This is not a small amount. The state statute provides for review of 30 applications. The City is consistent with that statutory requirement. The City simply requires completion of construction of the 30 before proceeding to other applications. Otherwise, the City can have a backlog of 100's of approved applications, and another provider can't use same site, as the City cannot require collocation, which will result in more poles, and more street furniture, in the City's ROWs.**
104-6A(p) at p. 27 **Unlawful basis for permit denial**	(p) Applications shall be processed and granted (or dismissed or denied) on a first-come, first served basis. If mutually exclusive applications are filed with the City, the first-filed grantable application shall be granted and the remaining mutually exclusive application(s) shall be dismissed.	337.401(7)(c) and (h) limits the authority delegated to the local government to regulate small wireless facilities within the ROW to those regulatory requirements and limits expressly enumerated within state law	Denial is not based upon list established in 337.401(7)(d)11 and therefore is unlawful **This is practical application – two applications for same location. Our expert disagrees that it is unlawful. Moreover, as the City cannot require collocation, the only practical way to handle the request is to reject the later request.**
Current HPB process exceeds State law 90-day shot clock max allowance	The current draft 15 of Miami Beach's Ordinance does not affirmatively impose the mandatory state shot clock requirements	Section 337.401(7)(d) requires, *inter alia*, that "An authority shall accept applications for permits and shall process and issue permits subject to the following requirements: 8. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of	See attached Industry White Paper regarding applicability of state law shot clocks (and Fee Exemption) to enforcement of historic preservation zoning regulations upon small wireless facilities **The City has to reconcile the conflicting provisions of the state law, which recognizes the power of the HPB. From practical point of view, with a 30 day**

		the application. Note that the shot clock can be as long as 90 days if the negotiations provision is invoked as described in 337.401(7)(d)4.	**notice requirement, and a meeting a month by the HPB, the City cannot take away the power of the HPB without a referendum. Practically, following the City's existing process is the only way to reconcile the power of HPB and the recognition of that power under the state statute. Moreover, the 90 day shot clock is in the Code, at Section 104(6)(t)(10), and most HPB applications are heard within the 90 day shot clock.**

Telecommunications Update Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE, CHAPTER 104, ENTITLED, "TELECOMMUNICATIONS," ARTICLE I, ENTITLED "COMMUNICATIONS RIGHTS OF WAY," BY AMENDING CHAPTER 104, TO BE CONSISTENT WITH STATE LAW, SECTION 337.401, FLORIDA STATUTES RELATING TO THE USE OF RIGHTS-OF-WAY FOR UTILITIES SUBJECT TO REGULATION; PERMITS; AND FEES; PROVIDING FOR REGULATIONS RELATING TO SMALL CELL COMMUNICATIONS CONSISTENT WITH STATE LAW; REQUIRING DESIGN AND APPROPRIATENESS REVIEW AND APPROVAL BY PLANNING STAFF; REMOVING REVIEW BY THE DESIGN REVIEW BOARD BY MODIFYING SECTION 118-71, ENTITLED, "POWERS AND DUTIES," AND SECTION 118-252, ENTITLED, "APPLICABILITY AND EXEMPTIONS"; AND CONTINUING HISTORIC PRESERVATION BOARD REVIEW UNDER THE CERTIFICATE OF APPROPRIATENESS CRITERIA FOUND AT SECTION 118-102, ENTITLED, "POWERS AND DUTIES," SECTION 118-251, ENTITLED "DESIGN REVIEW CRITERIA," AND SECTION 118-564, ENTITLED, "DECISIONS ON CERTIFICATES OF APPROPRIATENESS"; WHICH HISTORIC DISTRICT REVIEW IS CONSISTENT WITH STATE LAW; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the provision of telecommunications services to residents of and visitors to the City of Miami Beach ("City") is both an important amenity and often necessity of public and private life in the City; and

WHEREAS, the demand for telecommunications services has grown exponentially in recent years, requiring the continual upgrading of telecommunications equipment and services to satisfy such demand; and

WHEREAS, in 2017, the Florida State Legislature modified Florida Statutes Section 337.401, entitled "Use of right-of-way for utilities subject to regulation; permit; fees;" and

WHEREAS, the state legislature has preempted municipal authority, to a great extent, as it relates to telecommunications use of rights-of-way, by, amongst other things: allowing communications services providers, pass through providers and wireless infrastructure providers to be permitted in municipal rights-of-way; limiting municipal review time for most wireless facility proposals to a 14 day application completeness review and a 60 day application compliance review; authorizing antennas located on utility poles to extend 10 feet higher than utility pole height authorized by a municipality (and the FCC's interpretation of the Communications Act may authorize further modification up to an additional10 feet); and limiting the permitting and fees a municipality may charge ($100);[1] and

WHEREAS, the state has precluded the City from negotiating and entering into franchise agreements, soliciting or requiring in-kind contributions, or obtaining certain other consideration as a condition of communications services providers' use of the public rights-of-way, all as more fully set out in Florida Statutes Section 202.24;[2] and

WHEREAS, state law has limited the City's zoning authority relating to distance requirements,[3] height,[4] and other design elements with respect to small wireless facilities occupying the rights-of-way, but has not precluded all zoning regulations by a City; and

WHEREAS, the City categorizes utility poles, the equipment enclosures, and other structures placed in the rights-of-way for telecommunications and other utility uses as "street furniture;"

WHEREAS, although the state legislature has limited the City's authority as to the placement of telecommunications equipment and poles (street furniture) in the public rights-of-way, the City needs to modify its code in order to comply with state law, ensure the demand for telecommunications services is satisfied, but, to also protect the health, safety and welfare of all who drive over, or walk over the City's public rights-of-way, to prevent possible tampering or other interference with City Police and Transportation equipment located on utility poles, and to avoid sidewalk obstructions, ADA compliance issues, visibility issues, etc. due to obstruction of the public rights-of-way by street furniture; and

WHEREAS, the City has design concerns, particularly for our Historic Districts, and the City is concerned about the placement of street furniture, particularly as to the height of poles in the rights of way, the size of the associated equipment, the color of the equipment, colocation ability of the telecommunications equipment; and

WHEREAS, the City has reviewed its ordinances and has concluded that they must be updated the provisions consistent with state law; and

WHEREAS, adoption of the following amendments to Chapter 104 are necessary to satisfy the above objectives.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.

SECTION 1. City Code Chapter 104, "Telecommunications," Article I, "Communications Rights-of-Way," is hereby amended as follows:

ARTICLE I. COMMUNICATIONS RIGHTS-OF-WAY

Sec. 104-1. Title.

This Article shall be known and may be cited as the "City of Miami Beach Communications Rights-of-Way Ordinance."

Sec. 104-2. Intent and purpose.

It is the intent of the City to promote the public health, safety and general welfare by: providing for the placement or maintenance of communications facilities in the public rights-of-way within the City; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including, but not limited to, Florida Statutes Section 337.401, 47 USC Section 1455(a), the policies and rules of the Federal Communications Commission (FCC), as ~~they~~ amended from time to time, the City's home-rule authority, and in accordance with the

provisions of the Communications Act of 1934, as amended, and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by communications services providers, wireless infrastructure providers and pass-through providers; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the City shall be governed by and shall comply with all applicable federal and state laws.

Persons seeking to place or maintain communications facilities on private property or property owned, leased or controlled by the City, including rights-of-way shall comply with the applicable provisions of Subpart B, Land Development Regulations, of the Code of the City of Miami Beach. Persons seeking to place or maintain communications facilities in the public rights-of-way also shall comply with the provisions of this Chapter.

Consistent with the requirements of Florida Statutes Section 337.401(3)(b), the City shall not discriminate and shall provide competitively neutral regulation for providers of communications services.[5] Despite the foregoing limitations, the City retains the authority to regulate and manage the City's rights-of-way during the exercise of the City's police powers.[6]

Florida Statutes Section 337.401(3)(a) precludes the City from requiring franchise agreements from providers of communications services as a condition of placing or maintaining communications facilities in the public right-of-way. Further, with the limited exception of certain Cable Television services, Florida Statutes Section 337.401(3)(f) precludes the City from requiring or soliciting "in kind" compensation from a provider of communications services which is in any way related to using City roads or rights of way.[7] Under Florida Statutes Section 337.401(7)(d), term "In kind" includes reserving fiber, conduit, or pole space for the City.

Sec. 104-3. Definitions.

For purposes of this Article, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to mean the common and ordinary meaning.

Abandonment shall mean the permanent cessation of the use of a communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "abandonment" of a facility in public rights-of-way. ~~It may also mean the discontinued use of obsolete technology in favor of new technology, which would require the removal of the discontinued, abandoned, technology.~~[8]

Antenna shall mean communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.[9]

Applicable codes has its ordinary meaning, except when used in reference to collocation of a small wireless facility, in which case it shall have the meaning set out in Section 104-6A(a)(1).[10]

Authority shall mean the county or City having jurisdiction and control of the rights-of way of any public road, in this case, the City of Miami Beach, Florida. The term does not include the Department of Transportation, which is excluded from the requirements of Florida Statutes Section 337.401(7). [11]

Authority utility pole shall mean a utility pole owned by the City in the right-of-way. The term does not include a utility pole owned by a City electric utility, or a utility pole used to support municipally owned or operated electric distribution facilities.[12]

Arterial roadway shall mean any street or roadway that constitutes the highest degree of mobility at the highest speed, for long, uninterrupted travel, and constitutes the largest proportion of total travel as per the Federal Functional Classification Map maintained by the State of Florida Department of Transportation District Six Office, as amended.

City shall mean the City of Miami Beach, Florida.

Collector roadway shall mean any street or roadway that provides a mix of mobility and land access functions, linking major land uses to each other or to the arterial highway system as per the Federal Functional Classification Map maintained by the State of Florida Department of Transportation District Six Office, as amended.

Collocation or collocate shall mean to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.[13] ~~the situation in which a communications services provider or a pass-through provider uses an existing structure to locate a second or subsequent antenna. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antenna.~~

Communications facility shall mean a facility that may be used to provide communications services, as per Florida Statutes Section 337.401, as amended. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one communications facility.[14]

~~*Communications facility provider* shall mean a person (other than a communications services provider operating one or more communications facilities located within the City) who is engaged, directly or indirectly, in the business of leasing, licensing, subleasing, subletting or hiring to one or more communications service providers all or a portion of the tangible personal property used in a communications facility, including but not limited to, towers, poles, tower space, antennas, transmitters, and transmission line. Provisions of this Article that apply only to communications facility providers shall not apply to communications services providers even if the communication services provider also operates, licenses, leases, subleases, or sublets communications facilities.~~[15]

Communications services shall mean the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance, as per Florida Statutes Section 202.11, as amended. The term includes such transmission, conveyance, or routing in which computer processing

applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

~~(1)~~(a) Information services.
~~(2)~~(b) Installation or maintenance of wiring or equipment on a customer's premises.
~~(3)~~(c) The sale or rental of tangible personal property.
~~(4)~~(d) The sale of advertising, including, but not limited to, directory advertising.
~~(5)~~(e) Bad check charges.
~~(6)~~(f) Late payment charges.
~~(7)~~(g) Billing and collection services.
~~(8)~~(h) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer services.[16]

Communications services provider shall mean a person who is a "provider of communications services," as that term is used in Florida Statutes Section 337.401, as amended.

Communications services tax shall mean the local communications services tax authorized to be levied and collected by counties and municipalities, upon charges for communications services, pursuant to Florida Statutes Section 202.20, as amended.

Existing Structure shall mean a structure that exists at the time an application for permission to place antennas on the structure is filed with the City. The term includes any structure that can structurally support the attachment of antennas in compliance with applicable codes.[17]

FCC shall mean the Federal Communications Commission.

Make-ready work means a process by which existing attachments on a utility pole must be rearranged so that the utility pole can be made ready to accommodate new attachments, which may include replacing a pole with a repurposed structure.[18]

Micro wireless facility shall mean a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.[19]

In public rights-of-way or *in the public rights-of-way* shall mean in, on, over, under or across the public rights-of-way.

~~*Order*, as used in the definition of "wireless provider", shall mean:~~

~~(a) The following orders and rules of the FCC issued in FCC Docket No. 94-102:~~
~~(i) Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 20.03 and the creation of s. 20.18 of Title 47 Code of Federal Regulations adopted by the FCC pursuant to such order.~~
~~(ii) Memorandum and Order No. FCC 97-402 adopted on December 23, 1998.~~
~~(iii) Order No. FCC DA 98-2323 adopted on November 13, 1998.~~
~~(iv) Order No. FCC 98-345 adopted December 31, 1998.~~

~~*(b)* Orders and rules subsequently adopted by the FCC relating to the provision of 911 services, including Order Number FCC-05-116, adopted May 19, 2005 and Order Number FCC-2014-0011, adopted November 4, 2014.~~

Pass-through provider shall mean any person who places or maintains a communications facility in the roads or rights-of-way of a municipality or county that levies a tax pursuant to Florida Statutes Section 202 and who does not remit taxes imposed by that municipality or county pursuant to Chapter 202, as per Florida Statutes Section 337.401, as amended.[20]

~~*Pass-through provider* shall include any person (other than a communications services provider) who places or maintains a communications facility in the roads or rights-of-way of a municipality or county that levies a tax pursuant to Florida Statutes [Chapter] 202 and who does not remit taxes imposed by that municipality or county pursuant to Chapter 202 as per Florida Statutes § 337.401, as amended. A "pass-through provider" does not provide communications services to retail customers in the city. Provisions of this article shall not apply to communications services providers that provide the services identical or similar to those provided by pass-through providers.~~

Permit shall include, but not be limited to Miami Beach public right-of-way permits board or staff issued, and board or staff issued certificates of appropriateness.

Person shall include any individual, ~~children,~~ firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the City to the extent the City acts as a communications services provider.

Place or maintain or *placement or maintenance* or *placing or maintaining* shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A person that owns, or exercises physical control over a communications facility in public rights-of-way, such as the physical control to install, remove, maintain or repair, is "placing or maintaining" that communications facility. Additionally, when a communications facility in the public rights-of-way uses FCC licensed spectrum to provide communications services, the FCC licensee [or, in the case of licenses subject to long term de facto spectrum leases, the lessee of the licensed spectrum] of the communications facility is “placing or maintaining” that communications facility.[21]

Public rights-of-way shall mean a public right-of-way, highway, street, bridge, tunnel or alley for which the City is the authority that has jurisdiction and control and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. "Public rights-of-way" shall not include private property or easements over private property. "Public rights-of-way" shall not include any real or personal City property except as described above and shall not include City buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

Registrant shall mean a communications services provider, wireless infrastructure provider or pass-through provider that has registered with the City in accordance with the provisions of Section 104-4 this Article and holds an effective registration.

Registration or *register* shall mean the process described in this Article whereby a communications services provider, wireless infrastructure provider or pass-through provider provides certain information to the City.

Repurposed Structure shall mean an Existing Structure owned by the City that has been renovated, reconfigured, or replaced with a similar structure so as to continue serving its existing purpose while also supporting the attachment of communication facilities or antennas through Stealth Design that is approximately in the same location as the Existing Structure and in such a manner that does not result in a net increase in the number of structures located within the public right-of-way, shall be installed as directed by the Public Works Director and does not interfere with pedestrian or vehicular access, is Americans with Disabilities Act, Florida Building Code, and Florida Department of Transportation's Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, as same may be amended from time to time, compliant. By way of illustration only, where a light pole existing within the public right of way is removed and is replaced with a new light pole that is substantially similar to the old light pole but now supports the attachment or integration of communication facilities, the new light pole shall be considered a "repurposed structure." Unless stated otherwise, all references to "communications facilities" or "wireless facilities" shall also apply to repurposed structures. To "repurpose an existing structure" shall mean the act of renovating, reconfiguring, or replacing an Existing Structure as described above. The provider that later removes a repurposed structure shall reinstall a new light pole, utility pole or other applicable structure in the rights-of-way, at the direction of the City. During the life of the use of the repurposed structure (a) the City shall hold title to the repurposed structure, (b) the City shall pay all costs associated with the maintenance and operation of City facilities located on the repurposed structure, and (c) the communications services provider or wireless infrastructure provider proposing the repurposed structure shall pay all costs associated with the maintenance and operation of its facilities located on the repurposed structure, including without limitation the cost of electric power for its facilities. A communications services provider or wireless infrastructure provider proposing to repurpose an Existing Structure owned by the City may propose to own and operate the repurposed structure and to pay all costs associated with the ownership and operation of the repurposed structure, including the costs associated with the City's equipment located on the repurposed structure and, if such a proposal is accepted by the City, title to the repurposed structure shall be conveyed to the communications services provider or wireless infrastructure provider; provided however no such conveyance shall convey any right title or interest in any portion of the public rights-of-way.

Small wireless facility shall mean a wireless facility that meets the following qualifications:

(a) Each antenna associated with the facility is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than six (6) cubic feet in volume; and

(b) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.[22]

Smart City technology shall mean the use of various types of electronic data collection sensors to supply information to manage City assets and resources efficiently. This includes data from citizens, devices and assets that is processed and analyzed to monitor and manage traffic and transportation systems, power plants, water supply networks, waste management, law enforcement, information systems, schools, libraries, hospitals, and other community services. "Smart City" technology integrates information and communication technology and various physical devices into a network (the internet of things) to optimize the efficiency of City operations and services and to connect to citizens.

Smart City initiative means the present and future plans of the City of Miami Beach to implement smart City technology through equipment installed in the rights-of-way.

Stealth design shall mean a method of camouflaging any tower, antenna or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth design may include a repurposed structure, or portion of a repurposed structure (ie: repurposed light pole, or repurposed light on a pole).

Tower shall mean any structure designed solely or primarily to support a communications ~~services providers~~ facility's antennas.[23]

Utility pole shall mean a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless The City grants a waiver for such pole. The term does not include a "wireless support structure," such as a tower or monopole.[24]

Wireless facility shall mean a type of communications facility comprised of equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and back up power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

(a) The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
(b) Wireline backhaul facilities; or
(c) Coaxial or fiber optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.[25]

Wireless infrastructure provider shall mean a person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.[26]

Wireless provider shall mean a wireless infrastructure provider or a wireless services provider.[27]

Wireless services means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.[28]

Wireless services provider means a person who provides wireless services.[29] A wireless services provider is a type of communications services provider.

Wireless support structure means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.[30]

~~*Wireless communications facility* shall mean equipment used to provide wireless service, as the phrase, wireless communications facility, is further defined and limited in Florida Statutes § 365.172, as amended. A wireless communications facility is a type of communications facility.~~

~~*Wireless provider* shall mean a person who provides wireless service and is either (a) subject to the provisions of the order or (b) elects to provide wireless 911 service or E911 service in Florida. A wireless provider is a type of communications services provider.~~

~~*Wireless service* shall mean "commercial mobile radio service" as provided under §§ 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. §§ 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312, as per Florida Statutes §365.172, as amended. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include communications services providers that offer mainly dispatch service in a more localized, non-cellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.~~

Sec. 104-4. Registration for placing or maintaining communications facilities in public rights-of-way.

Proof of a current valid registration under this Section 104-4 shall be included in any administratively reviewed application or ~~Design Review Board or~~ Historic Preservation Board application, as required under Sections 104-6, 104-6A of the City Code or~~, 118-251, or~~ Section 118-564, of the City's Land Development Regulations.[31]

(a) A communications services provider, wireless infrastructure provider, or pass-through provider that desires to place or maintain a communications facility in public rights-of-way in the City shall first register with the City in accordance with this Article. This Chapter provides no right of access to the public rights-of-way for persons other than communications services providers or wireless infrastructure providers. Subject to the terms, conditions and limitations prescribed in this Article, a registrant may place or maintain a communications facility in public rights-of-way after registration, review and permitting, and as may be subject to the exemptions as set forth in Florida Statutes Section 337.401(7)(e).[32]

~~A communications services provider that desires to place or maintain a communications facility in public rights-of-way in the city shall first register with the city in accordance with this article.~~

~~This chapter provides no right of access to the public rights-of-way for (i) persons other than communications service providers or (ii) businesses other than providing communications services. Other uses of the public rights-of-way reasonably related to the provision of communications services may be allowed in the reasonable discretion of the city. Subject to the terms and conditions prescribed in this article, a registrant may place or maintain a communications facility in public rights-of-way.~~

(b) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way.[33] Tangible personal property placed in the public rights-of-way pursuant to this Article shall retain its character as tangible personal property and shall not be regarded as real property, fixtures or mixed property. Registration under this Article governs only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes or regulations may apply to the placement or maintenance in the public rights-of-way of facilities that are not communications facilities. Registration does not excuse a registrant from obtaining appropriate access or pole attachment agreements before locating its facilities on the City's or another person's facilities. Registration does not excuse a registrant from complying with all applicable City ordinances, codes or regulations, including this Article.

(c) Each communications services provider, wireless infrastructure provider, or pass-through provider that desires to place or maintain a communications facility in public rights-of-way in the City shall file a single registration with the City which shall include the following information:[34]

(1) Name of the ~~applicant~~ registrant;

(2) Name, address and telephone number of the ~~applicant's~~ registrant's primary contact person in connection with the registration, and the person to contact in case of an emergency;

(3) Evidence of the insurance coverage required under this Article~~.~~ or proof of self insured status adequate to defend and cover claims; and comply with the limited guarantee requirements of Section 104-14, of this Code;

(4) The limited guarantee required by Article 104-14, executed by all guarantors;

(5) An ~~and~~ acknowledgment that registrant has received and reviewed a copy of this Article, which acknowledgment shall not be deemed an agreement; and

(6) The number of the applicant's ~~registrant's~~ certificate of authorization or license to provide communications services issued by the Florida Public Service Commission, ~~or~~ the FCC, or the Department of State. ~~An applicant~~ registrant proposing to place or maintain a wireless facility operating on spectrum licensed by the FCC shall supply the file number of the FCC license authorizing such wireless service within ten days of a request from the City Manager or the City Manager's designee.

(d) Registration ~~application~~ fees: no registration ~~application~~ fees shall be imposed for registration under this Article.

(e) The City shall review the information submitted by the registrant. Such review shall be by the City Manager, or his or her designee. If the ~~applicant~~ registrant submits information in accordance with subsection (c) above, the registration shall be effective and the City shall notify the ~~applicant~~ registrant of the effectiveness of registration in writing. If the City determines that the information has not been submitted in accordance with subsection (c) above, the City shall

notify the registrant of the non-effectiveness of registration, and reasons for the non-effectiveness, in writing. The City shall so reply to a registrant within 30 days after receipt of registration information from the registrant. Non-effectiveness of registration shall not preclude a registrant from filing subsequent applications for registration under the provisions of this Section. A registrant has 30 days after receipt of a notice of non-effectiveness of registration to appeal the decision as provided in Section 104-8 hereof. ~~The city shall so reply to an applicant within 30 days after receipt of registration information from the applicant. Noneffectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section. An applicant has 30 days after receipt of a notice of noneffectiveness of registration to appeal the decision as provided in section 104-8 hereof.~~

(f) A registrant may cancel a registration upon written notice to the City stating that it will no longer place or maintain any communications facilities in public rights-of-way within the City and will no longer need to obtain permits to perform work in public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.

(g) Registration does not in and of itself establish a right to place or maintain or priority for the placement or maintenance of a communications facility in public rights-of-way within the City but shall establish for the registrant a right to apply for a permit.[35] Registrations are expressly subject to any future amendment to or replacement of this Article and further subject to any additional City ordinances, as well as any state or federal laws that may be enacted from time to time.

(h) Registrant shall renew its registration with the City each year, on or before October 1. The registration renewal shall include an inventory of the communications facilities, poles, towers, underground lines and equipment cabinets registrant installed in public rights-of-way in the City during the period from June 30 of the previous year to the July 1 immediately preceding the registration renewal filing. Additionally, the registration renewal shall include an inventory of the communications facilities, poles, towers, underground lines and equipment cabinets registrant abandoned in the public rights-of-way in the City during this same June 30 to July 1 period. These inventories shall identify the individual items and their locations [or, for abandoned items which have been removed, their prior locations] with sufficient detail to enable the City to verify the identity and location of each item on the inventories. Within 30 days of any change in the information required to be submitted pursuant to subsection (c) hereof, a registrant shall provide updated information to the City. Failure to renew a registration may result in the City restricting the issuance of additional permits until the lapsed registrant has complied with the registration requirements of this Article. If equipment is abandoned it must be removed by the registrant from the rights-of-way, as delineated in this Article.

~~Registrant shall renew its registration with the city, annually, by the anniversary of the date of initial registration. Each renewal shall include an inventory of the communications facilities, poles, towers, underground lines and equipment cabinets registrant installed in public rights-of-way in the city during the last term of the registration and an inventory of the wireless communications facilities, poles, towers, and equipment cabinets registrant abandoned in the public rights-of-way in the city during the last term of the registration. Within 30 days of any change in the information required to be submitted pursuant to subsection (c) hereof, a registrant shall provide updated information to the city. Failure to renew a registration may result in the city restricting the issuance of additional permits until the lapsed registrant has complied with the registration requirements of this article.~~

(i) In accordance with applicable City ordinances, codes or regulations, and subject to applicable statutory limitations, a permit is required of a registrant that desires to place, maintain or modify a communications facility in public rights-of-way.[36] An effective registration shall be a condition precedent obtaining approval of a permit. Notwithstanding an effective registration, all permitting requirements of the City shall apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.

~~In accordance with applicable city ordinances, codes or regulations, a permit is required of a registrant that desires to place or maintain a communications facility, including, without limitation, a collocation, in public rights-of-way. An effective registration shall be a condition precedent to obtaining a historic preservation or design review board approval or a right-of-way permit. Notwithstanding an effective registration, all permitting requirements of the city shall apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.~~

Sec. 104-5. Notice of transfer, sale or assignment of assets in public rights-of-way.

(a) A registrant shall not transfer, sell or assign all or any portion of its assets located in public rights-of-way except to a person holding a valid registration issued pursuant to Section 104-4, hereof. A registrant placing or maintaining in the public rights-of-way a facility operating on spectrum licensed by the FCC shall deliver a copy of any application filed with respect to the FCC license pursuant to 47 U.S.C. §310(d) to the City Manager, within 10 days of tendering the application for filing with the FCC. Written notice of the consummation of any such ~~proposed~~ transfer, sale or assignment of assets, along with assignee/transferee's signed and sworn certification of its compliance with the requirements of this Article, shall be provided by such registrant to the City within thirty (30) days after the effective closing date of the transfer, sale or assignment. If permit applications are pending in the name of the transferor/assignor, the transferee/assignee shall notify the City Manager that the transferee/assignee is the new registrant.

~~A registrant shall not transfer, sell or assign all or any portion of its assets located in public rights-of-way except to a person holding a valid registration issued pursuant to section 104-4, hereof. Written notice of any such proposed transfer, sale, or assignment, along with assignee/transferee's signed and sworn certificate of its compliance with the requirements of this article, shall be provided by such registrant to the city at least five days prior to the effective date of the transfer, sale or assignment. If permit applications are pending in the name of the transferor/assignor, the transferee/assignee shall notify the city manager that the transferee/assignee is the new applicant. Violation of the requirements of this section 104-5 will subject the registrant to a fine of up to $500.00 for each day the registrant fails to comply; provided however, city does not claim the right to approve or deny registrants' asset transfers or assignments to communications services providers operating at least one communications facility within the city, and the failure to comply with this section does not void any such asset transfer or assignment. The city reserves in right to exclude persons other than communications services providers from its right-of-way. Transfers or assignments of a communications facility to persons other than a communications services provider who will operate at least one communications facility within the city require compliance with this section in insure continued use of the public right-of-way.~~

(b) Violation of the requirements of this Section 104-5 will subject the registrant to a fine of up to $500.00. Each day the registrant fails to comply shall constitute a separate violation. City

does not claim the right to approve or deny registrants' asset transfers or assignments to communications services providers or wireless infrastructure providers authorized to place or maintain at least one communications facility within the public rights-of-way, and the failure to comply with this Section does not void any such asset transfer or assignment. The City reserves the right to exclude persons other than communications services providers and wireless infrastructure providers from its rights of way. Transfers or assignments of a communications facility to persons other than a communications services provider or a wireless infrastructure provider who will place or maintain at least one communications facility within the public rights-of-way require compliance with this Section to ensure continued use of the public rights-of-way.

Sec. 104-6. Placement or maintenance of a communications facility in public rights-of-way.

Unless included in Section 104-106A(a)(1), the provisions of this Section 104-106 do not apply to small wireless facilities.

(a) A registrant shall at all times comply with and abide by all applicable provisions of the state and federal law and City ordinances, codes and regulations in placing, maintaining or modifying a communications facility in public rights-of-way, including, but not limited to, applicable provisions of Articles II and III of Chapter 98, and of Article V of Chapter 110 of this Code.

(b) Registrant shall not commence to place, maintain or modify a communications facility, including without limitation a ~~collocation,~~ wireless facility, in public rights-of-way until all applicable permits, if any, have been issued by the City or other appropriate authority; provided, however, in the case of an emergency, a registrant may restore its damaged facilities in the right-of-way to their pre-emergency condition or replace its destroyed facilities in the rights-of-way with facilities of the same size, character and quality, all without first applying for or receiving a permit. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the City of the repair or replacement of a communications facility in public rights-of-way in the event of an emergency, and shall be required to obtain an after-the-fact permit if a permit would have originally been required to perform the work undertaken in the public rights-of-way in connection with the emergency. Registrant acknowledges that as a condition of granting permits, the City may impose reasonable rules or regulations governing the placement or maintenance of a communications facility, including without limitation a wireless facility, in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The City may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits. The City may not require approval or require fees or other charges for (1) routine maintenance; (2) replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or (3) installation, placement maintenance or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting taxes under Florida Statutes Chapter 202; provided however that prior to engaging in any such activity, a registrant shall provide the City written notification (via email to the Director of the Public Works Department) of its intention to engage in specific permit-exempt activities including a demonstration that each proposed activity is exempt from the requirement of obtaining a

permit; and provided further that the City shall require a right-of-way permit for any otherwise-permit-exempt activity that involves excavation, closure of a sidewalk or closure of a vehicle lane.[37]

~~Communication facilities providers and pass-through providers understand and acknowledge that the City's policies strongly favor strengthening utility infrastructure, in particular as it relates to flooding and hurricane related events. Subject to any applicable regulatory approval, the communication facility providers and pass-through providers will implement an infrastructure hardening plan for any facilities within the City's boundaries.~~

Occupation of the right-of-way by registrants is subject to City policies strongly favoring strengthening utility infrastructure, in particular as it relates to flooding and hurricane related events. Subject to any applicable regulatory approval and to the extent allowable under applicable law, registrants shall be required to periodically propose and implement an infrastructure hardening plan for registrant's communications facilities within the City's rights of way.

(c) As part of any permit application to place a new, or to modify or replace an existing, ~~wireless~~ communications facility in public rights-of-way, the registrant shall provide the following:

~~As part of any permit application to place a new or replace an existing wireless communications facility in public rights-of-way, including, without limitation, a collocation, the registrant shall provide the following:~~

(1) The location of the proposed facilities, including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of the facilities that will be located in public rights-of-way in compliance with the dimension requirements set out herein~~;~~.[38] The location specified by registrant must be the actual location where registrant intends to construct the proposed communications facility and shall not include contingent or alternative locations. Proposals containing contingent or alternative locations will be dismissed and returned to registrant without further consideration.

(2) With respect to proposals to locate a new tower or replace an existing tower or wireless facility in the right-of-way, engineering documentation demonstrating either: (i) how the proposed tower or wireless communications facility can accommodate multiple ~~collocations~~ wireless facilities;[39] (ii) why the City's interest in safe, aesthetic, efficient and effective management of the public rights-of-way is better served by the proposed communications tower or wireless ~~communications~~ facility than by a communications facility or wireless facility that could accommodate multiple ~~collocations~~ wireless facilities; (iii) why a repurposed structure is not better suited to or feasible for the site or (iv) why the proposed construction is exempt from the requirements of subsections (i)-(iii), above.

(3) A description of the manner in which the facility will be installed (i.e. anticipated construction methods or techniques).~~;~~ The City shall require a

construction bond to cover the cost of the proper repair of the right-of-way due to any digging, dredging, paving, laying of cable or fiber-optics in the rights-of-way. All registrants shall comply with the City's Public Works Manual standards for repair of the sidewalks, or streets, and shall refrain from any activity causing a risk to pedestrians and vehicles due to improper repair. The City shall determine the amount of the bond and the City shall be named the beneficiary of the bond should the scope of the work covered by the bond not be properly completed. All work shall require either a construction bond or escrow agreement (for work after the fact) to cover the scope of work relating to restoration or replacement of the City's sidewalks, electrical connections, and paving. The specifics for the construction bond are located in Section 104.13, of this Article.[40]

(4) A maintenance of traffic plan for any disruption of the public rights-of-way.

(5) For purposes of assessing impact on right of way resources, effects on historic contributing structures or residential structures, and potential for including multiple wireless facilities or repurposed structures, information on the ability of the public rights-of-way to accommodate the proposed facility, including both information that identifies all above-ground ground structures (including light poles, power poles, equipment boxes and antennas), currently existing in the public rights-of-way in the City within a 500-foot radius of the proposed facility and information that identifies all below-ground structures currently existing in the public rights-of-way in the City within a 50-foot radius of the proposed facility, if available (such information may be provided without certification as to correctness, to the extent obtained from other registrants with facilities in the public rights-of-way); however, if the City administrative staff or Historic Preservation Board, as may be applicable, determines that it either: (1) better serves the City's interests in safe, aesthetic, efficient and effective management of the public rights-of-way; (2) is necessary to address a documented lack of capacity for one or more carriers; or (3) will help minimize the total number of communication facilities necessary to serve a particular area, then the 500-foot and 50-foot distance requirements may be modified. The registrant shall provide competent substantial evidence to reflect that the above conditions are met, in order to waive either of these distance requirements, and ensure compliance with all the other requirements of this Chapter. Please note, that small wireless facilities are not subject to a mandatory distance separation, but, are subject to the site relocation procedures set out in Florida Statutes Section 337.401(7)(d)4.

~~For purposes of assessing impact on right-of-way resources, effects on neighboring properties and potential for collocations or repurposed structures, information on the ability of the public rights-of-way to accommodate the proposed facility, including information that identifies all above-ground and below ground structures (including light poles, power poles, equipment boxes and antenna), currently existing in the public rights-of-way in the city within a 500-feet radius of the proposed facility, if available (such information may be provided without certification as to correctness, to the extent obtained from other registrants with facilities in the public rights-of-way); however, if the applicable board determines that it either: (i) better serves the city's interests in~~

~~safe, aesthetic, efficient and effective management of the public rights-of-way; (ii) is necessary to address a documented lack of capacity for one or more carriers; or (iii) will help minimize the total number of communication facilities necessary to serve a particular area, then the 500-foot distance requirement may be modified. The applicant shall provide competent substantial evidence to reflect that the above conditions are met, in order to waive the 500-foot distance requirements, and ensure compliance with all the other requirements of this chapter;~~

(6) If appropriate given the communications facility proposed, an estimate of the cost of restoration to the public rights-of-way (Also see subsection (3), above).

(7) The timetable for construction of the facility project or each phase thereof, and the areas of the City which will be affected.

(8) Whether all or any portion of the proposed facilities will be rented, hired, leased, sublet or licensed from or to any third-party and, if so, the identity, and contact information of that third-party.

(9) Prior to installation of any new or additional equipment in the rights-of-way at a specific site, the registrant shall be required to remove any and all ~~obsolete,~~ unutilized or abandoned equipment. Any application to install new or additional equipment shall identify the abandoned, ~~obsolete~~ or unutilized equipment that shall be removed prior to the installation of any new or additional technology or equipment in the rights-of-way.

(10) If there exists a communications facility by the same registrant within the right-of-way that is adjacent to or within 15 feet of the proposed new communications facility location, the registrant shall be required to remove and consolidate the equipment into one facility, so as to not create a second location for street furniture within such a minimal distance.

~~If there exists a telecommunication facility by the same provider or pass-through provider within the right-of-way that is adjacent to or within 15 feet of the proposed new telecommunication facility location, the telecommunication provider or pass-through provider shall be required to remove and consolidate the equipment into one facility, so as to not create a second location for street furniture within such a minimal distance~~

(11) A certification that the wireless facilities comply with all OSHA requirements for radio frequency exposure of workers accessing the areas adjacent to the wireless facility or, if power levels prevent registrant from making this certification, a plan, acceptable to the City, for turning off or reducing power to the wireless facility when workers are present in the vicinity of the wireless facility.

(12)~~(11)~~ Such additional information as the City finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application.

(d) To the extent not otherwise prohibited by state or federal law, the City shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of public rights-of-way.~~—~~ and may consider, among other things and without limitation, the sufficiency of space to accommodate all of the present communications facilities and pending applications to place and maintain communications facilities in that area of the public rights-of-way, the sufficiency of space to accommodate City announced plans for public improvements or projects that the City determines are in the public interest (including without limitation any smart City initiatives), the impact on traffic and traffic safety, and the impact upon existing facilities in the rights-of-way. The City Manager or the Manager's designee may impose additional reasonable regulations and conditions to ensure the public health, safety and welfare ~~and peaceful enjoyment~~ of City residents and businesses.

(e) All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights-of-way by the City and the public, and with the rights and ~~convenience~~ safety of property owners who adjoin any of the public rights-of-way. The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way as well as joint trenching or the ~~co-location~~ joint-location of facilities in existing conduit is strongly encouraged, and should be employed wherever feasible. To the extent not prohibited by federal and state law, the City shall require any registrant that does not have communications facilities in the City as of the date of adoption of this Article to place any new cables, wires, fiber optics, splice boxes and similar communications facilities underground, unless such communications facilities can be colocated on existing poles. The City Manager may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way consistent with this Article and other applicable law.

(f) All safety practices required by applicable law and all accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.

(g) After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to its original condition before such work. If the registrant fails to make such restoration within 30 days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the City may perform restoration and charge the costs of the restoration against the registrant in accordance with Florida Statutes Section 337.402, as it may be amended. For 12 months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this Article at its own expense. This Section shall be adhered to in conjunction with subsection (c)(3), above.

(h) Removal or relocation at the direction of the City of a registrant's communications facility in public rights-of-way shall be governed by the provisions of Florida Statutes Section 337.403 and 337.404, as they may be amended from time to time. Subject to the aforementioned Florida Statutes Section 337.403 and 337.404 and other provisions of law, whenever existing overhead utility distribution facilities are converted to underground facilities pursuant to Article V of Chapter 110 of this Code, any registrant having communications facilities on poles that are to be removed shall arrange for the conversion to underground facilities on the same terms and conditions as the other utilities that are being converted to underground facilities. This underground conversion requirement is subject to any waiver that may be granted pursuant to Florida Statutes Section 337.401(7)(i).[41]

(i) A permit from the City constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this Article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.

(j) A registrant shall maintain its communications facilities in public rights-of-way in a manner consistent with accepted industry practice and applicable law.

(k) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the underground facility damage prevention and safety act set forth in Florida Statutes, Chapter 556, as it may be amended from time to time.

(l) Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work site areas. Registrant shall be liable to the City for the acts of registrant's employees, agents, invitees and independent contractors in the public rights-of-way, including but not limited to any losses, damages, injuries or costs incurred by the City arising out of or related to their negligence, misfeasance, malfeasance or non-performance of any obligation of the registrant.

(m) Upon request of the City, and as notified by the City of the other work, construction, installation or repairs referenced below, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public rights-of-way, and registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the public rights-of-way.

(n) A registrant shall not place or maintain its communications facilities so as to interfere with, impede, obstruct, displace, degrade, damage or destroy any facilities of the City or of any person lawfully occupying the public rights-of-way, including without limitation sewers, gas mains, ~~or~~ water mains, fire hydrants, storm drains, pipes, cables or conduits, emergency communications equipment, public safety equipment and smart City technology within the public rights-of-way. By way of illustration and not limitation, a registrant's facilities shall neither obstruct line-of-sight of law enforcement monitoring or surveillance facilities in the public rights-of-way nor obstruct line of sight of emergency radio communications facilities in the public rights-or-way.

(o) The City makes no warranties or representations regarding the fitness, suitability, or availability of the City's public rights-of-way for the registrant's communications facilities and any performance of work, costs incurred or services provided by registrant shall be at registrant's sole risk. Nothing in this Article shall affect the City's authority to add, vacate, modify, abandon or otherwise dispose of public rights-of-way, and the City makes no warranties or representations regarding the availability of any added, vacated, modified or abandoned public rights-of-way for communications facilities.

(p) The City shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Article. Whenever practicable, such inspections shall be conducted by non-intrusive means.

(q) A permit application to place a new or to modify an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the City, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the City. Upon completion of any new or modified communications facilities, the registrant shall furnish to the City, at no cost to the City, one complete set of sealed "as built" plans, or in the case of any underground communications facilities, a sealed survey showing the exact location of such communications facilities, including their depth; or in either case, such other documentation describing the location (including height or depth, as the case may be), of communications facilities as the City Manager, or his or her designee, may approve. This requirement shall be in addition to, and not in lieu of, any filings the registrant is required to make under the Underground Facility Damage Prevention and Safety Act set forth in Florida Statutes Chapter 556, as amended from time to time. The fact that such plans or survey is on file with the City shall in no way abrogate the duty of any person to comply with the aforesaid Underground Facility Damage Prevention and Safety Act when performing work in the public rights-of-way. Any proprietary confidential business information obtained from a registrant in connection with a permit application or a permit shall be held confidential by the City to the extent provided in Florida Statutes Section 202.195, as amended from time to time.

(r) The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, smart City technology and other types of facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in public rights-of-way occupied by the registrant, and the City also reserves the right to reserve any portion of the public rights-of-way for its own present or future use pursuant to capital improvement plans. The City further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the public rights-of-way within the limits of the City and within said limits as same may from time to time be altered.

(s) A registrant shall promptly, at the request of any person holding a permit issued by the City, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days advance written notice to arrange for such temporary relocation.

(t) Subject to any applicable limitations set out in Section 104-6A, the following additional requirements apply when a registrant seeks authority to locate a wireless facility in the public rights-of-way:

> (1) Registrants seeking to locate wireless facilities within the City are encouraged to locate on private property or government-owned property outside of the rights-of-way. An application for a permit to locate wireless communications facilities within the rights-of-way shall explain either why the registrant is unable to locate the proposed facilities on private property or government owned property or why the registrant is exempt from this requirement. The City may not deny an application based solely on the fact that the registrant is proposing to place a wireless telecommunications facility in the rights-of-way.

(2) Registrants seeking to place, construct or modify a wireless facility in the right-of-way shall either:

a. ~~Collocate wireless communications~~ jointly locate proposed wireless facilities with the wireless facilities of other wireless providers, as set out in Florida Statutes Section 365.172, as amended, or

b. install their wireless facilities on existing structures within the right-of-way, including without limitation existing power poles, light poles and telephone poles ~~in a stealth design~~ or

c. repurpose an existing structure. With respect to proposals to locate a new tower or replace an existing tower or wireless ~~communication~~ facility in the right-of-way, a registrant should supply engineering documentation demonstrating either: (i) how the proposed tower or wireless facility can accommodate ~~multiple colocations~~ jointly-located wireless facilities; (ii) why the City's interest in safe, aesthetic, efficient and effective management of the public rights-of-way is better served by the proposed tower or wireless facility than by a communications facility that could accommodate ~~multiple colocations~~ jointly-located wireless facilities; or (iii) why a repurposed structure would not be better suited to or would not be feasible for the site.

(3) Registrants seeking to construct wireless facilities within the rights-of-way shall locate their wireless facilities in the rights-of-way of arterial or collector roadways, whenever possible. An application for a permit to place wireless facilities in rights-of-way other than those of arterial or collector roadways shall either explain why the registrant is unable to locate the wireless facilities in the rights-of-way of an arterial or collector roadway (in which case the application shall include an engineering analysis from the registrant demonstrating to the satisfaction of the City engineer the need to locate the wireless facilities in the areas proposed in the application) or explain why the proposed wireless facilities are exempt from the requirements of this subsection.

~~Registrants seeking to construct wireless communications facilities within the rights-of-way shall locate their wireless communication facilities in the rights-of-way of arterial or collector roadways, whenever possible. An application for a permit to place wireless communication facilities in rights-of-way other than those of arterial or collector roadways shall explain why the applicant is unable to locate the wireless communications facilities in the rights-of-way of an arterial or collector roadway and shall include an engineering analysis from the applicant demonstrating to the satisfaction of the city engineer the need to locate the wireless communication facilities in the areas proposed in the application.~~

(4) Whenever wireless facilities ~~communications facilities~~ must be placed in a right-of-way with residential uses on one or both sides, neither towers, poles, equipment, antennas or other structures shall be placed directly in front of a

residential structure. If a right- of-way has residential structures on only one side, the wireless facilities shall be located on the opposite side of the right-of-way, whenever possible. All wireless facilities or communications facilities shall be located such that views from residential structures are not unreasonably impaired. Newly installed poles and towers for wireless facilities or communications facilities should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the pole or tower. The requirements of this subparagraph shall not apply to repurposed structures, when there is a one-to-one repurposing of an existing structure (ie: existing light pole).

(5) Registrants are required to locate wireless or facilities within rights-of-way in a manner that minimizes their impact in the City, including without limitation Miami Beach Historic Districts. Whenever a registrant applies for a permit to locate a wireless facility in a right-of-way within a Miami Beach Historic District, a copy of the permit application shall be simultaneously served on the City of Miami Beach Historic Preservation staff, along with the required filing fee. In this connection, Historic Preservation review fees are fees of general applicability unrelated to placement of facilities in the public rights-of-way and may be charged pursuant to Florida Statutes Section 202.24(2)(c)6. Within a historic district, registrant must obtain the approval of the Historic Preservation Board for the design and location of the wireless facility or communications facility, in accordance with the board's appropriateness criteria. The City reserves the right to condition the grant of any permit to locate a wireless facility ~~communications~~ within the right-of-way upon the registrant taking such reasonable measures, consistent with the City's jurisdiction, as the City may determine are necessary to mitigate the impact of the wireless facility on a Miami Beach Historic District. Installation of a pole or tower under this Chapter shall not interfere with a clear pedestrian path, at a minimum the width required by the Americans with Disabilities Act and Florida Building Code.

~~Registrants are required to locate wireless communications facilities within rights-of-way in a manner that minimizes their impact in the city, including without limitation Miami Beach Historic Districts. Whenever a registrant applies for a permit to locate a wireless communications facility in a right-of-way within a Miami Beach Historic District, a copy of the permit application shall be simultaneously served on the City of Miami Beach Historic Preservation staff. All other applications for permits to locate a wireless communications facility within the city shall be simultaneously served on the design review staff. Registrant must obtain the approval of the design review board or the historic preservation board (depending on the proposed facility's location and each board's respective jurisdiction) for the design and location of the wireless communications facility, in accordance with their respective design review or appropriateness criteria. The city reserves the right to condition the grant of any permit to locate a wireless communications facility within the right-of-way upon the registrant taking such reasonable measures, consistent with the city authority's jurisdiction, as the city may determine are necessary to mitigate the impact of the wireless communications facility on a Miami Beach Historic District. Installation of a pole or tower under this chapter shall not interfere with~~

~~a clear pedestrian path, at a minimum the width required by the Americans with Disabilities Act and Florida Building Code.~~

(6) Stealth design shall be utilized wherever possible in order to minimize the visual impact of wireless facilities. Each application for a permit to place a wireless facility in the right-of-way shall include:

a. photographs clearly showing the nature and location of the site where each wireless ~~communications~~ facility is proposed to be located,

b. photographs showing the location and condition of properties adjacent to the site of each proposed wireless ~~communications~~ facility, and

c. a description of the stealth design techniques proposed to minimize the visual impact of the wireless ~~communications~~ facility and shall include graphic depictions accurately representing the visual impact of the wireless ~~communications~~ facility when viewed from the street and from adjacent properties.

(7) Stealth design of communications facilities to be located on new towers or wireless ~~communications~~ facilities in the rights-of-way shall eliminate the need to locate any ground or elevated equipment (other than antennas) on the exterior of a tower or wireless ~~communications~~ facility. Stealth design of communications facilities to be located on existing structures other than towers shall minimize the need to locate any ground equipment or elevated equipment (other than antennas) on the exterior of the structure. The use of foliage and vegetation around any approved ground equipment may be required by the City based on conditions of the specific area where the ground equipment is to be located and in accordance with Subpart B, Land Development Regulations, Chapter 126, Landscaping.

(8) Stealth design of communications facilities to be located on structures in the rights-of-way shall (a) top mount antennas within enclosures that do not extend the diameter of the supporting structure at the level of antenna attachment and (b) shall side mount antennas within enclosures that do not extend more than two (2) feet beyond the exterior dimensions of the supporting structure at the level of antenna attachment. Under no circumstances shall antennas be mounted less than eight (8) feet above ground level. For purposes of calculating (a) and (b), above, the dimensions of the supporting structure do not include any platform, rack, mount or other hardware used to attach an antenna or antenna enclosure to the supporting structure.

(9) The following additional requirements shall apply to wireless facilities located in the rights-of-way:

a. Each application to locate equipment at ground level on or adjacent to the exterior of a pole or tower and each proposal to locate elevated equipment (other than antennas) on or adjacent to the exterior of a tower or pole shall include engineering documentation demonstrating to the satisfaction of the City engineer that the facility

cannot employ stealth design and that the proposed exterior location ~~and configuration of equipment proposes the minimum equipment necessary to achieve needed function~~. In order to avoid the clustering of multiple items of approved ground equipment or elevated equipment in a single area, only one equipment box may be located in any single location.

b. Where a registrant demonstrates that stealth design cannot be employed, the individual approved exterior equipment boxes shall not exceed 12 cubic feet in volume.

c. Wireless facilities in the rights-of-way must be spaced a minimum of 500 linear feet of right-of-way apart from each other except that no distance requirement shall apply to repurposed structures. This subsection may be waived upon a factual showing, supported by sworn testimony or matters subject to official notice, demonstrating to the satisfaction of the City, as determined by staff for all areas outside of Local Historic Districts ~~the Design Review Board~~ or the Historic Preservation Board for Local Historic Districts designated prior to 4/1/2017, depending upon which has jurisdiction, that locating a specific wireless facility less than 500 feet from other wireless facilities either: (1) better serves the City's interests in safe, aesthetic, efficient and effective management of the public rights-of-way than application of the 500 feet limitation; (2) is necessary to address a documented lack of coverage or capacity for one or more carriers;[42] or (3) will help minimize the total number of wireless facilities necessary to serve a particular area. See Subsection 104-6(c)(5).

d. All construction of wireless communications facilities in the public rights-of-way, including towers, utility poles repurposed structures and any other wireless support structures, shall meet the wind velocity standards for risk category III and IV buildings and structures set out in Section 1620 of the 2017 Florida Building Code, as amended. If construction of wireless communications facilities requires the replacement of City lighting located in the public rights-of-way, any replacement lighting shall employ City-approved light emitting diode lights. The size and height of new wireless communications facility towers and poles in the rights-of-way shall be no greater than the maximum size and height of any other utility or light poles located in the same portion of the right-of-way within the City; provided however that registrants proposing wireless communications facilities with antennas to be located on existing poles or repurposed structures may increase the overall height of the antenna(s) plus the existing pole or the repurposed structure up to 10 feet, if necessary, to avoid adversely affecting existing pole attachments All poles in the City, other than certain polls in Lincoln Road Mall are under 40 feet. ~~The overall height of any antenna(s) plus any repurposed structure within Lincoln Road Mall shall not exceed 60 feet, to replace the existing 60 foot light poles within the center of the pedestrian mall.~~

~~The size and height of new wireless communications facility towers and poles in the rights-of-way shall be no greater than the maximum size and height of any other utility or light poles located in the same portion of the right-of-way within the city; provided however, that registrants proposing wireless communications facilities with antennas to be located on existing poles or repurposed structures may increase the height of the existing pole or repurposed structure up to six feet, if necessary, to avoid adversely affecting existing pole attachments; and provided further that the overall height above ground of any wireless communications facility shall not exceed 40 feet or exceed the existing height of an existing light pole in the city's right-of-way, which ever height is greater. Any repurposed structure within Lincoln Road Mall shall not exceed 60 feet, to replace the existing 60-foot light poles within the center of the pedestrian mall.~~

e. Wireless facilities installed on poles or towers that are not light poles, and repurposed structures that were not originally light poles, shall not be lit unless lighting is required to comply with FAA requirements.

f. Registrants shall not place advertising on wireless facilities installed in the rights-of-way, provided, however, that repurposed structures that lawfully supported advertising before being repurposed may continue to support advertising as otherwise permitted by law.

(10) The City's action on proposals to place, construct or modify wireless communications facilities shall be subject to the standards and time frames[43] set out in this ordinance, as modified to comply with Florida Statutes Section 337.401;[44] Florida Statutes Section 365.172;[45] 47 USC Section 1455(a);[46] and the applicable rules and policies[47] issued by the FCC, as they may be amended.

~~(u) The obligations imposed by the requirements of subsections 104-6(t)(1) through 104-6(t)(9), above, upon registrants proposing to place or maintain wireless communications facilities in the public rights-of-way shall also apply to registrants proposing to place or maintain any other type of communications facility in public-rights-of-ways, if that other type of communications facility involves placement of over-the-air radio transmission or reception equipment in the public-rights-of-way.~~

~~(v) Prior to the issuance of any permit pertaining to the placement and maintenance of communications facilities within the public rights-of-way, the City may require the registrant to issue notice of the work to property owners who adjoin such rights-of-way (the "notification area"), and based on the scope of the proposed work, the number of affected property owners and the potential severity of the impact to such property owners, may further require the registrant to hold a public information meeting for purposes of answering questions and taking comments from affected property owners. The notification area may be expanded at the City's discretion and notice shall be effected in a manner deemed appropriate by the City; provided, however, the notification area, as expanded, shall not exceed a radius of 375 feet from the site of the proposed communications facilities. Should a public information meeting be required, the registrant shall meet with City staff as soon as practical to review comments received at the public information meeting, and attempt to resolve all negative comments or issues raised.~~

~~(w) Pursuant to Florida Statutes Section 337.401(c)(1)(b) and other applicable provisions of law, and notwithstanding any other provisions of this Code, the City hereby elects not to charge permit fees to any registrant for permits to do work in the public rights-of-way.~~

Sec. 104-6A. Collocation of a small wireless facility in public rights-of-way.

In addition to the applicable provisions of this Article, the following requirements shall apply to proposals to collocate a small wireless facility in the public rights-of-way:

(a) As used in this Section 104-6A, the following additional defined terms have the meanings stated:

(1) "Applicable codes," when used with respect to a small wireless facility, shall mean uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement the requirements of Florida Statutes Section 337.401(7) relating to the "Advanced Wireless Infrastructure Deployment Act." The term includes objective design standards adopted by ordinance that may require a new utility pole that replaces an existing utility pole to be substantially similar in design, material and color, or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by the City that may require a small wireless facility to meet reasonable location context, color, stealth and concealment requirements; however, such design standards may be waived by the City upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense. The waiver shall be granted or denied with 45 days after the date of the request.[48] For avoidance of doubt, all existing local codes and ordinances applicable to a communications facility located in the public rights-of-way are hereby re-adopted and confirmed as applying to any small wireless facility, to the full extent application of the existing local codes and ordinances to a small wireless facility is consistent with the provisions of the local codes and ordinances and is not prohibited by Florida Statutes Section 337.401(7). In this connection, applicable codes include, without limitation, the following provisions of this Article: Sections 104-3 through 104-5; Section 104-6 Subsections (a), (b), (c)(1), (c)(3), (c)(4), (c)(5) [but only with respect to identifying all above-ground and below ground structures currently existing in the public rights of way], (c)(6) through (c)(12), (d) through (s), (t)(4) through (t)(8), (t)(9)(a), (t)(9)(d) through (t)(9)(f) and (t)(10); and Sections104-6A through 104-20.

(2) "Applicant" means a person who submits an application and is a wireless provider.[49]

(3) "Application" means a request submitted by an applicant to the City for a permit to collocate small wireless facilities.[50]

(4) "Mutually-exclusive," when used with respect to two (2) or more applications, means that the grant of one application will require dismissal or denial of the other application(s), when reviewed under the applicable codes.

(b) An applicant is not required to provide more information to obtain a permit than is necessary to demonstrate compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application.[51]

(c) The City may not limit the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.[52]

(d) The City may not limit the placement of small wireless facilities by minimum separation distances,[53] but may request that the proposed location of a small wireless facility be moved to another location pursuant to the procedures set out in Florida Statutes Section 337.401(7)(d)4.

(e) The City shall limit the height of a small wireless facility to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. Unless waived by the City, the height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right of way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the City shall limit the height of the utility pole to 50 feet.[54]

(f) Except as provided in subparagraphs (d) and (e), above, the installation of a utility pole in the public rights-of-way designed to support a small wireless facility shall be subject to City rules or regulations governing the placement of utility poles in the public rights of way and shall be subject to the application review timeframes of Florida Statutes Section 337.401(7)[55].

(g) A wireless infrastructure provider may apply to the City to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within nine (9) months after the date the application is approved.[56]

(h) Registrants may be authorized to collocate small wireless facilities on City utility poles in the public rights-of-way pursuant to this Article upon terms and conditions consistent with the requirements of Florida Statutes Section 337.401(7). Make-ready work performed with respect to any such collocation shall conform to the following requirements:

(1) For a City utility pole that supports an aerial facility used to provide communications services or electric service, registrant shall comply with the process for make-ready work under 47 U.S.C. Section 224 and implementing regulations. The City shall not be responsible for any make-ready work costs. The good-faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include a repurposed structure if necessary.[57]

(2) For a City utility pole that does not support an aerial facility used to provide communications services or electric service, the City shall provide a good faith estimate for any make- ready work necessary to enable the pole

to support the requested collocation, including any necessary repurposed structure, within 60 days after receipt of a complete application. Make-ready work, including construction of any repurposed structure, must be completed by applicant within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the City may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including a repurposed structure, and perform the make-ready work.[58]

(3) The City may not require more make-ready work than is required to meet applicable codes and industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including the cost of any repurposed structure, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.[59]

(i) The City hereby reserves up to one third of the usable space on the City's utility poles for future public safety uses, including without limitation for future smart City initiatives; provided however, this reservation of space shall be implemented so as not preclude collocation of a small wireless facility. If replacement of a City utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.[60]

(j) Registrants collocating small wireless facilities on City utility poles shall be responsible for all costs of placing, maintaining and operating those small wireless facilities, including without limitation, costs of electrical power for those facilities. In this connection registrants are cautioned that unauthorized use of City facilities and resources, including without limitation electric power, is theft, a crime punishable under Florida Statutes Section 812.014 and that any such criminal activity will disqualify a registrant from placing or maintaining facilities in the public rights-of-way.

(k) Registrants are further cautioned that tampering with emergency or public safety communications equipment, or interfering with emergency or public safety communications, is a serious criminal offense that would disqualify a registrant from placing or maintaining facilities in the public rights of way.[61] Prior to a registrant [or its employees, agents or independent contractors] performing any work on a City utility pole supporting a governmental authority's emergency or public safety communications equipment, the registrant shall apply for and obtain a security clearance from the City's police department for each person performing the work on that City utility pole. Registrants shall keep accurate records identifying the date, time, location and identity of personnel accessing facilities collocated on any City utility pole. Registrants shall maintain the records to be kept pursuant to this subsection for a period of at least four years and shall make the records available to the City for inspection and copying promptly upon request.

(l) A structure granted a permit and installed pursuant to this Section 104-6A shall comply with Florida Statutes Chapter 333 and federal regulations pertaining to airport airspace protections.[62]

(m) The City shall act on each application in a manner consistent with the procedures and standards set out in Florida Statutes Section 337.401(7).

(n) A permit issued to an applicant shall expire in one year unless extended by the City.

(o) At no time shall a registrant hold unconstructed permits for more than ~~thirty (~~30~~)~~ small wireless facilities or for more than ~~thirty (~~30~~)~~ utility poles for the collocation of small wireless facilities. An application will not be accepted (or if inadvertently accepted will be dismissed) if grant of the proffered application, together with grant of all other pending applications of the applicant, would cause the applicant to exceed this limit on unconstructed permits.

(p) Applications shall be processed and granted (or dismissed or denied) on a first-come, first served basis. If mutually exclusive applications are filed with the City, the first-filed grantable application shall be granted and the remaining mutually exclusive application(s) shall be dismissed.

Sec. 104-7. Suspension of permits.

The City may suspend a permit for work in the public rights-of-way for one or more of the following reasons:

(1) Violation of permit conditions, including conditions set forth in the permit, this Article or other applicable City ordinances, codes or regulations governing placement or maintenance of communications facilities in public rights-of-way;

(2) Misrepresentation or fraud by registrant in a registration or permit application to the City;

(3) Failure to properly renew or ineffectiveness of registration; or

(4) Failure to relocate or remove facilities as may be lawfully required by the City.

The City Manager shall provide notice and an opportunity to cure any violation of (1) through (4) above, each of which shall be reasonable under the circumstances.

Sec. 104-8. Appeals.

Any person aggrieved by any action or decision of the City Manager, or his or her designee, with regard to any aspect of registration under this Article may appeal to the special master appointed pursuant to Article II of Chapter 30 of this Code by filing with the special master, within 30 days after receipt a written decision of the City Manager, or his or her designee, a notice of appeal, which shall set forth concisely the action or decision appealed from and the reasons or grounds for the appeal. No requests for extension of time for filing an appeal will be permitted. The only appeal that shall be considered are those appeals that allege that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Article. The special master shall set such appeal for hearing on the very

next available date following such notice of appeal and cause notice thereof to be given to the appellant and the City Manager, or his or her designee shall present the case on behalf of the City. The special master shall hear and consider all facts material to the appeal and render a decision within 20 calendar days of the date of the hearing. The special master may affirm, reverse or modify the action or decision appealed from; provided, that the special master shall not take any action which conflicts with or nullifies any of the provisions of this Article. Any person aggrieved by any decision of the special master on an appeal shall be entitled to apply to the Circuit Court for a review thereof by Petition for Writ of Certiorari in accordance with the applicable court rules.

Sec. 104-9. Involuntary termination of registration.

(a) The City may terminate a registration if:

(1) A federal or state authority suspends, denies, revokes or otherwise fails to grant a registrant any certification or license required to provide communications services;

(2) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;

(3) The registrant violates Florida Statutes Section 843.025, as amended;

(4) The registrant violates Florida Statutes Section 843.165, as amended;

(5) The registrant violates Title 18 United States Code Section 1362, as amended;

(6) The Registrant violates Florida Statutes Section 812.014; or

(7)~~(5)~~ The abandonment by the registrant of all of its communications facilities in public rights-of-way and noncompliance with Section 104-16 hereof.

(b) Prior to termination, the registrant shall be notified by the City Manager, or his or her designee, with a written notice setting forth all matters pertinent to the proposed termination action, including which of (1) through ~~(5)~~ (7) above is applicable as the reason therefore, and describing the proposed action of the City with respect thereto. The registrant shall have 60 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the City Manager to accomplish the same. If the plan is rejected, the City Manager shall provide written notice of such rejection to the registrant and shall make a recommendation to the Mayor and City Commission regarding a decision as to termination of registration. The City Manager, or his or her designee, shall provide notice to registrant of any resolution or other action to be taken up at any meeting of the Mayor and City Commission and registrant shall be granted the opportunity to be heard at such meeting. A decision by a City to terminate a registration may only be accomplished by an action of the Mayor and City Commission. A registrant shall be notified by written notice of any decision by the Mayor and City Commission to terminate its registration. Such written notice shall be sent within seven (7) days after the decision.

(c) In the event of termination, the former registrant shall: (1) notify the City of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or (2) provide the City with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a registrant fails to comply with this subsection (c), which determination of noncompliance is subject to appeal as provided in Section 104-8 hereof, the City may exercise any remedies or rights it has at law or in equity, including but not limited to requiring the registrant within 90 days of the termination, or such longer period as may be agreed to by the registrant, to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its original condition before the removal.

(d) In any event, a terminated registrant shall take such steps as are necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the City.

(e) In the event of termination of a registration, this Section does not authorize the City to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is registered with the City, if required.

Sec. 104-10. Existing communications facilities in public rights-of-way.

A communications services provider, wireless infrastructure provider or pass-through provider with an existing communications facility in the public rights-of-way of the City has 60 days from the effective date of this Article to comply with the terms of this Article, including, but not limited to, registration, or be in violation thereof~~.~~; provided, however, that a communications services provider, wireless infrastructure provider or pass-through provider that is otherwise lawfully occupying the public rights-of-way of the City shall not be required to obtain consent to continue such lawful occupation of those public rights-of-way; and provided further that nothing in this Article 104-10 shall be interpreted to limit the power of the City to adopt or enforce reasonable rules and regulations pursuant to Florida Statutes Section 337.401.[63]

Sec. 104-11. Insurance.[64]

(a) A registrant shall provide, pay for and maintain satisfactory to the City the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having a rating reasonably acceptable to the City. All liability policies shall provide that the City is an additional insured as to the activities under this Article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually. Thirty days advance written notice by registered, certified or regular mail or facsimile as determined by the City must be given to the City of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the City.

(b) The limits of coverage of insurance required shall be not less than the following:

(1) Worker's compensation and employer's liability insurance.
Worker's compensation—Florida statutory requirements.
(2) Comprehensive general liability.
Bodily injury and property damage: ~~$1~~2,000,000.00 combined single limit each occurrence.
(3) Automobile liability.
Bodily injury and property damage: $2~~1~~,000,000.00 combined single limit each accident.

Sec. 104-12. Indemnification.[65]

(a) A registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of the placement or maintenance of its communications facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Article, provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the City. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The City agrees to notify the registrant, in writing, within a reasonable time of the City receiving notice, of any issue it determines may require indemnification. Nothing in this Section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Section shall be construed or interpreted: (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (2) as a waiver of sovereign immunity beyond the waiver provided in Florida Statutes Section 768.28, as it may be amended from time to time.

(b) The indemnification requirements shall survive and be in effect after the termination or cancellation of a registration.

Sec. 104-13. Construction bond.[66]

(a) Prior to issuing a permit where the work under the permit will require restoration of public rights-of-way, a City shall require a construction bond to secure proper performance under the requirements of any permits and the restoration of the public rights-of-way. Twelve months after the completion of the restoration in public rights-of-way in accordance with the bond, the registrant may eliminate the bond. However, the City may subsequently require a new bond for any subsequent work in the public rights-of-way. The construction bond shall be issued by a surety having a rating reasonably acceptable to the City; shall be subject to the approval of the City's risk manager; and shall provide that: "For ~~twelve (~~12~~)~~ months after issuance of this bond, this bond may not be canceled, or allowed to lapse, until ~~sixty (~~60~~)~~ days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew." ~~Notwithstanding the foregoing, a construction bond will not be required if the cost of restoration is less than the amount of the security fund filed by registrant under City Code Section 104-14.~~

(b) The rights reserved by the City with respect to any construction bond established pursuant to this Section are in addition to all other rights and remedies the City may have under this Article, or at law or equity.

(c) The rights reserved to the City under this Section are in addition to all other rights of the City, whether reserved in this Article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the City may have.

~~**Sec. 104-14. Security fund.**~~[67]

~~At the time of registration, the registrant shall be required to file with the City, for City approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of $25,000.00, having as a surety a company qualified to do business in the State of Florida, and acceptable to the City Manager, or his or her designee, which shall be referred to as the "security fund." The security fund shall be maintained from such time through the earlier of: (a) transfer, sale, assignment or removal of all communications facilities in public rights-of-way; or (b) 12 months after the termination or cancellation of any registration. The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this Article. The security fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this Article, subject to section 104-15 of this Article, there shall be recoverable, jointly and severally from the principal and surety of the security fund, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any facilities of the registrant in public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. Notwithstanding the foregoing, the City may in its discretion not require a security fund or may accept a corporate guarantee of the registrant or its parent company~~.

Sec. 104-14. Limited Guarantee

At the time of registration, the registrant and registrant's parent entities shall be required to file with the City, a joint and several unconditional guaranty of payment and faithful performance of all of registrant's obligations under this Article and any permit issued hereunder; provided however the maximum amount of a parent entity's obligation under this guaranty shall not exceed ~~Fifty Thousand Dollars~~ $50,000.00 with respect to any single default or other single failure to perform by registrant.[68] Continuation of this guarantee shall be a condition precedent to any renewal of the registration. As used herein, "parent entities" are entities holding direct or indirect control of a registrant as the term "control" is interpreted under 47 U.S.C. §310(d).

Sec. 104-15. Enforcement remedies.

(a) A registrant's failure to comply with provisions of this Article shall constitute a violation of this Article and shall subject the registrant to the code enforcement provisions and procedures as provided in Chapter 30 of this Code, including the provisions of Chapter 30 that allow the City to seek relief as otherwise provided by law.[69]

(b) Failure of the City to enforce any requirements of this Article shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

Sec. 104-16. Abandonment of a communications facility.[70]

(a) Registrants shall comply with the provisions of Subsections 104-6(c)(9) and (10), relating to abandoned equipment and the addition of equipment. Further, upon abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the City, in writing, within 90 days. Additionally, registrants shall comply with the provisions of Subsection 104-4(h) relating to annual registration and updating of facilities. Note, a utility pole placed in the public rights-of-way by a wireless infrastructure provider will not be considered abandoned pursuant to this section (i) during the nine-month period following the approval of the request for a permit to locate the utility pole in the public rights-of-way or (ii) during any period a wireless services provider is using a small wireless facility collocated on the pole to provide wireless service.[71]

(b) The City shall direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's sole expense if the City determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such facility: (1) compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way; (2) prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available; or (3) creates a maintenance condition that is disruptive to the public rights-of-way's use. In the event of Subsection (2), above, the City may require the third person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.

(c) In the event that the City does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the City or another person at such third party's cost.

(d) If the registrant fails to remove all or any portion of an abandoned facility as directed by the City within a reasonable time period, not to exceed ~~sixty (~~60~~)~~ days, as may be required by the City under the circumstances, the City may perform such removal and charge the cost of the removal against the registrant and utilize the ~~bond~~ guarantee required pursuant to Section 104-14, for this purpose.

Sec. 104-17. Force majeure.[72]

In the event a registrant's performance of or compliance with any of the provisions of this Article is prevented by a cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result,

provided, however, that such registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Article, causes or events not within a registrant's control shall include, without limitation, acts of god, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within registrant's control, and thus not falling within this Section, shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of registrant's directors, officers, employees, contractors or agents.

Sec. 104-18. Reservation of rights and remedies.

(a) The City reserves the right to amend this Article as it shall find necessary in the lawful exercise of its police powers.

(b) This Article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this Article.

(c) The adoption of this Article is not intended to affect any rights or defenses of the City or a communications service provider under any existing franchise, license or other agreements with a communications services provider.

(d) Nothing in this Article shall affect the remedies the City or the registrant has available under applicable law.

(e) Any person who uses the communications facilities of a registrant, other than the registrant that owns the facilities, shall not be entitled to any rights to place or maintain such facilities in excess of the rights of the registrant that places or maintains the facilities.

Sec. 104-19. Establishment of the rate of the communications services tax.

(a) For the fiscal year of the City commencing on October 1, 2001, and ending on September 30, 2002, the City hereby establishes the rate of the communications services tax as the base rate of 5.10 percent established by Florida Statutes Sections 202.19 and 202.20, plus 0.40 percent, as permitted by Section 13 of Chapter 2001-140 of the Laws of Florida, plus 0.12 percent, as permitted by Florida Statutes Section 337.401, for a total of 5.62 percent.

(b) On and after October 1, 2002, the City hereby establishes the rate of the communications services tax as the base rate of 5.10 percent established by Florida Statutes Section 202.20, plus 0.12 percent, as permitted by Florida Statutes Section 337.401, for a total of 5.22 percent.

(c) The City hereby instructs the Florida Department of Revenue to collect the communications services tax at the rates set forth in Subsections (a) and (b) of this Section.

Sec. 104-20. Compensation for Use of Rights-of-way.[73] ~~Pass-Through Provider and Communications Facility Provider Fees and Charges.~~

(a) A registrant that places or maintains communications facilities, utility poles or wireless support structures in the public rights-of-way that provides communications services, as defined in Florida Statutes Section 202.11, within the City shall comply with communications services tax regulations as required by state and other applicable law. If a registrant does not remit communications services taxes in accordance with Florida Statutes Section 202.11, then a registrant must remit fees to the City in accordance with subSections (b) and (c) below.

(b) A registrant that collocates a small wireless facility on an authority utility pole in the public rights-of-way shall remit $150 per pole per year to the City. Agreements between the City and wireless providers that are in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The registrant may accept the rates, fees, and terms established under this subsection for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.

(c) A registrant who places or maintains in the public rights-of-way any communications facility [other than a small wireless facility on an authority utility pole], utility pole, wireless support structure, cable fiber optic or other pathway shall pay to the City annually no less than $500.00 per linear mile, or portion thereof, up to the maximum amount allowed under Florida Statutes Section 337.401, whichever is greater, to the extent that Section 337.401 is applicable, as follows:

> (1) Annual payments shall be due and payable on April 1st of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable. All fee payments shall be subject to audit by the City, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the City, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made; and
>
> (2) If the payments required by this Section are not made within 90 days after the due date, the City may withhold the issuance of any permits to the registrant until the amount past due is paid in full.

(d) Except to the extent prohibited by applicable law: (1) Any fee payments made pursuant to this Section shall not be deemed to be a tax; (2) Such fee payments shall be in addition to any and all taxes of a general applicability; and (3) A registrant shall not have or make any claim for any deduction or other credit of all or any part of the amount of said fee payments from or against any of said City taxes or other fees or charges of general applicability which registrant is required to pay to the City, except as required by law.

(e) The fee specified herein is the minimum consideration for use of the public rights-of-way, including all public easements, for the purpose of installing and maintaining a communications facility, utility pole or wireless support structure.

~~(a) Pass-through providers and communications facility providers that maintain one or more communications facilities in the City's roads or rights-of-way shall pay the City the maximum annual amount allowed under Florida Statute § 337.401, as amended. For purposes of calculating payments hereunder, each separate pole or tower installed or maintained by a pass-through provider or communications facility provider for purposes of supporting antennas or other over-the-air radio transmission or reception equipment in the public rights-of-way shall comprise a separate communications facility subject to assessment of a separate permit fee in the amount of $500.00 up to the maximum amount allowed under specified in Florida Statutes § 337.401, whichever is higher, to the extent that Florida Statutes §337.401 is applicable.~~

~~(b) The annual amount referenced in subsection 104-20(a), above, shall be due and payable on October 1 of every year. Fees not paid within ten days after the due date shall bear interest at the rate of one percent per month from the date due until paid. The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable or authorization to install any facilities in the City's rights-or-way.~~

SECTION 2. City Code Chapter 118, "Administration and Review Procedures," Article II, "Boards," Division 3, "Design Review Board," Section 118-71, "Powers and duties," is hereby amended as follows:

*** * ***

Sec. 118-71. Powers and duties.

The Design Review Board shall have the following powers and duties:

(1) To promote excellence in urban design.

(2)To review all applications requiring design review approval for all properties not located within a designated historic district or not designated as a historic site. For works of art in the art in public places program, the Design Review Board shall serve as advisor to the City Commission, and may impose binding criteria, as provided in Chapter 82, Article VII, "Art in Public Places," Division 4, "Procedures." This authority shall not include review and approval of design and location within public rights-of-way outside of locally designated historic districts of all wireless communications facilities, as defined in Chapter 104, "Telecommunication," Article I, "Communications Rights-of-Way" under the standards provided therein. Telecommunications shall be reviewed administratively by staff due to the limited review time constraints of Florida Statutes Section 337.401 (less than 60 days, and in some cases, 45 or 14 days).

(3) To prepare and recommend adoption of design plans pertaining to neighborhood studies.

(4) To promote reduced crime and fear of crime through the use of crime prevention through environmental design guidelines and strategies, as approved by the City Commission.

(5) To hear and decide appeals of the planning director when deciding matters pursuant to Section 118-260.

* * *

SECTION 3. City Code Chapter 118, "Administration and Review Procedures," Article II, "Boards," Division 4, "Historic Preservation Board," Section 118-102, "Powers and duties," is hereby amended as follows:

* * *

Sec. 118-102. Powers and duties.

The Historic Preservation Board shall:

(1) Recommend to the planning board, and City Commission, the designation of historic buildings, structures, improvements, landscape features, public interiors, and historic sites or districts.

(2) Prepare and recommend for adoption specific guidelines for each designated site or district to be used to evaluate the appropriateness and compatibility of proposed alteration or development within designated historic sites or historic districts.

(3) Issue or deny certificates of appropriateness, certificates to dig and certificates of appropriateness for demolition in accordance with procedures specified in this division, excluding certificates of appropriateness for demolition for City-owned buildings and other improvements as hereinafter specified on City-owned property and public rights-of-ways, and property owned by the Miami Beach Redevelopment Agency, for which properties the Historic Preservation Board shall serve as advisor to the City Commission. This authority shall include review and approval of design and location within public rights-of-way inside of locally designated historic districts of all wireless communications facilities, as defined in Chapter 104, "Telecommunication," Article I, "Communications Rights-of-Way~~,~~." ~~and under the standards provided therein, at Sections 1046(t) and 104 6A~~

(4) Recommend restoration of property to its prior condition as required by Section 118-533 when the property has been altered in violation of this division.

(5) Advise the board of adjustment with regard to variances associated with properties designated as historic sites, historic buildings, historic structures, historic improvements, historic landscape features or any building or structure located within a historic district or a National Register District through written recommendation to be read into the record by the planning and zoning director at the board of adjustment's hearing.

(6) Facilitate the redevelopment of historic sites and districts by directing the planning department, and other City departments, to provide advisory and technical assistance to property owners, registrants for certificates of appropriateness.

(7) Make and prescribe by-laws and application procedures that are reasonably necessary and appropriate for the proper administration and enforcement of the provisions of this division. The board shall prescribe forms for use by registrants when requesting action under this division. The board may authorize any one of its members to administer oaths and to certify official documents.

(8) Award historic markers or plaques upon the recommendation of the City manager and with the consent of the City Commission.

(9) Update and revise the historic properties database.

(10) Advocate that the City administration explore and advise the Historic Preservation Board and the building official as to alternatives available for stabilizing and preserving inadequately maintained and/or unsafe buildings or structures within the City's designated historic districts or on designated historic sites.

(11) Review all new construction, alterations, modifications and improvements to any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with Sections 118-591, 118-592 and 118-593, or located within an historic district.

(12) To review any and all amendments to this Code affecting historic preservation issues; specifically, Division 4 of Article II of Chapter 118 entitled "Historic Preservation Board," and Article X of Chapter 118 entitled "historic preservation," pursuant to Section 118-163.

SECTION 4. City Code Chapter 118, “Administration and Review Procedures,” Article VI, “Design Review Procedures,” Section 118-251, “Design Review Criteria,” is hereby amended as follows:

* * *

Sec. 118-251. Design review criteria.

(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:

(1) The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.

(2) The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.

(3) The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.

(4) The color, design, selection of landscape materials and architectural elements of exterior building surfaces and primary public interior areas for developments requiring a building permit in areas of the City identified in Section 118-252.

(5) The proposed site plan, and the location, appearance and design of new and existing buildings and structures are in conformity with the standards of this Article and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Board and all pertinent master plans.

(6) The proposed structure, and/or additions or modifications to an existing structure, indicates sensitivity to and is compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties.

(7) The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

(8) Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safety and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site.

(9) Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.

(10) Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.

(11) Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.

(12) The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

(13) The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.

(14) The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

(15) An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

(16) All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.

(17) The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.

(18) In addition to the foregoing criteria, Section 104-6(t) of the City Code shall apply to the Design Review Board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public-rights-of-way, other than small wireless facilities as defined in Chapter 104, and Florida Statutes 337.401.

* * *

SECTION 5. City Code Chapter 118, "Administration and Review Procedures," Article VII, "Design Review Procedures," Section 118-252, "Applicability and exemptions," is hereby amended as follows:

* * *

Sec. 118-252. - Applicability and exemptions.

(a) *Applicability.*

(1) All building permits for new construction, public interior areas, interior areas that face a street or sidewalk, demolitions and wrecking, alterations, or additions to existing buildings, including fences, parking lots, walls and signs, whether new or change of copy, and exterior surface finishes and materials, shall be subject to review under the

design review procedures except as provided in subsection (b) of this section. No building permit shall be issued without the written approval by the design review board or staff as provided for in these regulations.

(2) Except for stormwater pump stations and related apparatus installed by the City, all public improvements upon public rights-of-way and easements shall be reviewed by the Design Review Board. For purposes hereof, public improvements shall include, structures, streetscape projects, street improvements or redesign, modifications to street lighting or signage, landscaping projects, medians, master screening plans for stormwater pump stations and related apparatus, and above ground utilities; provided, however, that public improvements shall not include routine maintenance, utility repair work, and stormwater pump stations and related apparatus installed by the City.

(3) The review and approval of all new single-family home construction, in accordance with subsection 142-105(d)(7).

(b) *Exemptions.* Exemptions to these regulations include all of the following provided no new construction or additions to existing buildings are required:

(1) All permits for plumbing, heating, air conditioning, elevators, fire alarms and extinguishing equipment, and all other mechanical and electrical equipment when such work is entirely within the interior of the building, excluding public interior areas and interior areas that face a street or sidewalk; however, the planning director may approve such building permit applications for minor work on the exterior of buildings.

(2) Any permit necessary for the compliance with a lawful order of the building official, fire marshal or public works director related to the immediate public health or safety.

(3) All single-family dwellings are exempt from the design review regulations, with the exception of exterior surface color samples and finishes, and the review and approval of all new single family home construction in accordance with subsection 142-105(d)(7). However, all building permits for new construction, alterations or additions to existing structures shall be subject to compliance with section 142-105, and all demolition permits must be signed by the planning director, or designee.

(4) All properties located within designated historic districts and designated historic sites.

(5) Small wireless facilities, as defined in Chapter 104, "Telecommunication," Article I, "Communications Rights-of-Way" under the standards provided therein. However, Telecommunications shall be reviewed administratively by staff due to the limited review time constraints of Florida Statutes Section 337.401.

SECTION 6. City Code 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 hereby amended as follows:

* * *

Sec. 118-564. Decisions on certificates of appropriateness.

(a) A decision on an application for a certificate of appropriateness shall be based upon the following:

(1) Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable compliance with the following:

a. The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time; and

b. Other guidelines/policies/plans adopted or approved by resolution or ordinance by the City Commission.

(2) In determining whether a particular application is compatible with surrounding properties the Historic Preservation Board shall consider the following:

a. Exterior architectural features.

b. General design, scale, massing and arrangement.

c. Texture and material and color.

d. The relationship of subsections a., b., c., above, to other structures and features of the district.

e. The purpose for which the district was created.

f. The relationship of the size, design and siting of any new or reconstructed structure to the landscape of the district.

g. An historic resources report, containing all available data and historic documentation regarding the building, site or feature.

h. The original architectural design or any subsequent modifications that have acquired significance.

(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:

a. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.

b. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.

c. The color, design, surface finishes and selection of landscape materials and architectural elements of the exterior of all buildings and structures and primary public interior areas for developments requiring a building permit in areas of the City identified in Section 118-503

d. The proposed structure, and/or additions to an existing structure ~~is~~ are appropriate to and compatible with the environment and adjacent structures, and ~~enhances~~ enhance the appearance of the surrounding properties, or the purposes for which the district was created.

e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

f. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with vehicular traffic flow on these roads and pedestrian movement onto and within the site, as well as permit both pedestrians and vehicles a safe ingress and egress to the site.

g. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties and consistent with a City master plan, where applicable.

h. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.

i. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.

j. Any proposed new structure shall have an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

k. All buildings shall have, to the greatest extent possible, space in that part of the ground floor fronting a sidewalk, street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a sidewalk street, or streets shall have residential or commercial spaces, or shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of a parking structure from the surrounding area and is integrated with the overall appearance of the project.

l. All buildings shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

m. Any addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

n. All portions of a project fronting a street or sidewalk shall incorporate an amount of transparency at the first level necessary to achieve pedestrian compatibility.

o. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.

p. In addition to the foregoing criteria, for telecommunications, the Board shall review, Section 104-6A, ~~104-6(t),~~ and the requirements of Chapter 104, of the City Code ~~shall apply to the Historic Preservation Board's review~~ of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public-rights-of-way. As there is no physical address or property for the wireless communications facility being located in the right-of-way, the posting and mailing notice of 118-8 shall not apply to said applications. Posting on the website and advertising in a newspaper of general circulation shall continue to be required.

q. Section 337.401(7)(k),Florida Statutes states, in pertinent part: "An authority may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area designated by the state or authority. An authority may enforce pending local ordinances, administrative rules, or regulations applicable to a historic area designated by the state if the intent to adopt such changes has been publicly declared on or before April 1, 2017." Accordingly ordinance provisions regarding review by the City's Historic Preservation Board of construction of communications facilities within all existing historic districts, except Tatum Waterway Expansion must comply with the provisions of this Code. The Tatum Waterway Expansion area shall be administratively reviewed by staff, as it was not designated until after October 10, 2017.

SECTION 7. **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 renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "Section" or other appropriate word.

SECTION 8. NOTIFICATION OF SECRETARY OF STATE.

Pursuant to the requirements of Florida Statutes Section337.401, the City has provided the Secretary of State: (a) at least 15 days prior to consideration on first reading, notice of this ordinance governing a telecommunications company placing or maintaining telecommunications facilities in its roads or rights-of-way; and (b) at least 10 days prior notice of the second reading, public hearing.

SECTION 9. **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 10. **SEVERABILITY.**

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

SECTION 11. **EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____, 2018.

ATTEST:

_____
Dan Gelber, Mayor

_____
Rafael E. Granado, City Clerk

Underscore denotes new language
~~Strike-through~~ denotes stricken language

(Sponsored by Mayor Dan Gelber)

First Reading:
Second Reading:

[1] The City's challenge in adopting an ordinance governing telecommunications use of its rights-of-way is reconciling its general legislative power under both Article VIII, Section 2 of the Constitution of the State of Florida and Florida Statutes Section 166.021 with numerous, sometimes conflicting, statutes, administrative rules and regulatory pronouncements addressing the process of approving the location and construction of telecommunication facilities. The City's task is further complicated by (a) the inconsistent meanings used in definitions of terms used in common by the various statutes, rules and pronouncements and (b) the inconsistent deadlines for administrative action created by the various statutes and rules, which are further complicated by inconsistent methods of counting days in the calculation of deadlines. To a large extent these problems are addressed in this ordinance by reliance, wherever possible, on the provisions of Florida Statutes Section 337.401, "Use of right-of-way for utilities subject to regulation; permit; fees."

[2] Florida Statutes Section 202.24 largely prevents municipalities from receiving the compensation for use of public rights-of-way granted under Florida Statutes Section 337.401, by prohibiting municipalities from "levying on or collecting from dealers or purchasers of communications services any tax, charge, fee, or other imposition on or with respect to the provision or purchase of communications services." This prohibition encompasses "any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services." Prohibited charges include any sales tax, subscriber charge, franchise fee, user fee, privilege fee, occupancy fee, rental fee, license fee, pole fee, tower fee, base-station fee, security fund or other tax or fee measured by amounts charged or received for services or intended as compensation for the use of public roads or rights-of-way, for the right to conduct business or for other purposes.

Notable exceptions to the restrictions of Florida Statutes Section 202.24 include (a) local communications services taxes levied under Chapter 202 of the Florida Statutes, (b) ad valorem taxes levied under Chapter 200 of the Florida Statutes, (c) business taxes levied under Chapter 205 of the Florida Statutes, (d) 911 service charges levied under Chapter 365 of the Florida Statutes, (e) rental fees for use of property which is not located in the public rights-of-way, (f) permit fees of general applicability which are not related to placing or maintaining facilities in or on public roads or rights-of-way and (g) utility service fees or other similar user fees for utility services.

[3] *See* Florida Statutes Section 337.401(7)(d)4.

[4] *See* Florida Statutes Section 337.401(7)(d)5.

[5] The City interprets this requirement of non-discrimination and competitive neutrality as being qualified by the requirement that the City obey State and Federal law governing siting approval of communications facilities in public rights-of-way. A corollary to this interpretation is that the City is permitted to address unique circumstances created by statutory disparities in the treatment of providers of communications services. The provisions of Florida Statutes Section 337.401, codifies special treatment for certain communications facilities that meet the definition of "small wireless facility," requiring municipalities to grant them access to municipal property located in the public rights-of-way. The statute exempts certain installations of communications facilities qualifying as a "micro wireless facility" in the public rights-of-way from right-of-way permitting. The legislature, having favored certain providers of communications services in its

statutory scheme, has prevented literal application of Florida Statutes Section 337.401's professed goal of non-discrimination among providers of communications services.

[6] Police power connotes the power to establish laws and regulations for the preservation of public order and tranquility, the promotion of public health, safety and morals, and the general welfare. It embraces the power to define and proscribe public nuisances. *See Thompson v. State,* 392 So. 2d 1317, 1318 (Fla. 1981); and s*ee also Bal Harbor Village v. Walsh*, 29 Fla. L. Weekly D1816a, 4 ER FALR 218 (Fla. 3rd DCA 2004).

[7] *See also* Florida Statutes Section 202.24(1).

[8] The City's power to adopt reasonable, nondiscriminatory ordinances governing abandonment of equipment in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

[9] *See* Florida Statutes Section 337.401(7)(b)1.

[10] *See* Florida Statutes Section 337.401(7)(b)2.

[11] *See* Florida Statutes Section 337.401(7)(b)5.

[12] *See* Florida Statutes Section 337.401(7)(b)6.

[13] This definition is taken from Florida Statutes Section 337.401(7)(b)7. It contrasts with the definition of collocation used in Florida Statutes Section 365.172(3)(f), which was the basis of the previous definition in the ordinance.

[14] *See* Florida Statutes Section 337.401(6)(a)2.

[15] This definition has been replaced with the concept of "wireless infrastructure provider," as defined in Florida Statutes Section 337.401(7)(b)13.

[16] *See* Florida Statutes Section 202.11(1).

[17] *See* Florida Statutes Section 365.172(3)(i).

[18] *Cf. Implementation of Section 224 of the Act*, 25 FCC Rcd. 11864, 11943, n.37 (2010) ("Make-ready" is any rearrangement of equipment and attachments in order to make room on either an existing pole or a new, different pole for a new attacher.)

[19] *See* Florida Statutes Section 337.401(7)(b)9.

[20] *See* Florida Statutes Section 337.401((6)(a)1.

[21] Each FCC licensee is obligated to maintain control over its stations. *See* 47 U.S.C. Section 310(d), which provides, in pertinent part, that "No construction permit or station license, or any rights thereunder, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby."

[22] *See* Florida Statutes Section 337.401(7)(b)10.

[23] *See* Florida Statutes Section 365.172(bb); and 47 C.F.R. Section 1.4001(b)(9).

[24] *See* Florida Statutes Sections 337.401(7)(b)11 and 337.401(7)(b)17.

[25] *See* Florida Statutes Section 337.401(7)(b)12.

[26] *See* Florida Statutes Section 337.401(7)(b)13.

[27] *See* Florida Statutes Section 337.401(7)(b)14.

[28] *See* Florida Statutes Section 337.401(7)(b)15.

[29] *See* Florida Statutes Section 337.401(7)(b)16.

[30] *See* Florida Statutes Section 337.401(7)(b)17.

[31] The City has legislative authority to require each provider of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the City. *See* Florida Statutes Section 337.401(3)(a).

[32] The limitations of Section 337.401(7)(e) are incorporated into Section 104-6(b) of this Ordinance.

[33] In fact, registration does not establish a right to place or maintain, or priority for the placement or maintenance of, a communications facility in the public roads or rights-of-way. *See* Florida Statutes Section 337.401(3)(b).

[34] Florida Statutes Section 337.401(3)(a) states, in pertinent part, "In addition to other reasonable rules or regulations that a municipality or county may adopt relating to the placement or maintenance of communications facilities in its roads or rights-of-way under this subsection, a municipality or county may require a provider of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the municipality or county and to provide the name of the registrant; the name, address, and telephone number of a contact person for the registrant; the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission, the Federal Communications Commission, or the Department of State; and proof of insurance or self-insuring status adequate to defend and cover claims."[emphasis added.]

[35] *See* Florida Statutes Section 337.401(3)(b).

[36] In this connection there are limited exemptions from right-of-way permitting for routine maintenance, replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size, and certain micro wireless facilities; provided however that permits are required when work requires excavation, closure of a sidewalk, or closure of a vehicle lane. *See* Florida Statutes Section 337.401(7)(e).

[37] *See* Florida Statutes Section 337.401(7)(e).

[38] Proper description of location and proposed facilities allows the City to determine whether the registrant's proposal can be accommodated in the right-of-way in a manner consistent with the requirements of this Article. Where two pending permit requests propose facilities that cannot be simultaneously accommodated in the ROW, in a manner consistent with the criteria set out in this Article, they are said to be "mutually-exclusive." *See* Article 104-6A(a)(4).

[39] Public policy generally favors common siting of wireless facilities. *See* Florida Statutes Section 365.172(13)(a). Despite this policy, the City is statutorily prohibited from requiring common siting of small wireless facilities. See Florida Statutes Section 337.401(7)(d)3.

[40] The City's power to adopt reasonable, nondiscriminatory ordinances governing performance bonds for work in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

[41] This waiver provision is important to insuring the City's ability to comply with 47 U.S.C. Section 253(a) ["No State or local statute or regulation , or other State or local legal requirement, shall have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."] and 47 U.S.C. Section 332(c)(7)(B)(i) ["The regulation of the placement, construction and modification of personal wireless service facilities by any State or local government…(I) shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services."]

[42] *See* 47 U.S.C Section 253(a) and 47 U.S.C. Section 332(c)(7)(B)(i).

[43] These time frames are often referred to as "shot clocks" and are established by various state and federal statutes, FCC rules and FCC declaratory rulings. The shot clocks vary significantly from each other, depending upon (a) the size of the wireless facility proposed [tower, utility pole, small wireless, micro wireless, etc.], (b) the type of installation [new facility; modification of existing facility with significant changes to dimensions; modification of existing facility without significant changes to dimensions; modification of existing facility to add additional antennas; construction requires excavation; lane closures or sidewalk closures], and (c) the legal issues presented [is the permit filing complete; does the permit filing require a waiver of applicable codes; has the permit filing been amended]. The shot clocks also use various processes for computing deadlines [Do you count calendar days or business days; does the computation involve tolling the running of time] Remedies for municipal inaction on ROW permit requests vary, as well, with the most severe being that the permit is "deemed granted" by the running of time.

[44] *See* Florida Statutes Section 337.401(7), which establishes deadlines for municipal action on ROW permit requests for small wireless facilities and for certain utility poles used to support small wireless facilities. Under Subsection 337.401(7)(d)7, the City has 14 days to determine the completeness of a permit request and to notify the registrant via email whether the request is complete. During this same 14 day period, Subsection 337.401(7)(d)4 allows the City to request that the registrant relocate a proposed small wireless facility to a different site in the ROW.

A relocation request under Subsection 337.401(7)(d)4 triggers a 30 day negotiation period. At the end of this period, if the registrant accepts the relocation proposal, the permit request is deemed granted for the new location and for all other locations in the application. Subsection 337.401(7)(d)10 allows registrants to specify up to 30 small wireless facilities in a single consolidated ROW permit application and allows, but does not require, the City to consider individual facilities separately for purposes of assessing completeness. Apparently Subsection 337.401(7)(d)(4) requires consolidated grant of multi-location applications where a single site is subject to relocation negotiation.

Under Subsection 337.401(7)(b)2, a registrant's request for waiver of design standards must be acted upon within 45 days of the request. Subsection 337.401(7)(d)(8) requires City action on a complete ROW permit request within 60 days after receipt of the application. Otherwise the ROW permit is deemed granted. This time frame for action is altered if the City requests to negotiate relocation of a small wireless facility under Subsection 337.401(7)(d)4. In that case the City must grant or deny the original application within 90 days after the date the application was filed. Regardless of the applicable timeframe for action, if a request for a ROW permit application is denied, Subsection 337.401(7)(d)9 affords the registrant 30 days after notice of denial to resubmit the application and cure deficiencies identified in the denial. The City then has 30 days to act on the resubmitted permit request, or it is deemed granted.

Subsection 337.401(7)(f)5.c. imposes an additional deadline on the City in cases where (a) an applicant files to collocate a small wireless facility on a City utility pole that does not support an aerial facility used to provide communications services or electric services and (b) make-ready work or pole replacement is needed to support the proposed collocation. Under those circumstances, the City has 60 days from receipt of a complete application to provide the applicant with a good faith estimate of the costs of any make-ready work or the costs of any pole replacement needed to enable the pole to support the collocation.

[45] Florida Statutes Section 365.172(13) establishes criteria and procedures streamlining approval of proposals for joint location of multiple wireless facilities on a wireless support structures. Section 365.172 applies to approving construction of wireless facilities in commercial mobile radio service that provide wireless 911 or E911 services, whether or not they are located in the public ROW.

The shot clock established by Section 365.172 distinguishes between applications proposing joint location of wireless facilities (which joint location is called a "collocation" in this statute) and applications for "any other wireless communications facility." Under Subsection 365.172(13)(d)1, an application proposing a "collocation" must be acted upon within 45 business days after the application is determined to be properly completed. Subsection 365.172(13)(d)2 requires action on all other applications for a wireless communications facility, i.e. action on applications that are not a "collocation", be completed no later than 90 business days after the application is determined to be properly completed. Applications which are not acted upon within the time frames of Subsections 365.172(13)(d)1 and 2 are deemed granted.

In calculating dates for completeness, an application is submitted or resubmitted on the date it is received by the City. Subsection 365.172(13)(d)3a, gives the City 20 business days to notify an applicant that its application is incomplete. Otherwise, the application is deemed complete. An incomplete application may be resubmitted within reasonable timeframes established by the

City, and the City again has 20 business days to rule on its completeness (or the application is deemed complete).

[46] Under 47 U.S.C. Section 1455, the City is required to approve "any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station." This statute includes, but is not limited to, modification of existing towers and base stations in the public rights-of-way.

In response to 47 U.S.C. Section 1455, the FCC adopted a regulation, 47 C.F.R. Section 1.40001, which defined the types of insubstantial changes to towers and base stations that can be made through an eligible facilities request. This rule also established a 60-day shot clock for processing eligible facilities requests. This 60-day period begins when a permit request is filed and is subject to tolling if the request is incomplete.

In this connection, the information to be provided in request for ROW permit for an eligible facilities request is limited to documentation or information "reasonably related to determining whether the request meets the requirements [of 47 C.F.R. Section 1.40001.]" The City has 30 days to provide the registrant written notice of the permit request's incompleteness, delineating all missing documents and information. When this written notice is issued, the running of the 60-day period stops until the registrant files a supplemental submission. Thereafter, the City has ten days to provide a second or subsequent notice of incompleteness, which halts the running of the 60 day period until a second or subsequent supplemental submission it submitted.

The remedy for a failure to act on an eligible facilities request within the 60 day period is that the request is deemed granted. However the remedy is not effective until the registrant notifies the City in writing that the request is deemed granted and the City may bring claims related to the request in any court of competent jurisdiction.

[47] The FCC's original foray into shot clocks for the processing of siting proposals for wireless facilities was a declaratory ruling interpreting the following provision of 47 U.S.C. Section 332(c)(7)(B)(ii): "A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request." *See Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless siting Proposals as Requiring a Variance*, 22 FCC Rcd. 13994 (2009*); recon. denied*, 25 FCC Rcd. 11157 (2010).

The problem addressed in the declaratory ruling was the question of when is the correct time to institute litigation with a governmental authority that fails to act on a siting request. The answer given in the declaratory ruling was 90 days for proposals to jointly locate wireless facilities at the site of existing wireless facilities and 150 days for all other siting requests. The declaratory ruling also allowed for tolling of these periods when the governmental authority notifies the siting request's proponent of incompleteness of the request, within 30 days of the proposal's filing.

[48] This definition, up to placement of the endnote, generally tracks the definition in Florida Statutes 337.401(7)(b)2. Thereafter it seeks to describe the provisions of local codes and ordinances applying to small wireless facilities.

[49] This is the definition found at Florida Statutes Section 337.401(7)(b)3.

[50] This is the definition found at Florida Statutes Section 337.401(7)(b)4.

[51] *See* Florida Statutes Section 337.401(7)(d)2.

[52] *See* Florida Statutes Section 337.401(7)(d)3.

[53] *See* Florida Statutes Section 337.401(7)(d)4.

[54] *See* Florida Statutes Section 337.401(7)(d)5.

[55] *See* Florida Statutes Section 337.401(7)(d)6.

[56] *See* Florida Statutes Section 337.401(7)(j)

[57] *See* Florida Statutes Section 337.401(7)(f)5.b.

[58] *See* Florida Statutes Section 337.401(7)(f)5.c

[59] *See* Florida Statutes Section 337.401(7)(f)5.d.

[60] *See* Florida Statutes Section 337.401(7)(d)14.

[61] *See* Florida Statutes Sections 843.025 and 843.165. *See also* 18 U.S.C. Section 1362.

[62] *See* Florida Statutes Section 337.401(7)(d)15.

[63] *See* Florida Statutes Section 337.401(3)(h).

[64] The City's power to adopt reasonable, nondiscriminatory ordinances requiring insurance as a condition of placing or maintaining communications facilities in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

[65] The City's power to adopt reasonable, nondiscriminatory ordinances requiring indemnification as a condition of placing or maintaining communications facilities in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

[66] The City's power to adopt reasonable, nondiscriminatory ordinances governing performance bonds with respect to placement or maintenance of communications facilities in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

[67] Registrants paying the Communications Services Tax cannot be required to supply a security fund, even though such funds are explicitly authorized by Florida Statutes Section 337.401(7)12. *See* Florida Statutes Section 202.24(1)(b)1.

[68] A registrant's use of the right-of-way is conditioned, by statute, on its being responsible for any damage resulting from the issuance of a permit. See Florida Statutes Section 337.401(2).

This financial obligation is unlimited and is not restricted to damage caused to City property. The guarantee provided herein simply limits a registrant's ability to use of shell entities to circumvent the financial obligations imposed in Florida Statutes Section 337.401(2), but only to the extent of $50,000 per violation, not the full unlimited extent of registrant's obligation.

[69] These remedies include injunctive proceedings as provided by Florida Statutes Section 120.69 to enforce the provisions of this ordinance. *See* Florida Statutes Section 337.401(2).

[70] The City's power to adopt reasonable, nondiscriminatory ordinances governing abandonment of communications facilities in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

[71] *See* Florida Statutes Section 337.401(7)(j).

[72] *See* Florida Statutes Section 337.401(7)(d)12.

[73] The compensation structure set out in this section reflects the fact that Florida Statutes Section 202.24 prevents the City from obtaining compensation for the use of City facilities in the rights-of-way from entities paying the Communications Services Tax. The municipal compensation provisions found in Florida Statutes Section 337.401 is $150 per pole, per year.

Item 5.

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **DISCUSSION REGARDING ADAPTIVE REUSE ALONG THE TATUM WATERWAY**

HISTORY:
On April 26, 2017, at the request of Commissioner Ricky Arriola, the City Commission referred the subject item to the Land Use and Development Committee for discussion (item C4X). On May 10, 2017 the Land Use Committee deferred the item to June 14, 2017. On June 14, 2017 the Committee discussed the item and continued it to September 20, 2017.

The September 20, 2017 LUDC meeting was re-scheduled to October 11, 2017, due to Hurricane Irma. On October 11, 2017 the item was discussed and continued to a date certain of October 30, 2017. On October 30, 2017 the item was discussed and continued to a date certain of December 11, 2017.

On December 11, 2017 the Land Use and Development Committee discussed the item and continued it to a date certain of March 14, 2018.

Analysis
PLANNING ANALYSIS
At the December 11, 2017 LUDC, some concerns were expressed with regard to parking and neighborhood impacts. Staff was directed to prepare a revised Ordinance for the March LUDC, which allows limited neighborhood commercial uses and incorporates a modest parking requirement.

The Administration has further evaluated the area that adaptive, neighborhood commercial uses make the most sense, as well as the types of uses that would have less of an impact on the established residential character. In this regard, the RM-1 area that is north of 75th Street and east of Tatum Waterway, is one of the few areas of the City not within walking distance of a low-medium intensity commercial district. This is important because most of the RM-1 and RM-2 districts in the City are within easy walking distance to neighborhood commercial districts and uses.

In order to address this shortcoming, a more detailed set of options for both conditional uses and accessory uses that would be allowed as of right, have been developed as part of the draft ordinance attached. The following is a summary of the types of adaptive uses that would be allowed under the proposed ordinance:

Conditional Uses
With regard to 'Conditional Uses' (those requiring Planning Board approval), existing apartment buildings located along Tatum Waterway Drive, Byron Avenue, and Crespi Boulevard, which are also located within the North Shore National Register Historic District and which are classified as "Contributing", may have **accessory restaurants serving alcoholic beverages** subject to the

following:
1. Conditional Use Approval from the Planning Board;
2. The interior restaurant area, inclusive of all seating and back of house, shall be located at the first level of the building and shall not exceed 25 percent of the floor area of the existing structure;
3. Outdoor seating and outdoor dining shall only be permitted in buildings with internal courtyards and all such outdoor seating and dining areas shall be located within the internal courtyard.
4. The maximum number of outdoor seats shall not exceed 30;
5. Exterior speakers are prohibited.

Accessory Uses
As it pertains to allowable 'Accessory Uses' (those allowed as of right), existing apartment buildings located along Tatum Waterway Drive, Byron Avenue, and Crespi Boulevard, which are also located within the North Shore National Register Historic District and which are classified as "Contributing", may have **accessory office uses and the rental of non-motorized watercraft**, subject to the following:
1. The accessory use areas shall not exceed 25 percent of the floor area of the existing structure;
2. The hours of operation for which the use is open to the public may be from 12:00 pm to 8:00 p.m.
3. No exterior speakers shall be permitted, except as may be required under the Florida Life Safety Code.

Additionally, apartment buildings (new and existing) located north of 75th Street and east of Tatum Waterway Drive and Byron Avenue, would be permitted to have **accessory café, retail, office or personal service uses**, subject to the following:
1. The minimum distance separation between accessory uses shall be 1,500 feet. However, retail, office or personal service uses may obtain conditional use approval from the planning board to operate at a lesser distance from an accessory use, but in no event shall such use be located at a distance less than 500 feet from an existing accessory use. There shall be no variances from this distance separation requirement.
2. The accessory use areas shall not exceed 25 percent of the floor area of the structure.
3. The hours of operation for which the use is open to the public may be from 7:00 am to 7:00 p.m. Subject to conditional use approval, the hours of operation for any of the above noted uses may be extended to 10:00 pm
4. No exterior speakers shall be permitted.
5. A hall for hire, dance hall, open-air entertainment establishment, outdoor entertainment establishment, entertainment establishment or special event permits shall be prohibited.

As it pertains to minimum parking requirements, staff is concerned with the impact of requiring off-street parking for a couple of reasons. First, since the proposed accessory uses would be within existing structures, there would be no physical way to locate parking spaces within a property. Also, by requiring a parking impact fee, even if it were the less expensive annual fee in lieu, this added cost could be a deterrent to potential operators. Finally, even if parking could be provided on site, the availability of parking storage would be more of an incentive to drive. As demonstrated in the square footage limitations in the draft ordinance, these proposed adaptive accessory uses are intended to serve the area neighborhood, and not be destination establishments.

In order to incentivize and encourage the types of accessory uses proposed in the draft ordinance, staff has included the following modification to Sec. 130-31, pertaining to off-street parking requirements:

There shall be no off-street parking requirement for accessory uses associated with buildings in the RM-1 zoning district that existed prior to December 31, 2009, which are located north of 72nd Street and east of Crespi Boulevard.

The Administration believes that the draft ordinance achieves a careful balance between allowing tangible, neighborhood accessory uses, with protecting the established residential character of the RM-1 districts in North Beach.

CONCLUSION:

The Admininstration recommends that the Land Use and Development Committee discuss the proposed Ordinance and provide additional policy direction, as well as additional recommended changes. If there is consensus on the draft ordinance proposed, it is further recommended that the item be transmitted to the City Commission with a favorable recommendation, for referral to the Planning Board.

ATTACHMENTS:

	Description	Type
🗋	Tatum Waterway Adaptive Uses - DRAFT ORDINANCE	Memo
🗋	Tatum Waterway Adaptive Uses - MAP	Memo

DRAFT

RM-1 NORTH BEACH TATUM WATERWAY – REVISIONS TO ALLOWABLE ACCESSORY AND CONDITIONAL USES

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," OF THE LAND DEVELOPMENT REGULATIONS, ARTICLE II ENTITLED "DISTRICT REGULATIONS," DIVISION 3, ENTITLED "RESIDENTIAL MULTIFAMILY DISTRICTS," SUBDIVISION II, ENTITLED "RM-1 RESIDENTIAL MULTIFAMILY LOW INTENSITY", BY MODIFYING THE REQUIREMENTS AND TYPES OF ALLOWABLE ACCESSORY AND CONDITIONAL USES FOR RM-1 PROPERTIES IN NORTH BEACH IN ORDER TO ALLOW FOR ACCESSORY RESTAURANT, CAFÉ, OFFICE, RETAIL, PERSONAL SERVICE AND NON-MOTORIZED WATERCRAFT RENTAL USES; AND AMENDING CHAPTER 130, "OFF-STREET PARKING", ARTICLE I, "IN GENERAL", TO PROVIDE FOR AN EXCEPTION TO OFF STREET PARKING FOR CERTAIN ACCESSORY AND CONDITIONAL USES ON RM-1 PROPERTIES NORTH OF 72ND STREET IN NORTH BEACH; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

WHEREAS, the City of Miami Beach seeks to encourage and incentivize the retention and restoration of contributing historic waterfront structures within the North Shore National Register District in the North Beach area; and

WHEREAS, the City of Miami Beach seeks to enhance the pedestrian-friendly allure, and promote the unique sense of place and community culture along North Beach's historic Tatum Waterway through low-intensity and compatible mixed-uses while providing greater accessibility to neighborhood amenities for residents; and

WHEREAS, the amendments set forth below is 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 142, entitled "Zoning Districts and Regulations," Article II entitled "District Regulations," Division 3, entitled "Residential Multifamily Districts," Subdivision II, entitled "RM-1 Residential Multifamily Low Intensity", is hereby amended as follows:

Sec. 142-151. - Purpose.

The RM-1 residential multifamily, low density district is designed for low intensity, low rise, single-family and multiple-family residences.

Sec. 142-152. - Main permitted and prohibited uses.

(a) The main permitted uses in the RM-1 residential multifamily, low density district are single-family detached dwelling; townhomes; apartments; hotels, for properties fronting Harding Avenue or Collins Avenue, from the City Line on the north, to 73rd Street on the south; and bed and breakfast inn (pursuant to article V, division 7 of this chapter).

(b) Alcoholic beverage establishments pursuant to the regulations set forth in chapter 6, of the City Code, are prohibited uses, unless otherwise specified. Moreover, all uses not listed as a main permitted or conditional use are also prohibited.

Sec. 142-153. - Conditional uses.

(a) The conditional uses in the RM-1 residential multifamily, low density district are adult congregate living facility; day care facility; nursing home; religious institutions; private and public institutions; schools; commercial or noncommercial parking lots and garages.

(b) For properties located in the Collins Waterfront Local Historic District, which are designated as a Local Historic Site, a hall for hire use within the interior of an existing building shall require conditional use approval and shall comply with the following:

(1) The conditional use shall only be permitted within an existing structure that is on a property designated as a "Historic Site" and such limitation shall be recorded in the Public Records;

(2) Dance halls, entertainment establishments and neighborhood impact establishments may only be permitted as part of a hall for hire;

(3) The hall for hire use shall close by 11:00 p.m. Sunday through Thursday, and by 12:00 a.m. Friday and Saturday;

(4) Events at the hall for hire shall be for the exclusive use of the property owner (and its subsidiaries) and invited guests. Events at the hall shall not be for the general public, with the exception of adjacent schools and community organizations within the Collins Park and Flamingo Drive areas, which may use the hall until 9:00 p.m.;

(5) Restaurants, stand-alone bars and alcoholic beverage establishments, not functioning as a hall-for-hire, shall be prohibited;

(6) Outdoor dining, outdoor entertainment and open-air entertainment uses shall be prohibited;

(7) Private or valet parking for any event at the hall shall be prohibited from using Flamingo Drive, Flamingo Place or Lake Pancoast Drive to facilitate access to the site.

(c) For apartment buildings located north of 41st Street with a minimum of 100 apartment units, a restaurant serving alcoholic beverages shall require conditional use approval and shall comply with the following:

(1) The restaurant shall only be open to residents of the apartment building and their invited guests. All invited guests shall be required to park on the subject property.

(2) The kitchen shall be limited to a maximum size of 500 square feet.

(3) The conditional use application for a restaurant with outdoor seating and outdoor dining areas shall specify the proposed maximum number of seats, and locations of seating in the outdoor areas, which shall be subject to Planning Board review and approval.

(4) A hall for hire, dance hall, open-air entertainment establishment, outdoor entertainment establishment or entertainment establishment shall be prohibited.

(5) There shall only be one restaurant on the subject property.

(6) The hours of operation of the Restaurant may be from 8 a.m. to midnight (no orders to be taken after 11 p.m.) and for any exterior areas then only until 11p.m. (no orders to be taken after 10 p.m.)

(7) Without limiting the foregoing, in the outdoor areas of the restaurant there shall not be any entertainment or Special Events.

(d) For existing apartment buildings located along Tatum Waterway Drive, Byron Avenue, and Crespi Boulevard, which are also located within the North Shore National Register Historic District and which are classified as "Contributing", accessory restaurants serving alcoholic beverages shall require conditional use approval and shall comply with the following:

(1) The interior restaurant area, inclusive of all seating and back of house, shall be located at the first level of the building and shall not exceed 25 percent of the floor area of the existing structure.

(2) Outdoor seating and outdoor dining shall only be permitted in buildings with internal courtyards and all such outdoor seating and dining areas shall be located within the internal courtyard. The maximum number of seats shall not exceed 30 and the locations of seating in the outdoor areas shall be subject to Planning Board review and approval.

(3) Exterior speakers shall be prohibited, except as may be required under the Florida Life Safety Code.

(4) A hall for hire, dance hall, open-air entertainment establishment, outdoor entertainment establishment, entertainment establishment or special event permits shall be prohibited.

(5) There shall only be one restaurant on the subject property.

(6) The hours of operation of the Restaurant may be from 12:00 pm. to 10:00 pm (no orders to be taken after 9:00 p.m.)

(7) Adequate loading shall be provided. All loading hours and locations shall be at the discretion of the Planning Board as part of the conditional use permit review.

(8) The minimum distance separation between accessory restaurants serving alcoholic beverages shall be 1,500 feet. However, the planning board may allow a lesser distance than 1,500 feet, but in no event shall such use be located at a distance less than 500 feet from another accessory restaurant serving alcoholic beverages. There shall be no variances from this distance separation requirement.

There shall be no variances from the provisions of Section 142-153(b).

Sec. 142-154. - Accessory uses.

(a) The accessory uses in the RM-1 residential multifamily, low density district are as required in article IV, division 2 of this chapter.

(b) Existing apartment buildings located along Tatum Waterway Drive, Byron Avenue, and Crespi Boulevard, which are also located within the North Shore National Register Historic District and which are classified as "Contributing", may have accessory office uses and the rental of non-motorized watercraft. These accessory uses shall comply with the following:

1. The accessory use areas shall not exceed 25 percent of the floor area of the existing structure.

2. The hours of operation for which the use is open to the public may be from 12:00 pm to 8:00 p.m.

3. No exterior speakers shall be permitted, except as may be required under the Florida Life Safety Code.

(c) Apartment buildings located north of 75th Street and east of Tatum Waterway Drive and Byron Avenue.

1. The following accessory uses shall be permitted:
   a. Café
   b. Retail
   c. Office
   d. Personal Service

2. All accessory uses permitted under Sec. 142-154(c) shall comply with the following:
   a. The minimum distance separation between accessory uses shall be 1,500 feet. However, retail, office or personal service uses may obtain conditional use approval from the planning board to operate at a lesser distance from an accessory use, but in no event shall such use be located at a distance less than 500 feet from an existing accessory use. There shall be no variances from this distance separation requirement.
   b. The accessory use areas shall not exceed 25 percent of the floor area of the structure.
   c. The hours of operation for which the use is open to the public may be from 7:00 am to 7:00 p.m. Subject to conditional use approval, the hours of operation for any of the above noted uses may be extended to 10:00 pm
   d. No exterior speakers shall be permitted, except as may be required under the Florida Life Safety Code.
   e. A hall for hire, dance hall, open-air entertainment establishment, outdoor entertainment establishment, entertainment establishment or special event permits shall be prohibited.

SECTION 2. That Chapter 130, entitled "Off-Street Parking," Article I entitled "In General" is hereby amended as follows:

Sec. 130-31 Parking District Established.

(a) For the purposes of establishing off-street parking requirements, the city shall be divided into the following parking districts:

* * *

(b) There shall be no off-street parking requirement for main or accessory uses associated with buildings that existed prior to October 1, 1993, which are:

(1) Located within the architectural district,

(2) A contributing building within a local historic district, or

(3) Individually designated historic building.

This provision shall not apply to renovations and new additions to existing buildings which create or add floor area, or to new construction which has a parking requirement.

(c) There shall be no off-street parking requirement for accessory uses associated with buildings in the RM-1 zoning district that existed prior to December 31, 2009, which are located north of 72nd Street and east of Crespi Boulevard.

SECTION 3. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. SEVERABILITY.

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

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this ____ day of _____, 2018.

_____
Mayor

ATTEST:

_____
Rafael E. Granado City Clerk

First Reading: _____, 2018
Second Reading: _____, 2018

Verified by:_____
Thomas Mooney, AICP
Planning Director

M:\$CMB\CCUPDATES\Land Use and Development Committee\2018\March 14, 2018\Tatum Waterway and NR Adaptive Re-Uses - DRAFT ORDINANCE Mar 14 2018 LUDC.docx

North Beach
Adaptive Reuse Parcels

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **DISCUSSION ON THE CREATION OF A PINK ZONE**

HISTORY:
On October 18, 2017, at the request of Commissioner Ricky Arriola, the City Commission referred the subject item to the Land Use and Development Committee for discussion (item C4L). On October 30, 2017 the item was continued to a date certain of December 11, 2017.

On December 11, 2017 the Land Use and Development Committee discussed the item and continued it to the February 2018, LUDC. On February 21, 2018 the item was continued to a date certain of March 14, 2018.

Analysis
PLANNING ANALYSIS
At the December 11, 2017 LUDC, Mr. Brian Falk made a presentation regarding the Project for Lean Urbanism. Lean Urbanism and Pink Zones are ways to encourage small scale economic development. The Land Use Committee continued the item and requested that Mr. Falk provide a more detailed update and proposal tailored to incentivize small business.

The Administration met with Mr. Falk and is supportive of the Pink Zone concept in Miami Beach. In this regard, a defined area and/or type of use should be identified and further explored to see if a lean urbanism approach is suitable.

CONCLUSION:
The Administration recommends that the Land Use and Development Committee discuss the item and provide additional policy direction. If there is consensus on further studying the Pink Zone concept for application in the City, it is further recommended that the item be continued to a future LUDC meeting.

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **DISCUSSION: POSSIBLE AMENDMENT TO THE WASHINGTON AVENUE OVERLAY (CD-2 FROM 6TH-17TH STREETS)**

HISTORY:

On July 25, 2018, at the request of Commissioner Michael Gongora, the City Commission referred the item to the Land Use and Development Committee (Item C4L).

Analysis

BACKGROUND / ANALYSIS

Under Section 142-309 of the City Code, minimum setback requirements have been established for residential uses within the Washington Avenue overlay, from 6th to 17th Streets. A proposal has been put forward to amend the interior side setback requirements for residential uses along the Washington Avenue Corridor.

The existing interior side setback regulations were designed for a broader, water or beachside properties, as they set forth a large sum of the side yard requirement, particularly for aggregated lots. As development sites with larger numbers of individual lots are aggregated, the sum of the side yard requirement increases significantly for residential and hotel uses.

These larger interior side setback requirements are not consistent with the denser, more compact urban environment that defines Washington Avenue from 5th to 17th Street. Additionally, as this stretch of Washington Avenue is within a locally designated historic district, the strategic placement of limited infill construction consisting of residential or hotel uses is made more challenging by the current interior setback regulations.

The following text amendment maintains a baseline minimum of 7.5 feet for interior side setbacks for lots that have a frontage greater than 100 feet in this corridor. However, the requirement for a minimum interior side setback of 8% of the lot width has been stricken, as this percentage threshold is impacting larger lot aggregations (those in excess of 100 feet of frontage). The minimum sum of the side yard setback requirement of 16% is maintained, so as to ensure adequate light and air on very wide sites for the upper levels. Also, most projects will have commercial uses on the first level, thus allowing the continuous street wall at a zero side setback, which would not be affected.

Draft Text Amendment:

Sec. 142-309. - Washington Avenue development regulations and area requirements.
The following regulations shall apply to properties that front Washington Avenue between 6th Street and 16th Street; where there is conflict within this division, the criteria belowshall apply:

* * *

(3) For lots that have a frontage that is equal to or less than 100 feet, the setbacks shall be pursuant to section 142-307. For lots that have a frontage that is greater than 100 feet, the setbacks shall be as follows:

* * *

c. Side, facing a street:
i. Subterranean: Zero feet;
ii. Non-residential uses: Zero feet;
iii. Residential and Hotel uses: Sum of the side setbacks shall equal 16 percent of lot width or a minimum of 7½ feet and up to 20 feet.

d. Side, interior:
i. Subterranean: Zero feet;
ii. Non-residential uses: Zero feet;
iii. Residential and Hotel uses: ~~Sum of the side setbacks shall equal 16 percent of lot width or a minimum of 7½ feet or eight percent of lot width, whichever is greater~~. The minimum interior side setback shall be 7 ½ feet. The minimum sum of the side setbacks shall equal 16 percent of the lot width, up to 20 feet.

CONCLUSION:

The Administration recommends the LUDC discuss the item and provide appropriate policy direction. If there is consensus on the recommended text amendment herein, it is further recommended that the Administration be directed to prepare a draft ordinance to be sent to the full City Commission for referral to the Planning Board.

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **DISCUSSION ON EMPTY STOREFRONTS AND HOW THE CITY CAN INCENTIVIZE LANDLORDS TO FIND TENANTS TO ACTIVATE OUR STREETS.**

ATTACHMENTS:

Description	Type
C4 G	Memo

MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Commissioner Kristen Rosen Gonzalez
DATE: March 7, 2018

SUBJECT: REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE - DISCUSSION ON EMPTY STOREFRONTS AND HOW THE CITY CAN INCENTIVIZE LANDLORDS TO FIND TENANTS TO ACTIVATE OUR STREETS.

RECOMMENDATION

Please add a referral to Land Use and Development Committee regarding the following:

How many storefronts are currently empty and have been empty for more than six months?

Can we incentivize landlords so they find tenants and we once again activate our streets?

Legislative Tracking

Commissioner Kristen Rosen Gonzalez

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **DISCUSSION TO REVIEW THE ROLE OF LAND USE BOARDS IN NEIGHBORHOOD IMPROVEMENT PROJECTS.**

ATTACHMENTS:

	Description	Type
🗋	C4 N	Memo
🗋	Draft Ordinance	Memo
🗋	WAvNA Recommendation	Memo

MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Commissioner Mark Samuelian
DATE: April 11, 2018

SUBJECT: REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE TO REVIEW ROLE OF LAND USE BOARDS IN NEIGHBORHOOD IMPROVEMENT PROJECTS.

ANALYSIS

A review of the role the Land Use Boards should have in neighborhood improvement projects and the policies set forth pertaining these roles as it concerns such projects as to include streetscape enhancements, street raising, installation of rails, etc.

Miami Beach City Code Sec. 118-252 (on role of Land Use Boards):
(2) Except for stormwater pump stations and related apparatus installed by the City, all public improvements upon public rights-of-way and easements shall be reviewed by the Design Review Board. For purposes hereof, public improvements shall include, structures, streetscape projects, street improvements or redesign, modifications to street lighting or signage, landscaping projects, medians, master screening plans for stormwater pump stations and related apparatus, and above ground utilities; provided, however, that public improvements shall not include routine maintenance, utility repair work, and stormwater pump stations and related apparatus installed by the City.

Legislative Tracking
Commissioner Mark Samuelian

ATTACHMENTS:

Description

- Language Defining Role of Land Use Boards

Sec. 118-252. - Applicability and exemptions.

(a) Applicability.

(1) All building permits for new construction, public interior areas, interior areas that face a street or sidewalk, demolitions and wrecking, alterations, or additions to existing buildings, including fences, parking lots, walls and signs, whether new or change of copy, and exterior surface finishes and materials, shall be subject to review under the design review procedures except as provided in subsection (b) of this section. No building permit shall be issued without the written approval by the design review board or staff as provided for in these regulations.

(2) Except for stormwater pump stations and related apparatus installed by the City, all public improvements upon public rights-of-way and easements shall be reviewed by the Design Review Board. For purposes hereof, public improvements shall include, structures, streetscape projects, street improvements or redesign, modifications to street lighting or signage, landscaping projects, medians, master screening plans for stormwater pump stations and related apparatus, and above ground utilities; provided, however, that public improvements shall not include routine maintenance, utility repair work, and stormwater pump stations and related apparatus installed by the City.

DRB REVIEW OF PUBLIC PROJECTS

ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS (LDR'S) OF THE CITY CODE, AT CHAPTER 118, ENTITLED "ADMINISTRATIVE AND REVIEW PROCEDURES," ARTICLE VI "DESIGN REVIEW PROCEDURES, BY MODIFYING SECTION 118-252, ENTITLED "APPLICABILITY AND EXEMPTIONS" TO EXCLUDE FROM DESIGN REVIEW BOARD REVIEW CITY APPLICATIONS RELATING TO STORMWATER PUMP STATIONS; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

WHEREAS, the City Code, at Section 118-252 provides that the Design Review Board is to review all above ground public works improvements within the City's rights-of-way or on City property; and

WHEREAS, the amendment set forth below are necessary to accomplish 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 "Administrative and Review Procedures" at Article VI "Design Review Procedures, Section 118-252 entitled "Applicability and exemptions," of the City's Land Development Code is hereby amended follows:

* * *

CHAPTER 118 ADMINISTRATIVE AND REVIEW PROCEDURES

* * *

ARTICLE VI DESIGN REVIEW PROCEDURES

* * *

Sec. 118-252. - Applicability and exemptions.

(a) Applicability.

(1) All building permits for new construction, public interior areas, interior areas that face a street or sidewalk, demolitions and wrecking, alterations, or additions to existing buildings, including fences, parking lots, walls and signs, whether new or change of copy, and exterior surface finishes and materials, shall be subject to review under the design review procedures except as provided in subsection (b) of this section. No

building permit shall be issued without the written approval by the design review board or staff as provided for in these regulations.

(2) ~~Except for stormwater pump stations and related apparatus, installed by the City, s~~ Significant public improvements upon public rights-of-way and easements are reviewed by the Design Review Board. For purposes hereof, public improvements shall include, but not be limited to, structures, streetscape projects, street improvements or redesign, modifications to street lighting or signage, landscaping projects, medians, stormwater pump stations and related apparatus, master screening plans for stormwater pump stations and related apparatus and above ground utilities; however, public improvements shall exclude raising of streets and sidewalks by less than six inches, routine maintenance and utility repair work. ~~Public improvements shall not include stormwater pump stations and related apparatus.~~

(3) The review and approval of all new single family home construction, in accordance with subsection 142-105(d)(7).

(b) Exemptions. Exemptions to these regulations include all of the following provided no new construction or additions to existing buildings are required:

(1) All permits for plumbing, heating, air conditioning, elevators, fire alarms and extinguishing equipment, and all other mechanical and electrical equipment when such work is entirely within the interior of the building, excluding public interior areas and interior areas that face a street or sidewalk; however, the planning director may approve such building permit applications for minor work on the exterior of buildings.

(2) Any permit necessary for the compliance with a lawful order of the building official, fire marshal or public works director related to the immediate public health or safety.

(3) All single-family dwellings are exempt from the design review regulations, with the exception of exterior surface color samples and finishes, and the review and approval of all new single family home construction in accordance with subsection 142-105(d)(7). However, all building permits for new construction, alterations or additions to existing structures shall be subject to compliance with section 142-105, and all demolition permits must be signed by the planning director, or designee. This exception shall not apply to applicable public improvements on City rights of ways.

(4) All properties located within designated historic districts and designated historic sites.

* * *

Sec. 118-260. - Administrative review procedures.

(a) The planning director or designated representative, shall have the authority to approve, approve with conditions or deny an application on behalf of the board, for the following:

(1) Ground level additions to existing structures, not to exceed two stories in height, which are not substantially visible from the public right-of-way, any waterfront or public park. For those lots which are greater than 10,000 square feet, the floor area of the proposed addition may not exceed ten percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 5,000 square feet.

(2) Replacement of windows, doors, storefront frames and windows, or the approval of awnings, canopies, exterior surface colors, storm shutters and signs.
(3) Facade and building alterations, renovations and restorations which are minor in nature.
(4) Minor demolition and alterations to address accessibility, life safety, mechanical and other applicable code requirements.
(5) Minor demolition and alterations to rear and secondary facades to accommodate utilities, refuse disposal and storage.
(6) Minor work associated with the public interiors of buildings and those interior portions of commercial structures which front a street or sidewalk.
(7) Minor work involving public improvements upon public rights-of-way and easements; this shall not include the raising of streets and sidewalks in excess of six inches.
(8) Minor work which is associated with rehabilitations and additions to existing buildings, or the construction, repair, or rehabilitation of new or existing walls, at-grade parking lots, fences.

The planning director's decision shall be based upon the criteria listed in this article. The applicant may appeal a decision of the planning director pursuant to the procedural requirements of Section 118-9.

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 renumbered or relettered 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 _____, 2018.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

_____ _____
City Attorney Date

First Reading: _____, 2018
Second Reading: _____, 2018

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

Underscore denotes new language
~~Strikethrough~~ denotes deleted language

M:\$CMB\CCUPDATES\Land Use and Development Committee\2018\May 23, 2018\DRB Review of Public Projects - DRAFT ORD.docx

From: Granado, Rafael
Sent: Tuesday, May 22, 2018 2:16 PM
To: Mooney, Thomas; Aleman, John; Gongora, Michael (MGongora@beckerlawyers.com); Rosen Gonzalez, Kristen; Arriola, Ricky
Cc: Granado, Rafael; De Pinedo, Naima
Subject: West Avenue Neighborhood Association (WAvNA) - Recommendation

Good afternoon Commissioners,

At the request of the West Avenue Neighborhood Association (WAvNA), I am forwarding to you the below email regarding Agenda Discussion Item # 8 – May 23, 2018 Land Use and Development Committee.

Regards,

MIAMIBEACH
Rafael E. Granado, Esq., *City Clerk*
OFFICE OF THE CITY CLERK
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305.673.7411 rafaelgranado@miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

From: WAvNA - West Avenue Neighborhood Association [mailto:wavna305@gmail.com]
Sent: Tuesday, May 22, 2018 12:16 PM
To: Granado, Rafael
Cc: West Avenue Neighborhood Association; Gayle Durham; Shawn Patrick Bryant
Subject:

City Clerk Rafael Granado--

Please include this email in the packet for May 23, 2018, Land Use Board.

RE: Agenda Item 8:
DISCUSSION TO REVIEW THE ROLE OF LAND USE BOARDS IN NEIGHBORHOOD IMPROVEMENT PROJECTS.

The West Avenue Neighborhood Association is in support of having all neighborhood improvement projects going before the
Design Review Board (DRB). We want the City to return to following City Code 118-252 that is stated below.

During the Mayor Levine / Bruce Mowry Regime, the City of Miami Beach did not follow this City Code. As a result, public comment was restricted and less than acceptable projects were delivered by the City within the West Avenue Neighborhood. For example, Green Space park-

like areas received no Design Review Board overview. The former City Engineer was allowed to solely design these Green Space areas himself. Despite his commitments and promises to have the neighborhood residents participate in the design process he did not honor his commitments/promises and the neighborhood was left with an area that had ZERO design elements planned into the space.

The former City Engineer Bruce Mowry also did not submit Streetscape Projects to go before the DRB despite the requirement to do so.

We MUST have all projects outlined in the City Code put before the Design Review Board. That will allow all residents the opportunity to have input and pubic comment into future projects.

Sec. *118-252.* - Applicability and exemptions.

(a)

Applicability.

(1)

All building permits for new construction, public interior areas, interior areas that face a street or sidewalk, demolitions and wrecking, alterations, or additions to existing buildings, including fences, parking lots, walls and signs, whether new or change of copy, and exterior surface finishes and materials, shall be subject to review under the design review procedures except as provided in subsection (b) of this section. No building permit shall be issued without the written approval by the design review board or staff as provided for in these regulations.

(2)

Except for stormwater pump stations and related apparatus installed by the City, all public improvements upon public rights-of-way and easements shall be reviewed by the Design Review Board. For purposes hereof, public improvements shall include, structures, streetscape projects, street improvements or redesign, modifications to street lighting or signage, landscaping projects, medians, master screening plans for stormwater pump stations and related apparatus, and above ground utilities; provided, however, that public improvements shall not include routine maintenance, utility repair work, and stormwater pump stations and related apparatus installed by the City.

Regards,
S
hawn Patrick Bryant
West Avenue Neighborhood Association

West Avenue Neighborhood Association (WAvNA)

West Avenue Board of Directors:
Gayle Durham - President
Shawn Patrick Bryant - Vice President
Brian Keene - Secretary/Treasurer
Travis Copeland

Corinne Kirkland
Gregg Chislett
Tim Carr

wavna305@gmail.com
facebook/wavna30
twitter/wavna305

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **DISCUSSION REGARDING ESTABLISHING A HISTORIC PRESERVATION FUND.**

ATTACHMENTS:

	Description	Type
🗋	C4 O	Memo

MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Commissioner Ricky Arriola
DATE: April 11, 2018

SUBJECT: REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE AND THE FINANCE AND CITYWIDE PROJECTS COMMITTEE TO DISCUSS ESTABLISHING A HISTORIC PRESERVATION FUND.

ANALYSIS

Please place this item on the April 11, 2017 City Commission agenda.

The North Beach Master Plan was adopted by the City Commission on October 19, 2016. The plan highlighted five big ideas to revitalize North Beach: 1) create a Town Center; 2) provide more mobility options; 3) protect and enhance neighborhoods; 4) better utilize public lands; and 5) build to last.
To advance the idea of protecting and enhancing neighborhoods, the North Beach Master Plan recommended the creation of a historic preservation fund (HPF). Many cities throughout the United States have a HPF in place that acts as a grant or loan program to help homeowners renovate and repair their historic properties by fixing things like doors, windows, balconies, siding, chipped paint, etc. Attached are the historic preservation programs of a few cities like Tampa, Louisville, and Knoxville.

I ask the Land Use & Development Committee and the Finance & Citywide Projects Committee to discuss establishing and financing a Historic Preservation Fund (HPF) to further the idea of protecting and enhancing neighborhoods in North Beach. I further request that if a HPF is established for North Beach and after a period of time is found to be successful, it should be expanded and implemented citywide.

The Miami Design Preservation League (MDPL), Miami Beach United (MBU), and Historic Preservation Board (HPB) should be consulted throughout this process to determine the parameters of the program.

Legislative Tracking
Commissioner Ricky Arriola

ATTACHMENTS:

Description

PROCEDURES AND STANDARDS

Interstate Historic Preservation Trust Fund Loan Program (Program)

Mission
The mission of the Interstate Historic Preservation Trust Fund (Trust Fund) is to accelerate the exterior historic preservation of properties in the National Register Historic Districts of Ybor City, Tampa Heights, and West Tampa.

Goal
To enable the owners of historic properties within the National Register Historic Districts of Ybor City, Tampa Heights, and West Tampa to preserve the character and structure of those historic properties by providing exterior preservation funds for eligible owners and projects.

Application Deadline
Applications will be received through the Purchasing Department until **3:00 p.m. (EDT), March 28, 2018.** Applications received after the submission deadline will not be considered. Applications may be mailed, express mailed, or hand delivered to:

City of Tampa Purchasing Department
Bid Control Division
306 E. Jackson, St., 2nd Floor
Tampa, FL 33602

Review Process
The City of Tampa evaluates all applications on a competitive basis. The Interstate Historic Preservation Trust Advisory Committee (Advisory Committee) will advise the Mayor of Tampa and Tampa City Council on the allocation of the funds available for distribution.

Application Procedure
a) Applications may be submitted by property owners, not-for-profit organizations, together with cities, counties, or other units of local government.

b) Interested applicants shall obtain an application for assistance under the Trust Fund from the City of Tampa Historic Preservation Division. The Historic Preservation Division shall determine eligibility of the project under the requirements of the Trust Fund. When a project is determined to be eligible, the property owner will be referred to the City of Tampa Housing and Community Development Division (HCD) for financial review and underwriting. Following the timely receipt of the **TRUST FUND APPLICATION (EXHIBITS A-G),** and verification of applicant eligibility to participate in the Interstate Historic Preservation Trust Fund Loan Program (Program), the application submissions will be scheduled before the Advisory Committee for consideration. If an application is successful, the

applicant will then be offered a loan to be secured by the applicant's historic property. Applicants are not required to accept a loan because they submit an application or have Program funds allocated to them. Loans are made without regard to race, color, religion, national origin, sex, handicap, or familial status.

The City of Tampa reserves the right to reject any and all applications with or without cause, waive any informality of any application, cancel the application cycle, and make all awards in the best interest of the City and the Interstate Historic Preservation Trust Fund.

Eligibility Requirements (all of the following eligibility requirements must be met)

- Applications that have a funding deficit are ineligible for consideration. The total project budget must be covered by total funding sources, as evidenced by a completed **PROJECT FINANCIAL PLAN WORKSHEET** (**EXHIBIT B)** of the application. Applicants must provide proof of funding sources including owner funds being utilized in the project.
- Financing must have been sought and attempted through an institutional lender. All sources are to be indicated on **FINANCING DUE DILIGENCE WORKSHEET (EXHIBIT C)**. Applicants must provide **an outcome letter** from each conventional funding source.
- Located in the National Register Historic Districts of Ybor City, Tampa Heights, or West Tampa and constructed more than seventy-five (75) years prior to the date of the application.
- All exterior work included in the application adheres to the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties.
- Funds cannot be used for acquiring property.
- Does not include interior rehabilitation or restoration except for electrical, mechanical and plumbing improvements necessary for proper preservation and/or exterior improvements to the structure. A minimum of 50% of the funds are required to be spent on exterior restoration, rehabilitation and reconstruction of architectural details.
- Work identified in the scope of the project in the application has not been initiated.

Evaluation Criteria for Application

The Advisory Committee will utilize the following criteria to evaluate and rank each eligible project received in the application cycle. The Advisory Committee will evaluate and rank each application based, in general, upon the selection criteria identified below and the extent to which the project fulfills the mission of the Trust Fund. It is the responsibility of the applicant to demonstrate clearly within the application that the project addresses the evaluation criteria. The criteria that will be used as a general guide to evaluate and rank the application include, but are not limited to, the following:

- Catalyst for historic preservation projects in the immediate vicinity.
- Project alleviates or prevents endangerment of historic property.
- Importance of the structure as to its historic and/or architectural significance. For example, a contributing structure in an historic district will rank higher than a non-contributing structure.
- Qualifications of the applicant and/or professionals composing the project team.

- Financial Commitments: Applicant has identified the monetary scope of the project and has sought conventional sources of funding and/or has pledged personal/corporate funds to initiate and complete the project for which Trust Fund monies are sought. Applicant shall provide documentary evidence of all funding sources necessary to complete the project except for the funding source being sought through a grant application. Personal financial commitment will rank higher than applications that do not include a personal financial commitment. Applications with a shorter loan term being requested will rank higher than applications for projects of similar scope, but with a longer loan term being requested. Applications that have a funding deficit are ineligible for consideration.

Eligible Activities Which May Be Funded in Order of Priority

- Structural Stabilization or relocation of an eligible structure
- Exterior restoration, rehabilitation, or reconstruction of architectural details.
- Mothballing
- Electrical, mechanical and plumbing improvements necessary for proper preservation and/or exterior improvements to the structure.
- Soft costs (architectural or engineering) when included as part of scope of stabilization, mothballing, restoration or reconstruction project.
- Minor additions for contemporary adaptation of buildings.

Program Requirements

a) Eligible property owners may receive funding through the Trust Fund loan program only once per calendar year per property folio number. Subsequent applications to the Trust Fund must encompass a different project for which the funds are being sought, but may be applied to the same property folio number.

b) Applicants can request a maximum loan amount of $200,000.00.

c) A property owner is limited to a maximum of $400,000.00 in total funding through the Trust Fund per property folio number for a period of ten years.

d) Applicants must attach a commitment letter to evidence each funding source listed in **PROJECT FINANCIAL PLAN WORKSHEET** (**EXHIBIT B)**. The Total Costs of Project must be covered by the Total Project Funding. The loan amount requested shall not exceed the cost of the approved work. Applications that have a funding deficit are ineligible for consideration.

e) Conventional financing must have been sought and attempted through an institutional lender. Source to be indicated on **PROJECT FINANCIAL PLAN WORKSHEET** (**EXHIBIT B)**, in order to qualify for a Trust Fund loan. Applicants must provide **an outcome letter from each** conventional funding source.

f) Loan recipients are required to commence construction of the Project within three months of the disbursement date of the loan and be completed within one year from the date of disbursement of the loan.

g) A minimum of 50% of the loan award is required to be spent on exterior restoration, rehabilitation

and reconstruction of architectural details.

h) A maximum of 10% of the loan award may be applied to soft costs.

i) Approval of the Project plans by City of Tampa Historic Preservation staff is required prior to initiation of the approved Project. Applicants that initiate or complete the Project work without prior approval of the Project plans will be disqualified from receiving a Trust Fund loan.

j) The property must be in compliance with all City of Tampa codes.

Loan Underwriting Requirements

a) An applicant must have the capacity to repay the loan under the requirements of the Trust Fund as set out in this policy. Applications will be evaluated based on credit and financial analysis of the applicant. Past performance or similar projects may be considered for this purpose.

b) Debt Ratio: The applicant's total monthly debt to income ratio shall not exceed 50%. The Advisory Committee may make case by case exceptions with consideration of compensating factors.

c) Credit Report: Credit history shall be reviewed by HCD to determine how the applicant has handled prior obligations. No loan shall be granted in the event that there are judgments or other liens, other than mortgage liens, encumbering the property.

d) All ad valorem taxes on property owned by the applicant within the City of Tampa must be current.

e) Property title must be clear with the exception of mortgage liens. HCD shall obtain a title binder prior to loan approval. Lender's Title Insurance must be obtained for all loans from the Trust Fund to protect the lender's interest in the property should a problem with title arise.

f) Fund verification requires asset statements of at least six consecutive months.

g) A property survey, no more than ten years old for same structure on survey, shall be provided.

h) Total Encumbrances: In some cases the property may become over-encumbered when the Trust Fund loan is considered. In this event, the Trust Fund will consider this when determining the repayment period.

i) When the project owner is a for-profit corporation, the Trust Fund shall require that a principal of that organization personally guarantee the mortgage.

j) An appraisal of the property, to be paid for at the applicant's expense, may be requested by the Advisory Committee, at its discretion.

Loan Terms

a) Loans from the Trust Fund may not exceed $200,000.00 per eligible project.

b) The loan amount shall not exceed the cost of the approved work plus approved closing costs.

c) The loan's repayment period will be based on the use of the property and the amount of the loan.

1. If the loan amount is less than or equal to $10,000.00, the repayment period shall be no longer than five (5) years.
2. If the loan amount is more than $10,000.00, the repayment period shall be based as follows:
   i. For loans where the property use involves an owner-occupied, single family dwellings (or other program-eligible personal, family, or household uses) the repayment period shall be no longer than twenty (20) years.

ii. For all other program-eligible property uses (for example commercial or business uses), the loan type shall be a balloon mortgage consisting of a 5-year payment period with a 20-year amortization. The loan will come due at the end of the 5-year period at which time the applicant may then seek conventional or other financing to fully payoff the Trust Fund loan.

d) The interest rate for all loans is discounted from the U.S. Prime Rate by 1% and is established by the Program administrator basing the calculation on the U.S. Prime Rate for the day which the application cycle is advertised. For the application cycle of **March 28, 2018**, the interest rate is **2.5%**. If the loan amount is more than $10,000.00, it will be interest-only for the first six (6) months.

Representative Repayment Terms For Owner-Occupied Single Family Dwellings (or other personal, family, or household Program-eligible purposes) During the Application Cycle Commencing 12/4/2017:

i. Example where the loan amount is less than or equal to $10,000.00:
A loan of $10,000.00 for four (4) years at 6.067% annual percentage rate (APR) will have a monthly payment of $219.14. The payment does not include taxes or insurance and the actual payment obligation will be higher. Your actual payment may also vary based on amount, term, taxes and insurance and other factors. All loans are subject to approval and eligibility requirements.

ii. Example where the loan amount is more than $10,000.00:
A loan of $200,000.00 for twenty (20) years at 2.540% annual percentage rate (APR) will have a monthly payment of $1,080.77 (Month 1-Year 20). Taxes and insurance not included and the actual payment obligation will be higher. Actual payment may also vary based on amount, term, taxes and insurance and other factors. All loans are subject to approval and eligibility requirements.

e) No down payment is required at closing.

f) Servicing of loans shall be carried out by contractor(s) engaged by the City of Tampa. A servicing fee applies, estimated at $65.00.

g) Escrow accounts shall be established and administered by contractor(s) engaged by the City of Tampa. An initial set-up fee applies, estimated at $25.00. Draw amounts are limited to 20% of the total amount of the loan and will not be issued on delinquent accounts. A maximum of five (5) draws are allowed. Transfer fees apply, estimated at $15.00 per draw.

h) In the event that the mortgagee requests changes to the original loan terms once approved, including refinancing, subordination of priority, or any other action requiring reconsideration by the Advisory Committee, a processing fee of $300.00, in addition to all related fees, will be assessed prior to processing. Approval of the request is not guaranteed and fees are non-refundable in the event that the request is not granted.

i) If an historic property securing a Program loan is sold, the Program loan will be repaid at the time the sale is closed.

Emergency Funding Requests

In the event that an emergency situation occurs that poses an immediate threat to, or has resulted in the serious damage of, a historic building located in an eligible National Register District, a property owner may apply for emergency funding, in the form of a low-interest loan, through the Trust Fund loan program regardless of the application deadline. The Advisory Committee will determine if the scope of the application qualifies as an emergency situation and whether to authorize an emergency loan. The

established Trust Fund loan program *Procedures and Standards* will otherwise remain applicable. Emergency loans will be made exclusively for the interim stabilization of a historic property and are not available for a comprehensive rehabilitation project unless otherwise determined to be necessary to the general preservation of the historic building. An application for an emergency loan will be deemed ineligible in the event that the Advisory Committee determines, in its sole discretion, that the property owner has compromised the integrity of the subject building or structure through intentional or willful neglect or misconduct.

For applications requesting an emergency loan, the Advisory Committee may:

1. Require that the applicant disclose the scope of protection provided under all contracts of property insurance and submit copies of the current insurance policies related to the subject property (i.e., property loss, fire, extended coverages, limitations and riders); and
2. Require that the applicant and the City of Tampa enter into an agreement that requires immediate repayment of the emergency loan upon receipt of proceeds from any and all property insurance policies in effect that relate to the subject property; and
3. At its sole discretion, determine an appropriate period for repayment of the emergency loan when unique circumstances exist that warrant an extension; and
4. At its sole discretion, determine the appropriate scope of work that is necessary to eliminate the threat and damages to the historic building for which the emergency loan is requested.

Compliance with the City of Tampa Ethics Code

The applicant shall comply with all applicable governmental and city rules and regulations including the City's Ethics Code, which is available on the City's website (City of Tampa Code, Chapter 2, Article VIII. - Section 2-522). Moreover, each applicant to the Interstate Historic Preservation Trust Fund Loan Program acknowledges and understands that the City's Charter and Ethics Code prohibit any City employee from receiving any substantial benefit or profit out of any contract or obligation entered into with the City, or from having any direct or indirect financial interest in effecting any such contract or obligation. (City of Tampa Code, Chapter 2, Article VIII. - Section 2-514(d)).

Please note that the City's Ethics Code may be accessed on the Internet through the following website: www.tampagov.net

Tampa's municipal codes are published online by the Municipal Code Corporation. Printed copies of the Ethics Code can be obtained from the City Clerk's Office for a fee of $0.15 cents a page.

City of Louisville
COLORADO • SINCE 1882

Historic Preservation Fund

Application and Information

(Revised October 2009)

Guidelines

The City of Louisville's Historic Preservation Fund (HPF) and is intended to help retain the character of Historic Old Town Louisville by promoting the preservation and rehabilitation of historic resources. A complete application for assistance from the HPF will consist of an application form, historic information about the property, photographs, a contractor bid (if applicable), and information about the source of any matching funds.

Staff contact:

Sean McCartney, Principal Planner
749 Main St.
Louisville, CO 80027
(303) 335-4591
seanm@louisvilleco.gov

Submit all applications to:

Historic Preservation Fund
City of Louisville
749 Main St.
Louisville, CO 80027

For more information

1) Louisville Municipal Code §3.20.605.C, available at http://www.louisvilleco.gov
2) City Council Resolution No. 20, Series 2009
3) Historic Preservation Commission website: http://www.louisvilleco.gov/GOVERNMENT/BoardsCommissions/HistoricPreservationCommission/tabid/260/Default.aspx

Deadlines

There are no application deadlines. Applications will be considered as they are received, but they are subject to the availability of funds in any given year.

Priorities and Matching Funds and Other Incentives

According to §3.d of City Council Resolution No. 20, Series 2009, priority for incentives shall be given to loans, then rebates, then grants. You may wish to structure your requests accordingly to maximize your chances of a success

Matching funds are not required. However, applications which demonstrate the availability of matching funds from any source, including but not limited to the State Historical Fund, other grants, or private funding, may be viewed more favorably.

Eligible Applicants

Any owner of a historic resource or resource that helps to define the character of Historic Old Town Louisville (see map in Appendix A) is eligible to apply to the HPF. "Resources" include,

but are not limited to, primary structures, accessory structures, outbuildings, fences, existing or historical landscaping, archaeological sites, and architectural elements of structures.[1]

Owners of property in Historic Old Town Louisville which will experience new construction may also be awarded grants to preserve the character of Historic Old Town. The purpose of these incentives it to limit mass, scale, and number of stories, to preserve setbacks, to preserve pedestrian walkways between buildings, and to utilize materials typical of historic buildings, above mandatory requirements.[2]

Landmarking/Grant of Easements

As required by Ballot issue 2A, 2008 and Louisville Municipal Code §3.20.605.C, if you receive incentives from the Historic Preservation Fund, you must complete an application to landmark your property. Application forms are available here: http://www.louisvilleco.gov/Portals/0/Boards%20&%20Commissions/Preservation%20Commission/ladnmarkapplication.pdf . If the Historic Preservation Commission or the City Council determines that your property is not eligible to be landmarked, then you must enter into an agreement for a conservation easement to be placed upon your property. These requirements are to ensure that your property retains its character and that the city's investment in your property is respected, but does not mean that you cannot enjoy the use of your property or make appropriate additions or interior alterations.

Eligible Costs and Improvements:

Eligible costs include hard costs associated with the physical preservation of historic fabric or elements. Labor costs are eligible IF the work is to be done by someone other than the applicant/owner (whose labor can only be used for matching purposes with an acceptable written estimate).

Example eligible improvements:

Repair and stabilization of historic materials:

- Siding
- Decorative wood work and moulding
- Porch stairs and railing
- Cornices
- Masonry (such as chimney tuckpointing)
- Doors and Windows

Removal of non-historic materials:
(particularly those that cover the historic materials)

- Siding, trim and casing
- Porch enclosures
- Additions that negatively impact the historic integrity
- Repair/replacement to match historic materials

[1] City Council Resolution No. 20, Series 2009, §1.e.
[2] City Council Resolution No. 20, Series 2009, §3.c.

Energy upgrades:

- Repair and weather sealing of historic windows and doors

Reconstruction of missing elements or features:
(Based on documented evidence such as historic photographs and physical evidence)

- Porches and railings
- Trim and mouldings
- False-fronts cornices

Some additional project elements are eligible under the property owner's match ONLY if they are part of a larger rehabilitation project that includes at least one of the eligible features and improvements listed above. These match elements include:

- Necessary structural repairs
- Materials analysis
- Donated labor and materials
- Architectural and engineering services

Ineligible Costs and Improvements:

- Redecorating or any purely cosmetic change that is not part of an overall rehabilitation or that does not enhance the property's character
- Soft costs such as appraisals, interior design fees, legal, accounting and realtor fees, grant fees, sales and marketing, closing, building permit, use and inspection fees, bids, insurance, project signs and phones, temporary power, bid bonds, copying, and rent loss during construction
- New additions or enlargements
- Excavation, grading, paving, landscaping or site work such as improvements to paths or fences unless the feature is part of the landmark designation, except for correcting drainage problems that are damaging the historic resource
- Repairs to additions to non-historic portions of the property
- Reimbursement for owner/self labor (which can count only towards the matching costs)
- Interior improvements *(unless the interior is also landmarked)*
- Non-historical decorative elements
- Outbuildings which are not contributing structures to a landmarked site or district

Application Review Process

Applications will be screened by Historic Preservation Commission (HPC) staff to verify project eligibility. If any additional information is required, staff will contact the applicant directly. The HPC will evaluate the applications in a public meeting at which the applicant will be allowed to make statements. The HPC will make a recommendation to City Council, utilizing the criteria contained in Appendix B. City Council will take final action on the application.

Project Review and Completion

Any required design review or building permits must be obtained before beginning work on the project. If a property has already been landmarked, in some circumstances an Alteration Certificate must be approved by the HPC. HPC staff should be allowed a walk-through with the applicant and any contractor before the beginning of work. Projects must be completed within

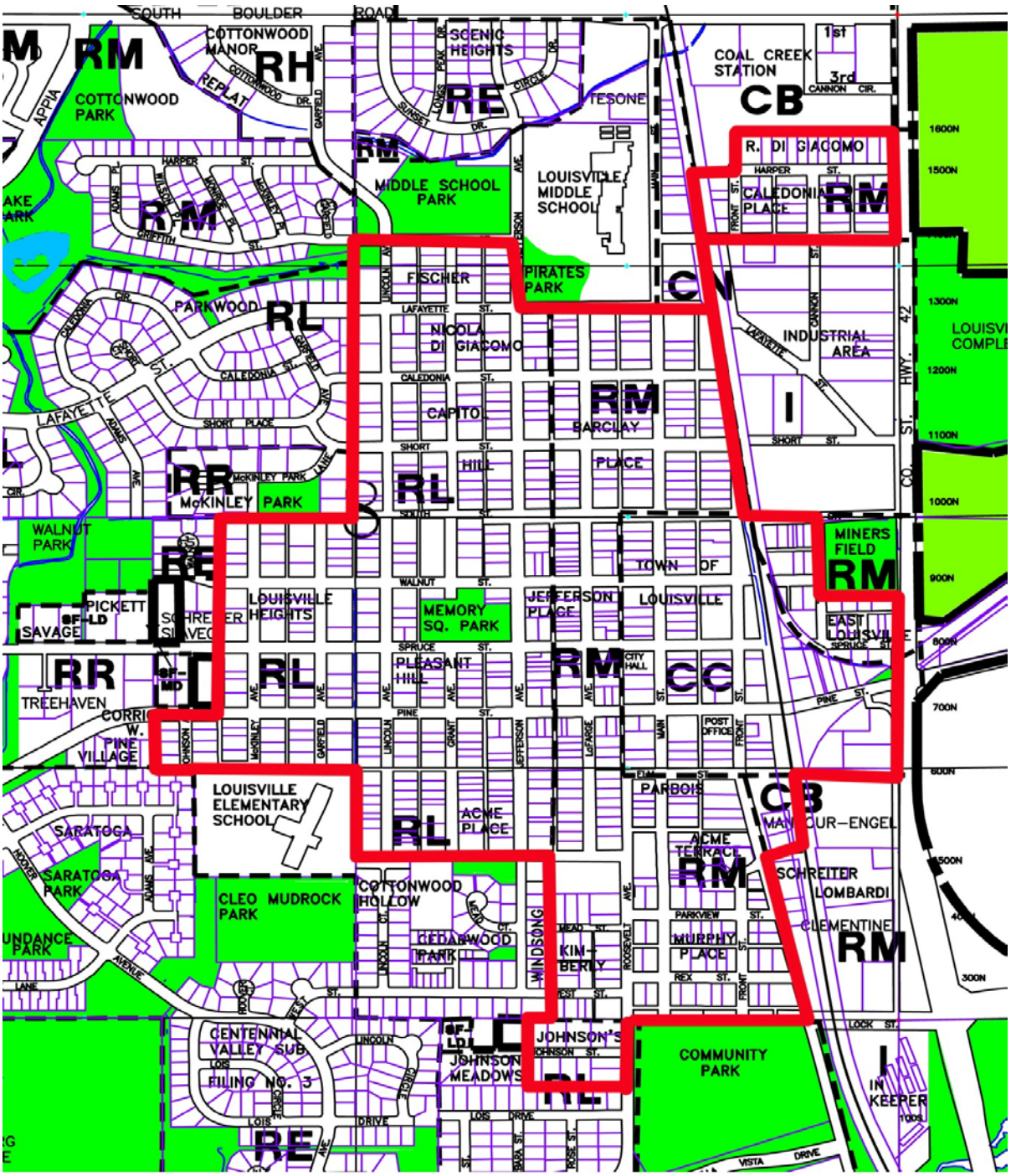
one year from the date on which the grant was awarded, unless a longer period of time was allowed when the grant was awarded or an extension is granted.

Disbursement of Funds

In most cases, grants and rebates will take the form of reimbursement after work has been completed, inspected and approved as consistent with the approved grant application by HPC staff. In planning your project, you should arrange to have adequate funds on hand to pay the final costs of the project. Incentives may be revoked if the conditions of any grant approval are not met. Under some circumstances, as determined by the HPC and City Council, incentives, particularly loans, may be paid prior to the beginning of a project or in installments as work progresses.

Incentives from the Historic Preservation Fund may be considered taxable income and applicants may wish to consult with a tax professional.

APPENDIX A



Old Town Overlay District and Commercial Core

(Downtown Lousiville Per LMC 17.08.113)

APPENDIX B

REVIEW CRITERIA

Applications that demonstrate the following will be preferred and have a greater chance of favorable review, although it is not necessary for all applications to satisfy all of these criteria.

1. Foster Rehabilitation of Resource

Applicants will be judged on how strong the effort to return the resource to its historic appearance and how well proper and professional preservation techniques will be applied.

2. Demonstrate Preservation Necessity or Threat

A project that demonstrates a strong need for funding because of an existing or future action or condition that may adversely affect the existing architectural or historic interest in the property will receive extra consideration for funding. This may include the need for significant repair due to neglect.

3. Demonstrate Resource Significance

Proposals to rehabilitate resources with high resource significance will be given greater weight over those proposals with lower resource value. Resources with high significance include those that are:

•Listed on the National, State or Louisville Registers of Historic Places.

•Eligible for listing as an individual landmark.

•Eligible for listing as a contributing building in a historic district and has architectural integrity.

4. Matching Funds

Applications which demonstrate the availability of matching funds will be preferred, though matching funds are not an absolute requirement.

5. Character-Producing Resources

Applications which retain or rehabilitate resources which contribute toward the historic character of Historic Old Town Louisville, even if those resources are not eligible for historic landmarking, may be given favorable review.

APPENDIX C

HELPFUL TERMS & DEFINITIONS

BASIC PRESERVATION THEORY

The Concept of Significance

A building possessing architectural significance is one that represents the work of a noteworthy architect, possesses high artistic value or that well represents a type, period or method of construction. A historically significant property is one associated with significant persons, or with significant events or historical trends. It is generally recognized that a certain amount of time must pass before the historical significance of a property can be evaluated. The National Register, for example, requires that a property be at least 50 years old or have extraordinary importance before it may be considered. A property may be significant for one or more of the following reasons:

- Association with events that contributed to the broad patterns of history, the lives of significant people, or the understanding of Louisville's prehistory or history.
- Construction and design associated with distinctive characteristics of a building type, period, or construction method.
- An example of an architect or master craftsman or an expression of particularly high artistic values.
- Integrity of location, design, setting, materials, workmanship, feeling and association that form a district as defined by the National Register of Historic Places Guidelines.

The Concept of Integrity "Integrity" is the ability of a property to convey its character as it existed during its period of significance. To be considered historic, a property must not only be shown to have historic or architectural significance, but it also must retain a high degree of physical integrity. This is a composite of seven aspects or qualities, which in various combinations define integrity, location, design, setting, materials, workmanship, feeling and association. The more qualities present in a property, the higher its physical integrity. Ultimately the question of physical integrity is answered by whether or not the property retains a high percentage of original structure's identity for which it is significant.

The Period of Significance Each historic town has a *period of significance*, which is the time period during which the properties gained their architectural, historical or geographical importance. Downtown Louisville, for example, has a period of significance which spans approximately 70 years (1880- 1950). Throughout this period of significance, the downtown has been witness to a countless number of buildings and additions which have become an integral part of the district. Conversely, several structures have been built, or alterations have been made, after this period which may be considered for removal or replacement.

BUILDING RATING SYSTEM

Contributing: Those buildings that exist in comparatively "original" condition, or that have been appropriately restored, and clearly contribute to the historic significance of downtown. Preservation of the present condition is the primary goal for such buildings.

Contributing, with Qualifications: Those buildings that have original material which has been covered, or buildings that have experienced some alteration, but that still convey some sense of history. These buildings would more strongly contribute, however, if they were restored.

Supporting category
These are typically buildings that are newer than the period of historic significance and therefore do not contribute to our ability to interpret the history of Louisville. They do, however, express certain design characteristics that are compatible with the architectural character of the historic district. They are "good neighbors" to older buildings in the vicinity and therefore support the visual character of the district.

Non-contributing building category
These are buildings that have features that deviate from the character of the historic district and may impede our ability to interpret the history of the area. They are typically newer structures that introduce stylistic elements foreign to the character of Louisville. Some of these buildings may be fine examples of individual building design, if considered outside the context of the district, but they do not contribute to the historic interpretation of the area or to its visual character. The detracting visual character can negatively affect the nature of the historic area.

Non-contributing, with Qualifications: These are buildings that have had substantial alterations, and in their present conditions do not add to the historic character of the area. However, these buildings could, with substantial restoration effort, contribute to the downtown once more.

PRESERVATION APPROACHES
Choosing an Appropriate treatment for historic buildings
While every historic project is different, the Secretary of the Interior has outlined four basic approaches to responsible preservation practices. Determining which approach is most appropriate for any project requires considering a number of factors, including the building's historical significance and its existing physical condition.
The four treatment approaches are:

- **Preservation** places a high premium on the retention of all historic fabric through conservation, maintenance and repair. It reflects a building's continuum over time, through successive occupancies, and the respectful changes and alterations that are made.

- **Rehabilitation** emphasizes the retention and repair of historic materials, but more latitude is provided for replacement because it is assumed the property is more deteriorated prior to work.

- **Restoration** focuses on the retention of materials from the most significant time in a property's history, while permitting the removal of materials from other periods.

- **Reconstruction** establishes limited opportunities to re-create a non-surviving site, landscape, building, structure, or object in all new materials.

The Secretary of the Interior's website outlines these approaches and suggests recommended techniques for a variety of common building materials and elements. An example of appropriate and inappropriate techniques for roofs is provided in the sidebars. Additional information is available from preservation staff and the Secretary's website at: www.cr.nps.gov/hps/tps/standguide/index.htm

THE SECRETARY OF THE INTERIOR'S STANDARDS

The Standards are neither technical nor prescriptive, but are intended to promote responsible preservation practices that help protect our Nation's irreplaceable cultural resources. For example, they cannot, in and of themselves, be used to make essential decisions about which features of the historic building should be saved and which can be changed. But once a treatment is selected, the Standards provide philosophical consistency to the work. http://www.nps.gov/history/hps/tps/standguide/overview/choose_treat.htm Louisville has not adopted these standards verbatim, but they are the basis for standards contained in Louisville's preservation code.

City of Louisville
COLORADO • SINCE 1882

Historic Preservation Fund Application

The following information must be provided to ensure adequate review of your proposal. Please type or print answers to each question. Please keep your responses brief.

1. OWNER/APPLICANT INFORMATION

Owner or Organization

a. Name: _____

b. Mailing Address: _____

c. Telephone: _____

d. Email: _____

Applicant/Contact Person (if different than owner)

a. Name: _____

b. Mailing Address: _____

c. Telephone: _____

d. Email: _____

2. PROPERTY INFORMATION

a. Address: _____

b. Year of construction or estimate: _____

C. Is the building designated as a landmark or in an historic district? (local, state, or federal) If so, what is the name of the landmarked property: _____

D. Attach information on the history of the site, including old photos and social history if available.

E. Primary Use of Property (check one): ___*Residential*

___*Commercial*

3. PROJECT DESCRIPTION (Please do not exceed space provided below.)

a. Provide a brief description of the proposed scope of work.

b. Describe how the work will be carried out and by whom. Include a description of elements to be rehabilitated or replaced and describe preservation work techniques that will be used.

c. Explain why the project needs rehabilitation grant funds now. Include a description of community support and/or community benefits, if any.

4. DESCRIPTION OF REHABILITATION

Feature A	
NAME OF ARCHITECTURAL FEATURE:_____ Describe feature and its condition:	Describe proposed work on feature:
Feature B	
NAME OF ARCHITECTURAL FEATURE:_____ Describe feature and its condition:	Describe proposed work on feature:
Feature C	

NAME OF ARCHITECTURAL FEATURE:_____ Describe feature and its condition:	Describe proposed work on feature:

4. DESCRIPTION OF REHABILITATION (continued)

Feature D	
NAME OF ARCHITECTURAL FEATURE:_____ Describe feature and its condition:	Describe proposed work on feature:
Feature E	
NAME OF ARCHITECTURAL FEATURE:_____ Describe feature and its condition:	Describe proposed work on feature:
Feature F	

NAME OF ARCHITECTURAL FEATURE:_____ Describe feature and its condition:	Describe proposed work on feature:

Please photocopy this sheet and attach copies if necessary.

5. COST ESTIMATE OF PROPOSED WORK

Please provide a budget that includes accurate estimated costs of your project. Include an ***itemized breakdown*** *of work to be funded by the incentives and the work to be funded by the applicant. Include only eligible work elements. Use additional sheets as necessary.* ***(Please reference this section in your contractor's bid attachment).***

Feature	Work to be Funded	Type and Amount of Incentive Sought	Applicant Cost
A.		$	$
B.		$	$
C.		$	$
D.		$	$
E.		$	$
F.		$	$
G.		$	$
H.		$	$
I.		$	$
J.		$	$
K.		$	$
	Subtotal Incentive Cost/Applicant Cost	$	$

Total Project Cost	$

If partial incentive funding were awarded, would you complete your project?

☐ **YES** ☐ **NO**

6. ADDITIONAL MATERIALS REQUIRED

The following items must be submitted along with this application:

a. One set of photographs or slides for each feature as described in Item 4 "Description of Rehabilitation". Please label of each photograph with the address of your property and the feature number.

b. A construction bid if one has been made for your project (recommended).

c. Working or scaled drawings, spec sheets, or materials of the proposed work if applicable to your project.

7. Assurances

The Applicant hereby agrees and acknowledges that:

A. Funds received as a result of this application will be expended solely on described projects, and must be completed within established timelines.

B. Awards from the Historic Preservation Fund may differ in type and amount from those requested on an application.

C. Recipients must submit their project for any required design review by the Historic Preservation Commission and acquire any required building permits before work has started.

D. All work approved for grant funding must be completed even if only partially funded through this incentives program.

E. Unless the conditions of approval otherwise provide, disbursement of grant or rebate funds will occur after completion of the project.

F. The incentive funds may be considered taxable income and Applicant should consult a tax professional if he or she has questions.

G. If this has not already occurred, Applicant will submit an application to landmark the property to the Historic Preservation Commission. If landmarking is not possible for whatever reason, Applicant will enter into a preservation easement agreement with the City of Louisville. Any destruction or obscuring of the visibility of projects funded by this grant program may result in the City seeking reimbursement.

H. The Historic Preservation Fund was approved by the voters and City Council of Louisville for the purpose of retaining the city's historic character, so all work completed with these funds should remain visible to the public.

_____ _____

Signature of Applicant/Owner Date

CITY OF KNOXVILLE

REQUEST FOR PROPOSALS

Funding for Improvements to Historic Buildings

Proposals to be Received by 11:00:00 a.m., Eastern Time
November 13, 2017

Submit Proposals to:
City of Knoxville
Office of Purchasing Agent
City/County Building
Room 667-674
400 Main Street
Knoxville, Tennessee 37902

CITY OF KNOXVILLE
Request for Proposals
Funding for Improvements to Historic Buildings

Table of Contents

City of Knoxville
Request for Proposals

Funding for Improvements to Historic Buildings

I. Statement of Intent

The City of Knoxville is requesting proposals from owners of residential or commercial buildings located within H-1 or NC-1 historic overlay districts or listed on the National Register of Historic Places, or eligible for listing on the National Register of Historic places in the city of Knoxville who are seeking funding for property improvement projects.

II. REQUEST FOR PROPOSALS TIME LINE

Availability of RFP ..... September 13, 2017

Mandatory pre-proposal conference.....September 26, 2017
Conference to be held at 10:00 a.m. in the Community Room of the Public Works Service Center; 3131 Morris Avenue; Knoxville, Tennessee.

Deadline for questions to be submitted (in writing) to the Assistant Purchasing Agent ..... November 6, 2017

Proposals Due Date..... November 13, 2017

This timetable is for the information of submitting entities. These dates are subject to change. **However, in no event shall the deadline for submission of the proposals be changed except by written modification from the City of Knoxville Purchasing Division.**

III. BACKGROUND

The City of Knoxville has allocated $500,000 of its budget for Fiscal Year 2017-18 for the purpose of offering short-term, interest-free loans to help support the costs of improvement projects for historic structures within the Knoxville city limits. Both residential and commercial projects are eligible for such funding. In order to achieve the largest positive impact with the program funds, the City anticipates making multiple awards.

Up to five percent of the allocated money is reserved for non-construction projects (see Types of Projects Eligible for Consideration" below).

Proposers should refer to Section V ("Conditions of Funding") for details regarding City requirements for project funding, and should refer to Section VII ("Instructions to Proposers") for detailed information that the City will need in order to evaluate the proposed project.

IV. GENERAL CONDITIONS

4.1 The following data is intended to form the basis for submission of proposals describing proposed improvements to historic buildings.

4.2 This material contains general conditions for the procurement process, the scope of service requested, contract requirements, instructions for submissions of proposals, and submission forms that must be included in the proposal. The RFP should be read in its entirety before preparing the proposal.

4.3 All materials submitted pursuant to this RFP shall become the property of the City of Knoxville.

4.4 To the extent permitted by law, all documents pertaining to this Request for Proposals shall be kept confidential until the proposal evaluation is complete and a recommendation submitted to City Council for review. No information about any submission of proposals shall be released until the process is complete, except to the members of the Evaluation Committee and other appropriate City staff. All information provided shall be considered by the Evaluation Committee in making a recommendation to enter into an agreement with the selected consultant.

4.5 Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFP shall be made **in writing and be in the hands of Penny Owens, Assistant Purchasing Agent, by the close of the business day on November 6, 2017**. Questions can be submitted by letter, fax (865-215-2277), or emailed to powens@knoxvilletn.gov. The City of Knoxville is not responsible for oral interpretations given by any City employee, representative, or others. **The issuance of written addenda is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this Request for Proposals, the Purchasing Division will post them to the City's website at www.knoxvilletn.gov/purchasing.** Submitting organizations are strongly encouraged to view this website often to see if addenda are posted. Failure of any proposer to receive such addendum or interpretation shall not relieve such Proposer from any obligation under his proposal as submitted. All addenda so issued shall become part of the Contract Documents.

4.6 The City of Knoxville reserves the right to (a) accept or reject any and/or all submissions of proposals; (b) to waive irregularities, informalities, and technicalities; and (c) to accept any alternative submission of proposals presented which, in its opinion, would best serve the interests of the City. The City shall be the sole judge of the proposals, and the resulting negotiated agreement that is in its best interest, and its decision shall be final. The City also reserves the right to make such investigation as it deems necessary to determine the ability of any submitting entity to perform the work or service requested. Information the City deems necessary to make this determination shall be provided by the submitting entity. Such information may include, but is not limited to, current financial statements by an independent CPA, verification of availability of equipment and personnel, and past performance records.

4.7 Included in the Submission Forms section is an affidavit that the undersigned has not entered into any collusion with any person with respect to this proposal. The proposer is required to submit this affidavit with their proposal submission. Also included in the Submission Forms section is the Diversity Business Program contracting packet. Submissions must indicate on the enclosed form whether or not the proposer intends to use subcontractors and/or suppliers from one of the defined groups. Proposers are advised that the City tracks use of such use, but it does not influence or affect evaluation or award.

4.8 Subsequent to the Evaluation Committee's review and the Mayor's recommendation of proposals to be funded, Knoxville City Council approval may be required before the final contract may be executed.

4.9 All expenses for making a submission of proposal shall be borne by the submitting entity.

4.10 **NO CONTACT POLICY: After the posting of this solicitation to the Purchasing Division's website, any contact initiated by any proposer with any City of Knoxville representative concerning this proposal is strictly prohibited, unless such contact is made with the Purchasing Division representative listed herein or with said representative's authorization. Any unauthorized contact may cause the disqualification of the proposer from this procurement transaction.**

V. CONDITIONS FOR FUNDING

Before making a proposal to the City, prospective proposers should be familiar with several conditions which will govern the eligibility of proposed improvement projects.

Important Notice: A mandatory pre-proposal conference will be held at 10:00 a.m. in the Community Room of the Public Works Service Center; 3131 Morris Avenue; Knoxville, Tennessee. Note that only proposals submitted by offerors represented at the pre-proposal site visit will be considered for award.

Proposers are advised that proposed projects must be essentially "shovel ready" at the time proposals are submitted: there will be NO material change to the scope of project work after awards are made and contracts executed.

No Unpaid Taxes Properties for which City or County property taxes are in arrears shall not be eligible for program funding. Any other properties owned by the proposer must have City and County property taxes current. City Codes violations on any properties owned by the proposer may render the application ineligible.

Ownership of Building Proposal must provide evidence that the applicant owns the property; funding is not available to underwrite or help underwrite the acquisition of property.

Types of Projects Eligible for Consideration To be eligible for funding, projects will support the historic preservation of structures through construction-oriented activities that will result in re-

use or improved use of the structure.

Note that up to 5% of the program's funding may be awarded to non-construction-type activities focused on historic preservation, such as applying for inclusion on the National Register of Historic Places or creation of a museum exhibit. Notwithstanding other provisions of this Request for Proposals, funding for non-construction activities may be awarded without the use of a deed of trust. Funding will still be awarded through a promissory note, but such note will be fully forgivable upon the recipient's completion of all required activities as defined in the recipient's proposal and the Historic Preservation Agreement with the City. Program funds will **not** be awarded for operating expenses (e.g., payroll, printing, office supplies or equipment).

Building Codes All proposed improvement projects must meet applicable building codes.

Historic Overlay and/or Designation Required The purpose of the City's funding program is to provide needed funding for improvements to buildings located within areas that have been designated (or have applied for designation) as historic overlay ("H-1") districts or neighborhood conservation overlay ("NC-1") districts. Also eligible are properties that are listed on the National Register of Historic Places or eligible for listing on the National Register of Historic Places within the City limits of Knoxville. Proposers must provide evidence to support the historic qualification of the structure. (See "Appendix" section for maps of eligible historic districts.)

Eligible Properties Both residential and commercial **buildings** located within H-1 or NC-1 overlay districts and/or National Register listed or eligible for listing as described above within the Knoxville city limits are eligible for funding consideration. Note that the designation of "buildings" is intended to mean a structure consisting of walls and a roof used as a dwelling or a place of public accommodation and does not include fences, sidewalks/steps, driveways or parking areas, landscaping, hardscaping, or any other structure that is non-occupiable by design, use, or practice. "Commercial property" is defined for the purposes of this solicitation to be property that generates, or is intended to generate, income. Commercial properties may include some multi-family dwellings, but the primary use of the building generates income for the owner.

For **owner-occupied buildings (including single family homes) that are exclusively or primarily residential**, repayment of the loan funds, in full, will be required at the end of construction. This funding will be structured as a zero interest loan, payable upon completion of the funded work (see "Repayment of Loans" below).

For **commercial buildings, including those with residential rental units,** the scope of work approved for funding with the City Historic Preservation Fund must be matched by the owner with at least a 35% **cash** contribution, such contribution to fund the same items contained in the scope of work. For example, if the City funds $50,000 in exterior improvements to a building, the owner will be required to provide a minimum of $17,500 of its own funds (35% of $50,000) in addition to the City funds for a total of $67,500 in exterior improvements to the building.

Note that non-monetary, in-kind contributions cannot count toward the 35% match. Donated labor or professional services (such as architectural work) will not be assigned a monetary value.

Preference will be given to projects that propose work that is essential to maintaining/restoring the building's exterior/structure as opposed to interior improvements.

Mixed Funding Sources The City may be the proposed project's sole funding source, but other funding sources may be used in addition to City funding. In evaluating a proposed project for award, the City will review how much of the project's total cost will be funded by the City and how much will come from other sources. Proposals will be evaluated for cost reasonableness and demonstrate that City funds are needed for the project to be completed. Proposals utilizing other funding sources in conjunction with City funds may receive higher scores.

Detailed, Well-Conceived Plan Proposed improvement projects must be well thought out, with demonstrable pre-planning. The more complex the project, the more detailed the proposal must be. See Paragraph 7.4 below for information that must be included with the proposal.

Professional Services Projects anticipated to cost $25,000 or more must have drawings stamped by an architect or engineer licensed to do business in the state of Tennessee. Copies of drawings should be included with the proposal if they are available.

Repayment of Loans Commercial building proposals that propose to re-pay the City funding at the end of construction will receive preferred consideration. Commercial building proposals that propose sale of the property at the end of construction may be required to repay the City. Additionally, proposers who intend to occupy the property at the end of construction may be required to repay the City.

Owner-occupied building proposals that are exclusively or primarily residential will be required to repay all loan funds in full at the end of construction to be eligible for consideration.

PROPOSALS MUST INCLUDE A REPAYMENT SCHEDULE, WITH PAYMENT IN FULL SCHEDULED NO LATER THAN SIX (6) MONTHS FROM THE COMPLETION/FINAL PAYOUT OF THE PROJECT.

Subject to Historic Zoning Commission Review The Historic Zoning Commission ("HZC") is appointed by the City Mayor and confirmed by City Council; it is responsible for reviewing applications to alter, demolish, or move properties protected by historic overlay and for reviewing proposed new construction in historic districts. The City will require HZC review and approval of applicable projects before dispersal of funds. More information about the HZC's responsibilities and the H-1 overlay designation may be found at: http://archive.knoxmpc.org/zoning/brochures/h1.pdf.

Evidence of Homeowner's /Building Owner's Insurance Evidence of insurance is not required with the proposal. However, evidence of insurance will be required before any award is made.

Evidence of Contractor(s) Insurance and Licensure Evidence of contractor(s) insurance and

appropriate licensure is not required with the proposal. However, evidence of insurance and appropriate licensure will be required before any award is made.

Changes to the Project The City, in making its awards, will give consideration to the proposed project only. Any changes to the project, either before or after award, may not be made without written approval by the City of Knoxville; otherwise, the City reserves the right to withdraw its commitment. The City reserves the right to partially fund projects, which may require some revision to the proposed scope of work. Any such changes must be approved in writing by the City. **NO MATERIAL CHANGES TO THE PROJECT WORK WILL BE APPROVED AFTER CONTRACT EXECUTION.**

VI. CONTRACT REQUIREMENTS

Submitting entities, if selected, must be willing to sign a contract with the City which will include certain provisions, among which are the following:

6.1 The contract shall consist of (1) the RFP; (2) the proposal submitted by the Owner to this RFP; and (3) the contract. In the event of a discrepancy between the contract, the RFP and the submitted proposal, the contract will prevail.

6.2 The contract will be administered by the City of Knoxville Department of Community Development.

6.3 Invoices for work completed will be submitted to the City in accordance with the contract terms and will be paid on a reimbursable basis.

6.4 The relationship of Owner to the City will be that of independent contractor. The contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and subcontractors done during the performance of the contract. All services performed by the contractor shall be provided in an independent contractor capacity and not in the capacity of officers, agents, or employees of the City.

6.5 The Owner shall not assign or transfer any interest in this contract without prior written consent of the City of Knoxville.

6.6 The successful proposer will be required to sign a contract with the City which contains the following indemnification clause. This indemnification clause will not be altered in any way. Failure to agree with this indemnification clause in the contract may result in the City moving to the next responsible responsive proposer.

Owner shall defend, indemnify and hold harmless the City, its officers, employees and agents from any and all liabilities which may accrue against the City, its officers, employees and agents or any third party for any and all lawsuits, claims, demands, losses or damages alleged to have arisen from an act or omission of Owner in performance of this Agreement or from Owner's failure to perform this Agreement using ordinary care and skill, except where such injury, damage, or loss was caused

by the sole negligence of the City, its agents or employees.

Owner shall save, indemnify and hold the City harmless from the cost of the defense of any claim, demand, suit or cause of action made or brought against the City alleging liability referenced above, including, but not limited to, costs, fees, attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the City; and Owner shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action upon written notice and demand for same by the City. Owner will have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as Owner may request. Owner will not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

Owner shall save, indemnify and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against City alleging liability referenced above.

The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

6.7 The City may terminate this Agreement at any time, with or without cause, by written notice of termination to the Owner.

If the City terminates this Agreement, and such termination is not a result of a default by the Owner, the Owner shall be entitled to receive as its sole and exclusive remedy the following amounts from the City, and the City shall have no further or other obligations to the Owner: the amount due to the Owner for work executed through the date of termination, not including any future fees, profits, or other compensation or payments which the Owner would have been entitled to receive if this Agreement had not been terminated.

The City may, by written notice of default to the Owner, terminate the whole or any part of this Agreement if the Owner fails to perform any provisions of this Agreement and does not cure such failure within a period of ten (10) days (or such longer period as the Purchasing Agent may authorize in writing) after receipt of said notice from the Purchasing Agent specifying such failure. If this Agreement is terminated in whole or in part for default, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to those terminated.

6.8 Insurance Requirements for Owner-owned Commercial and Residential Property
Proposers should note that the following requirements include City required coverages for both the property owner and the contractor hired to undertake the project work:

- Insurance Requirements for Owner-owned Residential Property (Property which is not used to generate income for the Owner) and for which the laon is less than $1,000 The loan applicant must provide with the loan proposal evidence of property insurance of at least 90% of the property value and homeowners' liability coverage of at least $100,000

and must maintain this insurance until the later of the completion of the rehabilitation project for which the loan was provided or repayment of any loaned funds. The applicant must agree to only use contractors who are licensed and bonded for the work performed and to require that such contractors maintain automobile insurance and general liability insurance which includes completed products liability with limits for both automobile and general liability of at least $500,000 per occurrence.

- Insurance Requirements for Owner-owned Residential Property for which the loan is more $1,000 or more The loan applicant must provide with the loan proposal evidence of property insurance of at least 90% of the property value and homeowners' liability coverage of at least $200,000 and must maintain this insurance until the later of the completion of the rehabilitation project for which the loan was provided or repayment of any loaned funds. The applicant must agree to only use contractors who are licensed and bonded for the work performed and to require that such contractors maintain automobile insurance and general liability insurance which includes completed products liability with limits for both automobile and general liability of at least $1,000,000 per occurrence and $2,000,000 aggregate.

- Insurance Requirements for Owner-owned Commercial Property (Property which is used to generate income for the Owner) The loan applicant must provide with the loan proposal evidence of property insurance of at least 90% of the property value and homeowners' liability coverage of at least $500,000 and must maintain this insurance until the later of the completion of the rehabilitation project for which the loan was provided or repayment of any loaned funds. The applicant must agree to only use contractors who are licensed and bonded for the work performed and to require that such contractors maintain automobile insurance and general liability insurance which includes completed products liability with limits for both automobile and general liability of at least $1,000,000 per occurrence and $2,000,000 aggregate.

6.9 Contractors Performing Work for Owner All project work shall be performed by qualified contractors in accordance with industry standards, local codes, ordinances, permit, and inspection requirements. In addition, all construction must conform to all Infill Design Guidelines as developed by the Knoxville-Knox County Metropolitan Planning Commission, the City's Neighborhood Housing Standards, and all applicable City housing and building codes and zoning requirements. For property listed on, or eligible for, the National Register of Historic Places, all work must comply with the Secretary of the Interior's Standards for rehabilitation of Historic Properties. If the Property is a contributing property within a potential Historic District, a National Register District, a Redevelopment Area, or an H-1 Historical Zoning Overlay, then all rehabilitation work, new construction or other alterations shall conform to the specific area requirements.

Contractors hired to undertake work on behalf of the Owner must be licensed professionals as required by the state of Tennessee, see T.C.A. Sections 62-2-101, *et. seq.*, for any services in this contract requiring such licensure. Before a contract is signed by the City, the Owner **must** provide the City with: 1) evidence of contractor(s) licensure in the appropriate contractor category or categories; 2) evidence of contractor(s) required insurance coverage; and 3) a copy of contractor(s)

valid business license **or** with an affidavit explaining why it is exempt from the business licensure requirements of the city or county in which it is headquartered.

Rehabilitation projects undertaken on buildings that contain asbestos will require asbestos abatement or containment where the asbestos will be disturbed. Any such abatement or containment work shall be done by trained and certified asbestos workers and supervisor(s) through a professional, certified, and licensed company specializing in asbestos removal. Contractor will be required to provide proof of proper certifications, licensures, and permitting to the City of Knoxville prior to the commencement of any work under this contract.

Rehabilitation projects undertaken on buildings constructed prior to 1978 may require lead remediation. Any additional costs to meet lead based paint requirements may be offset with a loan. Contractors hired to undertake such work shall treat all applicable surfaces (interior and exterior) in full compliance with the lead base paint regulations found in "EPA Renovation, Repair and Painting Rule found at 40 CFR (Code of Federal Regulations) § 745."

6.10 Applicable Building Codes and Standards All project work shall also be performed in accordance with the Standard Building, Plumbing, Gas, and Mechanical Codes and the National Electrical Code, regardless of whether specific reference is made to these codes in the work write-up. The Rehabilitation Specifications and Design Standards establish the standards to be followed in executing this Agreement relative to materials brands, methods of installation, and workmanship. All project work carried out under this Agreement shall be of first quality and performed in a workmanlike manner. All materials shall be new, in good condition, and consistent with the Rehabilitation Specifications and Design Standards. Provisions shall be made as necessary for substitutions of materials of equal quality. In those cases where the work write-up and the Rehabilitation Specifications and Design Standards conflict, the work write-up shall take precedence, and the material and workmanship prescribed by the work write-up shall be required.

6.11 Agreement between Owner and Contractor(s) Hired to Perform Project Work The Owner and the Contractor(s) selected by the Owner to perform the project work will be required to enter into a separate Agreement Between Owner and Contractor to establish the relationship between the parties and the obligations imposed on each.

This agreement will contain the following indemnification clauses:

- The Owner and the Contractor agree to indemnify and hold harmless the City of Knoxville from liability resulting from any damage, injury, cost, or loss to persons or property arising from the execution of this Agreement.

- The Contractor shall indemnify and hold the Owner harmless from all claims growing out of the lawful demands of all subcontractors, laborers, suppliers, workers, mechanics, material men, and furnishers of machinery and parts thereof incurred in the performance of the work. The Contractor shall be held responsible for failure to adhere to and comply with all local laws controlling in any way the actions of those engaged upon the work, or affecting materials, transportation, or disposition of same. The Contractor shall assume all liability for and indemnify and defend the Owner from any damages, claims, losses, costs,

and actions that may arise from personal injuries or property damages sustained by mechanics, laborers, or other persons by reason of accidents or otherwise occurring through neglect or carelessness of the Contractor. The Contractor shall hold harmless and defend the Owner from liabilities, claims, judgments, costs, and expenses that may, in any manner, arise against the Owner in consequence of the granting of this Agreement.

6.12 Loan Structure

Owners of owner-occupant buildings will be provided direct payment loans that will not be forgivable and will require full repayment of all funding provided through the City Historic Preservation Fund upon completion of approved construction.

Owners of commercial buildings will be provided deferred payment loans by the City that will be forgivable upon completion of the project and compliance with all terms, covenants, and obligations contained in the loan documents. For approved projects where Owner will reimburse the City for all or part of the provided funds, the reimbursable portion of the funds will be provided through a direct payment loan that will not be forgivable. Owners of commercial buildings will be required to match the funding provided through the City Historic Preservation Fund with 35% cash contributions by the owner.

No Owners may request disbursement of funds until the funds are needed for payment of an eligible development cost. The amount of each request may not exceed the amount needed for actual, eligible, and reasonable expenses incurred.

All funds loaned will be evidenced by a Promissory Note executed by Owner and secured by a Deed of Trust on the Property, of the same date, and duly recorded in the Register's Office for Knox County, Tennessee. By submitting a proposal pursuant to this RFP, Owner represents that the Owner possesses at least a portion of the applicable building that is (1) capable of being encumbered by a Deed of Trust signed only by the Owner, and (2) of fair market value equal to or greater than the amount of funds loaned by the City (e.g., common areas and/or structural components of a condominium building). The Owner's inability to sufficiently encumber the building with a Deed of Trust as required by this RFP may render the Owner ineligible to receive funding through this program. Owner agrees that the City will have the right to cancel or terminate the loan, at any time, and that the full amount of any monies included in the loan that have been advanced to Owner by the City will be due and payable by the Owner to the City on demand if the Owner breaches any of the terms, covenants, and obligations contained in the Promissory Note, Deed of Trust, or any other agreement between the Owner and the City.

Note Regarding Homeowners' Associations (HOAs): In the case of an HOA, the loan would be secured by the common areas and not by individual units. The applicant will need, therefore, to clearly state in the proposal exact what part or parts of the building will secure the City's funds. The deed of trust and promissory note will be based on that information.

6.13 Schedule for Completion The Owner agrees to complete the rehabilitation and/or construction of the structure located on the Property within 180 days, with any extension of time provided at the sole discretion of the City. The Owner will begin the work necessary to rehabilitate the structure located on the Property promptly upon execution of the Program Agreement with the

City. All work shall comply with all applicable City of Knoxville codes, inspection and permitting rules, approved plans and specifications, and the applicable Infill Housing Guidelines for the proposed work.

6.14 Lender Commitment The Owner agrees to obtain a written commitment from any and all lenders for all necessary financing for the rehabilitation and/or construction described in the proposal within 60 days from the date the City accepts the proposal for funding. Borrower will provide, or cause to be provided, to the City supportive documents from the lender(s) fully disclosing the financing terms. Any accepted proposal is subject to cancellation by the City if the Owner fails to complete this obligation.

6.15 Property Security and Maintenance During the period beginning upon the City's acceptance of the proposal for funding and continuing to the date the City issues a notice of completion of the rehabilitation, the Lendee agrees to secure and maintain the Property.

6.16 Inspections by the City The Owner will permit inspections at reasonable times by the Department's staff and designated agents to determine compliance with the terms of this Agreement.

6.17 Ethical Standards Attention of all firms is directed to the following provisions contained in the Code of the City of Knoxville: Chapter 24, Article II, Section 24-33 entitled "Debts owed by persons receiving payments other than Salary;" Chapter 2, Article VIII, Division 11. the Contractor hereby takes notice of and affirms that it is not in violation of, or has not participated, and will not participate, in the violation of any of the following ethical standards prescribed by the Knoxville City Code:

A. Section 2-1048. Conflict of Interest.
It shall be unlawful for any employee of the city to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy or other matter pertaining to any contract or subcontract and any solicitation or proposal therefore, where to the employee's knowledge there is a financial interest possessed by:

(1) the employee or the employee's immediate family;
(2) A business other than a public agency in which the employee or member of the employee's immediate family serves as an officer, director, trustee, partner or employee; or
(3) Any person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.

B. Section 2-1049. Receipt of Benefits from City Contracts by Council Members, Employees and Officers of the City.
It shall be unlawful for any member of council, member of the board of education, officer or employee of the city to have or hold any interest in the profits or emoluments of any contract, job, work or service, either by himself or by another, directly or indirectly. Any

such contract for a job, work or service for the city in which any member of council, member of the board of education, officer or employee has or holds any such interest is void.

C. Section 2-1050. Gratuities and Kickbacks Prohibited.
It is unlawful for any person to offer, give or agree to give to any person, while a city employee, or for any person, while a city employee, to solicit, demand, accept or agree to accept from another person, anything of a pecuniary value for or because of:

(1) An official action taken, or to be taken, or which could be taken;
(2) A legal duty performed, or to be performed, or which could be performed; or
(3) A legal duty violated, or to be violated, or which could be violated by such person while a city employee.

Anything of nominal value shall be presumed not to constitute a gratuity under this section.

Kickbacks. It is unlawful for any payment, gratuity, or benefit to be made by or on behalf of a subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

D. Section 2-1051. Covenant Relating to Contingent Fees.
(a) Representation of Contractor. Every person, before being awarded a contract in excess of ten thousand dollars ($10,000.00) with the city, shall represent that no other person has been retained to solicit or secure the contract with the city upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business.

(b) Intentional Violation Unlawful. The intentional violation of the representation specirfied in subsection (a) of this section is unlawful.

E. Section 2-1052. Restrictions on Employment of Present and Former City Employees.
Contemporaneous employment prohibited. It shall be unlawful for any city employee to become or be, while such employee, an employee of any party contracting with the particular department or agency in which the person is employed.

For violations of the ethical standards outlined in the Knoxville City Code, the City has the following remedies:

(1) Oral or written warnings or reprimands;
(2) Cancellation of transactions; and
(3) Suspension or debarment from being a Contractor or subcontractor under city or city-funded contracts.

The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this section shall be in accord with due process requirements, included but not limited to a right to notice and hearing prior to

imposition of any cancellation, suspension or debarment from being a Contractor or subcontractor under a city contract.

6.19 Non-Discrimination Firms must comply with the President's Executive Order No. 11246 and 11375 which prohibit discrimination in employment regarding race, color, religion, sex or national origin. Firms must also comply with Title VI of the Civil Rights Act of 1964, Copeland Anti-Kick Back Act, the Contract Work Hours and Safety Standards Act, Section 402 of the Vietnam Veterans Adjustment Act of 1974, Section 503 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, all of which are herein incorporated by reference.

6.20 Inclusion of Minority Firms or Individuals Proposers shall give consideration to the inclusion of minority firms or individuals in this project, and shall advise the City in this proposal of their efforts to do so.

6.21 Use of Environmentally Suitable Practices Proposers shall give consideration to the use of environmentally sustainable best practices, and shall advise the City in their proposal of their efforts to do so.

6.22 Each submitting entity is responsible for full compliance with all laws, rules and regulations which may be applicable.

6.23 The City's performance and obligation to pay under this contract is subject to funding contingent upon an annual appropriation.

6.24 This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Tennessee and its conflict of laws provisions. Venue for any action arising between the City and the Owner from the Agreement shall lie in Knox County, Tennessee.

6.25 Owner shall not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the City.

6.26 This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of the Agreement.

6.27 The captions appearing in the Agreement are for convenience only and are not a part of the Agreement; they do not in any way limit or amplify the provisions of the Agreement.

6.28 If any provision of the Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in the Agreement. Failure to enforce any provision of the Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.

6.29 The services to be performed by the Owner pursuant to the Agreement with the City are intended solely for the benefit of the City, and no benefit is conferred hereby, nor is any

contractual relationship established herewith, upon or with any person or entity not a party to the Agreement. No such person or entity shall be entitled to rely on the Owner's performance of its services hereunder, and no right to assert a claim against the City or the Owner, its officers, employees, agents, or contractors shall accrue to the Owner or to any subcontractors, independently retained professional consultant, supplier, fabricator, manufacturer, lender, tenant, insurer, surety, or any other third party as a result of this Agreement or the performance or non-performance of the Owner's work hereunder.

6.30 Parties explicitly agree that they have not relied upon any earlier or outside representations other than what has been included in the Agreement. Furthermore, neither party has been induced to enter into this Agreement by anything other than the specific written terms set forth herein.

6.31 Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times shall be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall means the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

6.32 The City of Knoxville is an EE/AA/Title VI/Section 504/ADA/ADEA Employer.

VII. INSTRUCTIONS TO PROPOSERS

All submissions of proposals shall comply with the following instructions. These instructions ensure that (1) submissions contain the information and documents required by the City RFP and (2) the submissions have a degree of uniformity to facilitate evaluation.

7.1 General

Submission forms and RFP documentation may be obtained on or after September 13, 2017, at no charge from:

City of Knoxville Purchasing Division
City/County Building
400 Main Street, Room 667
Knoxville, Tennessee 37902

between 8:30 a.m. and 4:30 p.m. (Eastern Time), Monday through Friday or by calling 865/215-2070. Forms and RFP information are also available on the City web site at www.knoxvilletn.gov/purchasing where it can be read or printed using Adobe Acrobat Reader software.

7.2 Submission Information

IMPORTANT NOTICE: The City of Knoxville receives many submissions for a number of different procurements. If your submission arrives without the proper labeling, we may not know what it's for or when it should be opened. Unlabeled mailing envelopes or mailing cartons may be rejected. Make sure that the outside mailing envelope or mailing carton is clearly labeled, "Improvements to Historic Buildings."

Proposals shall include seven (7) hard copies (one original and 6 duplicates—**mark the original as such**) and one electronic copy of the proposal (either CD or flash/thumb drive—**mark the storage device with the company name**); the electronic version shall be an exact duplicate of the original, and the electronic version will be the official document exhibited in the contract.

The signature must be entered above the typed or printed name and title of the signer. All proposals must be signed by an owner of record or an officer of the company authorized to bind the firm to a contract.

Proposals will be received until 11:00:00 a.m. (Eastern Time) on **November 13, 2017.** Each proposal must be submitted in a sealed envelope addressed to:

City of Knoxville Purchasing Division
City/County Building
400 Main Street, Room 667
Knoxville, TN 37902

Each mailing envelope or carton containing a proposal or multiple copies of the proposal must be sealed and plainly marked on the outside "Improvements to Historic Buildings."

Any proposals received after the time and date on the cover sheet will not be considered. It shall be the sole responsibility of the submitting entity to have the proposal delivered to the City of Knoxville Purchasing Division on or before that date.

Late proposals will not be considered. Proposals that arrive late due to the fault of United States Postal Service, United Parcel Service, DHL, FEDEX, any delivery/courier service, or any other carrier of any sort are still considered late and shall not be accepted by the City. Such proposals shall remain unopened and will be returned to the submitting entity upon request.

7.3 Format of Submission

The City is committed to reducing waste. Submissions must be typed on 8.5 x 11 inch wide white paper, printed on both sides; project drawings are exempt from this restriction. DO NOT BIND the document; instead, staple or binder clip the submission together and place in a sealed envelope (see Paragraph 7.2). Pages must be consecutively numbered. A table of contents must

be included in the proposal immediately after the title page, and each of the following numbered sections must be tabbed.

Proposals shall be structured as follows.

1. Title Page
2. Table of Contents
3. Submission Forms:
    A) Form S-1
    B) Non-Collusion Affidavit
    C) Diversity Business Enterprise Program form
4. Body of Proposal: See Paragraph 7.4 below

7.4 Items to Include in Body of Proposal

The more complex the project, the more detail will be required. Tell us, in detail, what your project will consist of and who you anticipate will undertake the work. For projects where the City will only fund a portion of the work, the proposal should indicate how the un-funded portion of the work will be paid for/financed. Smaller projects will probably not need a tab for each of the following categories, but larger project undoubtedly will.

Tab 1: Project Description and Evidence of Pre-Planning Start by telling us why you need to undertake the proposed improvement project. Then show us that you have thought through the project from start to finish with demonstrable pre-planning (in other words, tell us about any appraisals, architectural/engineering plans, environmental reviews, financing packages, etc., that you have already undertaken and **show us the associated paperwork**). The City **MUST** see written evidence of such pre-planning.

Tab 2: Cost Estimates and Project Timetable Proposals must contain cost estimates or quotes for the proposed project. These must be provided by licensed businesses and/or contractors, usually in the form of a written quotation for the work to be performed. Estimates/quotes must contain the detailed written descriptions and/or drawings of the work to be performed for that cost, and must state a reasonable period of time that it will take to complete the quoted project. Proposals should include a list of all sources of funding and amounts for each source and how the funds will be used during the project. Proposals must demonstrate the need for City funding in order to fill a gap so that the project can be completed. For commercial projects, an operating pro-forma should be provided in the submission.

Tab 3: Design Suitability/Benefits of the Project Proposals must **specifically state** how the proposed improvement project will improve or stabilize the building's long-term life, benefit the neighborhood's overall appearance, and/or enhance local property values. Commercial building projects must communicate the type of business, potential for job creation, and/or how the business will benefit the community.

7.5 Evaluation of Proposals

All submissions received by the deadline will be analyzed by the Evaluation Committee

according to the criteria outlined in these specifications. Failure to comply with the provisions of the RFP may cause any proposal to be ineligible for evaluation. Each submittal of proposals will be initially analyzed and judged according to the evaluation criteria below. The maximum score is 100 points.

Firms and/or teams responding to this Request for Proposals shall be available for interviews with the Evaluation Committee. Discussions may be conducted with responsible submitting entities for purposes of clarification to assure full understanding of and conformance to the RFP requirements. Selection shall be based in part on the nature of the services to be performed per this request for proposals. Determination of the proposed project's suitability shall be based on the written response to this Request for Proposals and information presented to the Evaluation Committee during oral interviews, if requested.

In addition to materials provided in the written responses to this Request for Proposals, the Committee may request additional material, information, or references from the submitting entity or others.

Provided it is in the best interest of the City of Knoxville, the firm or team determined to be the most responsive to the City of Knoxville, taking into consideration the evaluation factors set forth in this Request for Proposals, will be selected to begin contract negotiations. The firm or team selected will be notified at the earliest practical date and invited to submit more comprehensive information if necessary. If no satisfactory agreement can be reached with the "most responsive firm," the City may elect to negotiate with the next best and most responsive firm or team.

VIII. EVALUATION CRITERIA

In an effort to make the most widespread usage as possible of the City $500,000 program funds, the City intends to make multiple awards. In evaluating an improvement project's merits, several aspects of the project will be reviewed, evaluated, and scored by an Evaluation Committee. Those criteria for evaluation are listed below.

An evaluation team, composed of representatives of the City and other qualified persons, will evaluate proposals on a variety of quantitative and qualitative criteria. Upon receipt of proposals, the City will review to determine whether the proposal is acceptable or non-acceptable based on the criteria outlined below. The criteria upon which the evaluation of the proposals will be based, and their associated point count out of 100 total points, include, but are not limited to, the following:

Project's Cost and Financial Feasibility (30 points) – Costs have been researched or quotes/estimates have been provided by licensed businesses/contractors. All project funding sources and amounts are provided with uses identified. Proposal clearly demonstrates that City funds are needed in order to complete the project. Where appropriate, operating pro-formas are provided indicating that the project is feasible.

Project Objectives/Community Benefit (25 points) – Some projects will promote a direct benefit

to the community, which others may be less obvious but equally important to long-term community improvement and stability.

Project Readiness (25 points) – Project is well planned, with a clearly articulated scope of the work to be performed along with reasonable associated costs. Proposal describes the overall project and explains how the proposed project fits into a larger rehabilitation project, where appropriate. Preference will be given to projects that propose work that is essential to maintaining/restoring the building exterior/structure, as opposed to interior improvements

Loan Repayment (20 points) – At the end of the project, repayment of all or part of the funds for improvement of a commercial building is proposed.

Submission Forms

CITY OF KNOXVILLE
REQUEST FOR PROPOSALS

Funding for Improvements to Historic Buildings

Submission Form S-1

Proposals to be Received by 11:00:00 a.m., Eastern Time, November 13, 2017, in Room 667-674, City/County Building, Knoxville, Tennessee.

IMPORTANT: Proposers shall include seven (7) hard copies (one original and 6 duplicates), as well as one electronic (.pdf format) copy of their submission; the electronic version shall be an exact duplicate of the original, and the electronic version will be the official document exhibited in the contract. **IMPORTANT NOTE: A minimum of one of the submitted proposals must bear an original signature, signed in ink (duplicated signatures substituted for original ink signatures may result in rejection of the proposals). This document is the official, original submission; the required copies may have copied signatures.**

Please complete the following:

Legal Name of Proposer: _____

Address: _____

Telephone Number: _____

Fax Number: _____

Contact Person: _____

Email Address: _____

Signature: _____

Name and Title of Signer _____

_____

Note: Failure to use these response sheets may disqualify your submission.

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

_____, being first duly sworn, deposes and says that:

(1) He/She is the _____ of _____, the firm that has submitted the attached Proposal;

(2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and is not a collusive or sham Proposal;

(4) Neither the said firm nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other vendor, firm or person to submit collusive or sham proposal in connection with the contract or agreement for which the attached Proposal has been submitted or to refrain from making a proposal in connection with such contract or agreement, or collusion or communication or conference with any other firm, or, to fix any overhead, profit, or cost element of the proposal price or the proposal price of any other firm, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Knoxville or any person interested in the proposed contract or agreement; and

(5) The proposal of service outlined in the Proposal is fair and proper and is not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the firm or any of its agents, representatives, owners, employees, or parties including this affiant.

(Signed): _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

_____
NOTARY PUBLIC

My Commission expires _____

DIVERSITY BUSINESS ENTERPRISE (DBE) PROGRAM

The City of Knoxville strongly encourages prime contractors to employ diverse businesses in the fulfillment of contracts/projects for the City of Knoxville.

The City of Knoxville's Fiscal Year 2017 goal is to conduct 3.33% of its business with minority-owned businesses, 9.21% of its business with woman-owned businesses, and 45.5% with small businesses.

While the City cannot engage (pursuant to state law) in preferential bidding practices, the City does **strongly encourage** prime contractors to seek out and hire diverse businesses in order to help the City meet its goals as stated above. As such, the City encourages prime contractors to seek out and consider competitive sub-bids and quotations from diverse businesses.

For DBE tracking purposes, the City requests that prime contractors who are bidding, proposing, or submitting statements of qualifications record whether or not they plan to employ DBE's as sub-contractors or consultants. With that in mind, please fill out, sign and submit (with your bid/proposal) the following sub-contractor/ consultant statement.

CITY OF KNOXVILLE DIVERSITY BUSINESS DEFINITIONS

Diversity Business Enterprise (DBE's) are minority-owned (MOB), women-owned (WOB), service-disabled veteran-owned (SDVO), and small businesses (SB), who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background. These persons must own at least 51% of the entity and operate or control the business on a daily basis.

Minority: A person who is a citizen or lawful admitted permanent resident of the United States and who is a member of one (1) of the following groups:

a. African American, persons having origins in any of the Black racial groups of Africa;

b. Hispanic American, persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

c. Native American, persons who have origin in any of the original peoples of North America ;

d. Asian American, person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

Minority-owned business (MOB) is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals.

Woman-owned business (WOB) is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more women.

Service Disabled Veteran-owned business (SDOV) is a continuing, independent, for profit business that performs a commercially useful function, owned by any person who served honorably on active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service connected. Meaning such disability was incurred or aggravated in the line of duty in the active military, naval or air service, and is at least fifty-one percent (51%) owned and controlled by one (1) or more service disabled veteran.

Small Business (SB) is a continuing, independent, for profit business which performs a commercially useful function and has total gross receipts of not more than ten million dollars ($10,000,000) average over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Subcontractor/Consultant Statement

(TO BE SUBMITTED IN THE BID/PROPOSAL ENVELOPE)

We_____ do certify that on the
(Bidder/Proposer Company Name)

_____
(Project Name)

Please select one:

☐ **Option A: Intent to subcontract using Diverse Businesses**

A Diversity business will be employed as subcontractor(s), vendor(s), supplier(s), or professional service(s). The estimated **dollar value** of the amount that we plan to pay is:

$_____.
(Estimated Amount of Subcontracted Service)

Diversity Business Enterprise Utilization			
Description of Work/Project	Amount	Diverse Classification (MOB, WOB, SB, SDOV)	Name of Diverse Business

☐ **Option B: Intent to perform work "without" using Diverse Businesses**

We hereby certify that it is our intent to perform 100 % of the work required for the contract, work will be completed without subcontracting, or we plan to subcontract with non-Diverse companies.

DATE:_____ PROPOSER/COMPANY NAME:_____

SUBMITTED BY: _____ TITLE:_____
(Authorized Representative)

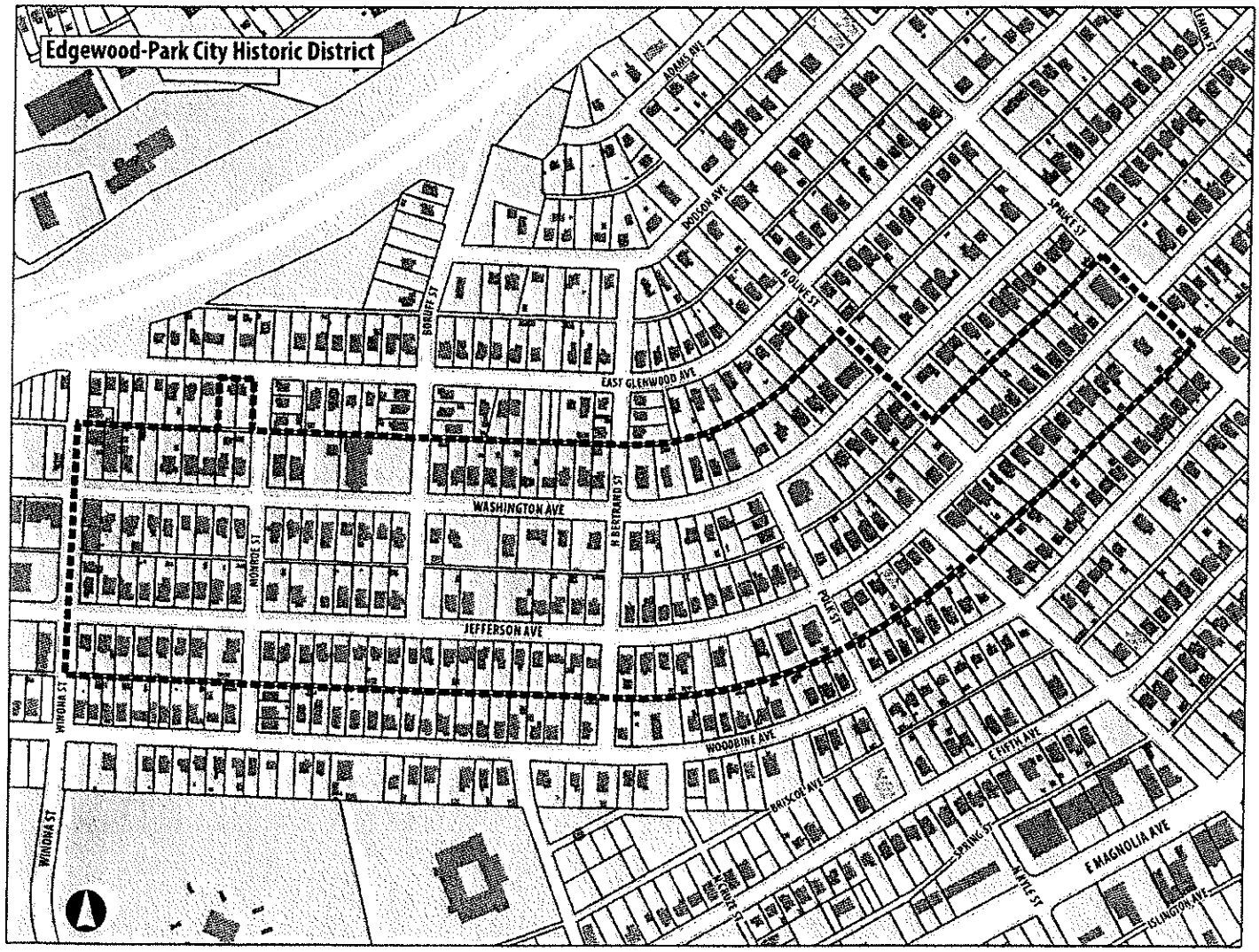
ADDRESS:_____

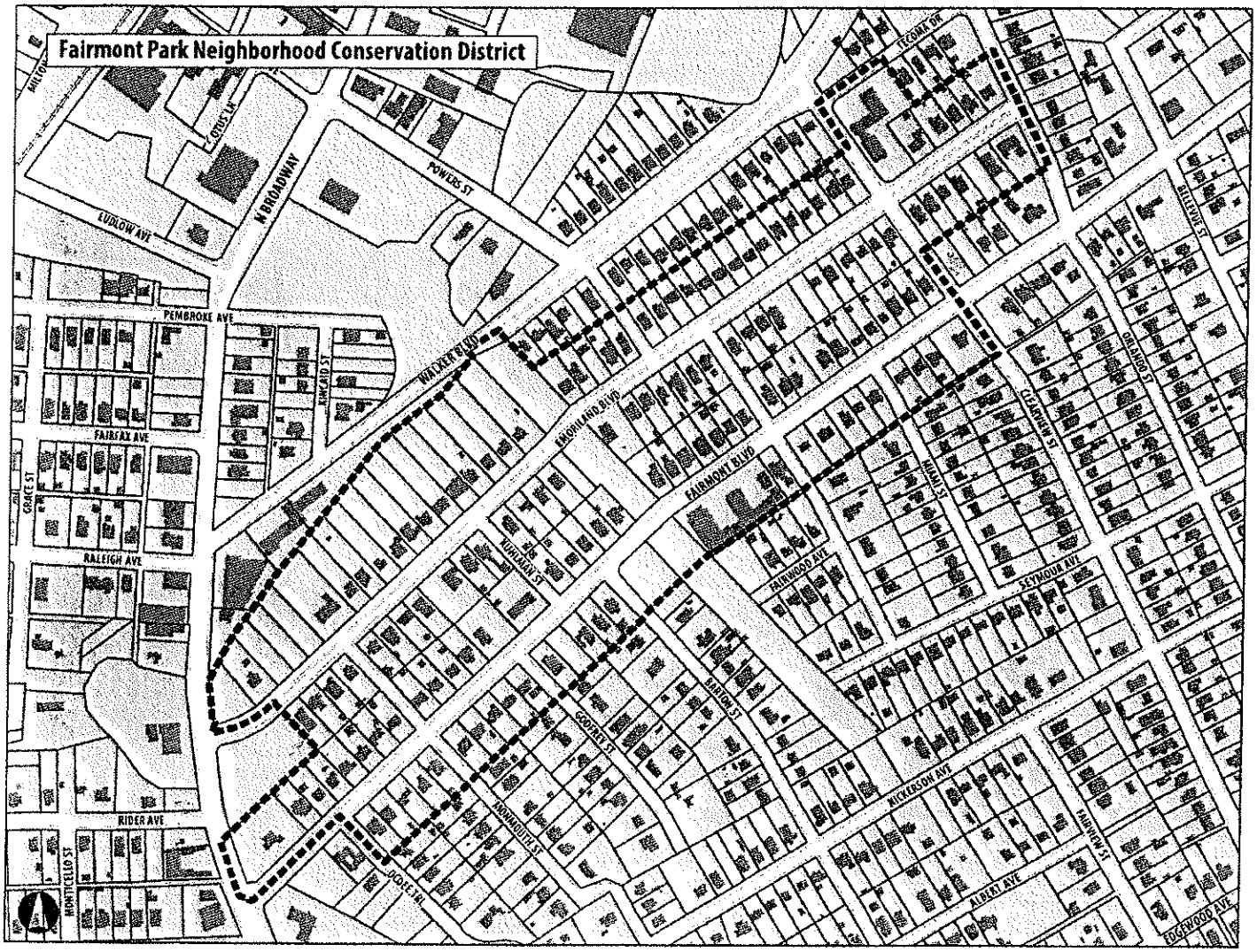
CITY/STATE/ZIP CODE: _____

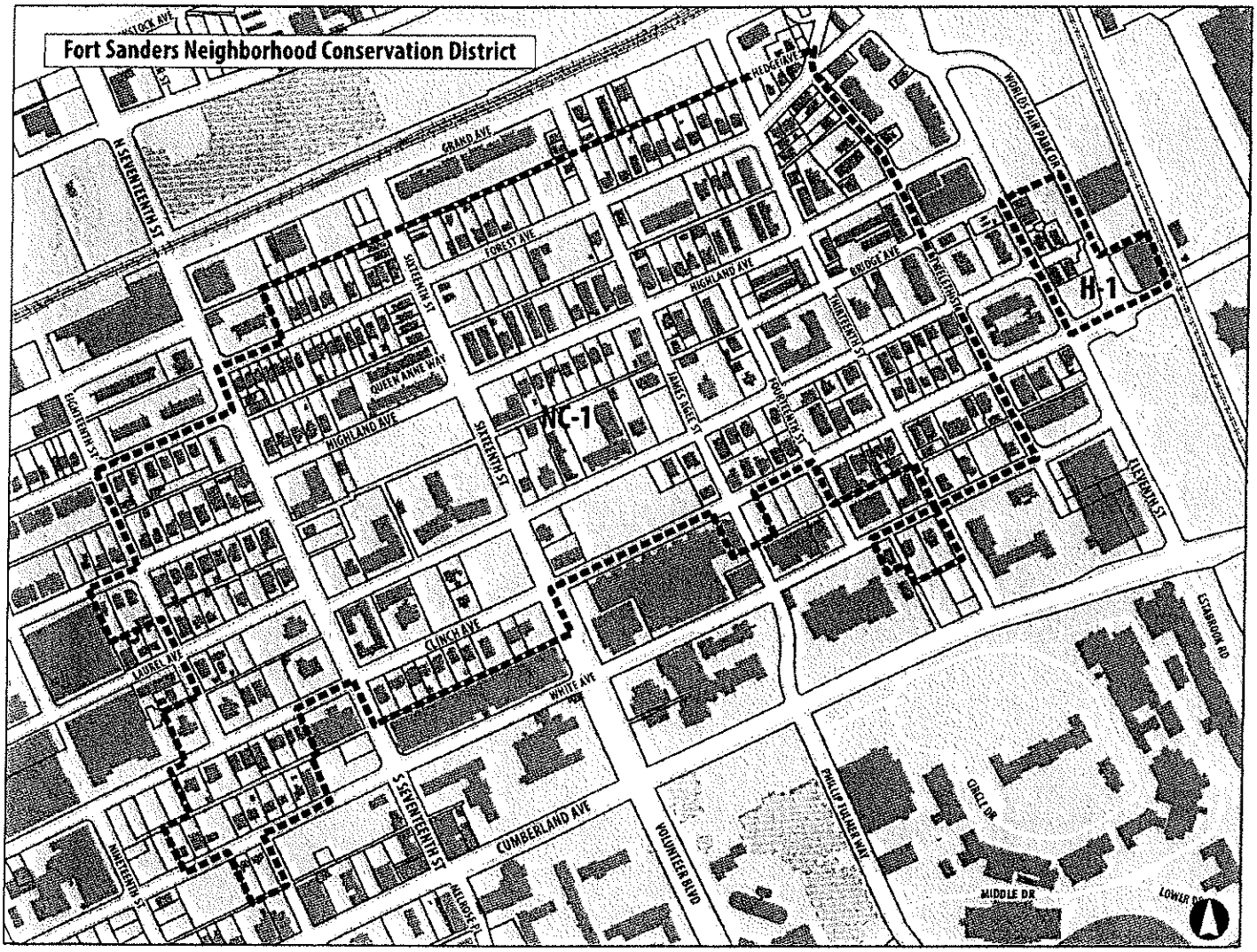
TELEPHONE NO: _____

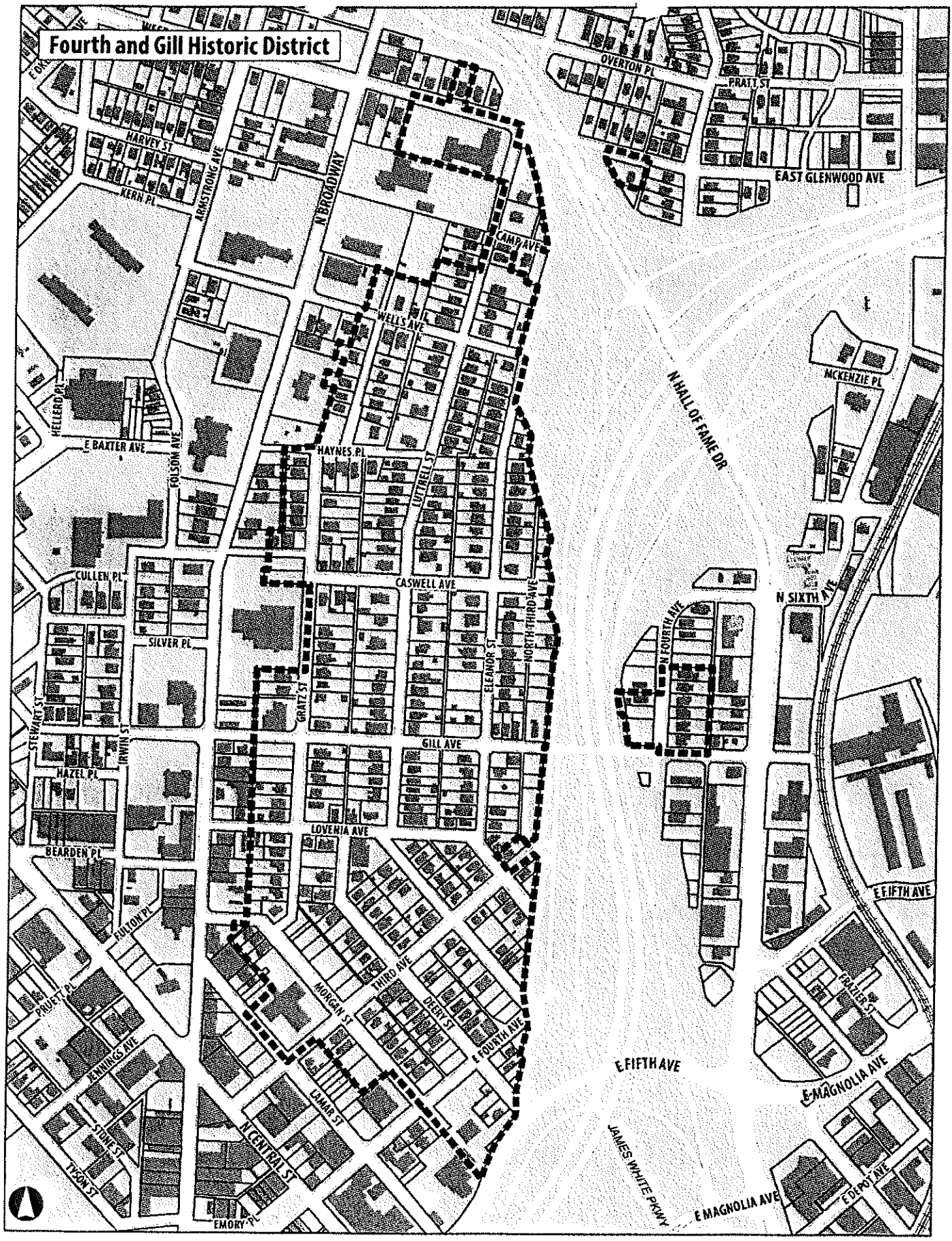
Appendix

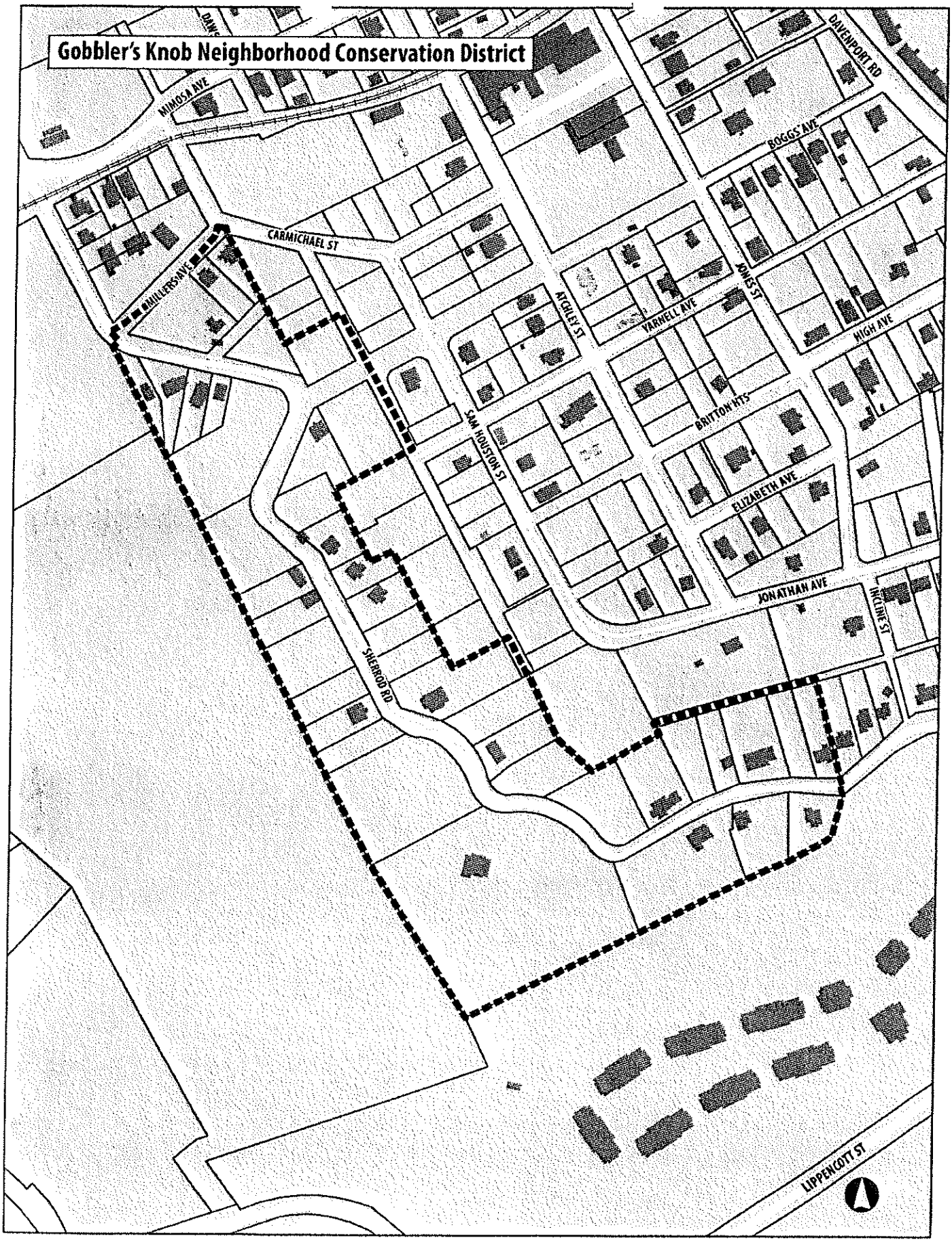
Maps of Eligible Historic Districts

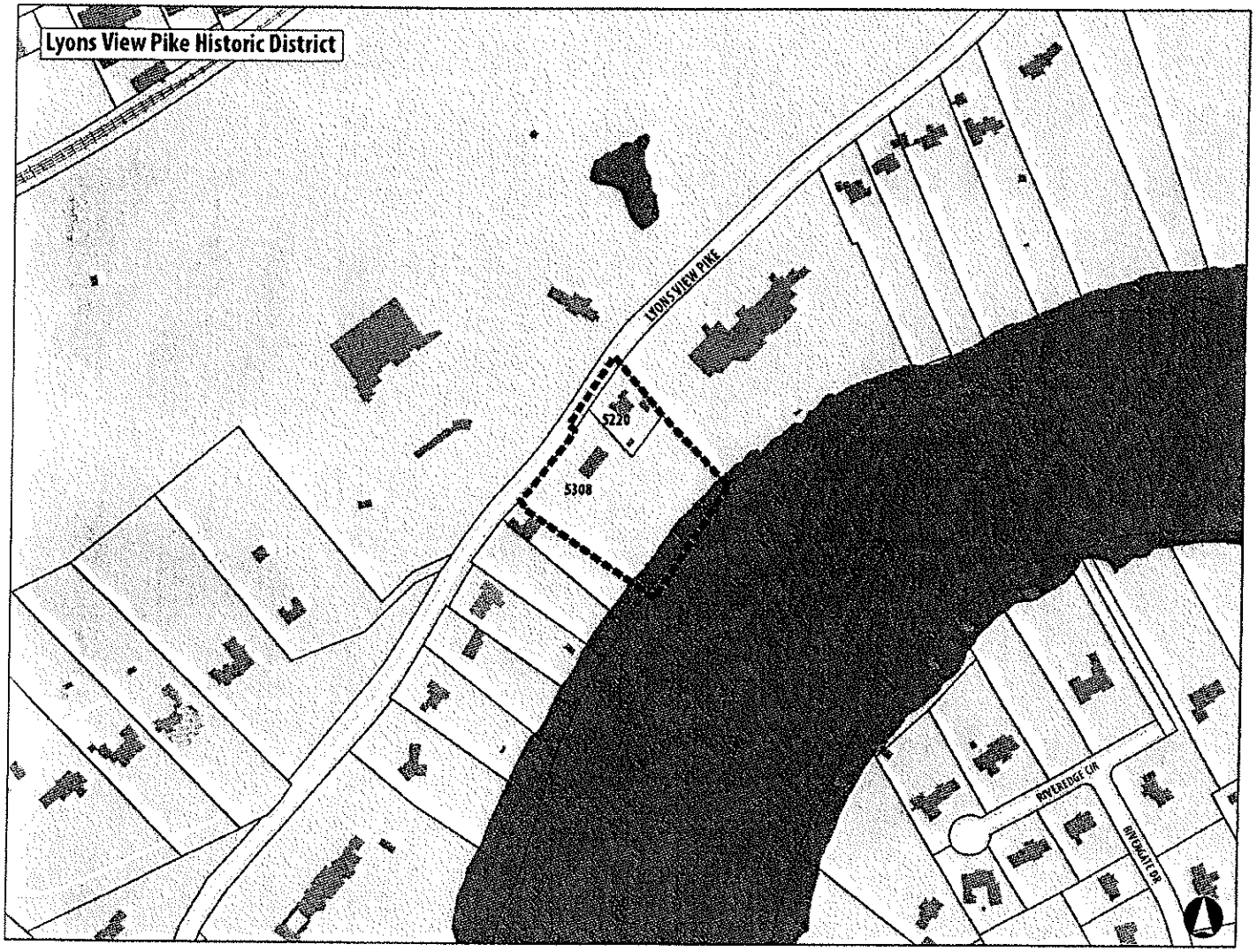

Edgewood-Park City Historic District
ADAMS AVE
DODSON AVE
BORUFF ST
LOUISE ST
SPRUCE ST
EAST GLENWOOD AVE
WASHINGTON AVE
N BERTRAND ST
MONROE ST
JEFFERSON AVE
PAUL ST
WINONA ST
WOODBINE AVE
BRISCOE AVE
FIFTH AVE
SPRING ST
MAYES ST
E MAGNOLIA AVE
SLIGHTON AVE

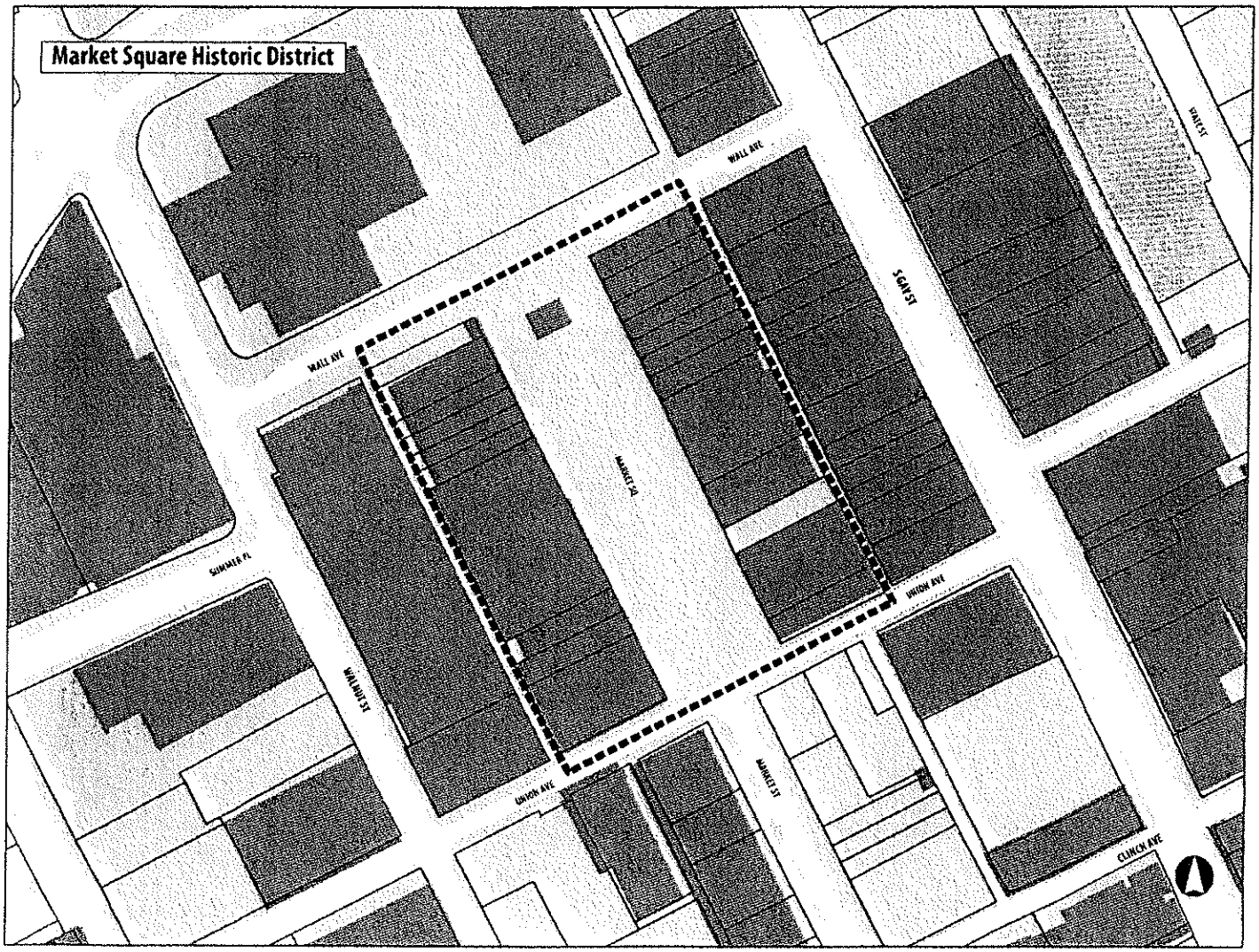

Fairmont Park Neighborhood Conservation District
TECOMA DR
OTIS LN
N BROADWAY
POWERS ST
LUDLOW AVE
PEMBROKE AVE
HOWARD ST
WALKER BLVD
EMORILAND BLVD
FAIRFAX AVE
GRACE ST
FAIRMONT BLVD
RALEIGH AVE
HURLMAN ST
GODFREY ST
BARTON ST
FAIRWOOD AVE
SEYMOUR AVE
NICKERSON AVE
ALBERT AVE
RIDER AVE
MONTICELLO ST
DORIS ST
NORMOUTH ST
EDGEWOOD AVE
COLONIAL ST
CLARKVIEW ST
MIAMI ST

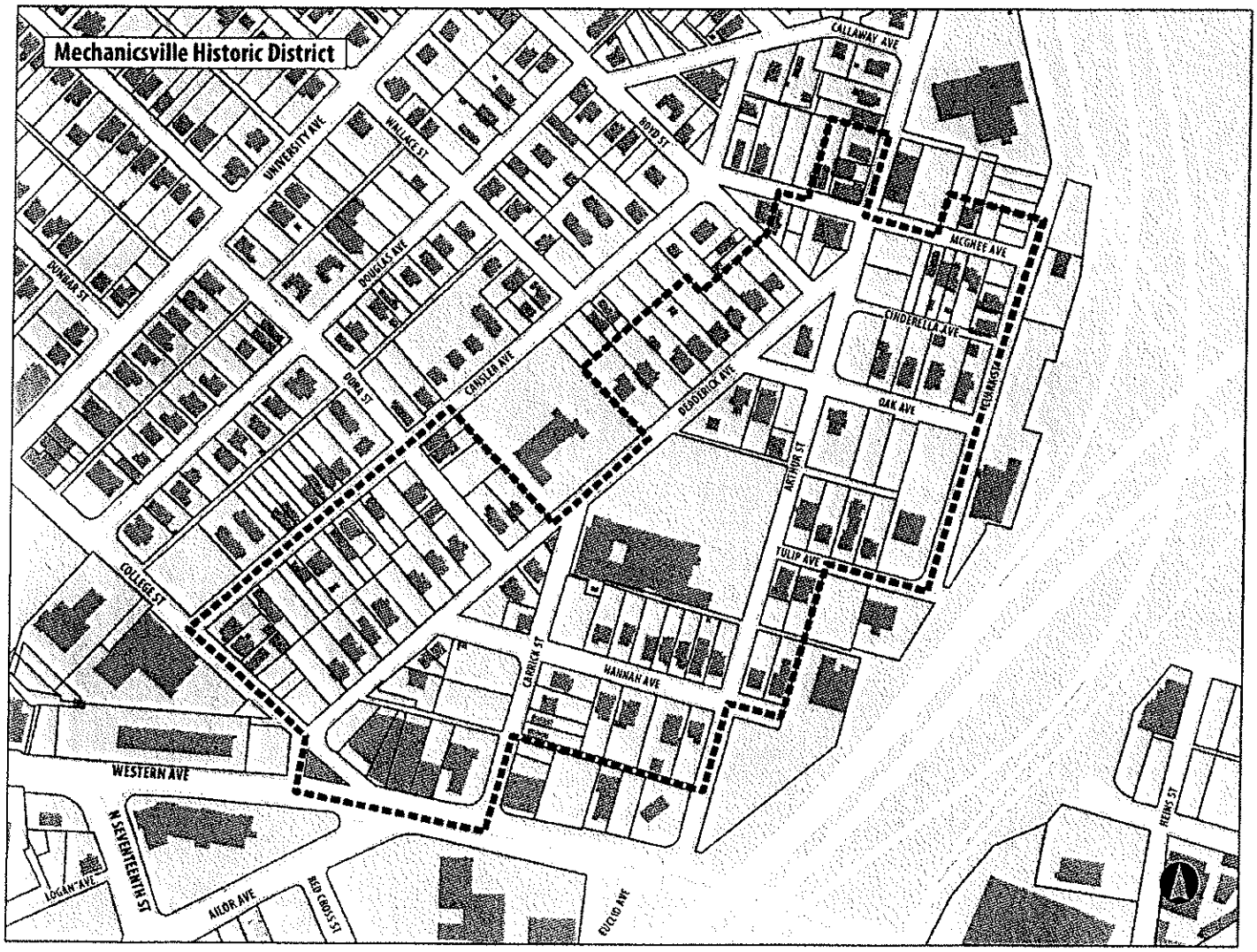

Fort Sanders Neighborhood Conservation District
NC-7
H-1
GRAND AVE
FOREST AVE
HIGHLAND AVE
QUEEN ANNE WAY
CLINCH AVE
WHITE AVE
LAUREL AVE
CUMBERLAND AVE
HEDGE DRIVE
BRIDGE AVE
N SEVENTEENTH ST
SEVENTEENTH ST
S SEVENTEENTH ST
EIGHTEENTH ST
NINETEENTH ST
JAMES AGEE ST
HUNTER ST
ELEVENTH ST
WORLDS FAIR PARK DR
VOLUNTEER BLVD
PHILLIP FULMER WAY
ORAUL DR
MIDDLE DR
LOWER DR
ESTABROOK RD

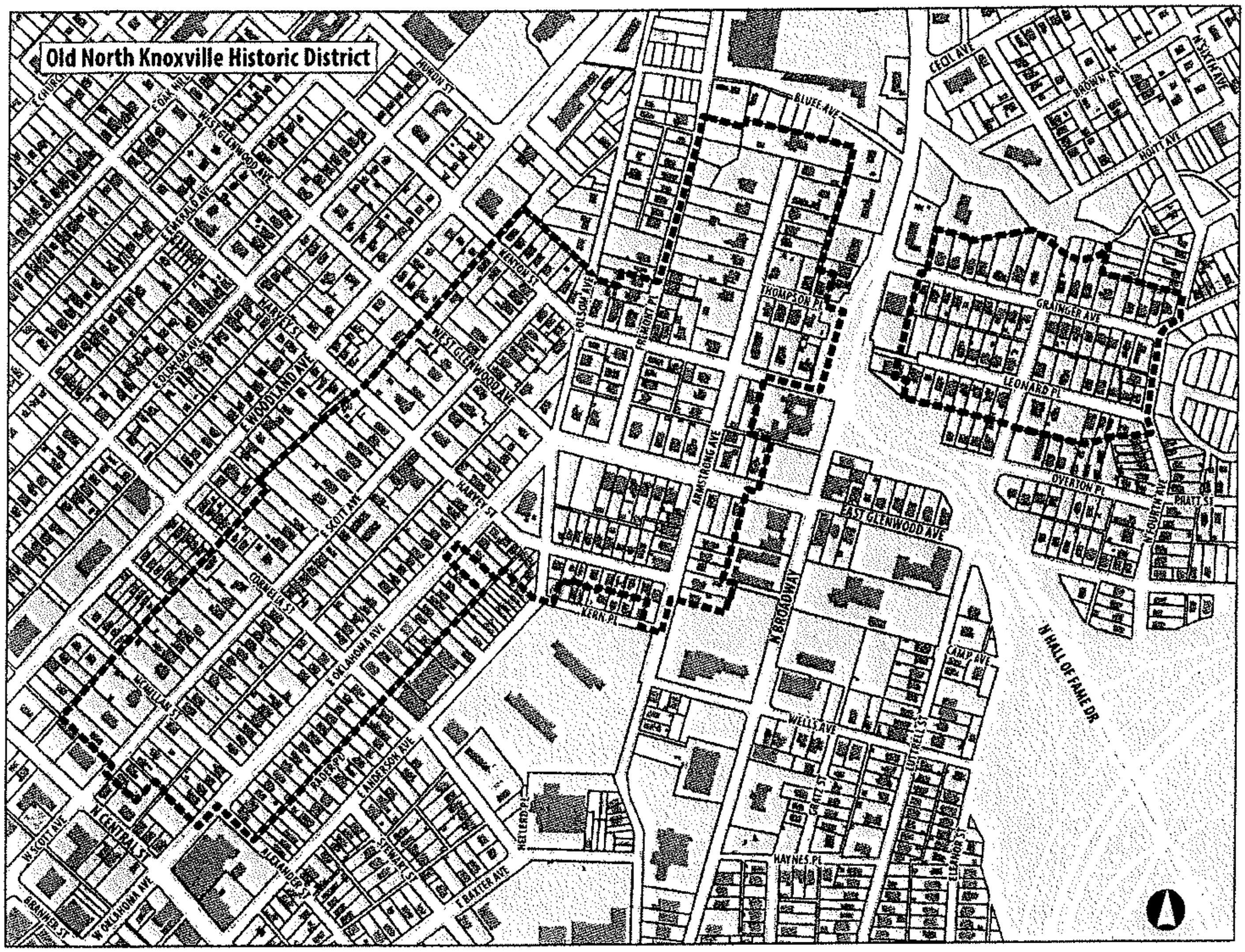

Fourth and Gill Historic District
OVERTON PL
PRATT ST
EAST GLENWOOD AVE
HARVEY ST
KERN PL
ARMSTRONG AVE
N BROADWAY
CAMP AVE
WELLS AVE
MCKENZIE PL
N HALL OF FAME DR
HELLERD PL
E BAXTER AVE
FOLSOM AVE
HAYNES PL
LUTTRELL ST
CULLEN PL
CASWELL AVE
N SIXTH AVE
N FOURTH AVE
NORTH THIRD AVE
SILVER PL
ELEANOR ST
GRATZ ST
STEWART ST
IRWIN ST
GILL AVE
HAZEL PL
LOVENIA AVE
BEARDEN PL
E FIFTH AVE
FULTON PL
THIRD AVE
MORGAN ST
DEERY ST
E FOURTH AVE
PRUETT PL
JENNINGS AVE
E FIFTH AVE
FRAZIER ST
E MAGNOLIA AVE
LAMAR ST
N CENTRAL ST
STONE ST
TYSON ST
JAMES WHITE PKWY
E MAGNOLIA AVE
E DEPOT AVE
EMORY PL


Gobbler's Knob Neighborhood Conservation District
MIMOSA AVE
DAVENPORT RD
BOGGS AVE
CARMICHAEL ST
MILLERS AVE
ARCHEY ST
YARNELL AVE
JONES ST
HIGH AVE
BRITTON HTS
SAM HOUSTON ST
ELIZABETH AVE
JONATHAN AVE
INCLINE ST
SHERROD RD
LIPPINCOTT ST


Lyons View Pike Historic District
LYONS VIEW PIKE
5220
5308
RIVERIDGE CIR
RIVERGATE DR


Market Square Historic District
WALL AVE
WALL AVE
MARKET SQ
S GAY ST
VANE ST
SUMMER PL
WALNUT ST
UNION AVE
UNION AVE
MARKET ST
CLINTON AVE


Mechanicsville Historic District
CALLAWAY AVE
UNIVERSITY AVE
WALLACE ST
BOYD ST
DUNBAR ST
DOUGLAS AVE
MCGHEE AVE
CINDERELLA AVE
DUPRE ST
CANSLER AVE
BENDERICK AVE
OAK AVE
KEMPER ST
ARTHUR ST
TULIP AVE
COLLEGE ST
CARRICK ST
HANNAH AVE
WESTERN AVE
N SEVENTEENTH ST
LOGAN AVE
AILOR AVE
RED CROSS ST
EUCLID AVE
PERRY ST


Old North Knoxville Historic District
N BROADWAY
N HALL OF FAME DR
EAST GLENWOOD AVE
WEST GLENWOOD AVE
GRAINGER AVE
LEONARD PL
OVERTON PL
THOMPSON PL
ARMSTRONG AVE
E WOODLAND AVE
E SCOTT AVE
E OKLAHOMA AVE
N CENTRAL ST
WELLS AVE
HAYNES PL
CAMP AVE
CECIL AVE
BROWN AVE
HOITT AVE
KENYON ST
HARVEY ST
CORNELIA ST
MCMILLAN ST
E ANDERSON AVE
E BAXTER AVE
W SCOTT AVE
W OKLAHOMA AVE
KERN PL
FOLSOM AVE
FREMONT PL
PRATT ST


Scenic Drive Neighborhood Conservation District
KINGSTON PIKE
FOREST PARK BLVD
OLD KINGSTON PIKE
KENILWOOD DR
GLENFIELD DR
WOODLAND DR
ISKAGNA DR
TALAHI DR
KLONDIKE AVE
SOUTHGREEN DR
VALENCIA RD
ARROWHEAD TRL
CHEROKEE BLVD


Tazewell Pike Neighborhood Conservation District
FOREST LN
GARDEN DR
RAVEN DR
HALL DR
GREENDALE RD
SHANNONDALE RD
CRESTWOOD DR
DOGWOOD RD
MAYFIELD RD
TERRACE VIEW DR
GAINES RD
DAYRON LN
CRANBERRY DR
VILLA RD
DOVEWOOD WAY
ROUNDLAKE WAY
GROVE CIR
WOODLAKE DR
NATHANIEL RD
LONGWOOD DR
CLAIRMONT DR
AUDUBON DR
JACKSBORO PIKE
EDGEFIELD RD
TAZEWELL PIKE
MCCAMPBELL LN
SHANNON LN
MAUPIN DR
LUCINDA DR
GIBBS DR
EAST KESTERWOOD DR
KESTERWOOD DR
BEVERLY PL
BEVERLY RD
ANDERSON RD
OAKLAND DR
WOODRUSH DR

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **DISCUSSION REGARDING AN AMENDMENT TO CITY CODE SECTION 142-546(B) (THE "OCEAN DRIVE SPEAKER ORDINANCE").**

ATTACHMENTS:

	Description	Type
🗋	C4 J	Memo

MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Raul J. Aguila, City Attorney
DATE: July 25, 2018

SUBJECT: REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE AND THE PLANNING BOARD REGARDING AN AMENDMENT TO CITY CODE SECTION 142-546(B) (THE "OCEAN DRIVE SPEAKER ORDINANCE").

ANALYSIS

Please place the above-referenced item on the July 25, 2018 City Commission meeting agenda, as a referral to the Land Use and Development Committee and Planning Board.

On April 26, 2017, the Mayor and City Commission adopted Ordinance No. 2017-4085, amending City Code Section 142-546, to create regulations pertaining to exterior speakers on lots fronting Ocean Drive.

The purpose of this referral is to amend the Ocean Drive Speaker Ordinance, in order to establish penalties for violations of the Ordinance, and to develop other appropriate amendments to the Ordinance.

Legislative Tracking
Office of the City Attorney

Sponsor
Commissioner Ricky Arriola

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **DISCUSSION REGARDING PROPOSED HISTORIC DESIGNATION OF INTERNATIONAL INN AT 2301 NORMANDY DRIVE.**

ATTACHMENTS:

Description	Type
C4 K	Memo

MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Commissioner Ricky Arriola
DATE: July 25, 2018

SUBJECT: REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE TO DISCUSS PROPOSED HISTORIC DESIGNATION OF INTERNATIONAL INN AT 2301 NORMANDY DRIVE.

RECOMMENDATION

Please place this referral item on the July 25, 2018 City Commission agenda.

ANALYSIS

On October 10, 2017, the Historic Preservation Board reviewed the Preliminary Evaluation and Recommendation Report, and directed staff to prepare a Formal Designation Report for the International Inn Historic Site.

Pursuant to Section 118-591 of the City Code, on October 12, 2017 the City Commission was advised of the action of the Historic Preservation Board via LTC 488-2017.

The Historic Preservation Board is scheduled to hear the Designation Report on September 17, 2018. Under the Land Development Regulations, the Planning Department is required to prepare and present the Designation Report for consideration by the Historic Preservation Board within one year from the date the Board instructed staff to prepare the report. October 9, 2018 will be a year.

The request to designate is currently an involuntary designation, as the International Inn, has placed the City on notice of its concerns with designation. The Inn's counsel has reached out to propose a settlement so that the designation may move forward. The Inn's counsel has indicated that his client would agree not to object to or contest (including through litigation) the historic designation of the International Inn under the following conditions:

1. The City Code (and the Comp Plan, if applicable) would be amended to provide that individually designated historic sites in RM-1 zoning districts would have the following specific regulations applicable to them:

   a. Height limit 8 stories;
   b. Hotels allowed as permitted use, along with restaurants and bars as accessory uses;
   c. Distance separation requirement between alcohol establishments and schools and religious institutions would not apply;
   d. Reduced parking requirement; and
   e. Reduced unit sizes.

2. The City Commission would not vote on the historic designation until the above amendments tot he City Code (and Comp Plan, if applicable) are final and non-appealable.

I am referring this matter to Land Use and Development Committee for further discussion. In no way does my referral indicate, at this time, my support for this proposal. Rather, I think it is appropriate to move this along to the Committee for further discussion, as well as public comment.

Should you have any questions or concerns please contact Erick Chiroles at 305-673-7030 at extension 6274.

Legislative Tracking
Commissioner Ricky Arriola

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 28, 2018

TITLE: **DISCUSSION REGARDING A PROPOSED CITY-WIDE SIX MONTH MORATORIUM ON NEW HOTEL USES.**

ATTACHMENTS:

Description	Type
C4 D	Memo

MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Raul J. Aguila, City Attorney
DATE: September 12, 2018

SUBJECT: REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE MEETING OF SEPTEMBER 28, 2018, REGARDING A PROPOSED CITY-WIDE SIX MONTH MORATORIUM ON NEW HOTEL USES.

RECOMMENDATION

I would like to refer to the Land Use and Development Committee an ordinance imposing a City-wide, six (6) month moratorium. The moratorium would preclude planning from accepting or processing any new hotel use applications. Developments or projects with development approvals prior to the enactment of the moratorium that include hotel uses would be vested. The City's Convention Center Hotel would also be exempt from the moratorium.

The moratorium is intended to provide the city with the opportunity to hire a consultant and conduct a study similar to the study conducted in Sedona, Arizona, which study attempts to determine a sustainable balance between resident and tourism uses. For your reference, enclosed is an article relating to the Sedona study. I would also ask that Miami-Dade County Water and Sewer Department (WASD) weigh in as to two material issues: (1) how does the increase in intensity of use due to additional tourists and visitors affect the City's and County's water supply and the Miami-Dade County aquafer; and (2) what is the impact to WASD's management of the Virginia Key water treatment plant. The health of Biscayne Bay, which is a great natural resource that is a draw for tourism, needs to be maintained and enhanced, not degraded. I am concerned with the increase in tourism density and the impacts to the health of the Bay.

I am requesting that the item be referred to the September 28, 2018 Committee meeting. A referral to this meeting date requires a 5/7 vote of the City Commission. In the alternative, it is requested that the item be referred to the October 31, 2018 Committee meeting, which would simply require a majority vote of the City Commission.

If you have any questions, please contact Gloria Salom at 305-673-7030 at extension 6854.

Thank you.

Legislative Tracking
Office of the City Attorney

Sponsor
Commissioner Kristen Rosen Gonzalez