

**Condensed Title:**

An Ordinance proposing an amendment to the Land Development Regulations of the City Code amending the review criteria for a lot split to require massing and scale studies to determine compatibility with neighborhood and require that the opinion of title should be as of a date not more than 120 days before the Planning Board meeting.

**Key Intended Outcome Supported:**

Satisfaction with neighborhood character

**Supporting Data (Surveys, Environmental Scan, etc**

Satisfaction with compatibility of new construction

**Issue:**

Should the City Commission adopt the proposed ordinance that amends the review criteria for a lot split by requiring massing and scale studies to determine compatibility with neighborhood and require that the opinion of title should be as of a date not more than 120 days before the Planning Board meeting?

**Item Summary/Recommendation:**

**SECOND READING PUBLIC HEARING**

This ordinance will make it mandatory to submit massing and scale studies when an application to divide a parcel of land is submitted for review by the Planning Board. The proposed ordinance also requires that the opinion of title be of a date not more than 120 days from the date of the meeting.

The Administration recommends that the City Commission adopt the proposed ordinance as modified by the Planning Board.

**Advisory Board Recommendation:**

At the October 28, 2008 meeting, the Planning Board voted (6-0; one member absent) to recommend to the City Commission adoption of the proposed ordinance, as modified. The Board modified the proposed ordinance by requiring that massing and scale studies be submitted with an application for the division of a parcel of land and also requiring that the opinion of title be current.

**Financial Information:**

Source of Funds:		Amount	Account
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	2		
	3		
	Total		

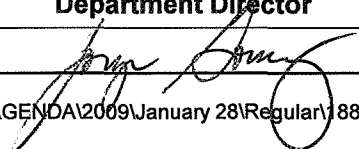
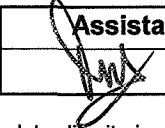
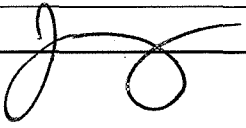
**Financial Impact Summary:**

The proposed Ordinance is not expected to have any fiscal impact upon the resources of the City.

**City Clerk's Office Legislative Tracking:**

Jorge Gomez or Mercy Lamazares

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
		

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# MIAMI BEACH

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

## COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: January 28, 2009

SECOND READING PUBLIC HEARING

SUBJECT: Lot Split Review Criteria

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING CITY CODE CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE VII, "DIVISION OF LAND/LOT SPLIT," SECTION 118-321, "PURPOSE, STANDARDS AND PROCEDURE," BY CLARIFYING THAT THE REVIEW CRITERIA FOR REQUESTS FOR A DIVISION OF LAND/LOT SPLIT TO REQUIRE AN APPLICANT TO SUBMIT MASSING AND SCALE STUDIES OF POSSIBLE STRUCTURES AND USES ON THE LOT OR LOTS PROPOSED TO RESULT FROM LOT SPLITS, AND THE REQUIRED OPINION OF TITLE SHOULD BE AS OF A DATE NOT MORE THAN 120 DAYS BEFORE THE PLANNING BOARD MEETING; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

### ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission adopt the proposed ordinance.

### BACKGROUND

At the June 25, 2008 meeting, the City Commission referred an ordinance that would amend the review criteria for lot splits which would clarify the review criteria that evaluates whether the proposed new construction is compatible with the as-built character of a neighborhood or surrounding area.

### ANALYSIS

City Code section 118-321 B. provides review criteria for applications that propose lot splits for consideration by the Planning Board. Arguably, subsection B. (3) requiring the Planning Board to consider whether the proposed lot split would result in new construction that would be compatible with the as-built character of the surrounding area, or creates adverse impacts on the surrounding area, may be interpreted so as to not require plans for proposed construction to be submitted or considered as part of the request. That subsection specifically provides:

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

\* \* \*

- (3) Whether the scale of any proposed new construction is compatible with the as-built character of the surrounding area, or creates adverse impacts on the surrounding area; and if so, how the adverse impacts will be mitigated.

It was the intention of the Administration and the City Attorney's Office when this ordinance was amended last year, that applicants would submit evidence, such as massing and scale studies, to assist in determining whether a proposed lot split satisfies this criterion.

To clarify this intention, the City Attorney requested the City Commission to refer to the Planning Board an amendment to the land development regulations that would require such studies. The Administration supports this amendment.

The City Commission has asked that the Planning Board consider two versions of the ordinance. The first provides that the Planning Director and Planning Board **may** require the applicant to submit massing and scale studies reflecting structures and uses permitted under the land development regulations as a result of the proposed lot split, even if the applicant presently has no specific plans for construction. The second version **requires** such submittals from all applicants.

#### **PLANNING BOARD ACTION**

At the October 28, 2008 meeting, the Planning Board voted (6-0; one member absent) to recommend the City Commission adoption of the alternative version of the proposed ordinance, as modified, requiring the massing and scale studies. The Board also included a requirement that the opinion of title, which is one of the documents that must be submitted with an application to divide a parcel, must not be of a date more than 120 days from the date of the meeting.

#### **FISCAL IMPACT**

The proposed Ordinance is not expected to have any significant fiscal impact upon the resources of the City.

#### **CITY COMMISSION ACTION**

At the December 10, 2008 meeting, the City Commission approved the proposed ordinance on first reading. The Commission also discussed an additional criterion that evaluates the extent to which the proposed lot split preserves an existing structure. This item was referred to the Land Use and Development Committee and afterwards to the Planning Board for review and recommendation.

#### **CONCLUSION**

The Administration recommends that the City Commission adopt the proposed ordinance.

Pursuant to Section 118-164(3), when a request to amend the Land Development Regulations **does not** change the actual list of permitted, conditional or prohibited uses in a zoning category, the proposed ordinance may be read by title or in full on at least two separate days and shall, at least **ten days prior** to adoption, be noticed once in a

newspaper of general circulation in the City. Immediately following the public hearing at the second reading, the City Commission may adopt the ordinance by a five-sevenths vote.

**JMG/TH/JGG/ML**

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

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING CITY CODE CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE VII, "DIVISION OF LAND/LOT SPLIT," SECTION 118-321, "PURPOSE, STANDARDS AND PROCEDURE," BY CLARIFYING THAT THE REVIEW CRITERIA FOR REQUESTS FOR A DIVISION OF LAND/LOT SPLIT TO REQUIRE AN APPLICANT TO SUBMIT MASSING AND SCALE STUDIES OF POSSIBLE STRUCTURES AND USES ON THE LOT OR LOTS PROPOSED TO RESULT FROM LOT SPLITS, AND THE REQUIRED OPINION OF TITLE SHOULD BE AS OF A DATE NOT MORE THAN 120 DAYS BEFORE THE PLANNING BOARD MEETING; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, review criteria are necessary for the proper review and evaluation by the Planning Board for the requests to divide or split a parcel of land; and

**WHEREAS**, the preservation of neighborhood character is an important quality to protect; and

**WHEREAS**, new construction that is compatible with the prevailing character of existing residential neighborhoods should be encouraged and promoted; and

**WHEREAS**, review criterion number 3 of the lot split review criteria in City Code Section 118-321 requires an applicant for a lot split to establish: "Whether the scale of any proposed new construction is compatible with the as-built character of the surrounding area, or creates adverse impacts on the surrounding area; and if so, how the adverse impacts will be mitigated. "

**WHEREAS**, in order to ensure that sufficient evidence is submitted to establish that an application satisfies review criterion number 3, it is necessary to clarify the authority of the Planning Director and Planning Board to require an applicant in establishing compliance with this criterion to submit massing and scale studies reflecting structures and uses permitted under the land development regulations as a result of the proposed lot split, even if the applicant presently has no specific plans for construction.

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

**SECTION 1.** That City Code Chapter 118, "Administration and Review Procedures," Article VII, "Division of Land/Lot Split," Section 118-321, "Purpose, Standards and Procedure," is hereby amended as follows:

**Sec. 118-321. Purpose, Standards and Procedure.**

In order to maintain open space and neighborhood character, wherever there may exist a main permitted structure and any accessory/auxiliary building or structure including, but not limited to, swimming pools, tennis courts, walls, fences, or any other improvement that was heretofore constructed on property containing one or more platted lots or portions thereof, such lots shall thereafter constitute only one building site and no

permit shall be issued for the construction of more than one main permitted structure on the site unless the site is approved for the division or lot split by the planning board.

No lot(s), plot(s) or parcel(s) of land, whether improved or unimproved or building site, as defined herein, designated by number, letter or other description in a plat of a subdivision, shall be further divided or split, for the purpose, whether immediate or future, of transfer of ownership or development, without prior review and approval by the planning board. Lots shall be divided in such a manner that all of the resulting lots are in compliance with the regulations of these land development regulations. All lot lines resulting from the division of a lot shall be straight lines and consistent with the configuration of the adjoining lots.

If a main permitted structure is demolished or removed therefrom, whether voluntarily, involuntarily, by destruction or disaster, no permit shall be issued for construction of more than one main permitted structure on the building site unless the site is approved for the division or lot split by the planning board.

A. Procedure

- (1) All applicants shall provide as part of the application process copies of all deed restrictions, reservations or covenants applicable to the building site, lot, plot or parcel of land being considered for division or split, and an opinion of title evidencing that, as of a date not more than 120 days before the Planning Board's decision upon the application, any none of such matters do not prevent or serve as exceptions to the division or split requested. No variance from this requirement shall be allowed.
- (2) Any applicant requesting the establishment or separation of building sites shall pay the fee for division of lot or lot split as provided in appendix A. The fees in this section are for the purpose of defraying expenses of public notices and other administrative costs in connection with processing applications. An additional fee as provided in appendix A shall be required for an after-the-fact application.
- (3) If a deferment or an extension of time is requested by the applicant, an additional fee as provided in appendix A shall be assessed.
- (4) If a request for a deferral is submitted by the administration or the planning board, and not at the request of an applicant, there will be no additional charge.
- (5) If the applicant withdraws the application after it has been accepted by the planning department, but prior to the public noticing of the request, the city shall refund 50 percent of required fees.

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

- (1) Whether the lots created are divided in such a manner that they are in compliance with the regulations of these land development regulations.

- (2) Whether the building site created would be equal to or larger than the majority of the existing building sites, or the most common existing lot size, and of the same character as the surrounding area.
  - (3) Whether the scale of any proposed new construction is compatible with the as-built character of the surrounding area, or creates adverse impacts on the surrounding area; and if so, how the adverse impacts will be mitigated. To determine whether this criterion is satisfied, the applicant shall submit massing and scale studies reflecting structures and uses that would be permitted under the land development regulations as a result of the proposed lot split, even if the applicant presently has no specific plans for construction.
  - (4) Whether the building site created would result in existing structures becoming nonconforming as they relate to setbacks and other applicable regulations of these land development regulations, and how the resulting nonconformities will be mitigated.
  - (5) Whether the building site created would be free of encroachments from abutting buildable sites.
- C. Final decision. In granting a division of land/lot split, the planning board may prescribe appropriate conditions and safeguards, including but not limited to a condition restricting the size of new structures to be built on the resulting lots, based upon the application's satisfaction of and consistency with the criteria in subsection B above, and the board's authority under section 118-51. Violation of such conditions and safeguards, when made a part of the terms under which the division of land/lot split is granted, shall be deemed a violation of these land development regulations.
- The decision of the planning board shall be final and there shall be no further review thereof except by resort to an appellate court of competent jurisdiction by petition for writ of certiorari.
- D. Procedure to request adjustment to the after-the-fact fee. The planning board may adjust the after-the-fact fee based on substantial competent evidence that there are extenuating circumstances that warrant such an adjustment. The request for a fee adjustment shall be in writing at the time the application for a lot split is filed with the planning department. The adjusted after-the-fact fee shall not be less than the regular application fee.

**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 \_\_\_\_\_, 2008.


\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

First Reading:  
Second Reading:

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

12/1/08  
\_\_\_\_\_  
Date

Verified by: \_\_\_\_\_  
Jorge G. Gomez, AICP  
Planning Director

Underscore denotes new language  
~~Strikethrough~~ denotes deleted language



# CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARINGS

**NOTICE IS HEREBY** given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, January 28, 2009**, to consider the following:

**10:15 a.m.**

An Ordinance Amending Miami Beach City Code Chapter 2, Article III, Section 2-22(5)(a) Thereof Regarding General Requirements For Membership On City Of Miami Beach's Agencies, Boards And Committees, By Providing That When A Vacancy On The City Commission Exists Beyond December 31 Of The Year An Appointing Commission Member Leaves Office, Direct Appointees Of Said Former Commission Member Shall Hold Over Until The Appointment/Election Of The Successor City Commission Member.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

**10:20 a.m.**

An Ordinance Amending The Land Development Regulations Of The City Code Of The City Of Miami Beach, Florida By Amending Chapter 118, "Administration And Review Procedures," Article II, "Boards," Division 2, "Planning Board," By Amending Section -118-53, "Composition," By Clarifying That Only A Resident Of The City Shall Be Eligible For Appointment; Amending Division 4, "Historic Preservation Board," Section 118-103, "Membership," By Establishing That One Of The At-Large Members Who Must Own Or Manage Property In One Of The Historic Districts Shall Also Reside In The City.

Inquiries may be directed to the Planning Department at (305) 673-7550.

**10:25 a.m.**

An Ordinance Amending City Code Chapter 118, "Administration And Review Procedures," Article VII, "Division Of Land/Lot Split," Section 118-321, "Purpose, Standards And Procedure," By Clarifying That The Review Criteria For Requests For A Division Of Land/Lot Split To Require An Applicant To Submit Massing And Scale Studies Of Possible Structures And Uses On The Lot Or Lots Proposed To Result From Lot Splits; And The Required Opinion Of Title Should Be As Of A Date Not More Than 120 Days Before The Planning Board Meeting.

Inquiries may be directed to the Planning Department at (305) 673-7550.

**10:35 a.m.**

An Ordinance Implementing A Deferred Retirement Option Plan For Members Of The Miami Beach Employees' Retirement Plan Created By Ordinance 2006-3504, As Subsequently Amended; Creating A New Section 2.26, Providing A Definition Of Deferred Retirement Option Plan; Creating A New Section 5.13, Establishing The Deferred Retirement Option Plan And Setting Forth The Features Of The Plan.

Inquiries may be directed to the Human Resources Department at (305) 673-7520.

**INTERESTED PARTIES** are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk  
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305) 673-7218 (TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Ad #519