

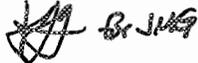


MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Members of the Land Use and Development Committee

FROM: Jorge M. Gonzalez, City Manager 

DATE: January 28, 2010

SUBJECT: LAND USE AND DEVELOPMENT COMMITTEE MEETING OF JANUARY 28, 2010

A meeting of the Land Use and Development Committee has been scheduled for January 28, 2010 at 4:00 pm in City Manager's Large Conference Room, 4th Floor, City Hall.

1. SELECTION OF A CHAIR AND VICE-CHAIR FOR THE LAND USE AND DEVELOPMENT COMMITTEE

NEW BUSINESS:

2. a. **DISCUSSION OF POTENTIAL AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS PERMITTING SHORT TERM RENTALS OF APARTMENT UNITS OR TOWNHOMES IN A SPECIFIC AREA DISTRICT**
- b. **DISCUSSION REGARDING POSSIBLE EXPANSION OF BED AND BREAKFAST DEFINITION**
3. **DISCUSSION OF AN AMENDMENT TO SECTION 142-902 OF THE LAND DEVELOPMENT REGULATIONS, TO PERMIT ADDITIONAL ACCESSORY USES IN BUILDINGS ADJACENT TO, AND PROVIDING ACCESS TO A PUBLIC BAYWALK.**

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- R5M Temporary Parking Lots - Amendment To The 10-Year Limit
 An Ordinance Amending The Land Development Regulations Of The Code Of The City Of Miami Beach, By Amending Chapter 130, "Off Street Parking," Article III, "Design Standards", By Amending Section 130-70(7), To Allow For Additional Extensions Of Time For Temporary Parking Lots; Providing For Repealer, Codification, Severability And An Effective Date. **First Reading.**
 (Planning Department)

ACTION: Item not reached. Lilia Cardillo to place on the Commission Agenda. Jorge Gomez to handle.

11:47:07 a.m.

9:00:36 p.m.

- R5N Short Term Rental Of Apartment Units Or Townhomes
 An Ordinance Amending Chapter 142 Of The City Code, "Zoning Districts And Regulations," Article IV, "Supplementary District Regulations," Division 3, "Supplementary Use Regulations," By Creating New Ordinance Section 142-1111, "Short Term Rental Of Apartment Units Or Townhomes," Providing For Repealer, Nonseverability, Codification, And An Effective Date. **First Reading**
 (Planning Department)

ACTION: Ordinance approved on first reading. Motion made by Vice-Mayor Diaz, seconded by Commissioner Gross; Ballot vote: 7-0. Second reading and Second Public Hearing scheduled for October 14, 2009. R. Parcher to notice. Lilia Cardillo to place on the Commission Agenda. Jorge Gomez to handle.

* **Amendment:**

- 1 Refer to Land Use and Development Committee, the issue of whether it's a NCD or overlay district, and that the study is done in specific areas without expanding,
- 2 That the current policy remains in effect (complaint driven);

End

11:47:07 a.m.

Jorge Gonzalez, City Manager, announced that the item will be heard after 5:00 p.m.

DETAILS TO BE REVIEWED

Jorge Gomez, Planning Director, introduced the item.

Discussion held.

Richard Lorber, Planning and Zoning Manager, read the requirements for short term rentals.

Jorge Gomez, Planning Director, stated the requirements from the Building and Fire Departments.

Carter McDowell, Esq., spoke.
 Gerald K Schwartz, Esq., spoke.
 Tammy Taboltz spoke.
 Ernesto Arguello spoke.
 Eric Harari spoke.
 Carter McDowell spoke.
 Marsha Fabre spoke.



MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Jerry Libbin, Commissioner *Jel*

DATE: October 5, 2009

SUBJECT: Agenda item for October 14, 2009 referral to Land Use
Possible expansion of bed and breakfast definition

In light of the ongoing discussions about short term rentals, particularly the Flamingo Park Historic District, a consistent concern has surfaced in each discussion about the need for on-sight supervision to prevent disturbing parties or unwarranted noise in the neighborhood. I believe our current code permits single family homes that are designated as historic to operate as a bed and breakfast with the requirement that there must be on-sight supervision/management. I would like to refer a discussion to Land Use to discuss whether expanding the definition of bed and breakfast to include historic rental buildings with the same restriction of requiring on-sight supervision/management would make sense.

You may contact my office at ext. 7106 if you have any questions.

JL/sm



COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: January 28, 2010

SUBJECT: **DISCUSSION OF POTENTIAL AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS PERMITTING SHORT TERM RENTALS OF APARTMENT UNITS OR TOWNHOMES IN A SPECIFIC DISTRICT**

DISCUSSION REGARDING POSSIBLE EXPANSION OF BED AND BREAKFAST DEFINITION

BACKGROUND

An amendment to the Land Development Regulations, permitting short term rentals of apartment units in zoning districts that did not currently permit transient occupancy was reviewed by the City Commission at its September 9, 2009 meeting. At that time, the Commission voted to not approve the proposed ordinance, but, rather they referred the matter to the Land Use and Development Committee. The Commission's specific directive was for the Administration to first begin to examine specific areas within which a neighborhood consensus could be arrived at regarding short term rentals, and then bring back any proposals that may be able to achieve consensus within a wider neighborhood context.

A related topic, a discussion of possible expansion of the Bed and Breakfast Inn regulations, was referred to the Land Use and Development Committee by Commissioner Jerry Libbin at the October 14, 2009 Commission meeting.

ANALYSIS

After the City Commission public hearing of September 9th, the Flamingo Park Neighborhood Association held a meeting of their board on September 26, 2009, to continue to discuss this important issue. At that meeting, the Association adopted a resolution (see attachment A), reiterating their opposition to the introduction of new short term rental apartments into their neighborhood, but expressing approval of the concept of "grandfathering" a small number of properties that had been already operating short term rentals within that neighborhood. The resolution listed a number of criteria that would identify properties with a record of a current and consistent history of short-term renting, and demonstrating that short-term rentals were the primary source of income derived from that building. Their criteria also focused upon the management of any short term rental property being on-site or within the nearby area, and on limiting any properties that may have had noise violations or other problems with maintenance.

Planning Department staff was informed of the Association's resolution, and has subsequently met with representatives of the Flamingo Park Neighborhood Association, as well as with property owners whose properties might be affected by this proposed amendment. Staff has crafted a proposed ordinance, which attempts to codify as many of the Neighborhood Association's criteria as possible (see attached ordinance draft). The proposed ordinance would only apply to the RM-1 and TH zoning districts within the Flamingo Park and Espanola Way Historic Districts.

The ordinance identifies the properties that would be eligible for short term rental of apartment units within the specified area as those having proof of previous short term rentals according to the following formula. For apartment buildings of four or more (all of which are required to register for resort tax with the City regardless of short or long term occupancy) the property must A) be registered with the City for the payment of Resort Tax as of February 1, 2009; and, B) have had City of Miami Beach Resort Tax taxable room revenue equal to at least 50% of total room revenue over the past two years. This figure is intended to distinguish between properties whose resort tax payments were simply to cover the occasional broken lease, and those whose primary activities have focused upon short term rentals for a substantial period of time.

For properties with less than four units, since the City's Resort Tax Division currently exempts these properties from registering for resort tax, an alternative method of demonstrating short term rental history was found. For these properties, in order to be eligible for short term rental, the property must have been licensed by the State of Florida as a resort dwelling as of February 1, 2009.

An analysis of City and State records shows that four apartment buildings and one townhouse building would currently qualify as eligible if the amendment were adopted as proposed. The four apartment buildings are all currently under the ownership of one operator, Mr. Eric Harari, who worked closely with the Neighborhood Association to secure their adoption of the previously discussed resolution. Those apartment properties are located at 1440 Pennsylvania Avenue, 1534 Euclid Avenue, 1542 Jefferson Avenue, and 1032 Michigan Avenue. The only townhouse unit which would be eligible is located at 1446 Jefferson Avenue, and is owned and operated by Tammy R. Tibbles.

Eligible properties would have one year from the date of approval of the ordinance in which to apply to the City for short term rental approval. The procedures and regulations for such approval are spelled out in the ordinance, and come primarily from the previously discussed short term rental ordinance which was crafted by the Planning Board after careful review. Rentals would be limited to a minimum period of one week, and management would be required to be on-site or located within the Flamingo Park or Espanola Way district. Fines would be assessed for violations, and multiple violations could result in the non-renewal of short term rental licenses. No variances would be allowed, and these rules would not supersede any association rules that may apply.

This proposed ordinance appears to be limited in scope, affecting a relatively few properties, and has support from both the property owners in question and the neighborhood association. In future, it should be expected that other proposals for changes to short term rental rules in other neighborhoods should follow a similar path of neighborhood collaboration and dialog, rather than being simply a proposal from one group or the other.

A number of other inquiries have been made to the Planning Department regarding the possibilities for legislation that would permit similar short term rentals in other ways and in other neighborhoods. The following is a short list of these:

1. **The 1600 Block of Lenox Avenue, between 16th Street and Lincoln Road**
Owners of a proposed short term rental apartment / hotel facility in this block have met with Planning Department staff regarding this ordinance. Their concept, however, involves both an existing building and a proposed new building, and as such would not be covered under a limited grandfathering. Since the block contains a legal nonconforming commercial use at Lenox and 16th Street, as well as being very closely located to a busy portion of Lincoln Road, the block may be a candidate for a type of Neighborhood Conservation District which might allow short term rentals in both existing and new buildings, under the proper conditions.
2. **The Temple House**
The property at 1415 Euclid Avenue was formerly a synagogue, and was converted to a single family residence several years ago by Mr. Dan Davidson. Mr. Davidson desires to convert the property into a lodging facility or bed and breakfast inn. However, the structure does not meet the existing requirements for conversion to bed and breakfast inn; a code amendment would be required to slightly modify those regulations to permit bed and breakfasts in non-single family structures (although it was originally built as a single family home, the structure has been altered over the years). Note however, that Mr. Davidson would also desire that any such code amendment also be written to permit use as a "hall for hire" for assembly uses, which he proposes would end by 12:00 midnight. Mr. Davidson presented this proposal to the Flamingo Park Neighborhood Association, which has submitted a letter indicating that a resolution supporting this proposal was approved at their December 14, 2009 meeting (see attachment C).
3. **South of Fifth Street**
Several property owners have inquired about the possibility of permitting short term rentals in the South Pointe area. James Nooney owns a single family home at 828 4th Street, and would like to operate it for short term rentals. After discussing this with the Planning Department staff, Mr. Nooney is circulating a petition to the residents of the area seeking support for an ordinance change which would allow this (see attachment D). Additionally, property owners Erika Brigham, Bernard Superstein, and Donna Bragassa each own apartment buildings, which they desire to use for short term rentals. Although staff has explained to them under the current zoning, those properties could be converted to apartment hotels, which are permitted in their particular zoning district, they have enquired as to the possibility of code changes which would grandfather them in without the need to convert to apartment hotel. In all of these cases, staff has advised property owners to seek out neighborhood representatives and work on arriving at a consensus that is acceptable to all parties. The South of Fifth Neighborhood Association (SOFNA) is planning to discuss the issue of short term rentals at their meeting of January 27th; City staff will attend that meeting for informational purposes, and advise the Land Use and Development Committee of any developments.

As shown above, there remains significant interest in short term rentals in several areas of the City. The ordinance before the Land Use and Development Committee today, however, is specifically limited to one specific area, and is the end product of cooperation between property

owners and neighborhood association representatives. Staff believes that this process represents the spirit of the referral from the City Commission last year, when it declined to approve the wider ordinance that was proposed, and instead directed a more neighborhood focused approach. Staff will continue to work with other groups in other areas as proposals are made, working through neighborhood associations and community groups when possible, to ensure a consensus is reached prior to bringing forward additional proposals.

In regards to this specific ordinance, limited to the Flamingo Park and Espanola Way historic districts, and only permitting a limited number of previously existing short term rental apartments to be approved under very stringent conditions, staff believes that the proposal merits approval.

RECOMMENDATION

In view of the above analysis, the Administration recommends that the Land Use and Development Committee submit the proposed ordinance back to the full Commission for First Reading.

JMG/JGG/RGL

attachments

c: Jorge G. Gomez, Assistant City Manager
Gary Held, City Attorney's Office
Richard G. Lorber, Acting Planning Director

ATTACHMENT A

Flamingo Park Neighborhood Association (FPNA)
c/o Miami Beach Community Development Corporation
945 Pennsylvania Avenue
Miami Beach, FL 33139

Resolution RE: Proposed Changes to City Code Allowing Short Term Rentals in Flamingo Park- and Espanola Way- Historic Districts

WHEREAS, the City of Miami Beach Planning Department Staff in its revised Report as presented to the Commission at its September 9, 2009 meeting, recommended a revision to the current code* which would allow short-term rentals (*'short-term'* defined as a period of no less than 1 week) in RM-1 and TH zoned neighborhoods, excluding the Flamingo Park Historic District. * *Staff Report defines the current code in this way: "... the City treats the rental of multi-family residential or town-home properties in districts that do not permit hotel uses (RM-1 and TH) for periods of less than 6 months and one day as transient use, and is therefore prohibited under existing regulations":*

WHEREAS, the City of Miami Beach Commission did not adopt said Ordinance in its current draft form, and moved to submit the Ordinance for continued analysis and development to the Commission's Land Use and Development Committee:

WHEREAS, the current six month plus one day policy for the Flamingo Park / Art Deco Historic District follows the guidelines of the Anderson Notter Finegold Preservation and Development Plan of 1981 (*commissioned by the Miami Design Preservation League after the recognition of the Miami Beach Architectural District in 1979*), which recognizes the unique character of the Flamingo Park neighborhood and labels it "residential" for "permanent and seasonal residents" (*seasonal residents defined as those who make their homes in Miami Beach from November to April*):

WHEREAS, "permanent" residents of the Flamingo Park / Art Deco Historic District have settled here precisely because of their long-fought and hard-won sense of community and permanence, a social amenity which has greatly enhanced the destination appeal of South Beach and lies at the core of its long-term economic health:

WHEREAS, the City's regulatory requirements for transient residences in its commercial districts (ie hotels) all require full-time, on-site management.

WHEREAS, the City of Miami Beach has been outspoken in its advocacy of affordable housing, both for work force and low-income families, and inventory for such diverse housing would be threatened by an incentivized, lucrative short-term rental market:

WHEREAS, there are currently within the Flamingo Park / Art Deco Historic District property owners conducting successful short-term rentals, having complied with the City's and/or State's tax requirements, and/or licensing requirements, as well as demonstrating their commitment to maintaining the peace and quiet within their property's immediate vicinity, for whom the elimination of short-term rentals as an accepted and legal use would represent a loss of livelihood and financial hardship:

WHEREAS, it is essential for the Miami Beach City Commission to take action immediately to limit short-term rentals in the Flamingo Park *and* Espanola Way Historic Districts (bounded by Lincoln Road, Washington Avenue, Fifth Street and Alton Road) in order to prevent the conversion of additional buildings to short-term rental use.

THEREFORE, the Flamingo Park Neighborhood Association urges the City of Miami Beach Commission to take the following action as soon as possible:

Preserve the current policy limiting rental periods to a six month and one day minimum in the RM-1 and TH zones *only* of the Flamingo Park *and* Espanola Way Historic Districts, as well as the exception allowing Bed and Breakfast facilities, while allowing the issuance of a “grandfathered” short-term rental license to those property owners who qualify according to the following criteria:

1. Short-term rentals must be a property owner’s primary source of income derived from that building.
2. Property owners must demonstrate a current and consistent history of short-term renting during the past six months in compliance with all applicable City noise, sanitation, parking, and building ordinances.
3. Property owners must demonstrate a current and consistent history of short-term renting during the past six months in compliance with all applicable City and State requirements for business licensing and tax payments.
4. Property owners of *historic multi-family buildings*, whose apartment units are less viable as long-term rentals due to size (*with areas measuring less than 400 s/f*) may apply for a short-term rental license even if they are not in compliance with items 1-3, so long as all other criteria outlined herein are satisfied.
5. Upon the sale of a “grandfathered” property, the subsequent owner of the property may re-apply for a short-term rental license, but must do so within the first 6 months of ownership (*after 6 months, the property becomes forever ineligible for “grandfathering” status*).
6. Property owners granted a license to operate short-term rentals under items 4-5 shall be given a temporary license for a 1-year period, during which time they must operate in compliance with all other criteria outlined herein prior to receiving a license renewal. During that 1-year grace period, the City’s Planning Director may require a progress report.
7. Property owners who are *not living on-site* must maintain management which is available 24 hours a day located within the Flamingo Park and Espanola Way Historic Districts, and whose contact information is registered with the City’s Police and Code Compliance departments and as well as posted on the building.
8. Any property owner who is eligible to conduct short-term rentals according the criteria 1-3 must make application for a license to do so within 90 days of the date the currently proposed Ordinance takes effect, or the property shall become forever ineligible for “grandfathering” status.

(Adopted unanimously - 9/26/2009)

**“SHORT TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES”
Flamingo Park – Planning Department draft - January 21, 2010**

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142 OF THE CITY CODE, “ZONING DISTRICTS AND REGULATIONS,” ARTICLE IV, “SUPPLEMENTARY DISTRICT REGULATIONS,” DIVISION 3, “SUPPLEMENTARY USE REGULATIONS,” BY CREATING NEW ORDINANCE SECTION 142-1111, “SHORT TERM RENTAL OF APARTMENT UNITS OR TOWNHOMES,” PROVIDING FOR REPEALER, NONSEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations (“LDRs”) restrict multifamily residential properties to residential and compatible uses; and

WHEREAS, the LDRs are designed to protect and preserve the identity, image, environmental quality, privacy, attractive pedestrian streetscapes, and human scale and character of the City’s residential neighborhoods and buildings and to encourage and promote construction that is compatible with the established neighborhood context; and

WHEREAS, the RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3, and TH zoning districts do not permit hotel uses, except for the West Avenue Bay Front Overlay District, a specified section of the RM-1 district in North Beach, Bed and Breakfast Inns in the RM-1 district in historic districts, and apartment hotels in the RPS-1 and RPS-2 districts; and

WHEREAS, the land development regulations define hotel uses as buildings occupied or intended to be occupied by transient residents; and

WHEREAS, the City Code treats residences leased in the City for less than six consecutive months and one day as transient occupancy; and

WHEREAS, the rental of multifamily residential or townhome properties in districts that do not permit hotel uses for periods of less than six months and one day is a transient and commercial use and therefore prohibited under existing regulations; and

WHEREAS, the City has determined that there is a potential for harm if transient rentals are permitted without regulations protecting against adverse external effects of such use or prohibited in certain instances; and

WHEREAS, multifamily or townhome unit owners’ sense of community and privacy would be compromised by commercial and transient use of units in multifamily buildings and neighborhoods; and

WHEREAS, multifamily or townhome unit owners have reasonable expectations of a community of permanent neighbors and owners and the privacy such a community entails; and

WHEREAS, the privacy and ambience of such multifamily or townhome residential buildings and areas are materially undermined by transient rentals; and

WHEREAS, the values associated with multifamily or townhome residential areas can only be preserved by very limited and controlled commercial and transient use of residences, if at all; and

WHEREAS, the Planning Department Staff Report contains further history, research and concerns about this issue, which report is adopted as part of the legislative history of this ordinance; and

WHEREAS, based upon the factors listed above, any relaxation of the current land development regulations with respect to short term rentals in multifamily zoning districts must be limited in size and scope to specifically defined neighborhood areas, which have undertaken a process of examining the short term rental issue and have come to a neighborhood consensus with regards to the advisability and desirability of the introduction of these uses into those neighborhoods; and

WHEREAS, at this time, based upon an initiative of the Flamingo Park Neighborhood Association, a consensus has been reached that a limited number of properties within the Flamingo Park and Espanola Way Historic Districts, which can demonstrate a current and consistent history of short-term renting, should be permitted to be approved by the City for such use; and

WHEREAS, while residents are entitled to enjoy the use of their multifamily units consistent with applicable regulations in apartment or townhome residential districts, the City Commission deems that within the aforementioned Flamingo Park and Espanola Way Historic Districts, a limited number of such short term rental uses, which can demonstrate a current and consistent history of short-term renting, may be approved by the City under certain specified conditions, if subject to regulation that would protect the enjoyment, character and value of apartment or townhome residential neighborhoods, buildings and units; and

WHEREAS, the provisions herein regarding Short Term Rental of Apartment Units or Townhomes are hereby adopted 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 City Code Chapter 142, "Zoning Districts And Regulations," Article IV, "Supplementary District Regulations," Division 3, "Supplementary Use Regulations," is hereby amended by creating new Section 142-1111, "Short Term Rental Of Multifamily Units," as follows:

Sec. 142-1111. Short Term Rental of Apartment Units or Townhomes.

(a) Intent and Purpose:

The Land Development Regulations restrict apartment and townhome residential properties to residential and compatible uses. The rental of apartment or townhome residential properties in districts zoned RM-1, RM-PRD, RM-PRD-2, RPS-1 and RPS-2, CD-1, RO, RO-3 or TH for periods of less than six months and one day, unless expressly provided for in these land development regulations (such as for a portion of the RM-1 district, and for apartment hotels in the RPS-1 and RPS-2 districts) are not a permitted use in such districts, unless conducted in accordance with this section.

(b) Previously Existing Short Term Rentals in Specified Districts.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained, that for a limited period of time of one (1) year after the effective date of this ordinance, certain properties located in the following district shall be eligible to apply for approval of short term rental of apartment and townhome residential units for these properties under the requirements and provisions set forth below.

District: Properties within the RM-1 and TH zoning districts in the Flamingo Park and Espanola Way Historic Districts.

Eligibility: Those properties that can demonstrate a current and consistent history of short-term renting, and that such short-term rentals are the primary source of income derived from that building, as defined by the requirements listed below.

1. For apartment buildings of four or more units:

In order to demonstrate current, consistent and predominant short-term renting, the property must:

- a. have been registered with the City for the payment of Resort Tax as of February 1, 2009; and,
- b. have had City of Miami Beach Resort Tax taxable room revenue equal to at least 50% of total room revenue over the past two years.

2. For apartment and townhouse buildings of less than four units:

In order to demonstrate current, consistent and predominant short-term renting, the property must:

- i. have been registered with the State of Florida as a Resort Dwelling pursuant to Chapter 509, Florida Statutes, as of February 1, 2009.

(c) Time Period to Apply for Short Term Rentals Approval.

During the one year period of time after the effective date of this ordinance, applicants demonstrating compliance with 1 or 2 above may apply for short term rental approval as detailed in Section 142-1111(d).

(d) Regulations:

For those properties eligible as per (b) above, unless otherwise expressly provided for in these land development regulations, short term rental of apartment and townhome residential units shall be permitted, provided that the following mandatory requirements are followed:

- 1) **Time period.** All short term rentals under this section must be pursuant to a binding written agreement, license or lease for seven (7) or more consecutive days. Each such document shall contain, at a minimum: the beginning and ending dates of the lease term; and each lessee's name, permanent address, land line telephone number, cell phone number, fax number, and e-mail address, as applicable. No unit may be rented more frequently than on a weekly basis.
- 2) **Family or housekeeping unit.** All rentals must be to one family or housekeeping unit (as defined under *family* in section 114-1). This section does not authorize the establishment of rooming houses as defined in section 114-1 in these districts.
- 3) **Contact person.** All rentals must be supervised by the owner, manager, or a local and licensed real estate broker or agent or other authorized agent licensed by the City, who must be available for contact on a twenty-four hour basis, seven days a week, and who must live on site or have a principal office or principal residence located within the Flamingo Park or Espanola Way Historic Districts. Each agreement, license, or lease, or scanned copy thereof, must be kept available throughout its lease term and for a period of one year thereafter, so that each such document or, solely at the option of the authorized enforcement personnel specified in Section 142-1111(e)(3), the information therein, is available to enforcement personnel. If not living on-site, the name and phone number of a 24-hour contact shall be permanently posted on the exterior of the premises or structure or other accessible location, in a manner subject to the review and approval of the city manager or designee.
- 4) **Entire unit.** Only entire apartment and townhome units, as defined in section 114-1, legally created pursuant to applicable law, may be rented to a family or housekeeping unit under this section, not individual rooms or separate portions of apartments or townhome units.
- 5) **Rules and Procedures.** The city manager or designee may adopt administrative rules and procedures to assist in the uniform enforcement of this ordinance.

- 6) **Signs.** No signs advertising the property for short term rental are permitted on the exterior of the property or in the abutting right-of-way, or visible from the abutting public right-of-way.
- 7) **Approvals required.** Owners, lessees, or any person with interest in the property seeking to engage in short term rental, must obtain written approval for short term rental under this section. The application for approval to engage in short term rentals shall be on a form provided for that purpose, and contain the contact information (name, permanent office or residential address, land line telephone number, cell phone number, fax number, and e-mail address, as applicable) for the person identified in subsection 3 above, identify the minimum lease term for which short-term rental approval is being requested, and such other items of required information as the Planning Director may determine. The application shall be accompanied by the letter described in subsection 10 below, if applicable, and by copies of the business tax receipt, certificate of use, and certificate of occupancy (required to prove compliance with applicable codes). The application shall be filed with the Planning Director or his designee.
- 8) **Effect of Violations.** Approvals shall be issued for a one-year period, but shall not be issued or renewed if more than two violations at the unit, or at another unit in the building owned by the same owner or managed by the same person or entity, of the noise ordinance, commercial use ordinance, or this ordinance issued to the short term rental owner or operator were adjudicated either by failure to appeal from a Notice of Violation or a Special Master's determination of a violation, within the 18 months preceding the date of filing of the application. The City may for cause revoke an approval before its expiration date, in which event the owner may not reapply for a period of one year following the date of revocation; provided, however, that, before any such revocation, the City shall furnish to the owner of record both notice by certified mail and the opportunity to present information as to why the approval should not be revoked.
- 9) **Resort taxes.** Owners are subject to resort taxes for rentals under this section, as applicable by City law.
- 10) **Association Rules.** Where a condominium or other property owners association has been created that includes the rental property, a letter from the association dated not more than sixty days before the filing of the application, stating the minimum rental period and the maximum number of rentals per year, as set forth under the association's governing documents, and confirming that short term rentals as proposed by the owner's application under subsection 7 above are not prohibited by the association's governing documents, shall be submitted to the City as part of the application.
- 11) **Variances.** No variances may be granted from the requirements of this section.

(e) Enforcement:

(1) Violations of this section shall be subject to the following fines. The special master may not waive or reduce fines set by this ordinance.

- a. If the violation is the first violation: \$500.00;
- b. If the violation is the second violation within the preceding 18 months: \$1,500.00;
- c. If the violation is the third violation within the preceding 18 months: \$5,000.00;
- d. If the violation is the fourth or greater violation within the preceding 18 months: \$7,500.00.

Fines for repeat violations by the same offender shall increase regardless of locations.

(2) In addition to or in lieu of the foregoing, the City may seek an injunction by a court of competent jurisdiction, or administratively impose a prohibition against, or revoke approvals issued for, rentals permitted under this section. Administrative remedies under this section shall be administered by the city manager or designee, and preceded by certified mail notice to the owner of record in the property appraiser's records, and an opportunity for such owner to be informed of the alleged violation(s) and to present evidence and testimony thereon.

(3) Any city police officer or code compliance officer may issue notices for violations of this ordinance, with alternative enforcement as provided in section 1-14 and Chapter 30 of this Code. Violations shall be issued to the owner, owner's agent, renter, and/or to any realtor, real estate agent, real estate broker, or any other individual or entity that participates in or facilitates the violation of this section. In the event the record owner of the property is not present when the violation occurred or notice of violation issued, a copy of the violation shall be served by certified mail on the owner at its mailing address in the property appraiser's records, or on the owner's registered agent.

Section 2. Repealer.

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

Section 3. Codification.

It is the intention of the City Commission, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, as amended; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

Section 4. Nonseverability.

This ordinance is not severable, and if any provision hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the ordinance shall be returned to the City Commission for reconsideration or clarification.

Section 5. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____ 2010.
ATTEST:

MAYOR

CITY CLERK

First Reading:
Second Reading:
Verified By:

Richard G. Lorber, AICP
Acting Planning Director

APPROVED AS TO FORM AND LANGUAGE
, AND FOR EXECUTION

City Attorney

Date

M:\\$CMB\CCUPDATES\Land Use and Development Committee\2010\January 28, 2010\Short Term Grandfather Flamingo Park proposed ordinance RGL (2).docx

ATTACHMENT C



**FLAMINGO PARK NEIGHBORHOOD ASSOCIATION
945 PENNSYLVANIA AVENUE, MIAMI BEACH, FLORIDA 33139**

To whom it may concern,

At the regular meeting of the Flamingo Park Neighborhood Association on December 14, 2009, Dan Davidson presented to the Association his plan to convert his home at 1415 Euclid Avenue to a Bed and Breakfast, in accordance with Subdivision II, Sec. 142-152. He also spoke about the proposed use of the property as a hall for hire for normal and customary uses that end no later than midnight.

Provided that all such uses shall be fully compliant with City of Miami Beach noise ordinances, and that an on-site owner/manager shall be accessible at all times, the Association supports Mr. Davidson's plan for the property. A resolution to that effect was duly adopted by the Association at the December 14, 2009 meeting.

Sincerely,

Jack Johnson, Co-Chair

Flamingo Park Neighborhood Association

Marilu Bakula & Miriela Marcos
1409 Euclid Ave.
Miami Beach, FL 33139

January 5, 2010

To whom it may concern:

We are owners of 1409 Euclid Ave. Miami Beach - the immediate neighbors of Daniel Davidson at 1415 Euclid, "The Temple House". For the years prior to Mr. Davidson purchasing the building, the property was in a state of disrepair. Often the site of crime, drug use, and an "outhouse" for homeless, the property was dirty, dangerous and an eye sore for the neighborhood.

Since the time Mr. Davidson purchased the property, he has invested heavily in cleaning up the area, restoring the building to its once beautiful splendor and making sure that the property has become a neighborhood gem.

What was once nothing more than an old dilapidated building has now become, as a result of Mr. Davidson's efforts, a very important contributor to neighborhood pride.

Mr. Davidson has hosted a number of events as his home - some private gatherings, some to support charity, some film events for which he has received film permits, and the like. In every occasion, Mr. Davidson has been respectful of the neighbors, assuring that there are no issues related to traffic or noise.

Mr. Davidson has recently approached us and asked if we would support his converting the property into a Bed & Breakfast with a hall for hire for normal uses that end no later than midnight.

We wanted to write to you to express our support for the conversion and to provide assurances that Mr. Davidson has been a tremendous asset to the neighborhood.

Thank you,



Marilu Bakula



Miriela Marcos

ATTACHMENT D

BACKGROUND

The single family home at 828 4th Street, Miami Beach, FL 33139 (on the southwest corner of 4th Street and Meridian Way) (the "Property"), is located in a RPS-2 Residential Performance Standard, Medium density zoning district. This district expressly allows "apartment hotels" (multifamily buildings with both apartments and hotel units) which would allow transient "short-term" rentals; however, because the Property is a single family home, such Short Term rentals are neither expressly allowed nor expressly prohibited.

The City of Miami Beach is in the process of examining provisions of the city code which deal with Short Term rentals in multifamily districts, and the City's Planning Department is working with renters and neighborhood groups in specific areas to arrive at a consensus that could be presented to the City Commission on a neighborhood basis. If possible, the owner of the Property (the "Owner") would like the Property to be included in a category which expressly allows transient rental of the Property.

The Owner does not desire to rent the Property long-term, as it is the Owner's intention to continue to maintain, improve and personally utilize the Property on an ongoing basis. Additionally, the Owner does not desire to convert the Property to a multi-family apartment/hotel, which would expressly allow for short-term rental; rather, the Owner feels there is an unmet need for families visiting Miami Beach who would like the privacy and comfort of a single family home.

Please feel free to contact the Owner, James Nooney, at 305-931-1022, with any questions or concerns you may have.

Thank you for your consideration and support.

PETITION

We the undersigned are NOT opposed to short-term (i.e. weekly) rentals of the single family home located at 828 4th Street, Miami Beach, FL 33139 (on the southwest corner of 4th Street and Meridian Way); nor are we opposed to a clarification/modification of Miami Beach City Code which would expressly permit such activity at this location.

Name

Address

***ITEM
THREE***



COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: January 28, 2010

SUBJECT: **DISCUSSION OF AN AMENDMENT TO SECTION 142-902 OF THE LAND DEVELOPMENT REGULATIONS, TO PERMIT ADDITIONAL ACCESSORY USES IN BUILDINGS ADJACENT TO, AND PROVIDING ACCESS TO A PUBLIC BAYWALK.**

BACKGROUND

A discussion of an amendment to Section 142-902 of the Land Development Regulations to permit additional accessory uses in buildings adjacent to, and providing access to a public baywalk, was referred to the Land Use and Development Committee by the City Commission at its December 9, 2009 meeting at the request of the Administration.

Section 142-902 of the Land Development Regulations governs the permitted accessory uses in various types of buildings throughout the City. For example, hotels are permitted in many zoning districts to have restaurants and retail stores as accessory uses within the building. The permitted accessory uses within apartment buildings are generally more restrictive, with some commercial uses permitted within buildings in the highest intensity zoning districts, and limited accessory uses permitted in other districts. Within these districts, there may be cases where additional accessory uses might be warranted, if these uses could be beneficial and complementary to an adjacent recreational area or similar public benefit.

ANALYSIS

An amendment to Section 142-902 would be required to expand the allowable accessory uses within buildings. If linked to the provision of additional public benefits, such as adjacent land for baywalk or recreational corridor usage, allowing some expanded level of accessory uses within buildings may be warranted.

Currently the area zoned RM-2 which lies along Biscayne Bay between Dade Canal and Fifteenth Street is the most relevant area to be explored for this provision, as it lies directly adjacent to the proposed Baywalk recreational walkway. Uses such as small restaurants and cafes, as well as sundry stores and similar retail, may enhance the experience of the Baywalk promenade. Such uses would need to be limited in size and scope. For example, such uses could be limited to a specified percentage of ground floor square footage or number of café seats. Staff would recommend a maximum of 100 restaurant seats, and/or 25% of ground floor space, as a starting point for discussion.

These uses might also be appropriate for further review by one of the land use boards, for example as a Conditional Use reviewed by the Planning Board, depending on the nature of the proposed use. These options could be explored as part of the amendment process.

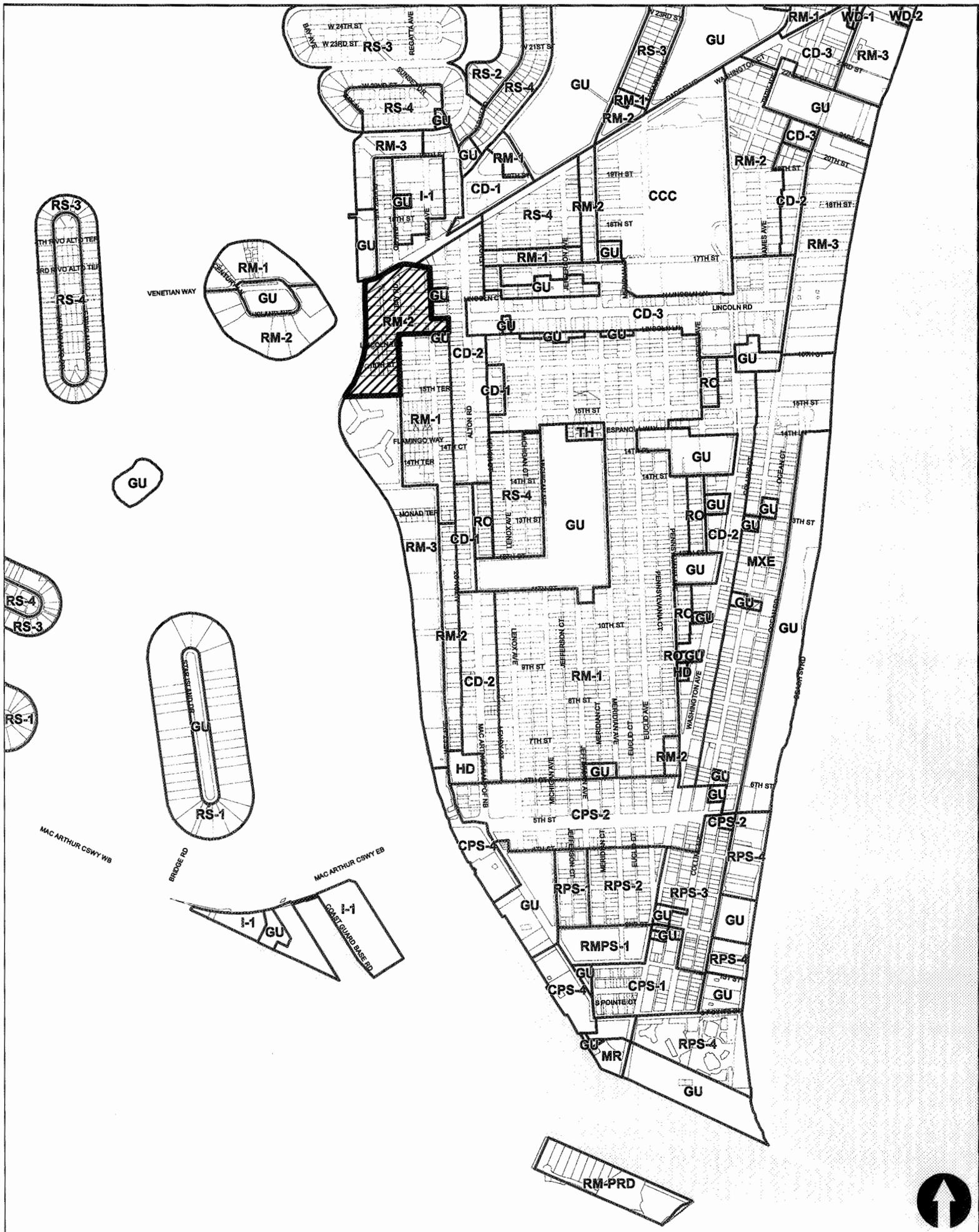
RECOMMENDATION

The Administration recommends that the Land Use and Development Committee refer the matter to the Planning Board for review and comment, prior to bringing it back to the Committee and the full Commission.

JMG/JGG/RGL

c: Jorge G. Gomez, Assistant City Manager
Richard G. Lorber, Acting Planning Director

RM-2 zoning district adjacent to Baywalk



ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING SECTION 142-902 OF THE LAND DEVELOPMENT REGULATIONS, TO PERMIT ADDITIONAL ACCESSORY USES IN BUILDINGS ADJACENT TO, AND PROVIDING ACCESS TO A PUBLIC BAYWALK; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 142-902 of the Land Development Regulations governs the permitted accessory uses in various types of buildings throughout the City; and

WHEREAS, the permitted accessory uses within apartment buildings are restrictive, with some commercial uses permitted within buildings in the highest intensity zoning districts, and limited accessory uses permitted in other districts such as the RM-2 Residential Multifamily Medium Intensity zoning district; and

WHEREAS, within such districts, there may be cases where additional accessory uses might be warranted, if these uses could be beneficial and complementary to an adjacent recreational area or similar public benefit and allowing some expanded level of accessory uses within buildings may be warranted; and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above referenced objective;

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

Section 1.

Section 142-902 of the Land Development Regulations of the City Code, entitled "Permitted accessory uses" is hereby amended as follows:

Sec. 142-902. Permitted accessory uses.

The following are permitted accessory uses:

* * *

(2) Apartment buildings may have accessory uses based upon the below criteria:

* * *

c. A dining room which is operated solely for the residents in the building shall be located inside the building and shall not be visible from the street with no exterior signs, entrances or exits except for those required by the South Florida Building Code. However, a dining room shall not be allowed in the RM-1 district except for those dining rooms associated with adult congregate living facilities.

* * *

e. Buildings in the RM-3 and R-PS4 districts may have commercial, office, eating or drinking uses with access to the street if they are either located in the ground floor space, subterranean level or in the highest floor of a building; however, office space, when located on the ground floor, shall be at least 50 feet from the front property line.

f. Solarium, sauna, exercise studio, health club or massage service for use by residents or open to the public by an individual licensed by the state or other appropriate agencies.

g. Any accessory commercial use as permitted herein shall be located on the lobby or first floor if there are no apartment units on such levels. This provision shall not apply to home based business offices as provided for in section 142-1411.

* * *

j. Buildings in the RM-2 district in the area bounded by Indian Creek Drive, Collins Avenue, 41st Street and 44th Street that face the RM-3 district may have restaurant, coffee house, sundry shops, or food market uses located in ground floor space not to exceed 70% of the ground floor. These uses may have direct access to the street. Dance halls, entertainment establishments, neighborhood impact establishments, outdoor entertainment establishments, or open air entertainment establishments are not permitted. Outdoor music (including background music) is prohibited. Any outdoor uses on Indian Creek Drive shall be limited to no later than 11:00 p.m. Parking requirements for accessory commercial uses in newly constructed buildings must be satisfied by providing the required parking spaces, and may not be satisfied by paying a fee in lieu of providing parking. There shall be no variances from these provisions.

k. Buildings in the RM-2 district that are directly adjacent to, and provide public access to a public pedestrian recreational walkway, may have restaurants (up to a maximum of 100 seats), sundry shops, or food market uses, open to the public and directly accessible to Baywalk users, located in ground floor space not to exceed 25% of the ground floor area. These uses may have direct access to the street. Dance halls, entertainment establishments, neighborhood impact establishments, outdoor entertainment establishments, or open air entertainment establishments are not permitted. Outdoor music (including background music) is prohibited. Any outdoor uses shall be limited to no later than 11:00 p.m. Parking requirements for accessory commercial uses in newly constructed buildings must be satisfied by providing the required parking spaces, and may not be satisfied by paying a fee in lieu of providing parking. Parking requirements for accessory commercial uses in existing buildings may be satisfied by paying a fee in lieu of providing parking. There shall be no variances from these provisions.

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

