



# MIAMIBEACH

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

## COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jorge M. Gonzalez, City Manager *JMG*

DATE: May 16, 2012

SUBJECT: Discussion of procedures for obtaining informal opinions and formal administrative determinations from the Planning Director

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE BY AMENDING CHAPTER 118, "ADMINISTRATIVE AND REVIEW PROCEDURES," BY CREATING A NEW ARTICLE XII, "ADMINISTRATIVE DETERMINATIONS," SECTIONS 118-801, "INFORMAL OPINIONS," 118-802, "FORMAL ADMINISTRATIVE DETERMINATIONS," AND 118-803, "EFFECT OF OPINIONS AND DETERMINATIONS," TO CLARIFY AND AMEND THE PROCEDURES FOR OBTAINING INFORMAL OPINIONS AND FORMAL ADMINISTRATIVE DETERMINATIONS FROM THE PLANNING DIRECTOR, PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.**

This item was deferred at the March 28, 2012 Land Use and Development Committee meeting.

### **BACKGROUND**

A discussion relative to the stay of proceedings of City Code Section 118-136 and Section 118-137, resulting from appeals of administrative decisions to the Board of Adjustment was referred to the Land Use and Development Committee and the Planning Board by the City Commission. This was discussed at the Committee of the Whole on April 13, 2011.

In addition to the ordinance relative to appeals to the Board of Adjustment, on April 13, 2011, the City Commission also referred to the Planning Board the issue of administrative determinations – those determinations that interpret Code provisions and clarify existing law; and another ordinance dealing with the jurisdiction of land use boards over appeals. The referral was both to examine the procedures regarding these appeals, and to require that administrative determinations should be published.

### **ANALYSIS**

The proposed ordinance would create a formal mechanism for administrative determinations, classifying them either as "informal opinions" or "formal determinations". In this way, the normal functioning of the Planning Department can take place in the

context of providing information quickly and efficiently, through informal opinions. When a formal administrative determination is sought, however, the ordinance specifically requires that the request be in writing, and that certain procedures and protocols be followed. This regulation is patterned upon similar requirements used at the Florida Department of Revenue, which was pointed out to staff by Commissioner Deede Weithorn. The benefit staff hopes to derive from this ordinance would be that while a formal administrative determination could be appealed to the Board of Adjustment under the appeal provisions of the code, this requirement could help to limit appeals to issues of code interpretation and policy, rather than permitting appeals of less formalized opinions expressed in emails, conversation, or other less formal media.

The ordinance also contains a provision for a fee commensurate with similar general interpretation letters (currently \$160). Finally, the ordinance specifies, that upon issuance of a formal administrative determination, the Planning Department shall post the determination on its web page, and that in January of each year, the Planning Director shall present the prior year's administrative determinations to the City Commission's Land Use and Development Committee, along with recommendations for amendments to the City Code arising from such determinations. This provision is especially important as it permits an opportunity for the policy makers to review those areas where policy direction may be required, or where codification of such determinations would help clarify and improve the Land Development Regulations.

#### **PLANNING BOARD ACTION**

At the Planning Board meeting of August 23, 2011 the ordinance was reviewed and by a vote of 6-0 (one member absent), the Board recommended that the City Commission adopt the ordinance.

#### **CITY ATTORNEY OPINION**

At the November 21, 2011 LUDC meeting, Gary Held, First Assistant City Attorney, explained how the City Attorney's Office has determined that this ordinance would require a referendum as per the City Charter and discussed the matter with Commissioner Wolfson. Commissioner Wolfson stated that he would like to still have an ordinance that requires Administrative Determinations to be published. Staff explained that the ordinance should also clarify what constitutes an administrative determination. However, no motion was made as the meeting ended due to loss of a quorum.

Planning Department staff has reviewed what can be done immediately, without a charter referendum, and has concluded that current policy can be expanded to include publication and notice to Commission any time an administrative determination is formally written up. Staff will put this into effect immediately.

#### **CONCLUSION**

The Administration seeks guidance from the Committee in light of the City Attorney's opinion that referendum is required prior to adoption of this ordinance,

JMG/JGG/RGL

c: Jorge G. Gomez, Assistant City Manager

M:\\$CMB\CCUPDATES\Land Use and Development Committee\2012\May\Administrative determinations.docx

**ADMINISTRATIVE DETERMINATIONS**

**DRAFT 10-20-11**

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

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE BY AMENDING CHAPTER 118, "ADMINISTRATIVE AND REVIEW PROCEDURES," BY CREATING A NEW ARTICLE XII, "ADMINISTRATIVE DETERMINATIONS," SECTIONS 118-801, "INFORMAL OPINIONS," 118-802, "FORMAL ADMINISTRATIVE DETERMINATIONS," AND 118-803, "EFFECT OF OPINIONS AND DETERMINATIONS," TO CLARIFY AND AMEND THE PROCEDURES FOR OBTAINING INFORMAL OPINIONS AND FORMAL ADMINISTRATIVE DETERMINATIONS FROM THE PLANNING DIRECTOR, PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the land development regulations provide in section 114-7 for zoning compliance letters, but no procedures have been codified for the planning director to issue informal opinions or formal administrative determinations; and

**WHEREAS**, it has been determined that property owners and interested persons will greatly benefit from codifying such procedures; and

**WHEREAS**, it is not the intent of this amendment to allow the Planning Director to formulate policy, but rather to interpret Code provisions and clarify existing law; and

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

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

**SECTION 1.** Chapter 118, "Administrative And Review Procedures," is hereby amended by establishing a new Article XII, "Administrative Determinations," and Section 118-801, "Informal Opinions," Section 118-802, "Formal Administrative Determinations," and Section 118-803, "118-803, Effect Of Opinions And Determinations," are hereby created as follows:

**Article XII. -Administrative Determinations.**

**Sec. 118-801. -Informal Opinions.**

The Planning Director is hereby authorized to issue informal written opinions, called "Informal Opinions."

(1) Informal Opinions are intended to:

(a) Guide property owners, residents and interested persons with standing as to the application of the land development regulations to particular properties or projects;

- (b) Promote the uniform application of the land development regulations.
- (c) Inform the public about changes in:
  - 1. Florida land use or growth management laws; or,
  - 2. Court decisions that interpret the land development regulations;
- (d) Explain to property owners, residents and interested persons their rights and responsibilities under the land development regulations; and
- (e) Assist property owners, residents and interested persons in complying with the land development regulations.

(2) (a) Informal Opinions cannot supersede, alter, or otherwise change Florida law, the City Code, or any other source of law.

(b) An informal opinion is not a formal administrative determination, and is not appealable to the Board of Adjustment.

(3) (a) If there is an inconsistency between an Informal Opinion and a statute, ordinance, rule, or court decision, the statute, ordinance, rule, or court decision controls.

(b) Any person relying on an Informal Opinion is required to consider the effects of a later statute, ordinance or rule changes, or court decisions, which render the opinion inapplicable. A person who relies on an inapplicable opinion cannot subsequently allege that he or she received inaccurate guidance from the director.

**Sec. 118-802. –Formal Administrative Determinations.**

(1) All requests for formal Administrative Determinations must be in writing. No oral requests for Administrative Determinations will be considered or processed by the Director.

(2) Each written request for an Administrative Determination must contain:

(a) A complete statement of all relevant facts relating to the property, including: address, legal description, boundary and/or as built surveys and plans, as determined by the Director, names and addresses all interested parties; and a carefully detailed description of the request, proposed use or project on which inquiry is being made.

(b) If the requestor proposes a particular result, an explanation of the grounds for the proposed determination, and a statement of relevant authorities in support of the position asserted, should be furnished. Even though the requestor is urging no particular result, he or she should state his or her views as to the consequences of the proposed determination and furnish a statement of relevant authorities to support such views. In addition, the requestor should, for prompt disposition, inform the Director of any legislation, court decisions or regulations that the requestor determines to be contrary to the position advanced. If the requestor determines that there are no contrary authorities, a statement to this effect should be included in the request.

(3) A request must also contain a statement whether, to the best of knowledge of the requestor, and or his or her legal counsel or representative, if any, a similar issue is involved in an opinion, determination, property or project of any other person or property, and, if so, whether:

(a) The issue is being considered by the Director, Department or City;

(b) The issue is pending in litigation in any case in which the requestor or his or her legal counsel or representative is aware, or

(c) The issue, or a substantially similar issue, has been ruled on by the Director, Department or City, and the substance of the prior opinion or administrative determination.

(4) A request for issuance of an Administrative Determination shall be made to the Planning Director, c/o Planning Department, Second floor, 1700 Convention Center Drive, Miami Beach, Florida, 33139.

(5) Any request for an Administrative Determination that does not comply with all the provisions of this section will be acknowledged, and the requirements that have not been met will be pointed out. If a request for a Determination lacks essential information, the requestor will be advised that if the information is not forthcoming within 30 days, the request will be closed.

(6) Upon issuance of a formal Administrative Determination, the Planning Department shall post the determination on its web page.

(7) Appeals of Administrative Determinations shall be as provided for in Chapter 118, Article VIII, Procedure for Variances and Administrative Appeals.

(8) Fees for preparation of an Administrative Determination shall be as provided for in Appendix A of this Code.

(9) The Planning Director shall present the prior year's Administrative Determinations to the City Commission's Land Use and Development Committee in January of each year, or as soon thereafter as is practicable, along with recommendations for amendments to the City Code arising from such determinations.

#### **118-803, Effect Of Informal Opinions And Administrative Determinations.**

(1) A person or entity may not rely on an Informal Opinion or Administrative Determination issued to any other person or entity.

(2) An Informal Opinion or Administrative Determination will be revoked or modified at any time by the Director or designee in the administration of the land development regulations, if the applicable statutes, codes, rules, case law, or policies supporting the Informal Opinion or Administrative Determination change, or if the circumstances initially described by the requestor in his or her request for the opinion or Administrative Determination change. If an Informal Opinion or Administrative Determination is revoked or modified, the revocation or modification shall be prospective only, and such revocation or modification shall not be applied retroactively against the requestor, if the requestor establishes that he or she relied to his or her detriment on the opinion or administrative determination where such reliance establishes equitable estoppel under Florida law, or section 118-168, City Code.

(3) When a requestor receives an Informal Opinion or Administrative Determination prior to the filing of an application for a building permit or application for a development approval from a city land use board, he or she should attach a copy of the Opinion or Determination to the application.

(4) As part of the determination of the significance of a previously issued Informal Opinion or Administrative Determination to an applicant for a building permit or application for a development approval from a city land use board, it is the responsibility of the Director to ascertain whether the Opinion or Determination previously issued has been properly applied, and whether the representations, upon which the Opinion or Administrative Determination was based, reflected an accurate statement of the material

facts and whether the circumstances presented actually was carried out substantially as proposed.

**SECTION 2. Repealer.**

All ordinances or parts of ordinances and all sections 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 \_\_\_\_\_, 2012.

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

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

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

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

First Reading:  
Second Reading:

Verified by: \_\_\_\_\_  
Richard G. Lorber, AICP  
Acting Planning Director

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