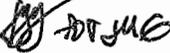




MIAMI BEACH

MEMORANDUM

TO: Land Use and Development Committee

FROM: Jorge M. Gonzalez, City Manager 

DATE: June 13, 2012

SUBJECT: **DISCUSSION REGARDING A POSSIBLE CHARTER AMENDMENT RESTRICTING THE MANNER IN WHICH CHANGES TO CURRENT LAND USE REGULATIONS CAN BE MADE**

1. **SHALL THE CHARTER BE AMENDED TO REQUIRE THAT, AFTER NOVEMBER 7, 2012, AND BEFORE BECOMING EFFECTIVE, ANY CHANGE TO CHAPTER 118, ARTICLE II, DIVISION 4 OF THE CITY CODE ("HISTORIC PRESERVATION BOARD"), OR TO CHAPTER 118, ARTICLE X, DIVISION 1-4 ("HISTORIC PRESERVATION"), THAT EITHER REDUCES THE POWERS AND DUTIES OF THE BOARD, OR CREATES LESS STRINGENT HISTORIC PRESERVATION STANDARDS OR REGULATIONS, FIRST BE APPROVED BY A MAJORITY OF VOTERS IN A CITYWIDE ELECTION?**
2. **SHALL SECTION 1.03 OF THE CHARTER BE AMENDED TO REQUIRE THAT, AFTER NOVEMBER 7, 2012, AND BEFORE BECOMING EFFECTIVE, ANY CHANGE TO THE CITY'S LAND DEVELOPMENT REGULATIONS THAT ALLOWS INCREASED MAXIMUM BUILDING HEIGHTS IN LOCAL HISTORIC DISTRICTS SHALL FIRST BE APPROVED BY A MAJORITY OF VOTERS IN A CITYWIDE ELECTION?**

BACKGROUND

At the May 9, 2012 City Commission meeting, a discussion regarding a possible charter amendment restricting the manner in which changes to current Land Use Regulations can be made was referred to the Land Use and Development Committee.

The proposed amendment was originally referred to a joint meeting of the Neighborhoods/Community Affairs and Land Use Committees by the City Commission on June 1, 2011, at the request of Mayor Bower. The Joint Committee met on July 7, 2011 and considered two specific charter amendments requiring voter approval before allowing increased building heights or enacting less stringent standards for historic preservation. After discussing the issues, the Joint Committee passed a motion, by acclamation, moving the item to the full Commission without a recommendation.

On July 13, 2011, the City Commission discussed the ballot questions relating to the two charter amendments and voted to defer the matter to the June 2012 Commission Meeting.

Furthermore, Mayor Bower requested that the Land Use and Development Committee and the Neighborhood/Community Affairs Committee discuss the proposed charter amendments no later than May 2012 in order for the item to be ready for presentation at the June 2012 Commission meeting.

At the December 14, 2011 City Commission meeting, Mayor Bower referred to the Land Use and Development Committee and Neighborhoods/Community Affairs Committee the two proposed charter amendments that would strengthen the existing protections for Historic Preservation In Miami Beach. At the same meeting, Commissioner Wolfson also referred to the Land Use and Development Committee a proposal to put the Historic Preservation Board enabling language in the charter to protect the composition and existence of our city's preservation mechanism.

At the March 27, 2012 Neighborhood/Community Affairs Committee (NCAC) meeting, the Committee moved to recommend the charter amendment dealing with the City's Historic Preservation process to the full City Commission for its consideration and vote on whether to place it on the August ballot. The motion also included that the charter amendment dealing with heights return to Committee for further discussion in April. The Committee also requested that an ordinance amendment be prepared that would deal with the Board member categories stipulating which ones the Commission would determine would be required to formally constitute the Board and changes thereto would trigger the Charter provision of referendum.

At the March 28, 2012 Land Use and Development Committee (LUDC) meeting, the Committee also moved to recommend the charter amendment dealing with Historic Preservation to the full City Commission and return to Committee in April; with further discussion on the charter amendment dealing with heights.

Both Committees requested that the charter amendment dealing with heights be presented as a series of alternatives for consideration by the LUDC and NCAC and if possible, conduct it as a joint meeting of both Committees.

At a joint meeting of the Neighborhood/Community Affairs and Land Use and Development Committees on April 24, 2012, the Committees recommended the subject ballot question dealing with heights for consideration by the City Commission.

ANALYSIS

The first proposed charter amendment; drafted in consultation with the City Attorney's Office addresses both the requests made by Mayor Bower and Commissioner Wolfson to protect the City's Historic Preservation processes.

1. Historic Preservation Regulations

CHARTER AMENDMENT REQUIRING VOTER APPROVAL BEFORE ENACTING LESS STRINGENT STANDARDS FOR HISTORIC PRESERVATION.

SHALL THE CHARTER BE AMENDED TO REQUIRE THAT, AFTER NOVEMBER 7, 2012, BEFORE BECOMING EFFECTIVE, ANY CHANGE TO CHAPTER 118, ARTICLE II, DIVISION 4 OF THE CITY CODE ("HISTORIC

PRESERVATION BOARD”), OR TO CHAPTER 118, ARTICLE X, DIVISIONS 1-4, OF THE CODE (“HISTORIC PRESERVATION”), WHICH REDUCES THE POWERS AND DUTIES OF THE BOARD, OR CREATES LESS STRINGENT HISTORIC PRESERVATION STANDARDS OR REGULATIONS, FIRST BE APPROVED BY A MAJORITY OF VOTERS IN A CITYWIDE ELECTION?

As discussed in Committee, this Charter amendment, not unlike the Charter provision that deals with the ethics ordinance, will require that any future amendment to the Land Development regulations that diminishes the powers and duties of the Historic Preservation Board or creates a less stringent historic preservation standard or regulation must be approved by referendum before it can become effective.

These standards and regulations are contained in Chapter 118, Article X, Divisions I through 4 and include the intent and purpose of the Board, the Board’s review of projects, the regulations pertaining to the issuance of Certificate of Appropriateness for demolition and the Boards’ process for designation among others. This Charter amendment does not include Division 5 of Article X that deals with the Single Family Ad Valorem Tax Exemption provision of the Code. This Charter provision also applies to Chapter 118, Article II, Division 4 which include the HPB’s authority, powers and duties, membership, etc. With respect to the Board membership, both the NCAC and LUDC discussed the composition of the Board and if changing the membership of the Board would be considered a less stringent modification. After much discussion, Mayor Bower requested that an ordinance amendment be prepared that would define which of the 6 membership categories, if amended, would trigger the referendum. The draft Ordinance is attached and the Administration is seeking policy direction on which of the categories should be designated as “charter” members.

The second proposed charter amendment, prepared after the original referral on June 1, was refined by the Mayor’s Office in consultation with the City Attorney’s Office to focus on the issue of increases to the height regulations.

2. Height Restrictions

CHARTER AMENDMENT REQUIRING VOTER APPROVAL BEFORE ALLOWING INCREASED BUILDING HEIGHTS, EXCEPT FOR CITY PROPERTY.

SHALL THE CHARTER BE AMENDED SO THAT, AFTER NOVEMBER 7, 2012, AND BEFORE BECOMING EFFECTIVE, ANY CHANGE TO THE CITY’S LAND DEVELOPMENT REGULATIONS THAT ALLOWS INCREASED MAXIMUM BUILDING HEIGHTS IN LOCAL HISTORIC DISTRICTS SHALL FIRST BE APPROVED BY A MAJORITY OF VOTERS IN A CITYWIDE ELECTION?

After discussion by both the LUDC and NCAC, this proposed Charter amendment was modified to deal with increases in height regulations within the City’s local historic districts. This amendment would require a referendum for any proposed ordinance that would increase the maximum building height regulations for those districts within a local historic district. As discussed in Committee this would not apply to amendments that deal with the various height exemptions for those structures that may exceed the maximum building heights like chimneys, wind turbines, rooftop mechanical rooms, etc.

CONCLUSION

The Administration requests that the Land Use and Development Committee refer the draft ordinance amendment dealing with the Historic Preservation Board member categories and amendments thereto that trigger the referendum, to the Planning board for their required review. The Administration would also recommend that such proposed ordinance be also reviewed by the Historic Preservation Board for their comments.

The deadline for placing ballot questions on the November 6, 2012, general election is July 24, 2012.

JMG/JGG/GMH

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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," ARTICLE II, "BOARDS," DIVISION 4, "HISTORIC PRESERVATION BOARD," SECTION 118-103, "MEMBERSHIP," TO SPECIFY THAT MODIFICATION OF THE MEMBERSHIP COMPOSITION OF THE HISTORIC PRESERVATION BOARD THAT WOULD ELIMINATE CERTAIN MEMBERSHIP CATEGORIES OF THE BOARD SHALL BE CONSIDERED TO BE CREATING LESS STRINGENT HISTORIC PRESERVATION STANDARDS, AND SHALL FIRST BE APPROVED BY A MAJORITY OF VOTERS IN A CITYWIDE ELECTION, AS PER THE PROVISIONS OF THE CHARTER AND RELATED SPECIAL ACTS, PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Charter and Related Special Acts have been amended to require a referendum of the voters to enact less stringent standards for historic preservation.; and

WHEREAS, it has been determined that this concept is intended to apply to the composition of the membership of the Historic Preservation Board; and

WHEREAS, it is the intent of this amendment to clarify this and specify that any modification of the composition of the membership of the board that would eliminate certain membership categories would constitute such an enactment of less stringent standards and would be subject to such a referendum of the voters; and

WHEREAS, the amendment 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," Article II, "Boards," Division 4, "Historic Preservation Board," Section 118-103, "Membership," is hereby amended as follows:

Sec. 118-103. - Membership.

- (a) The historic preservation board shall be composed of seven members. There shall be a member from each of the following categories:
 - (1) A representative from the Miami Design Preservation League (MDPL), selected from three names nominated by such organization.

- (2) A representative from Dade Heritage Trust (DHT), selected from three names nominated by such organization.
 - (3) Two at-large members who have resided in one of the City's historic districts for at least one year, and who have demonstrated interest and knowledge in urban design and the preservation of historic buildings.
 - (4) An architect registered in the state with practical experience in the rehabilitation of historic structures.
 - (5) A registered architect, registered landscape architect, professional designer or professional urban planner with practical experience in the rehabilitation of historic structures; or an attorney at law or a licensed engineer who has professional experience and demonstrated interest in historic preservation.
 - (6) A member of the faculty of a school of architecture in the state, with academic expertise in the field of design and historic preservation or the history of architecture, with a preference for an individual with practical experience in architecture and the preservation of historic structures.
- (b) All members of the board except the architect, engineer, landscape architect, professional designer or professional urban planner and university faculty member of the board shall be residents of, the city; provided, however, that the city commission may waive this requirement by a 5/7ths vote in the event a person not meeting these residency requirements is available to serve on the board and is exceptionally qualified by training and/or experience in historic preservation matters. All appointments shall be made on the basis of civic pride, integrity, experience and interest in the field of historic preservation.
- (c) Members of the Board designated under Subsections _____ above shall be considered Charter members; modification of the membership composition that would eliminate said Charter members shall be considered to be creating less stringent historic preservation standards, and shall first be approved by a majority of voters in a citywide election, as per the provisions of the Charter and Related Special Acts.

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.

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