

WEST AVENUE HOTEL USES
(As Transmitted by Planning Board on June 25, 2013)

ORDINANCE NO. 2013-3820

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 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II, "DISTRICT REGULATIONS", DIVISION 3, "RESIDENTIAL MULTIFAMILY DISTRICTS", SUBDIVISION IV, "RM-2 RESIDENTIAL MULTIFAMILY, MEDIUM INTENSITY"; AND BY AMENDING SUBDIVISION V, "RM-3 RESIDENTIAL MULTIFAMILY, HIGH INTENSITY", TO LIMIT HOTELS AS HEREINAFTER PROVIDED IN THE WEST AVENUE CORRIDOR TO THOSE EXISTING AS OF MAY 28, 2013; DEFINING THE WEST AVENUE CORRIDOR AS THAT AREA BORDERED BY COLLINS CANAL TO THE NORTH, ALTON ROAD TO THE EAST, BISCAYNE BAY TO THE WEST AND 6TH STREET TO THE SOUTH; DEFINING THE RIGHTS OF EXISTING HOTELS AS LEGAL CONFORMING USES; TO EXCLUDE OUTDOOR ENTERTAINMENT ESTABLISHMENTS AND OUTDOOR ENTERTAINMENT FROM PERMITTED HOTEL ACCESSORY USES; TO ADD HOTELS AS A PROHIBITED USE WITHIN THE BOUNDARIES OF THE WEST AVENUE CORRIDOR OF THE RM-2 AND RM-3 DISTRICTS; ACKNOWLEDGING STATE PREEMPTION OF SHORT TERM RENTAL REGULATIONS; PROVIDING RULES FOR CESSATION AND RESUMPTION OF HOTEL USES; AND PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach endeavors to preserve and enhance the residential scale, character and livability of residential apartment and condominium buildings within the City's medium and high intensity multi-family districts; and

WHEREAS, hotel uses located in the West Avenue Corridor and zoned RM-2 & RM-3 include allowable accessory uses that present compatibility issues with existing residential structures; and

WHEREAS, the City of Miami Beach desires to amend existing requirements and procedures for certain types of prohibited uses located in the West Avenue Corridor and zoned RM-2 & RM-3; and

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

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

SECTION 1. That Chapter 142, Article 2, entitled "District Regulations", Division 3, entitled "Residential Multifamily Districts", Subdivision IV, entitled "RM-2 Residential Multifamily, Medium Intensity", of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Sec. 142-212. - Main permitted uses.

The main permitted uses in the RM-2 residential multifamily, medium intensity district are

single-family detached dwellings; townhomes; apartments; apartment-hotels; and hotels; except that in the "West Avenue Corridor", defined in this Subdivision as that area bordered by Collins Canal to the north, Alton Road to the east, Biscayne Bay to the West and 6th Street to the south, apartment-hotel or hotel uses are only permitted if issued a building permit or occupational license prior to May 28, 2013, or are approved by the Design Review Board pursuant to a complete application filed and pending prior to May 28, 2013, in which event they shall be considered a "Legal Conforming Use." A property that has a "Legal Conforming Use" as used in this Subdivision prior to May 28, 2013, may retain all, and apply for new, expansions and modifications to, permitted, conditional and /or accessory uses permitted in the zoning category as of May 28, 2013, and apply for building permits to add, improve and/or expand existing structures, or construct new structures for permitted, conditional and/or accessory uses permitted in the zoning category, if FAR remains available.

Sec. 142-213. - Conditional uses.

Conditional uses in the RM-2 residential multifamily, medium intensity district are adult congregate living facility; day care facility; nursing home; religious institutions; private and public institutions; schools; commercial or noncommercial parking lots and garages; and accessory neighborhood impact establishment, as set forth in article V, division 6 of this chapter.

Sec. 142-214. - Accessory uses.

The accessory uses in the RM-2 residential multifamily, medium intensity district are as required in article IV, division 2 of this chapter and uses that serve alcoholic beverages as listed in article V, division 4 of this chapter, pertaining to alcoholic beverages. RM-2 properties within the "West Avenue Corridor," may not have accessory outdoor entertainment establishments. Notwithstanding the foregoing, a property that had a Legal Conforming Use as of May 28, 2013 shall have the right to apply for and receive special event permits that contain entertainment uses.

Sec. 142-215. Prohibited Uses.

The prohibited uses in the RM-2 residential multifamily, medium intensity district are accessory outdoor entertainment establishment, accessory open air entertainment establishment, as set forth in article V, division 6 of this chapter; and accessory outdoor bar counter; and for properties located within the "West Avenue Corridor," hotels and apartment-hotels, except to the extent preempted by Section 509.032(7), Florida Statutes, and unless they are a Legal Conforming Use. Properties that voluntarily cease to operate as a hotel for a consecutive three (3) year period, shall not be permitted to later resume such hotel operation. Without limitation, (a) involuntary hotel closures due to casualty, or (b) cessation of hotel use of individual units of a condo-hotel, shall not be deemed to be ceasing hotel operations pursuant to the preceding sentence.

SECTION 2. That Chapter 142, Article 2, entitled "District Regulations", Division 3, entitled "Residential Multifamily Districts", Subdivision V, entitled "RM-3 Residential Multifamily, High Intensity", of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Sec. 142-242. - Main permitted uses.

The main permitted uses in the RM-3 residential multifamily, high intensity district are single-family detached dwelling; townhomes; apartments; apartment-hotels; and hotels; except that in the "West Avenue Corridor," defined in this Subdivision as that area bordered by Collins Canal to the north, Alton Road to the east, Biscayne Bay to the West and 6th Street to the south, apartment-hotel or hotel uses are only permitted if issued a building permit or occupational license prior to May 28, 2013, or are approved by the Design Review Board pursuant to a complete application filed and pending prior to May 28, 2013, in which event they shall be considered a

“Legal Conforming Use.” A property that has a “Legal Conforming Use” as used in this Subdivision prior to May 28, 2013, may retain all, and apply for new, expansions and modifications to, permitted, conditional and accessory uses permitted in the zoning category as of May 28, 2013, and apply for building permits to add, improve and/or expand existing structures, or construct new structures for permitted, conditional and/or accessory uses permitted in the zoning category, if FAR remains available.

Sec. 142-243. - Conditional uses.

The conditional uses in the RM-3 residential multifamily, high intensity district are adult congregate living facility; day care facility; nursing home; religious institutions; private and public institutions; schools; commercial or noncommercial parking lots and garages; accessory outdoor entertainment establishment; accessory neighborhood impact establishment; and accessory open air entertainment establishment as set forth in article V, division 6 of this chapter.

Sec. 142-244. - Accessory uses.

The accessory uses in the RM-3 residential multifamily, high intensity district are as follows:

- (1) Those uses permitted in article IV, division 2 of this chapter.
- (2) Uses that serve alcoholic beverages as listed in article V, division 4 of this chapter, pertaining to alcoholic beverages.
- (3) Accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.
- (4) Oceanfront hotels with at least 100 hotel units may operate and utilize an accessory outdoor bar counter, notwithstanding the above restriction on the hours of operation, provided the accessory outdoor bar counter is (i) located in the rear yard, and (ii) set back 20 percent of the lot width (50 feet minimum) from any property line adjacent to a property with an apartment unit thereon.
- (5) RM-3 properties within the “West Avenue Corridor,” may not have accessory outdoor entertainment establishments. Notwithstanding the foregoing, a property that had a Legal Conforming Use as of May 28, 2013 shall have the right to apply for and receive special event permits that contain entertainment uses.

Sec. 142-245. Prohibited Uses.

The prohibited use in the RM-3 residential multifamily, high intensity district is accessory outdoor bar counter, except as provided in section 142-244; and for properties located within the “West Avenue Corridor,” hotels and apartment-hotels, except to the extent preempted by Section 509.032(7), Florida Statutes, and unless a Legal Conforming Use. Properties that voluntarily cease to operate as a hotel for a consecutive three (3) year period shall not be permitted to later resume such hotel operation. Without limitation, (a) involuntary hotel closures due to casualty, or (b) cessation of hotel use of individual units of a condo-hotel, shall not be deemed to be ceasing hotel operations pursuant to the preceding sentence.

SECTION 3. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word “ordinance” may be changed to “section”, “article”, or other appropriate word.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed, with the exception of Chapter 142, Article III, Division 5 - West Avenue Bay Front Overlay.

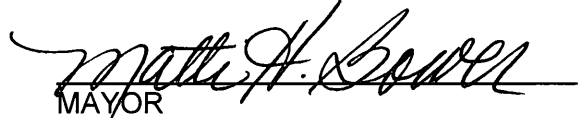
SECTION 5. SEVERABILITY.

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

SECTION 6. EFFECTIVE DATE.

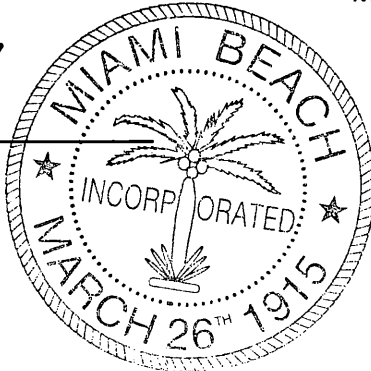
This Ordinance shall take effect ten days following adoption.

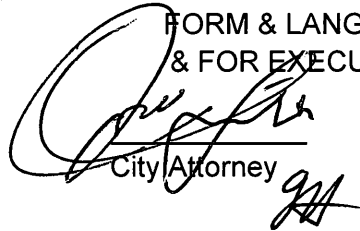
PASSED AND ADOPTED this 16 day of October, 2013.


MAYOR

ATTEST:

CITY CLERK



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

9/27/13
Date

First Reading: September 11, 2013
Second Reading: October 16, 2013

Verified by: 
Richard G. Lorber, AICP, LEED AP
Acting Planning Director

Underscore denotes new language
~~Strike Thru~~ denotes deleted language
09/27/2013

Condensed Title:

Second Reading to consider an Ordinance Amendment modifying the regulations for hotel uses within the West Avenue corridor in the RM-2 and RM-3 districts.

Key Intended Outcome Supported:

Maintain strong growth management policies.

Supporting Data (Surveys, Environmental Scan, etc 48% of residential respondents and 55% of businesses rate the effort put forth by the City to regulate development is "about the right amount."

Item Summary/Recommendation:

SECOND READING
 The proposed Ordinance would modify the regulations for hotel uses within the West Avenue corridor in the RM-2 and RM-3 districts.

The City Commission approved the Ordinance at First Reading on September 11, 2013 and set a Second Reading Public Hearing for October 16, 2013.

The Administration recommends that the City Commission adopt the Ordinance.

Advisory Board Recommendation:

On June 25, 2013, the Planning Board transmitted the subject Ordinance to the City Commission by a vote of 5-0.

Financial Information:

Source of Funds:		Amount	Account
<div style="border: 1px solid black; width: 40px; height: 40px; display: flex; align-items: center; justify-content: center;"> OBPI </div>	1		
	2		
	3		
	Total		

Financial Impact Summary:
 In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action. The proposed Ordinance is not expected to have any tangible fiscal impact.

City Clerk's Office Legislative Tracking:

Richard Lorber or Thomas Mooney

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: Jimmy L. Morales, City Manager
DATE: October 16, 2013
SUBJECT: **West Avenue Hotel Uses**

SECOND READING

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 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II, "DISTRICT REGULATIONS", DIVISION 3, "RESIDENTIAL MULTIFAMILY DISTRICTS", SUBDIVISION IV, "RM-2 RESIDENTIAL MULTIFAMILY, MEDIUM INTENSITY"; AND BY AMENDING SUBDIVISION V, "RM-3 RESIDENTIAL MULTIFAMILY, HIGH INTENSITY", TO ADD HOTELS AS A PROHIBITED USE WITHIN THE BOUNDARIES OF THE WEST AVENUE CORRIDOR OF THE RM-2 AND RM-3 DISTRICTS, MORE SPECIFICALLY DEFINED AS THAT AREA BORDERED BY COLLINS CANAL TO THE NORTH, ALTON ROAD TO THE EAST, BISCAYNE BAY TO THE WEST AND 6TH STREET TO THE SOUTH; PROHIBITING OUTDOOR ENTERTAINMENT, AND PERMITTING HOTEL PROJECTS IN THE DEFINED AREA TO REMAIN AS LEGAL CONFORMING USES; AND PROVIDING FOR CODIFICATION; REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

Adopt the Ordinance.

BACKGROUND

On October 24, 2012, the City Commission referred a discussion regarding hotels in residential neighborhoods to the Land Use and Development Committee (LUDC). On December 19, 2012 the Land Use Committee referred an Ordinance prohibiting hotel uses within the West Avenue and Palm View areas to the Planning Board for consideration.

The subject Ordinance was first scheduled to be considered by the Planning Board on April 3, 2013. However, due to a defect in the notice, the matter was required to be re-noticed for the May 28, 2013 meeting. Additionally, the subject Ordinance was bifurcated into a separate Ordinance for the Palm View area and a separate Ordinance for the West Avenue area.

On September 11, 2013, the City Commission approved the Ordinance at First Reading and set a Second Reading Public Hearing for October 16, 2013.

ANALYSIS

Historically, hotels did exist along the bay side of West Avenue. However, the development of the bay front since the 1960's has been almost exclusively residential, characterized by high-density high-rise apartment buildings. The West Avenue bayfront corridor, between 6th Street and 15th Terrace, is zoned RM-3 multifamily high-density residential, while the remainder of the West Avenue corridor is zoned RM-1 and RM-2. The RM-3 and RM-2 districts include both apartments and hotels as permitted uses. The 1998 citywide down zoning, which conformed development regulations to the existing neighborhood characteristics, placed a greater focus on reducing the oversized scale, massing and height of new construction, relative to the established, built context. However, these down zoning efforts did not consider that potential hotel uses might be problematic within the residential uses in the subject area.

The development of the Mondrian hotel at 1100 West Avenue was the first new hotel to be introduced in the RM-3, West Avenue bayfront corridor since the 1960's. As a proposed Neighborhood Impact Establishment (over 199 persons occupancy content, with entertainment) the hotel was reviewed by the Planning Board for Conditional Use approval. The Planning Board approved the Conditional Use permit with restrictions on various aspects of their operations. Those restrictions include limitations on hours of operation, sound systems, outdoor speakers, deliveries and loading zones. In addition to the Mondrian, other hotels are in the development process within the West Avenue corridor, as well as on Meridian Avenue between 17th Street and the Collins Canal (Palm View area).

The subsequent history of relations between the Mondrian hotel and the residents of the surrounding neighborhood has been problematic, and the compliance with the conditional use permit has been at issue. The Planning Board has reviewed the case through progress reports. Discussions at these hearings have included resident testimony of problems of noise, bus parking, deliveries and loading, and at least one adjacent resident has been able to photograph delivery trucks stopped and blocking traffic lanes. The Planning Board may act to modify or revoke a conditional use if repeated noncompliance is an issue, but this is based primarily on actual code enforcement violations. The compliance record of the Mondrian indicates few violations over the past two or three years, and has not warranted further Planning Board action.

Purely from the standpoint of economic development and the extremely important hospitality industry, The Mondrian Hotel is a significant investment and an asset to the City. However, there is concern from residents regarding the potential for proliferation of hotel uses in what is predominantly a residential corridor.

Planning Department staff has previously recommended that a total ban on hotel uses in the residential zoning districts in the West Avenue corridor be approached with caution, due to potential legal complications, as well as the potential for creating legal 'non-conforming' uses. The Land Use Committee referred the matter to the Planning Board with a recommendation to prohibit hotels in the West Avenue neighborhood. The Ordinance transmitted by the Planning Board reflects this direction.

While the Ordinance was pending before the Planning Board, different neighborhood groups were in discussion with existing hotel operators in the West Avenue corridor. These discussions addressed the impact that a ban on hotels would have, as well as the negative of impacts of accessory uses. The proposed Ordinance reflects some aspects of the aforementioned discussions, including clarifying that existing hotels and accessory uses, which may become legal non-conforming, can retain their status going forward,

due to the substantial investment in the property.

Additional modifications have been incorporated into the Ordinance that further address concerns of affected operators regarding the grandfathering of non-conforming uses. These include the ability to re-introduce a hotel use after the property was converted to a conforming residential use, provided that the property was licensed as a hotel before May 28, 2013 and that the subsequent residential use does not exist for more than three (3) years. The Planning Board concluded that a 3 year window to revert back to a previously established, though non-conforming, hotel use is a fair amount of time for an affected property owner to be able to absorb any potential loss of revenue associated with an unsuccessful residential venture.

While not opposed to the 3 year rule proposed, as indicated previously in the process, staff is not in favor of allowing a non-conforming use to continue in perpetuity, in the event such use was discontinued and replaced by a conforming use. Such a modification would substantially contravene Chapter 118, Article IX of the Land Development Regulations of the City Code, pertaining to 'Nonconformances'.

As part of the Planning Board review process, staff also suggested other areas that may be worthy of discussion, including:

- Establishing a Conditional Use requirement for hotels and accessory uses proposed in the West Avenue district.
- Stricter regulation of allowable 'Accessory Uses', including placing defined limits on occupancy loads, seating and hours of operation.
- A prohibition on outdoor seating facing a street or sidewalk, as well as on sidewalk cafes.
- Requiring that access to 'Accessory Uses' be from within the confines of the hotel, via a hotel lobby, and not be directly from the street or sidewalk
- As recommended by the Land Use Committee, creating an 'Applicability' section of the Ordinance, in order to address existing hotel uses.

It is also important to note that the proposed prohibition of hotels within the West Avenue corridor would not supersede the allowances and incentives associated with the 'West Avenue Bayfront Overlay'. This particular area was created in order to incentivize the retention, renovation and preservation of existing, low scale structures. One of the key mechanisms for this overlay district is the ability to convert eligible, existing structures, to hotel or motel uses, in accordance with the standards, requirements and procedures of the overlay district.

PLANNING BOARD REVIEW

The Planning Board reviewed the subject Ordinance on June 25, 2013, and transmitted it to the City Commission with a favorable recommendation by a vote of 5 to 0.

FISCAL IMPACT

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long term economic

impact (at least 5 years) of this proposed legislative action. The proposed Ordinance is not expected to have any tangible fiscal impact.

CONCLUSION

The Administration recommends that the City Commission adopt the subject Ordinance.

JLM/JMJ/RGL/TRM

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