

# MIAMI BEACH

## COMMITTEE MEMORANDUM

TO: Land Use and Sustainability Committee Members

FROM: Eric Carpenter, City Manager

DATE: January 16, 2025

TITLE: DISCUSS, AS APPLICABLE TO ZONING INCENTIVES FOR NON-TRANSIENT, LONG-TERM RESIDENTIAL DEVELOPMENT, ESTABLISHING A POLICY THAT, WHENEVER A COVENANT RESTRICTING TRANSIENT USES ON A PROPERTY IS SUBMITTED AS A CONDITION OF ELIGIBILITY FOR RESIDENTIAL ZONING INCENTIVES, THAT THE COVENANT SHALL REQUIRE A 6/7TH SUPERMAJORITY VOTE OF THE ENTIRE CITY COMMISSION BEFORE THE COVENANT MAY BE RELEASED OR AMENDED IN SUCH A MANNER AS TO WEAKEN A RESTRICTION ON THE TRANSIENT USE OF THE PROPERTY.

### **RECOMMENDATION**

The Administration recommends that the Land Use and Sustainability Committee (LUSC) endorse the proposed amendment to the Land Development Regulations of the City Code (LDRs) and recommend that the Mayor and City Commission (City Commission) refer a draft ordinance to the Planning Board.

### **BACKGROUND/HISTORY**

On November 20, 2024, at the request of Commissioner Alex Fernandez, the City Commission referred the item (C4 S) to the LUSC.

### **ANALYSIS**

As noted in the attached referral memorandum, the item sponsor has requested that the LUSC discuss and consider a policy that, whenever a covenant restricting transient uses on a property is submitted as a condition of eligibility for residential zoning incentives, the covenant should require a 6/7th supermajority vote of the entire City Commission before the covenant may be released or amended in such a manner as to weaken a restriction on transient use.

On November 20, 2024, the City Commission adopted a residential use incentive ordinance, which amended Chapter 7, Article I of the LDRs. Specifically, Section 7.1.11, which is applicable to all zoning districts in the city where non-transient residential uses may be incentivized, was created. The following is the text of this section:

#### ***7.1.11 RESIDENTIAL USE INCENTIVES***

*a. Eligible Development. These provisions are hereby adopted as voluntary zoning incentives for non-transient residential development. Where authorized in the underlying zoning district or overlay district, and in accordance with all applicable regulations set forth in such zoning district or overlay district, residential developments consisting solely of non-transient residential units and allowable accessory uses shall be eligible for applicable incentives set forth in such zoning district or overlay district, subject to the property owner's agreement to be bound by the following conditions:*

1. *Lodging Use Conversion and Prohibition.* In order to be eligible for the residential use incentives, the property shall be required to fully vacate any and all existing transient uses including, but not limited to, bed & breakfast inn, hostel, hotel, apartment hotel, suite hotel or rooming house. Such transient uses shall be prohibited throughout the development and at all times, in order to maintain the residential use incentives authorized for the applicable zoning district or overlay district.

2. *Short Term Rental Conversion and Prohibition.* In order to be eligible for the voluntary residential use incentives authorized for the applicable zoning district or overlay district, the property owner(s) shall first be required to vacate any and all existing approvals for the short-term rental of any apartment units on the property.

3. **Covenant.** As a condition of eligibility for the voluntary residential use incentives authorized for the applicable zoning district or overlay district, the property owner(s) shall first be required to execute a restrictive covenant running with the land, in a form approved by the City Attorney, affirming that throughout the building and at all times, no residential units on the property shall be leased or rented for a period of less than six months and one day, and that no transient uses including, but not limited to, bed & breakfast inn, hostel, hotel, apartment hotel, suite hotel or rooming house, shall be permitted on the property. **The covenant shall expressly provide that an affirmative vote of six-sevenths of all members of the city commission shall be required in order to release the covenant or to modify the covenant in such a manner as to impose a less stringent restriction after it is executed.**

4. *Certificate of Appropriateness.* If the property is located within a local historic district or site, as a condition of eligibility for the voluntary residential use incentives authorized for the applicable zoning district or overlay district, the property owner(s) shall be required to retain, preserve and restore all contributing structures on the site, as may be required by the historic preservation board and subject to certificate of appropriateness approval in accordance with chapter 2, article VIII of the land development regulations of the city code.

b. *There shall be no variances from the requirements of this section for eligible developments.*

Of note is the following sentence in the covenant requirement above:

*The covenant shall expressly provide that an affirmative vote of six-sevenths of all members of the city commission shall be required in order to release the covenant or to modify the covenant in such a manner as to impose a less stringent restriction after it is executed.*

To the extent that this provision should apply to all future covenants that require non-transient residential uses, it could be added as a separate section under Chapter 7, Article I, as follows:

#### 7.1.12 COVENANT RESTRICTING TRANSIENT USES ON A PROPERTY

In all instances where a property owner(s), either voluntarily or as an applicable requirement, executes a restrictive covenant running with the land, in a form approved by the City Attorney, affirming that throughout the building and at all times, no residential units on the property shall be leased or rented for a period of less than six months and one day, and that no transient uses including, but not limited to, bed & breakfast inn, hostel, hotel, apartment hotel, suite hotel or rooming house, shall be permitted on the property, the covenant shall expressly provide that an affirmative vote of six-sevenths of all members of the city commission shall be required in order to release the covenant or to modify the covenant in such a manner as to impose a less stringent restriction after it is executed.

If there is consensus on the above noted provision, a draft ordinance can be prepared for referral to the Planning Board by the City Commission.

#### FISCAL IMPACT STATEMENT

No Fiscal Impact Expected

**Does this Ordinance require a Business Impact Estimate?**  
(FOR ORDINANCES ONLY)

The Business Impact Estimate (BIE) was published on .

See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

**FINANCIAL INFORMATION**

Not Applicable

**CONCLUSION**

The Administration recommends that the LUSC endorse the proposed amendment to the LDRs and recommend that the City Commission refer a draft ordinance to the Planning Board.

**Applicable Area**

Citywide

**Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?**

Yes

**Is this item related to a G.O. Bond Project?**

No

**Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying?** No

If so, specify the name of lobbyist(s) and principal(s):

**Department**

Planning

**Sponsor(s)**

Commissioner Alex Fernandez

**Co-sponsor(s)**

**Condensed Title**

Discuss, As Applicable To Zoning Incentives For Non-Transient, Long-Term Residential Development, Establishing A Policy That, Whenever A Covenant Restricting Transient Uses On A Property Is Submitted As A Condition Of Eligibility For Residential Zoning Incentives, That The Covenant Shall Require A 6/7th Supermajority Vote Of The Entire City Commission Before The Covenant May Be Released Or Amended In Such A Manner As To Weaken A Restriction On The Transient Use Of The Property.