

TO: SUSTAINABILITY AND RESILIENCY COMMITTEE

Commissioner Michael Grieco, Chair  
Commissioner Ricky Arriola, Vice-Chair  
Commissioner Kristen Rosen-Gonzalez, Member  
Commissioner Joy Malakoff, Alternate

FROM: Jimmy L. Morales, City Manager

DATE: March 8, 2017



SUBJECT: MEETING OF THE SUSTAINABILITY AND RESILIENCY COMMITTEE (SRC) ON  
WEDNESDAY MARCH 8, 2017

A meeting of the Sustainability and Resiliency Committee has been scheduled for Wednesday March 8, 2017 at 1:00pm in the City Manager's Large Conference Room - City Hall

The agenda for the meeting is as follows:

1. **Discussion Regarding the Securing and Storage Of Commercial Dumpsters**  
*Commission item C4A, May 11, 2016*  
*(Requested by Commissioner Grieco)*

Hernan Cardeno, Code Compliance Director/ Debora Turner, First Assistant City Attorney

2. **Discussion on Stormwater Best Management Practices**  
*Commission Item C4U, June 8, 2016*  
*(Requested by Commissioner Steinberg)*

Margarita Wells, Interim Environment and Sustainability Director

3. **Discussion on Best Practices for Beach Sand Sifting and Maintenance**  
*Commission Item C4C, January 11, 2017*  
*(Requested by Commissioner Grieco)*

John Ripple, Beach Maintenance Director/ Margarita Wells, Interim Environment and Sustainability Director

4. **Discussion on the City to offer Christmas Tree Recycling, Commencing in 2017**  
*Commission Item C4D, January 11, 2017*  
*(Requested by Commissioner Rosen-Gonzalez)*

Jay Fink, Assistant Public Works Director

5. **Discussion to Incentivize Solar Panel Installations In The City By Waiving Permit Fees.**  
*Commission Item C4B, March 1, 2017*  
*(Requested by Commissioner Rosen-Gonzalez)*

Flavia Tonioli, Sustainability Manager

6. **Discussion on Receiving an Update Regarding City Action and Fines Given To Garbage Operators for Leaking Trucks.**  
*Commission Item C4C, March 1, 2017*  
*(Requested by Commissioner Aleman)*

Hernan Cardeno, Code Compliance Director/ Al Zamora, Sanitation Division Director

**Verbal Reports**

7. **Mayor's Blue Ribbon Panel on Flooding and Sea Level Rise**

Bruce Mowry, City Engineer

8. **Sustainability Committee**

Dave Doebler, Committee Chairman

9. **Resiliency Strategy**

Susanne Torriente, Assistant City Manager / Amy Knowles, Deputy Resiliency Officer

- 9a. Referral Pertaining To Rm-1 and Rm-2, Development Regulations and Parking Requirements.
- 9b. Ordinance Amendment Pertaining To Maximum Building Heights in Commercial Zoning Districts and Allowable Height Exceptions.
- 9c. Ordinance Amendment Pertaining To Roof Replacements and Roof Materials.
- 9d. Ordinance Amendment Pertaining To non-conforming Buildings.

JLM/SMT/MKW/FCT/YP

**Sustainability and Resiliency Committee**  
**March 8, 2017**

**Discussion Regarding the Securing and Storage Of Commercial Dumpsters**


Item to be presented by Hernan Cardeno, Code Compliance Director/ Debora Turner, First Assistant City Attorney

**ITEM # 1**

TO: Sustainability and Resiliency Committee

FROM: Jimmy Morales, City Manager

DATE: March 8, 2017



SUBJECT: Securing and Storage of Commercial Dumpsters

The Sustainability and Resiliency Committee (SRC) discussed the securing and storage of commercial dumpsters at its July 20, 2016 meeting and requested follow-up regarding the requirements for covering dumpsters citywide. At the October 26, 2016 SRC meeting, an overview of the appropriate sections of Chapter 90 (Solid Waste) of the Code of the City of Miami Beach, was provided to the Committee for review and discussion. The item was continued to the November 16, 2016 meeting with a request for the full chapter of the Code to be provided. At this meeting, direction was given to staff to review Chapter 90 to determine if there were recommendations in order to strengthen the City's ability to enforce the provisions of the Chapter.

A team comprised of representatives from Code Compliance, Sanitation, Environment & Sustainability, the City Attorney's Office, as well as input from the public, reviewed Chapter 90 and drafted proposed changes to the Chapter. Proposed changes consist of revised definitions, to simplify and clarify language throughout the Chapter, increased fine penalties, as well as compounding penalties for repeat violations, and the addition of a requirement to cover rollofs when not in use to prevent the escape of material. Housekeeping amendments were also made for internal consistency with Code language and section references.

Highlighted below are the proposed changes to each section with specific detail provided in the attached draft Chapter amendments:

- Amendments were made to section 90-2 "*Definitions*" to clarify language used throughout the Chapter.
- Amendments were made to section 90-37 "*Removal of waste by city; penalties for violations*" to remove the fine schedule and create a new section 90-42 "*Fine schedule for which no fine is specified in sections 90-39, 90-40, and 90-41*" for consistency purposes. See table for section 90-42 at end of memorandum.
- Amendments were made to section 90-39 "*Fine schedule for violations issued and applied to owners, agents, tenants, occupants, operators, or managers, or persons responsible for the violation*" to clarify penalties for repeat violators and to increase fine amounts for certain violations. See table for section 90-39 at end of memorandum.
- Amendments were made to section 90-40 "*Fine schedule for violations of sections 90-36; 90-96; 90-98; 90-99; 90-100; 90-107; 90-191 et seq.; 90-221 et seq.; and 90-228 by private waste contractors*" to clarify section references, increase fines, and create fines for repeat violations. See table for section 90-40 at end of memorandum.
- Section 90-41 "*Fine schedule for violations of section 90-279 and 90-280 by Specialty Contractors*" was added to create a fine schedule for rolloff location restrictions and condition requirements. The first offense is \$200 and the second and/or subsequent is \$400. See table for section 90-41 at end of memorandum.
- Amendments were made to section 90-99 "*Condition and inspection of garbage facilities; inspections*" to clarify the conditions in which garbage facilities should be maintained to

prevent unwanted access and to address sanitary concerns. The proposed amendments require that garbage facilities stored in enclosed garbage rooms have doors that are tightly closed except during active loading or unloading of the garbage facility. This is intended to prevent unwanted access, the escape of materials, and unsightly conditions.

- Amendments were made to section 90-194 *"Observance of federal, state, local regulations"* to correct a scrivener's error.
- Amendments were made to the title of *Subdivision II of Division 4 "Specialty Contractors"* for clarification purposes.
- Amendments were made to the title of section 90-276 to utilize current terminology.
- Amendments were made to section 90-277 *"Permits required"* to remove language regarding the fine amount as it is now covered in section 90-40 *"Fine schedule."*
- Amendments were made to section 90-279 *"Location restrictions"* to correct street names that have changed since the last amendments to that provision.
- Amendments were made to section 90-280 *"Use restrictions; conditions"* to clarify the types of material and purpose for which rolloff containers can be used and to provide conditions by which rollofs shall be maintained to prevent the overflow and escape of material. Rollofs, rolloff containers, and portable containers are used for the temporary storage and removal of construction and demolition debris or for large quantities of trash and/or bulky waste. The proposed amendments require rollofs, rolloff containers, and portable containers to be covered when not in use and that at no time may the contents rise above the top of the container. This is intended to prevent the escape of dust and debris or other materials as well as prevent unsightly conditions.
- A deletion was made to section 90-281 *"Overflowing rollofs and portable containers"* as the provisions in this section were moved to the conditions of 90-280 *"Use restrictions; conditions."*

The proposed amendments to section 90-280 *"Use restrictions; conditions"* requiring rollofs, rolloff containers, and portable containers to be covered when not in use will require notification to contractors, as well as a grace period for contractors to purchase the appropriate materials. It is recommended that the proposed ordinance be effective 60 days from adoption to allow for City notification to and compliance by contractors.

Attachment: Chapter 90 Solid Waste Proposed Changes

HC\SKS

<b>Sec. 90-39. Fine schedule for violations issued and applied to owners, agents, tenants, occupants, operators or managers, or persons responsible for the violation.</b>	
<b>(a) Violation(s) of section 90-36:</b> A solid waste violation or accumulation of solid waste that creates a health hazard, environmental hazard or nuisance:	<i>Fine</i>
a. (1.) First offense	\$1000.00
b. (2.) <u>Second or subsequent offense; in addition, for a fourth or subsequent offense, the City may seek injunctive relief and/or, in the case of commercial establishments, revoke the business tax receipt and/or certificate of use of the establishment and/or premises</u>	2000.00
<b>(b) Violations of sections 90-96, 90-97 and 90-98:</b>	
(1) Garbage facilities on public property without a permit:	
a. First offense, per garbage facility	\$200.00
b. Second or subsequent offense, per garbage facility	1,000.00
	<i>Fine for Failure to correct in specified time after written notice</i>
(2) Dumpsters located and kept on front yard or side yard facing street (corner lots)	\$200.00
(3) Dumpsters not kept in approved garbage storage facility	200.00
(4) Owners; occupants; or operator or managers without garbage collection service where required by this chapter (private or city)	400.00
(5) Individual properties with different ownerships sharing the same service, with or without consent, per owner	400.00
	<i>Fine</i>
<b>(c) Violations of sections 90-99 and 90-100:</b>	
(1) Open lid on garbage facility(ies)	<del>\$100.00</del> 200.00
(2) Insufficient garbage facility(ies) capacity	200.00
(3) Insufficient frequency of garbage collection	200.00
(4) Overloaded garbage facility(ies)	200.00
(5) Lack of/or deteriorated garbage facility(ies)	200.00
(6) Garbage or miscellaneous trash around garbage facility(ies)	200.00
(7) <u>Second or subsequent offenses</u>	<u>400.00</u>
<b>(d) Violations of sections 90-100—90-105:</b>	
(1) Illegal disposal of garbage, trash, industrial and bulky waste:	
a. First offense	\$500.00
b. Second or subsequent offense	1000.00
(2) Illegal disposal of garden trash, tree and shrubbery trash and/or special handling trash:	
a. First offense	500.00
b. Second or subsequent offense	1,000.00
(3) Illegal disposal of biohazardous and/or hazardous waste:	
a. First offense	2,000.00
b. Second or subsequent offense	4,000.00



<b>Sec. 90-40. Fine schedule for violations of sections 90-36; <del>90-96</del>; 90-98; 90-99; 90-100; 90-107; 90-191, et seq.; 90-221, et seq.; 90-277; and 90-228 by private waste contractors.</b>	
(a) <i>Violations of section 90-36:</i> The existence of the same garbage inside the same garbage container for four consecutive days upon a premises serviced by a private waste contractor:	<i>Fine for Failure to correct in specified time after <u>written</u> notice</i>
a.-(1.) First offense	\$ 100.00
b.-(2.) Second or subsequent Offense	250.00
(b) <i>Violations of sections <del>90-96</del>, 90-98, 90-193, and 90-277:</i>	
(1) Dumpsters and rollofs placed on public property without city permit, per day	<del>\$ 100.00</del> 250.00
(2) Second or subsequent offense, per dumpster or rolloff	1000.00
(c) <i>Violations of sections 90-99 and 90-100:</i>	
(1) Deteriorated, rusted, decayed or unserviceable dumpsters	150.00
(2) Outdoor garbage dumpster(s) without lid	<del>100.00</del> 250.00
(3) Failure to remove all garbage and trash placed in garbage can or container and generated by the account being serviced	250.00
(d) <i>Violations of sections <del>90-193</del> <del>194 through 90-196</del>; and 90-221 through 90-228:</i>	
(1) Dumpsters currently in service, overflowing and generating a health hazard, per offense	500.00
(2) Dumpsters not sanitized or disinfected after collection	<del>100.00</del> 200.00
(3) Dumpsters not removed after account is closed or permit or license is revoked	<del>100.00</del> 250.00
(4) Dumpsters without contractor's identification	<del>50.00</del> 200.00
(5) Dumpsters or other garbage facility(ies) installed without permits	<del>100.00</del> 250.00
(6) Garbage facilities placed <u>on private property</u> by contractor without permit:	
a. First offense	<del>50.00</del> 250.00
b. Second or subsequent offense by same contractor during same city fiscal year	<del>200.00</del> 1000.00
(7) Contractors not reporting timely a stopped service in writing to the city manager or his designee (temporary or permanent)	<del>50.00</del> 100.00
(8) Contractor's truck driving <u>or parking on</u> sidewalks, curbs, and blocking pedestrian traffic; <u>or breaking water meter, electric meter or other types or lids on city property; cost of replacement by city plus:</u>	
a. First offense	100.00
b. Second or subsequent offense	200.00
(9) Contractors leaving trucks, not servicing accounts, parked within city limits, per day	<del>100.00</del> 250.00
(10) Dumpsters not in service and generating a health hazard and dumped on city limits prior to removal, per offense	500.00
(11) Dumpsters not returned by contractor to approved location, per offense	<del>50.00</del> 100.00
(12) Dumpsters providing shared service to properties with different ownership, per offense	200.00
(13) Failure to maintain an office in Miami-Dade County with adequate staff and service or failure to resolve complaints within required time period:	
a. First offense	<del>Warning</del> 100.00
b. Second or subsequent offense	<del>100.00</del> 200.00

(14) Failure to remove all garbage, rubbish and trash in garbage can or container and placed within immediate area of owner, occupant, or operator or manager's property line where container is located and, at a minimum, within a radius of ten feet around the container:	
a. First offense	<del>Warning</del> <u>100.00</u>
b. Second or subsequent offense by same contractor during same city fiscal year	<del>50.00</del> <u>200.00</u>
(15) Contractor's trucks or garbage facilities leaking fluids, per offense	<del>50.00</del> <u>100.00</u>
(16) Violation of collection hours, per offense	<u>100.00</u>
(17) Failure of permanent contractor employees to carry approved identification cards while servicing account(s), per offense	<del>50.00</del> <u>100.00</u>
(e) Payment of city's costs. In addition to the above-stated fines, violators must also pay any costs incurred by the city in the event the city corrects any violation(s) pursuant to sections 90-36 and 90-37.	

**Sec. 90-41. Fine schedule for violations of sections 90-279 and 90-280, and ~~90-281~~, by Specialty Contractors.**

a. First offense	<u>\$200.00</u>
b. Second or subsequent offense	<u>400.00</u>

**Sec. 90-42. Fine schedule for which no fine is specified in sections 90-39, 90-40, and 90-41.**

For violations of this chapter for which no fine is specified in sections 90-39, 90-40 or 90-41 the city attorney may prosecute the violators pursuant to section 1-14. Fines for such offenses shall be as follows:	Fine
a. <u>First offense</u>	<u>\$350.00</u>
b. <u>Second offense</u>	<u>500.00</u>
c. <u>Third offense</u>	<u>1000.00</u>
d. <u>Fourth or subsequent offense:</u>	<u>5000.00</u>



Chapter 90

**SOLID WASTE**

**ARTICLE I. IN GENERAL**

**Sec. 90-1. Legislative intent.**

It is the purpose of this chapter to ensure that areas within the city are adequately provided with high-quality solid waste collection and disposal service. Because of the overriding public health, safety and welfare considerations associated with the provision of this service, it is necessary that the city retain regulatory authority over solid waste collection and disposal. The provisions of this chapter will also ensure that this service is efficient and responsive to public complaints and that the public convenience, aesthetic and environmental considerations, and the public investment in right-of-way property are protected.

**Sec. 90-2. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Agent or registered agent* means a person registered with the city's code compliance department and designated by the property owner to administer and manage a property.

*Apartment building* means a building with or without resident supervision occupied or intended to be occupied by more than two persons, or families, living separately with separate cooking facilities in each unit. For purposes of this chapter, this particular definition shall include a condominium or cooperative building, but not a duplex.

*Apartment unit* means a room or group of rooms occupied or intended to be occupied as separate living quarters by one or more persons, or a family, containing independent cooking facilities. For purposes of this chapter, this definition shall include a condominium unit or cooperative unit, but not a duplex.

*Biohazardous waste* means any solid waste that may present a threat of infection to humans. The term includes, without limitation, nonliquid human tissue and body parts; laboratory and veterinary waste containing human-disease-causing agents; used disposable sharps; human blood, human blood products, and any bodily fluids; and other materials representing a significant risk of infection to persons.

*Biohazardous waste contractor* means a private waste contractor who collects and disposes of biohazardous waste.

*Building department director* means the city's building official, appointed by the city manager to administer and enforce the Florida Building Code in the city. This definition also includes the building official's designee(s) working under his/her supervision.

*Bulky waste* means large item(s) of household refuse, including, without limitation, appliances, furniture, accumulations from major tree cutbacks (exceeding ten inches in diameter and four feet in length), large crates, and like articles.

*Business tax* shall have the same meaning ascribed in section 102-356.

*Business tax receipt* shall have the meaning ascribed to the word "receipt" in section 102-356.

*Commercial establishment* means an establishment dealing in an exchange of goods or services for money or barter. For purposes of this chapter, the term shall include churches, synagogues and schools.

*Commercial refuse* means all solid waste produced by commercial establishments.

*Condominium unit* means the same as "apartment unit."

*Construction and demolition debris* means discarded material generally considered not to be water-soluble or hazardous, including, without limitation, steel, concrete, glass, brick, asphalt roofing material, or lumber from a construction or demolition project; but not garbage or commercial refuse or any other types of solid waste. ~~Commingling construction and demolition debris with any amount of will cause it to be classified as other than construction and demolition debris.~~

*Cooperative unit* means the same as "apartment unit."

*Dumpster* means a container used in the waste industry, and approved for use in the city by the city manager, with a tight fitting top and a minimum capacity of one-half cubic yard or 90 or more between 100 and 133.3 gallons. For purposes of this chapter, compact containers shall also be considered dumpsters.

*Duplex* means a detached building, divided horizontally or vertically, and designed as two separate units to be occupied by one or more persons, or families, each living separately, with separate kitchens in each housekeeping unit.

*Dwelling* means a building or portion thereof designed or used for residential occupancy.

*Dwelling unit* means a room or group of rooms occupied or intended to be occupied as separate living quarters by one or more persons, or a family.

*Franchise waste contractor* means a private waste contractor, approved pursuant to section 90-221 et seq., who enters into a franchise agreement with the city for the collection and disposal of solid waste in the city, and who pays a percentage of its gross earnings to the city pursuant to this chapter.

*Front yard* means an open area extending the full width of the lot between the main building and the front lot line.

*Garbage* means every refuse accumulation of animal, fruit, vegetable or organic matter that attends the preparation, use, cooking and dealing in or storage of meats, fish, fowl, fruit or vegetables, and decay, putrefaction and the generation of noxious or offensive gases or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ-carrying insects.

*Garbage can or container* means a container which has been approved for use in the city by the city manager, made of galvanized metal, durable plastic or other suitable material of a capacity not less than ten gallons but not to exceed 30 gallons for collection of solid waste awaiting pickup and disposal. Such can or container shall have two handles upon the sides thereof, or a bail, by which it may be lifted, and shall have a tightening solid top.

*Garbage facility* includes garbage can or container, dumpster and trash container.

*Garbage storage facility* means a structure enclosed on the bottom and all sides (except the top), which may be open or closed, constructed of solid material, and having sufficient capacity to hold all garbage facilities required for a particular establishment including, without limitation, an apartment building or other multifamily residence, duplex, hotel, and/or a commercial establishment.

*Garden* means a piece of ground used for the growing of fruits, flowers, or vegetables; a well-cultivated region (e.g. a lawn).

*Garden trash* means all accumulation of lawn, grass or shrubbery cuttings or clippings and leaf rakings, free of dirt, rock, large branches, and bulky or noncombustible materials, which can be containerized.

*Gardener* means a person whose business or occupation is the making or tending of gardens.

*Grapple service* means the use of a claw-like device such as, but not limited to, bobcats, self loaders, loaders, and backhoes, to pick up construction and demolition debris; large quantities of trash (e.g. rubbish); and bulky waste; but not garbage or commercial refuse, and place it into a truck for disposal.

*Grapple service contractor* means a private waste contractor who performs grapple service.

*Hazardous waste* means any solid waste, which, because of its quality, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed.

*Hazardous waste contractor* means a private waste contractor who collects and disposes of hazardous waste.

*Hotel* means a building with ten or more dwelling units in which the majority of the dwelling units do not contain kitchens and which is licensed as a hotel.

*Industrial waste* means any solid waste generated by construction, land clearing, excavating of structures, roads, streets, sidewalks or parkways, and including, without limitation, waste collected for recycling, and oil, grease and petroleum.

*Kitchen* means a facility for preparing food containing, at a minimum, a sink with running water, a stove, and a refrigerator.

*Landscape firm* means a business entity engaged in planning to change or changing the natural scenery of a place for a desired purpose or effect. This definition includes state licensed and unlicensed landscape architects, landscape contractors, and landscape maintenance businesses.

*Licensee* means any person, which includes, without limitation, a corporation, partnership, sole partnership, limited liability corporation, or other business entity engaged in the business of removing, transporting or disposing of solid waste or recyclable materials in the city, and which is duly licensed by the city as provided for by this chapter.

*Manager* means the same as "operator."

*Multifamily residence* means a building occupied or intended to be occupied by two or more families living separately, with separate kitchens in each unit.

*Occupant* means any person using or having actual possession of any structure, building, lot, or premises, or part thereof.

*Offense* means a notice of violation that has not been appealed timely or a finding of a violation by a special master following the appeal of a violation.

*Operator or manager* means any person who has control or use of or is in charge of, or has responsibility for, the care of any structure, building, lot, or premises, or part thereof.

*Owner* means any person who individually, or jointly or severally with others, holds the legal or beneficial title to any structure, building, lot, or premises (or part thereof), as well as to any facilities or equipment subject to the provisions of this chapter. For purposes of this chapter, the term shall also include an owner's duly authorized agent, a purchaser, devisee, fiduciary, property holder, or any other person having a vested or contingent interest; in the aforesaid, or, in the case of a lease, the legal holder of the lease, or his legal representative. It is further intended that for purposes of this chapter the term shall also be construed as applicable to the person responsible for the construction, maintenance and operation of a structure, building, lot, premises, facilities, or equipment involved.

*Parkway* means that area between the edge of the street and the adjacent property line, excluding that area occupied by the sidewalk.

*Portable container* means a dumpster, rollaway, or similar container designed for mechanized collection.

*Premises* means real property and includes any buildings or structures thereon.

*Private waste contractor* means any person engaged in the business of collection and disposal of solid waste within the city limits that has been approved and permitted by the city to perform such service including, without limitation, issued a current business tax receipt by the city to conduct such activity (or perform such service).

*Recyclable materials* means those materials capable of being recycled and which would otherwise be processed or disposed of as solid waste. Any recyclable material mixed with solid waste shall be considered to be solid waste.

*Recycling* means any process by which recyclable materials are collected, separated, or processed to be reused or returned to use in the form of raw materials or products.

*Recycling container* means a container approved by the city manager for collection of recyclable material by a recycling contractor.

*Recycling contractor* means a private contractor licensed by the city and state who collects recyclable materials and transports same to a state- or county-licensed recycling facility for processing. Recycling contractors must provide their customers with a separate recycling container for recyclable materials.

*Regulated stash area* means a disposal site which is either operated by the city or, if approved by the city commission, by a private waste contractor, where trash (e.g. rubbish) may be deposited.

*Residential refuse* means all garbage and trash (e.g. rubbish) originating in a dwelling or single-family residence.

*Restaurant* means a commercial establishment maintained and operated as a place where food is regularly prepared, served or sold for immediate consumption on or about the premises, or a commercial establishment where prepared food is called for, delivered to, or taken out by customers.

*Rolloff* means a container with a minimum capacity of ten cubic yards designed to be transported by a motorized vehicle.

~~*Rolloff compaction container* means a rolloff designed to hold or receive compacted garbage or trash.~~

*Rolloff container* means a metal container, compacted or open, approved by the city manager, that is designed and used by rolloff contractors for the collection and disposal of ~~compacted or non-compacted~~ construction and demolition debris; large quantities of trash; and/or bulky waste; but not garbage or commercial refuse ~~or any other types of solid waste.~~

*Rolloff contractor* means a private waste contractor licensed by the city who uses rolloff containers for the collection and disposal of construction and demolition debris and/or large quantities of trash and/or bulky waste, but not garbage or commercial refuse.

*Roominghouse* means a building which is issued a business tax receipt by the city as a rooming house or boardinghouse, containing less than ten dwelling units, and in which the majority of the dwelling units do not contain kitchens.

*Rubbish or trash* means refuse accumulations of paper, excelsior, rags, wooden or paper boxes or containers, sweepings and all other accumulations of a nature other than garbage, which are usual to housekeeping and to the operation of stores, offices, and other places of business; and any bottles, cans or other containers, which, due to their ability to retain water, may serve as breeding places for mosquitoes or other water-breeding insects. Rubbish shall not include industrial waste.

*Side yard* means an open area between a building and the adjacent side of the lot, and extending from the front yard to the rear yard.

*Single-family residence* means a detached building designed for or occupied exclusively by one person or one family.

*Single-family waste contractor* means a private waste contractor who contracts with the city to provide solid waste collection and disposal service to single-family residences.

*Single-stream recycling* means a process by which certain recyclable materials are mixed together instead of being sorted into separate recycling containers in the collection process.

*Solid waste* includes bulky waste, commercial refuse, garden trash, tree and shrubbery, garbage, refuse, rubbish, special handling trash, trash, hazardous waste, biohazardous waste, industrial waste, residential refuse, white goods, or other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from domestic, industrial, commercial, mining, or agricultural operations.

*Special handling garden trash* means accumulation of tree branches, tree limbs, parts of trees, bushes and shrubbery over ten inches in diameter; which does not exceed four feet in length, and is too large to be containerized or bundled and tied.

*Special handling wastes* means wastes that can require special handling and management, including, without limitation, white goods, furniture, mattresses, and other bulky items of household trash; oils; whole tires; lead-acid batteries; and hazardous and biohazardous wastes; but excluding special handling garden trash.

*Structure* means anything constructed or erected so that its use requires permanent location on the ground.

*Substantial rehabilitation* means rehabilitation the cost of which exceeds 50 percent of the replacement value of the structure, as determined by the county property appraiser's office.

*Townhouse* means a single-family dwelling unit attached to a grouping of same on one building site, with each having separate ingress and egress facilities.

*Trash* means the same as "rubbish."

*Trash container* means any container used for temporary storage of trash (e.g. rubbish) approved by the city manager, but excluding garbage cans.

*Tree and shrubbery trash* means an accumulation of tree branches, tree limbs, parts of trees, bushes and shrubbery up to three inches in diameter but which does not exceed four feet in length, and which is too large to be containerized or requiring to be bundled and tied.

*White goods* mean discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.

**Sec. 90-3 – 90-35. Reserved.**

## **ARTICLE II. ADMINISTRATION**

**Sec. 90-36. Enforcement of chapter; notice of violation.**

- (a) The city manager is hereby authorized and directed to enforce all the provisions of this chapter regulating and governing the accumulation, collection, and disposal of solid waste. The city manager shall have the power to delegate duties to employees working under his authority (including, without limitation, the city's public works director) in the enforcement of the provisions of this chapter.
- (b) Upon presentation of proper credentials, an inspector designated by the city manager may enter any building, structure, lot or other premises for the purpose of inspection, or to prevent violations of this chapter.
- (c) The existence of solid waste shall be prima facie evidence that the same was created or placed there by the occupant of the dwelling or commercial establishment; or the owner; or the operator or manager. The existence of the same garbage inside the same garbage containers for four consecutive days upon a premises serviced by a private waste contractor shall be prima facie evidence of a violation of this chapter by the contractor. For purposes of this section premises serviced by a private waste contractor shall not include accounts that have been discontinued by the contractor when notice of discontinued service has been mailed to the owner, occupant, or operator or manager, as well as to the city, prior to the accumulation of the garbage.
- (d) Whenever a designated city inspector observes a violation (or violations) of this chapter regarding solid waste or an accumulation of solid waste that creates a health hazard, environmental hazard, or nuisance, the inspector shall order the violation(s) to be corrected within a specified period of time by serving a written notice of violation(s) upon the person causing, or responsible for, such violation and/or health hazard, environmental hazard, or nuisance. Such person shall immediately cease or abate the violation(s).



- (e) A notice of violation shall be served personally or by certified mail upon the property owner or upon the person(s) in lawful possession of the premises, and/or upon the waste contractor servicing the premises. If the person addressed with such notice cannot be found by the city after making reasonable good faith effort, such notice shall be sent by certified mail to the last known address of such person, and a copy of the notice shall be posted in a conspicuous place on the premises. Such notice shall be deemed the equivalent of personal service.
- (f) The notice shall specify any fine(s) that may be due in connection with the violation(s), the time specified by the inspector to correct the violations, and the procedure for timely payment or appeal of the fine(s).
- (g) If the inspector determines that the conditions constitute an immediate threat to the health, safety or welfare of the public, he/she may order the immediate correction of the violation(s) at the expense of the occupant, owner, or operator or manager and the city shall have the right to recover such expenses as provided in section 90-37.
- (h) The enforcement of the recycling requirements for the citywide recycling program for multifamily residences and commercial establishments provided for in article V of this chapter, and the penalties for violations of article V, are provided in sections 90-345 through 90-347 of this chapter.

**Sec. 90-37. Removal of waste by city; penalties for violations.**

- (1) For violations involving failure to remove solid waste, the city manager may cause the waste to be removed from the premises and charge the actual costs to the owner, occupant, or operator or manager, on a force account basis. Any fine due pursuant to section 90-39 or 90-40 shall also be charged to the owner, occupant, or operator or manager. Failure to pay such costs and fines or to appeal pursuant to section 90-38 within 15 days of receipt of the notice shall result in the imposition of a lien upon the property, in the amount of such costs and fines. Such liens shall be treated as special assessment liens against the subject real property and, until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved. Such liens shall be enforced by any of the methods provided in F.S. ch 86; or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions of F.S. ch. 173; or the collection and enforcement or payment thereof may be accomplished by any other method authorized by law. The owner, occupant, or operator or manager shall pay all costs of collection, including reasonable attorneys' fees, incurred in the collection of fines, and other charges, penalties, and liens imposed by virtue of this chapter.
- ~~(2) For violations of this chapter for which no fine is specified in sections 90-39, 90-40 or 90-41 the city attorney may prosecute the violators pursuant to section 1-14. Fines for such offenses shall be as follows:~~
  - ~~a. First offense: \$350.00~~

- ~~b. Second offense: \$500.00~~
- ~~c. Third offense: \$1,000.00~~
- ~~d. Fourth or subsequent offense:~~  
\$5,000.00

~~(2)(3)~~For violations which present a serious threat to the health, safety or welfare of the public and/or violations that constitute a fourth or subsequent offense by the same violator, the city may seek injunctive relief and/or, in the case of commercial establishments, revoke the business tax receipt and/or certificate of use of the establishment and/or premises, in addition to the penalties set forth in subsection 90-37(2).

**Sec. 90-38. Appeal to special master.**

- (a) Any person receiving a notice of violation pursuant to section 90-36 and/or a notice of fine pursuant to sections 90-39 and/or 90-40 may request, within 15 days of receipt of the notice, an administrative hearing before a special master, appointed as provided in article II of chapter 30, to appeal the decision of the city inspector resulting in the issuance of the notice. Procedures and application fee for the scheduling and conduct of the hearing shall be as provided in sections 102-384 and 102-385. Failure to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, as noticed, and fines and penalties may be assessed accordingly.
- (b) Timely filing of a notice of appeal pursuant to this section shall toll the imposition of a lien pursuant to section 90-37 or 90-136, or enforcement procedures pursuant to section 90-36, until 30 days after the issuance of a written determination by the special master. Any amounts of money due the city pursuant to such determination must be received by the city within 30 days after the issuance of the determination, or a lien shall be imposed upon the property in question, and any other enforcement or collection procedures commenced, as provided by this chapter or under state law.

**Sec. 90-39. Fine schedule for violations issued and applied to owners, agents, tenants, occupants, operators or managers, or persons responsible for the violation.**

	<i>Fine</i>
(a) Violation(s) of section 90-36: A solid waste violation or accumulation of solid waste that creates a health hazard, environmental hazard or nuisance:	
<del>a. (1.)</del> First offense	\$1000.00
<del>b. (2.)</del> Second or subsequent offense; <u>in addition, for a fourth or subsequent offense, the City may seek injunctive relief and/or, in the case of commercial establishments, revoke</u>	

<u>the business tax receipt and/or certificate of use of the establishment and/or premises</u>	2000.00
<i>(b) Violations of sections 90-96, 90-97 and 90-98:</i>	
(1) Garbage facilities on public property without a permit:	
a. First offense, per garbage facility	\$200.00
b. Second or subsequent offense, per garbage facility	1,000.00
	<i>Fine for Failure to correct in specified time after written notice</i>
(2) Dumpsters located and kept on front yard or side yard facing street (corner lots)	\$200.00
(3) Dumpsters not kept in approved garbage storage facility	200.00
(4) Owners; occupants; or operator or managers without garbage collection service where required by this chapter (private or city)	400.00
(5) Individual properties with different ownerships sharing the same service, with or without consent, per owner	400.00
	<i>Fine</i>
<i>(c) Violations of sections 90-99 and 90-100:</i>	
(1) Open lid on garbage facility(ies)	<del>\$100.00</del> 200.00
(2) Insufficient garbage facility(ies) capacity	200.00
(3) Insufficient frequency of garbage collection	200.00
(4) Overloaded garbage facility(ies)	200.00
(5) Lack of/or deteriorated garbage facility(ies)	200.00
(6) Garbage or miscellaneous trash around garbage facility(ies)	200.00
(7) Second or subsequent offenses	400.00
<i>(d) Violations of sections 90-100—90-105:</i>	
(1) Illegal disposal of garbage, trash, industrial and bulky waste:	
a. First offense	\$500.00
b. Second or subsequent offense	1000.00
(2) Illegal disposal of garden trash, tree and shrubbery trash and/or special handling trash:	
a. First offense	500.00
b. Second or subsequent offense	1,000.00
(3) Illegal disposal of biohazardous and/or hazardous waste:	
a. First offense	2,000.00
b. Second or subsequent offense	4,000.00

**Sec. 90-40. Fine schedule for violations of sections 90-36; 90-96; 90-98; 90-99; 90-100; 90-107; 90-191, et seq.; 90-221, et seq.; 90-277; and 90-228 by private waste contractors.**

(a) <i>Violations of section 90-36:</i> The existence of the same garbage inside the same garbage container for four consecutive days upon a premises serviced by a private waste contractor:	
	<i>Fine for Failure to correct in specified time after <u>written</u> notice</i>
<del>a. (1.)</del> First offense	<del>\$ 100.00</del>
<del>b. (2.)</del> Second or subsequent offense	<del>250.00</del>
(b) <i>Violations of sections <u>90-96</u>, 90-98, <u>90-193</u>, and <u>90-277</u>:</i>	
(1) Dumpsters and rollofs placed on public property without city permit, <del>per day</del>	<del>\$ 100.00</del> 250.00
(2) <u>Second or subsequent offense, per dumpster or rolloff</u>	<u>1000.00</u>
(c) <i>Violations of sections 90-99 and 90-100:</i>	
(1) Deteriorated, rusted, decayed or unserviceable dumpsters	150.00
(2) Outdoor garbage dumpster(s) without lid	<del>100.00</del> 250.00
(3) Failure to remove all garbage and trash placed in garbage can or container and generated by the account being serviced	250.00
(d) <i>Violations of sections <u>90-193</u> <del>191 through 90-196</del>; and 90-221 through 90-228:</i>	
(1) Dumpsters currently in service, overflowing and generating a health hazard, per offense	500.00
(2) Dumpsters not sanitized or disinfected after collection	<del>100.00</del> 200.00
(3) Dumpsters not removed after account is closed or permit or license is revoked	<del>100.00</del> 250.00
(4) Dumpsters without contractor's identification	<del>50.00</del> 200.00
(5) Dumpsters or other garbage facility(ies) installed without permits	<del>100.00</del> 250.00
(6) Garbage facilities placed <u>on private property</u> by contractor without permit:	
a. First offense	<del>50.00</del> 250.00
b. Second or subsequent offense by same contractor during same city fiscal year	<del>200.00</del> 1000.00
(7) Contractors not reporting timely a stopped service in writing to the city manager or his designee (temporary or permanent)	<del>50.00</del> 100.00

(8) Contractor's truck driving <del>or parking on</del> sidewalks, curbs, and blocking pedestrian traffic; <del>or breaking water meter, electric meter or other types or lids on city property; cost of replacement by city plus:</del>	
a. First offense	100.00
b. Second or subsequent offense	200.00
(9) Contractors leaving trucks, not servicing accounts, parked within city limits, per day	<del>100.00</del> <u>250.00</u>
(10) Dumpsters not in service and generating a health hazard and dumped on city limits prior to removal, per offense	500.00
(11) Dumpsters not returned by contractor to approved location, per offense	<del>50.00</del> <u>100.00</u>
(12) Dumpsters providing shared service to properties with different ownership, per offense	200.00
(13) Failure to maintain an office in Miami-Dade County with adequate staff and service or failure to resolve complaints within required time period:	
a. First offense	<del>Warning</del> <u>100.00</u>
b. Second or subsequent offense	<del>100.00</del> <u>200.00</u>
(14) Failure to remove all garbage, rubbish and trash in garbage can or container and placed within immediate area of owner, occupant, or operator or manager's property line where container is located and, at a minimum, within a radius of ten feet around the container:	
a. First offense	<del>Warning</del> <u>100.00</u>
b. Second or subsequent offense by same contractor during same city fiscal year	<del>50.00</del> <u>200.00</u>
(15) Contractor's trucks or garbage facilities leaking fluids, per offense	<del>50.00</del> <u>100.00</u>
(16) Violation of collection hours, per offense	100.00
(17) Failure of permanent contractor employees to carry approved identification cards while servicing account(s), per offense	<del>50.00</del> <u>100.00</u>
(e) <i>Payment of city's costs.</i> In addition to the above-stated fines, violators must also pay any costs incurred by the city in the event the city corrects any violation(s) pursuant to sections 90-36 and 90-37.	

**Sec. 90-41. Fine schedule for violations of sections 90-279 and 90-280, and 90-281, by Specialty Contractors.**

a. <u>First offense</u>	<u>\$200.00</u>
b. <u>Second or subsequent offense</u>	<u>400.00</u>

**Sec. 90-42. Fine schedule for which no fine is specified in sections 90-39, 90-40, and 90-41.**

<u>For violations of this chapter for which no fine is specified in sections 90-39, 90-40 or 90-41 the city attorney may prosecute the violators pursuant to section 1-14. Fines for such offenses shall be as follows:</u>	
<u>a. First offense</u>	<u>\$350.00</u>
<u>b. Second offense</u>	<u>500.00</u>
<u>c. Third offense</u>	<u>1000.00</u>
<u>d. Fourth or subsequent offense:</u>	<u>5000.00</u>

**Sec.90.4143 – 90.70. Reserved.**

**ARTICLE III. COLLECTION AND DISPOSAL**

**DIVISION 1. GENERALLY**

**Sec. 90-71. City manager rules and regulations.**

The city manager is hereby delegated and shall have the full authority to promulgate rules and regulations to enforce and administer the provisions of this article, provided such regulations are not inconsistent with this article; are in writing; and are approved by the city commission.

**Secs. 90-72 – 90-95. - Reserved.**

**DIVISION 2. COLLECTION**

**Sec. 90-96. Removal, storage and disposal of unauthorized garbage facilities found on public property.**

- (a) Garbage facilities found on public property without a city permit for that location shall be removed immediately by the city. If the owner, occupant, or operator or manager of the premises is identifiable, the city manager or his designee shall promptly thereafter serve a notice of violation, and notice of removal and storage location of the facility, upon the violator by certified mail.
- (b) Upon removal of a garbage facility pursuant to subsection (a), the city shall retain the facility for a period of 30 days thereafter, during which time the owner, occupant, or operator or manager of the premises may claim the facility upon payment of the city's cost of removal and storage, and payment of the imposed fine.

- (c) Garbage facilities not retrieved within 30 days, pursuant to subsection (b) may be disposed of as provided by law.

**Sec. 90-97. Garbage collection services.**

- (a) *Mandatory.* Each dwelling or commercial establishment in the city is required to have a solid waste collection service, and garbage facilities approved by the city manager.
- (b) *Collection by single-family waste contractors.* All solid waste generated by single-family residences and multifamily residences of eight units or less shall be collected, conveyed and disposed of by a single-family waste contractor(s).
- (c) *Collection by franchise waste contractors.* All solid waste generated by commercial establishments, industrial uses, hotels, roominghouses, multifamily residences of nine dwelling units or more shall be collected, conveyed and disposed of by franchise waste contractors.

**Sec. 90-98. Location of garbage facilities and garbage storage facilities.**

- (a) All garbage facilities shall be kept together in or within a walled or enclosed area on private property or (if not on private property) at a location approved by the city manager. Such area shall not extend into any front yard. On corner lots it shall not extend into any side yard facing a street. Such area shall be accessible to both single-family waste contractors and franchise waste contractors. The area shall be located so that garbage collectors do not have to use stairs or ascend or descend split elevations in the collection process. The location of a garbage facility in an area requiring the garbage collector to use stairs or ascend or descend split elevations in order to accomplish the collection process is deemed to be a health hazard and subject to penalty pursuant to sections 90-37, 90-39 and 90-40.
- (b) A city building permit shall be required for construction of a garbage storage facility, and such facility shall be constructed so as to be compatible in appearance with the building and/or premises it services.
- (c) It shall be the responsibility of the owner, occupant, or operator, or manager of a property, and the franchise waste contractor servicing that property, to ensure the return of garbage facilities to the approved location after collection.
- (d) At no time shall any garbage facility be kept upon any public property, including, without limitation, on any street, alley, sidewalk, other right-of-way, or public land provided, however, that containers provided for pickup of recyclable materials may be placed in front of property between the hours of 12:01 a.m. and 11:59 a.m. on designated pick-up days.
- (e) All new commercial buildings and all new multifamily residences exceeding eight units shall provide a garbage storage facility approved by the city's planning department, public works department, and building department, as to location, size, and such other criteria deemed necessary by applicable law(s).



- (f) All buildings that are undergoing substantial rehabilitation, construction of an addition or additions, or are under new construction or undergoing a change of use must provide a garbage storage facility approved by the city's planning department, public works department, and building department as to location, size and other criteria as required by law or city ordinance.
- (g) All new restaurants and all restaurants undergoing substantial rehabilitation, or construction of an addition or additions, shall have air conditioned garbage storage facilities approved by the city's planning department, public works department, and building department, as to location, size and such other criteria as required by applicable laws.

**Sec. 90-99. ~~Condition and inspection of~~ Requirements for garbage facilities; inspections.**

- (a) Garbage facilities shall be used only for the temporary storage and removal of garbage, rubbish, or trash. None of those materials is ever to be stored or permitted to overflow directly on the ground, or to be permitted to rise at any time above the top of the garbage facility.
- (b) All garbage facilities shall be:
  - (1) maintained in good condition and repair, painted, and clean; Graffiti violations are subject to the provisions of sec. 70-121, et seq. All such facilities shall be
  - (2) provided with a closed, secure cover sufficiently tight, and non-permeable to deter flies or prevent other insects or vermin from having access to the contents of the garbage facility receptacles and to deter or prevent the escape of the garbage facility's contents, except for garbage facilities secured in a fully enclosed and locked garbage room or during active loading or unloading of the garbage facility;
  - (3) within an enclosed garbage room with doors that are tightly closed for locations required to have enclosed garbage rooms;
  - (4) leakproof, if wet materials are placed in them; and Containers in which wet garbage or trash matter are placed shall be leakproof. All garbage shall be
  - (5) subject to inspection and approval, or condemnation, by inspectors authorized by the city manager or the city manager's designee. An appeal from a condemnation shall be to the city manager or the city manager's designee.

**Sec. 90-100. Minimum capacity requirements for various types of uses and occupancies.**

- (a) It shall be the responsibility of the owner, occupant, manager or operator of the premises to provide sufficient temporary garbage and trash storage through the use of approved garbage facilities.
- (b) The garbage cans or containers per property shall not be limited provided each individual property has its approved number of garbage cans or containers, and provided that all garbage is picked up a minimum of twice a week. The city manager or his authorized

designee has the authority to approve the capacity of cans or containers, and the frequency of collection services for an individual property pursuant to the guidelines as set forth below.

(c) The city divides and classifies solid waste and its handling requirements as follows:

- (1) Residential refuse is all the garbage, trash (e.g. rubbish), or other solid waste generated in any dwelling used for a single-family residence, including, without limitation, a single-family home, duplex, townhouse, apartment, or other multifamily residence. The city manager or his authorized designee will determine the necessary capacity of cans or containers and frequency of collection service based on the standard of two 30-gallon cans or containers, per family, in a single-family residence, such as a single-family home, duplex or townhouse; and for apartments, one 30-gallon can or container, per apartment.

If an owner, occupant, or operator or manager uses containers the volume of which is measured in cubic feet or yards, the foregoing requirements shall be computed by assuming that one gallon equals 0.133 cubic foot.

- (2) Commercial refuse is all solid waste generated by commercial establishments including, without limitation, stores, office buildings, restaurants, bars, hotels, motels, markets, schools, churches, and hospitals and other institutional buildings. Minimum requirements for capacity of cans or containers and frequency of collection are as follows:

- a. Restaurants, stores, office buildings, churches, schools, cafeterias, bars, markets, hotels and motels will have container minimum capacities and frequency of service as approved by the city manager or his designee on a case-by-case basis.
- b. The required minimum capacity may be supplied by providing garbage facilities of sufficient size and number as are required to hold the minimum capacity (as defined below), and by providing for all such garbage facilities to be emptied at least twice a week; or by providing cans or containers of lesser sizes or number, provided that the same are emptied on a regularly scheduled basis, but more frequently than twice a week. The product of the capacity of the containers provided multiplied by the number of times per week the containers are emptied shall equal to the minimum capacity requirements in this subsection b. Minimum capacity requirements may also be met through the use of a garbage or trash compactor, in which event the minimum required capacity of the actual cans or containers provided shall be reduced by the same ratio as the compactor is capable of reducing the bulk of garbage or trash, (as certified by its manufacturer).
- c. Where the minimum capacity requirements of this section are met through the use of collections on a basis more frequent than twice a week, or through the use of a garbage or trash compactor, the owner, occupant, or operator or manager shall, if requested by the city manager or his authorized designee

provide proof of the frequency of trash and garbage collections or, in the case of a compactor, the manufacturer's brochures or certification indicating its capacity. If such proof is not provided when requested it shall be presumed that the capacity supplied is that of the containers provided, and that the containers are emptied on a basis no more frequent than once a week.

d. Installation of compactors is subject to approval of the building department director, and a duly issued permit by the building department

(3) Industrial waste is all solid waste generated by construction, land claims, excavation of structures, roads, streets, sidewalks or parkways, including waste collected for recycling; such as (but not limited to) oils, greases and papers. Any such waste that, due to volume or nature, does not lend itself to collection and incineration, shall be removed through special handling and shall be the responsibility of the person(s) who generates the waste.

(4) Bulky waste. All large items of household refuse, such as appliances, furniture, accumulations from major tree cutbacks, large crates and like articles shall be disposed of by the person(s) who generates the bulky waste.

#### **Sec. 90-101. Removal of garbage, trash and other items.**

- (a) Any owner, or occupant of a single-family residence, duplex, or townhouse, shall be required to remove from such property, and the area adjacent to the property between the property line and the paved portion of the public right-of-way, any and all garbage, trash or other solid waste within 24 hours of the time such waste is placed in that area.
- (b) It is prohibited for an owner, occupant, or operator or manager of a commercial establishment to transport any type of garbage, trash or other solid waste off the premises on which it was generated. Violators of this section shall be subject to fine and penalty as provided under sections 90-37, 90-39 and 90-40.
- (c) This section shall not be deemed to apply to any garbage, trash or other solid waste properly stored for collection in accordance with the provisions of this chapter, or the temporary storage, pending collection, of discarded furniture, appliances, or bedding for a period of less than one week.

#### **Sec. 90-102. Illegal disposal of solid waste.**

Except as provided elsewhere in this chapter, it shall be unlawful to deposit (i.e. dump) garbage, trash or any other solid waste upon any vacant, occupied or unoccupied premises; or upon any street, alley, parkway or park; or in any canal, waterway, bay, ocean, pool or lake within the city.

**Sec. 90-103. Disposal of biohazardous or hazardous waste.**

Notwithstanding any other provisions of this chapter, biohazardous and/or hazardous waste shall not be placed in garbage cans, or containers, trash containers or dumpsters for routine collection. Substances in this class shall be segregated and disposed of as provided by state and federal law including, without limitation, the procedures set forth in F.A.C., ch. 17-7, which prohibits the deposit of this type of waste in a sanitary landfill.

**Sec. 90-104. Removal of industrial wastes.**

Removal of industrial wastes is the responsibility of the owner, occupant, or operator or manager of the premises; or of the construction contractor performing such work on the premises; or such other person or persons creating or causing the accumulation of such materials on the premises, as the case may be. Such removal must be done by a private waste contractor.

**Sec. 90-105. Disposal of garden trash, tree and shrubbery trash, and special handling garden trash.**

- (a) *Options.* Property owners or occupants serviced by the city shall have the following options for disposal of their garden trash and tree and shrubbery trash. The owner or occupant may:
  - (1) Either containerize the garden trash or bundle the tree and shrubbery trash for city collection; or
  - (2) Transport such material(s) to a regulated stash area and deposit it there, at the owner or occupant's expense.
- (b) *Containerized or bundled material.* Material that is containerized or bundled shall be placed at curbside no sooner than the evening prior to the scheduled collection day.
- (c) *Contractor pickup procedures for garden trash, and tree and shrubbery trash.*
  - (1) Garden trash shall be placed into garbage cans or containers, plastic bags, or other weatherproof containers strong enough to support the weight of the material, but not to exceed 50 pounds, and are to be placed curbside for pickup on a regular collection day.
  - (2) Tree and shrubbery trash shall be tied in bundles with material strong enough to support the weight of the bundle, but such bundle shall not exceed 50 pounds, and shall be left at the curb for pickup on a regular collection day.
- (d) *Contractor pickup procedures for special handling garden trash.* Special handling garden trash will be collected only from city-serviced accounts, and scheduled on a date mutually agreeable to the city and the account.

- (e) *Fees.* All pickup of garden, tree or shrubbery trash is subject to a fee, which fee shall be determined by the city manager, but subject to approval by the city commission.

**Sec. 90-106. Use of regulated stash areas.**

The city may establish a regulated stash area(s), as approved by the city commission, and which may be operated by the city or by a private waste contractor, if approved by the city commission. Upon payment of a fee, said fee subject to approval by the city commission, members of the public may deposit such trash or other solid waste at the regulated stash area, in accordance with reasonable rules and regulations promulgated from time to time, by the city manager or has authorized designee.

**Sec. 90-107. Exemption for recycling pursuant to interlocal agreement.**

Notwithstanding any other provision of this chapter, collection and disposal of recyclable materials pursuant to an interlocal agreement which the city has entered into, or may enter into with Miami-Dade County, for inclusion in the county's curbside recycling program, shall be exempt from the requirements of this chapter and shall be governed by the terms of the most current version of the interlocal agreement.

**Secs. 90-108 - 90-130. Reserved.**

**DIVISION 3. RATES, CHARGES, BILLING PROCEDURES**

**Sec. 90-131. Fees for collection.**

Except as otherwise provided in this chapter, all owners or occupants of residential properties in the city, shall pay the city the fees set forth in this division for the solid waste collection and disposal, including the availability of such service.

**Sec. 90-132. Liability for fees owed to city.**

- (a) It shall ultimately be the responsibility and liability of the owner of the property and/or premises to pay the proper service fee and to furnish the necessary number of garbage facility for such property and/or premises, in accordance with the established need therefor, as determined by the city manager or his authorized designee. A commercial establishment in the same building with a residential unit or with another commercial establishment, even though under the same ownership, shall not be considered a part of such residential unit or other commercial establishment but shall be treated as a separate commercial establishment upon which a separate waste fee shall be due. The operator of the principal business on a premises shall be considered as the operator of any leased department conducted as a part of, or along with, the principal business for the purpose of fixing responsibility of paying the necessary service fee, and furnishing necessary garbage facilities.
- (b) The service fee required and imposed by this division is the ultimate responsibility of the owner of the property and/or premises. Nothing contained in this chapter shall be

construed or interpreted so as to impose such responsibility and liability for payment of the service fee, upon a residential tenant or occupant of any hotel or apartment building.

**Sec. 90-133. Single utility billing.**

The city's chief financial officer may direct, where practicable, that the appropriate charges for solid waste fees be included on any bill rendered for water and sewer charges. A sanitation commercial impact fee shall be charged monthly on each commercial business account and included on any bill rendered for water and sewer charges. This fee would be based on each commercial business's equivalent commercial unit (ECU), as shown on the fee schedule below. The terms "commercial business account" and "commercial units" shall exclude from their definitions townhouse and duplex units, apartment units, and other multifamily residential buildings fronting a private street, and whose waste removal services are provided by a private waste contractor.

Number of Equivalent Commercial Units (ECU)	Monthly Charge
From 0 to 25	\$16.00
From 26 to 50	24.00
From 51 to 75	30.00
From 76 to 100	40.00
101 and above	50.00

The combined bills are subject to all provisions as set forth in chapters 90 and 110.

**Sec. 90-134. Occupation of premises deemed evidence that garbage or trash is being produced.**

The fact that any residential dwelling or commercial establishment is occupied shall be prima facie evidence that garbage or trash is being produced and accumulated upon such premises and that, with regard to all premises serviced by the city, fees for the collection and disposal thereof are due the city.

**Sec. 90-135. When fees payable.**

The fees prescribed in this division are payable monthly, in advance, beginning on October 1 of each year. The credits provided in section 90-137 shall also be prorated on a monthly basis. Fees for new occupancies will be fixed on a prorated basis commencing on

the date of issuance of a certificate of occupancy. No refunds will be made. All fees shall be payable promptly, upon billing by the city.

**Sec. 90-136. Liens; penalty for delinquency in payment of fees; payment of collection costs and attorney fees.**

All services charges, fines, and special collections resulting from violations of this chapter, which become due to the city and payable on and after October 13, 1984, shall constitute and are hereby imposed as liens against the particular real property involved, and, until fully paid and discharged, shall be imposed as special assessment liens against the subject real property, and shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against said real property. The above-referenced charges shall become delinquent if not fully paid within 15 days after the due date. The maximum rate of interest allowable by law shall accrue to such delinquent accounts. Unpaid and delinquent charges, together with all penalties imposed thereon, shall remain and constitute liens against the real property involved. Such liens shall be enforced by any of the methods provided in Ch. 86, Florida Statutes; or, in the alternative, foreclosure proceedings may be instituted and prosecuted pursuant to Ch. 173, Florida Statutes; or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. In addition, to any other charges imposed by this chapter. The owner shall be responsible for payment of any and all costs, including attorney fees and costs, resulting from collection of said fees/charges.

**Sec. 90-137. Schedule of fees for collection and disposal of garbage and trash.**

- (a) Fees for collection and disposal of garbage and trash are as specified in appendix A.
- (b) The charges, rates, and other terms for collection and disposal for commercial establishments will be as prescribed in the contract entered into between the particular establishment and the private waste contractor.
- (c) The city manager shall have the authority to adjust base fees (upwards or downwards, as the case may be) where, in particular instances, the accumulation of solid waste exceeds or falls below that for which the base fee was established.

**Secs. 90-138 - 90-170. Reserved.**

**ARTICLE IV. - PRIVATE WASTE CONTRACTORS**

**DIVISION 1. GENERALLY**

**Secs. 90-171 - 90-190. Reserved.**

**DIVISION 2. LICENSE AND PERMIT**

**Sec. 90-191. Licenses, permits, indemnification, and insurance required for all contractors.**



The requirements of this division are to:

- (1) Ensure and facilitate the collection of fees to provide uniformity and quality of service from the contractors;
- (2) Minimize wear and tear, traffic congestion, and noxious and noisome materials, odors and activities in and around city streets and other public rights-of-way and public property; and
- (3) Assure that the citizens of the city have safe, efficient, sanitary and qualified licensed contractors.

**Sec. 90-192. Business tax receipt required.**

- (a) No person shall engage in the business of disposal and/or collection of any kind of solid waste, or recyclable material within the city without first having been approved by the city manager, and having secured a current business tax receipt for such activity. The business tax receipt will be issued once an applicant has met all requirements, as set forth in this division and in chapter 18, and has paid the applicable business tax receipt fee.
- (b) Business tax receipts for private waste contractors shall be classified as follows:
  - (1) Franchise waste contractors;
  - (2) Rolloff and grapple service contractors;
  - (3) Recycling contractors;
  - (4) Hazardous waste contractors; and
  - (5) Biohazardous waste contractors.
- (c) Only franchise waste contractors shall not be required to obtain separate business tax receipts for servicing rollofs and portable containers; for collection of hazardous and biohazardous waste, and for recycling activities.
- (d) The city manager shall have the authority to create any additional business tax receipt classifications, as deemed necessary to protect the public health, safety, or welfare, subject to the approval of the city commission.
- (e) Any (and each) application for a business tax receipt for collection and disposal of any kind of solid waste shall require and be subject to the prior approval of the city manager, which approval, if given at all, shall be obtained prior to issuance of the particular business tax receipt.
- (f) Issuance of a business tax receipt shall require completion of an application form showing the name of the person to be licensed; (or in the case of a corporation or other business entity, the names of the principal partners, owners, officers and directors or the name of the person who will actually manage and operate the business), together with the business and home address of each person; the description of all equipment and vehicles to be used in such collection and disposal; and a description of the method of disposal, including the location of all garbage facilities. The applicant shall also provide evidence that any garbage facility described is licensed or approved by the city pursuant

to this chapter. No applicant under this section shall substitute the permanent personnel named in its application, nor the equipment, vehicles, or methodology for disposal and collection, nor the location of garbage facilities described in its application, without first having reported such changes to the city manager, and obtained the manager's prior written approval of the substitution/change. In the case of changes in the location of disposal facilities, such changes shall also be approved by the proper authorities of the county and municipality where such disposal facility is located.

- (g) Any business tax receipt granted to a private waste contractor pursuant to this section shall not be assigned, nor shall any receipt remain valid, if the controlling stock ownership or voting rights of a contractor (who is a corporate entity) is transferred or assigned, except with the prior express written approval of the city manager.
- (h) Assignment or transfer (including, without limitation, the transfer of controlling stock ownership or voting rights) of a franchise waste contractor's business tax receipt and/or franchise agreement must first be approved by resolution of the city commission.
- (i) The foregoing restrictions on stock transfer shall not apply to corporations whose common stock is traded over the New York Stock Exchange or the American Stock Exchange, or that are institutional lenders.
- (j) In the event of any assignment or transfer pursuant to this section, the assignee shall execute an agreement of acceptance, subject to the approval of the city manager, evidencing that such assignee accepts the assignment subject to any or all of the provisions of this chapter and, if also a franchise waste contractor, of any applicable franchise agreement with the city; which acceptance shall also include an affirmative statement evidencing such assignee's intent to fulfill the obligations imposed under this chapter.
- (k) Notwithstanding the city's approval of an assignment or transfer of a franchise agreement, and the assignee's acceptance thereof, the original franchisee shall guarantee the performance of its assignee; and such assignment shall always provide the city with full recourse to the original franchisee.
- (l) Any contractor doing business, as specified in subsection (b) of this section, within the city limits, without first obtaining the required business tax receipt, will be subject to enforcement procedures and penalties, as set forth in section 102-356 et seq. Failure to comply with the regulations set forth in this chapter or in chapter 18 may result in the suspension or revocation of the business tax receipt pursuant to chapter 18 and, if a franchise waste contractor, of suspension or revocation of the franchise.

#### **Sec. 90-193. Permit required.**

The city manager shall require, and will issue, a permit for each garbage facility, recycling, hazardous and biohazardous waste, rolloff and portable container, for all solid waste accounts in the city serviced by a private waste contractor. The permit for solid waste collection and disposal shall be issued by the city manager after the contractor has complied with all requirements for obtaining a business tax receipt; any and all other requirements prescribed by this chapter; and has been cleared by the city's finance department. Rolloffs, portable containers and containers for recycling or hazardous and biohazardous wastes shall

be included, except that all recycling containers situated in a single location on a property shall require only one permit.

**Sec. 90-194. - Observance of federal, state, local regulations.**

All private waste contractors shall keep fully informed of all federal, state and local laws, ordinances, codes, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority that in any manner affect the work, or that in any way affect the conduct of their work. Contractors shall at all times observe and comply with all such laws, ordinances, codes, rules, regulations, and orders and decrees. Each private waste contractor shall obtain all required licenses including, without limitation, business tax receipts, and permits to conduct business pursuant to this chapter.

**Sec. 90-195. - Indemnification.**

Each private waste contractor shall execute an indemnification agreement whereby the contractor covenants to indemnify, hold harmless and defend the city, its officers, agents and employees, against and assumes all liability for any and all claims, suits, actions, damages, liabilities, expenditures or causes of actions of any kind arising from any solid waste collection and/or disposal activities, and/or the use of any public streets for the purposes authorized in this chapter; or resulting or accruing from any negligence, act, omission or error of the contractor, its officers, agents or employees and/or arising from the failure of the contractor, its officers, agents or employees, to comply with each and every covenant of any applicable franchise agreement with the city, or with any other city or county ordinance or state or federal law applicable to its activities and resulting in or relating to bodily injury, loss of life or limb or damage to property sustained by any person. The contractor shall hold the city, its officers, agents, and employees, harmless from and against all judgments, orders, decrees, attorney's fees, costs, expenses and liabilities incurred in and about any such claim, investigation or defense thereof, which may be entered, incurred or assessed as a result of the foregoing. The contractor shall defend, at his sole cost and expense, any legal action, claim or proceeding instituted by any person against the city, its officers, agents and employees, as a result of any claim, suit or cause of action accruing from activities authorized by this chapter.

**Sec. 90-196. - Insurance required.**

(a) Each private waste contractor must maintain throughout the entire effective period and/or term of its business tax receipt and/or franchise agreement, whichever term is longer, the following required insurance coverage:

- (1) *Commercial general liability*, in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. This policy must include coverage for contractual liability and specifically re-state the indemnity agreement set forth in section 90-195. The city must be named as an additional insured on this policy.
- (2) *Automobile liability*, in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage, covering all vehicles owned, leased or used by the contractor within the limits of the city. The city must be named as an additional insured on this policy.

- (3) *Workers' compensation and employer's liability*, as required by state law.
- (b) All companies providing insurance shall be authorized to do business in the state and rated B+: VI or better by Best's Key Rating Guide, latest edition.
  - (c) No change or cancellation of any insurance coverage shall be made without 30 days' written notice to the city's risk manager.
  - (d) All required policies of insurance are intended to be primary coverage to any insurance or self-insurance of the city possesses that may be applied to a loss resulting from the work performed by the contractors pursuant to this chapter.
  - (e) All policies shall provide full coverage from the first dollar of exposure. No deductibles will be allowed in any policies.
  - (f) As evidence of the above required coverage, the contractor must provide original certificates of insurance to the city's risk manager, which must be approved by the risk manager prior to the issuance of a business tax receipt, or the commencement date of a franchise agreement, as the case may be. The contractor must submit a new certificate evidencing continuing or replacement coverage prior to the expiration date of the insurance policies and must submit annually certified copies of the liability policies required in subsections (a)(1), (2).
  - (g) The city manager reserves the right to increase the kinds and amounts of insurance coverage required in this section, including the right to make periodic adjustments to the amounts of required coverage for inflation.
  - (h) Operation of activities by the contractor without the required insurance shall be grounds for revocation or suspension of the contractor's business tax receipt and/or franchise agreement.

**Secs. 90-197 - 90-220. Reserved.**

### **DIVISION 3. FRANCHISE**

**Sec. 90-221. Required; fees.**

Each franchise waste contractor shall pay to the city a franchise fee consisting of a percentage of the contractor's total monthly gross receipts. The city commission shall have the option of raising the franchise fee once yearly, by resolution, following a duly noticed public hearing with 30 days' prior notice to all franchise waste contractors. Such raises shall not exceed two percent of the contractor's total monthly gross receipts yearly. The term "gross receipts" as used in this section shall mean the entire amount of the fees collected by the contractor (whether wholly or partially collected) for solid waste collection and disposal within the city and including, without limitation, but excluding any taxes, and gross receipts from servicing rolloff and portable containers.

**Sec. 90-222. List of accounts.**

- (a) Each franchise waste contractor shall provide the city manager with the following information upon initial application for a franchise and, thereafter, at the commencement of each application for renewal:

- (1) A current list of the names and addresses of each account franchise;
  - (2) The frequency of service;
  - (3) The permit number and capacity of each waste dumpster as per account;
  - (4) The permit number and capacity for each recycling container, as per account;
  - (5) The address serviced by each dumpster; and
  - (6) The address serviced by each recycling container.
- (b) No property owner may share an account with another property owner.
- (c) Notwithstanding subsection (a)(1), the contractor shall notify the city manager, in writing, on a monthly basis, of any changes in its list of accounts.
- (d) Each franchise waste contractor shall notify the City of all accounts that have been discontinued prior to the accumulation of garbage on the previously serviced premises.

**Sec. 90-223. Monthly report.**

Each franchise waste contractor shall deliver to the finance department, on or before the last day of each month, a true and correct monthly report of gross receipts generated during the previous month from accounts within the city. This monthly report shall include the customer names, service addresses, account numbers, and the actual amount of solid waste and of any recyclable materials collected from each customer. Payments of the franchise fee shall be made monthly to the finance department, on or before the last day of each month, for gross receipts for the previous month. Contractors shall, on or before 60 days following the close of their respective fiscal year, deliver to the finance department a statement of annual gross receipts generated from accounts within the city for the preceding fiscal year, certified by an independent certified public accountant. The contractor's failure to provide the certified statement of annual gross receipts within the required time frame shall be grounds for revocation or suspension of the franchise.

**Sec. 90-224. Audit or inspection of licensee's books and records.**

Each franchise waste contractor shall allow the city's auditors, upon reasonable notice and during normal business hours (i.e. 9:00 a.m. — 5:00 p.m. Monday through Friday, excluding legal holidays), to audit, inspect and examine the contractor's books and records, and state and federal tax returns, insofar as they relate to city accounts, to confirm the contractor's compliance with this division. This information shall include, without limitation, the following: billing rates, billing amounts, sequentially pre-numbered invoices, signed receipts, trip tickets, computer records, general ledgers, and accounts receivable. Additionally, the city's auditors may communicate directly with contractor's customers for purposes of confirming compliance with this division. Failure to allow access to any books and records in this section shall be grounds for revocation or suspension of the franchise.

#### **Sec. 90-225. Failure to pay franchise fee; penalties.**

If a franchise waste contractor fails to pay any franchise fee (as set forth in section 90-221), when due and within the time provided, the contractor shall pay any and all of the city's expenses for collection of same, including, without limitation, audit costs and reasonable attorney fees and costs. If the contractor fails to pay the full franchise fee on or before the last day of each month, penalty fees for private waste collectors/contractors shall be as follows:

- (1) *Original delinquency.* Any franchise waste contractor who fails to remit any franchise fee imposed by this division within the time required shall pay a penalty of ten percent of the amount of the delinquent fee in addition to the amount of the delinquent fee.
- (2) *Continued delinquency.* Any franchise waste contractor who fails to remit the franchise fee on or before the 30th day following the date on which the fee first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the delinquent fee, in addition to the amount of the fee, and the ten-percent penalty imposed pursuant to subsection (1). An additional penalty of ten percent of the amount of the delinquent fee shall be paid for each additional 30-day period, or part thereof, during which the franchise fee is delinquent, provided that the total penalty imposed by subsection (1) and this subsection (2) shall not exceed 50 percent of the amount of the franchise fee. This penalty shall be in addition to the franchise fee and interest imposed by this division.
- (3) *Interest.* In addition to the penalties imposed in subsections (1) and (2) of this section, any franchise waste contractor who fails to remit any franchise fee imposed by this division shall pay interest at the highest legal rate of interest permitted by law on the amount of the franchise fee, exclusive of penalties, from the date on which the franchise fee first became delinquent until paid.
- (4) *Penalties merged with franchise fee.* Every penalty imposed and all interest accrued under the provisions of this section shall become a part of the franchise fee required to be paid.

#### **Sec. 90-226. Evidence of payment.**

In order to effectively provide for the collection of the required business tax receipts to the city, any person seeking to renew a business tax receipt pursuant to the provisions of chapter 18 shall provide the finance department with evidence of payment of all outstanding solid waste franchise fees, fines, and other charges, as a condition to reissuance or renewal of the business tax receipt.

#### **Sec. 90-227. Handling of complaints.**

Each franchise waste contractor shall maintain an office in Miami-Dade County with adequate staff and telephone service to handle and resolve all incoming calls and complaints between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. Between the hours of 4:00 p.m. and 8:00 a.m., Monday through Friday, and all day on Saturday and Sunday, including holidays, each contractor shall maintain an answering

service or answering machine to receive incoming calls and complaints. Any complaints received by the contractor before noon (12:00 p.m.) shall be resolved before 4:00 p.m. of that same day. Complaints received after noon (12:00 p.m.) but before 8:00 a.m. shall be resolved before noon (12:00 p.m.) of the following day. An emergency telephone number where the contractor may be reached shall be provided to the city manager or his authorized designee.

**Sec. 90-228. Regulations for servicing dumpsters, compactors and other garbage facilities.**

Garbage collection equipment shall consist of trucks with leakproof and enclosed bodies, with compactors and sanitizing materials in each truck, and covered in leakproof garbage dumpsters. The location of each dumpster, recyclable material container, and any and all other garbage facility(ies) shall be approved by the city manager, or his authorized designee, and a permit will be issued for each. No dumpster, recyclable material container, or any other garbage facility shall be placed or serviced until such permit is issued. Notwithstanding the preceding, in the event any such facility is delivered by a contractor without a permit, the city shall still receive payment for the account in computing the franchise fee due under section 90-221. Contractors shall return dumpsters, recyclable material containers, and any other garbage facilities to approved locations after servicing. Compactors shall not be installed without a permit from the city's building department. Each garbage facility and/or each recycling container must bear the name of the contractor and must be serviced and sanitized at least twice weekly. Garbage facilities or recycling containers located on public property, or without a city permit, shall be deemed abandoned and will be removed by the city at the contractor's expense, pursuant to section 90-331 et seq. Service pickups by trucks are to be made from streets and driveways. Trucks shall not be driven or parked on sidewalks at any time. Contractors may not park any truck on any public or private property within the city when not being used to service accounts. Collection hours for all solid waste or recyclable materials shall be between the hours of 7:00 a.m. and 7:00 p.m. only. All permanent employees of contractors shall carry identification cards, approved by the city manager or his designee, at all time(s) while servicing accounts. In addition to the required solid waste and recyclable materials collection pursuant to the provisions of this section 90-228, and other requirements of this chapter, contractors shall include the collection of garbage, rubbish, trash, and recyclable materials, up to and within that immediate area of the owner's private property line where a dumpster, compactor, recycling container, or garbage facility may be located and, at a minimum, within a radius of ten feet surrounding the location of said recycling container, or garbage facility, regardless of whether such garbage, rubbish, trash, or recyclable materials may or may not be included or secured in a recycling container, or other garbage facility. Such immediate collection of garbage, rubbish, trash or recyclable materials shall be incorporated by contractors as part of their regularly scheduled service pickups.

**Sec. 90-229. Selection of franchise waste contractors.**

- (a) Except as provided in section 90-233, the city shall not authorize more than five franchise waste contractors for residential and commercial solid waste collections and disposal. Each applicant for a franchise, or for a renewal thereof, shall submit its qualifications, in writing, to the city manager. The minimum qualifications to be considered in the granting of the franchise shall include:



- (1) Evidence of the applicant's ability to fulfill all duties and requirements of a franchise waste contractor, as set forth in this chapter, and including, without limitation, proper certification and adequate insurance coverage.
  - (2) Certification that the applicant has never defaulted on any government contracts or bid awards.
  - (3) Evidence that the applicant has the potential for a significant amount of business within the city, comprised of either a minimum of 50 committed accounts within the city. In the alternative, and at its sole discretion, the city commission may accept as evidence of compliance with this subsection, 50 comparable committed accounts from outside of the city.
  - (4) Certification that there are no unsatisfied judgments against the applicant.
  - (5) Certification that the applicant is not, and will not be, throughout the term of the franchise agreement, affiliated with, as a parent, subsidiary, by virtue of an interlocking directorate, or otherwise, an affiliated entity of any existing, private waste contractor under section 90-191, et seq., or other franchise waste contractor under section 90-221, et seq., including any current or prospective applicants therefore.
  - (6) The applicant's ability and commitment to provide its customers with:
    - a. Good service;
    - b. Competitive prices; and
    - c. Demonstrated and/or proposed "green" initiatives.
  - (7) The applicant's ability and commitment to provide additional "public benefit(s)" to the city which may include, without limitation, provision of additional waste collection, disposal, and/or recycling services (at no cost to the city) to city rights-of-way, city-owned public buildings, parks, and/or beaches; voluntary cost and/or fee reductions; and/or such other city public benefits and/or services as the city manager may, in his reasonable judgment and discretion, from time to time, require.
- (b) If more than one applicant for a franchise waste contractors' license qualifies under the minimum qualifications of this division, the issuance of the franchise shall be determined by the city commission, based upon the applicant which the city commission deems, in its sole and reasonable judgment and discretion (and having considered the recommendation of the city manager to have provided the most significant public benefit(s) to the city (pursuant to subsection 90-229(a)(7)).

**Sec. 90-230. Term of franchise agreements; initial term; renewal term.**

- (a) Effective May 1, 2010, franchise agreements shall have an initial term of five years. As to those certain franchise agreements between the city and franchise waste contractors in effect as of May 1, 2010, but having an initial three-year term which commenced on October 1, 2009, said initial term shall be extended from three to five years (with the five-year term commencing retroactively as of October 1, 2009).
- (b) Prior to the expiration of the initial term of a franchise agreement, the city commission may choose, in its sole discretion, to accept applications for new franchise waste

contractors, or, in the alternative, to renew an existing franchise agreement for up to an additional three-year renewal term.

**Sec. 90-231. Recycling requirements for franchise waste contractors; protest procedures.**

**(a) *Recycling requirements.***

- (1) Each franchise waste contractor shall, as a condition of the franchise, be required to offer directly, or through a subcontractor, recycling for any and all accounts (as defined below) serviced by the contractor (including, without limitation, any and all commercial and residential accounts).
- (2) Each contract with a franchise waste contractor for waste collection and disposal services (an account) shall include a proposal to provide recycling. Such proposal shall, to the maximum extent that is commercially feasible, maximize recycling activity in the city, and provide for sufficient flexibility in recyclable materials container size and location (as is both necessary and consistent for the particular account).
- (3) Each recycling proposal shall be required to disclose to the account holder the savings offset that is anticipated as a result of the recycling and the consequent reduction of solid waste disposed; provided, however, that the recycling proposal (and the required savings offset) shall remain within the purview of the franchise waste contractor and the particular account holder to negotiate.
- (4) Effective May 1, 2010, all contracts between a franchise waste contractor and an account holder for the collection and disposal of solid waste in the city shall be modified to include a provision to offer/provide recycling, consistent with the provisions of this subsection 90-231(a). The franchise waste contractor shall be given a six-month grace period commencing on May 1, 2010, to amend all of its contracts (including contracts with current account holders) to include a provision offering the required recycling services.

- (b) *Protest procedures for multifamily residences only.* In the event that the recycling bid and/or price quote (hereinafter, the offer) provided by the contractor to an account holder who is an owner, occupant, or operator or manager of an apartment building or other multifamily residence, is deemed unfair by said owner, occupant, or operator or manager, then the aggrieved party may file a protest with the city manager. Any such protest must be submitted in writing; must be made within 30 days of receipt of the offer by the aggrieved party; must include a copy of the offer; and must clearly state the reasons and grounds that the aggrieved party considers the offer to be unfair. Protests not made within the time period set forth in the preceding sentence shall be time-barred and shall receive no further consideration. Upon receipt of a timely written protest, the city manager shall provide a copy to the particular contractor, who may respond to the protest, in writing, within 15 days of receipt of the protest. At the end of the 15 days, the city manager has 30 days to direct that an administrative hearing be scheduled to consider the protest (which hearing need not necessarily be held within the 30-day period). The aggrieved party and contractor shall be given written notice, certified mail return receipt

requested, of the hearing date. The hearing shall be conducted by the city manager, or a designee appointed by the city manager, and shall be conducted in accordance with the provisions established pursuant to section 102-385. At the hearing, the city manager or his designee may hear testimony and consider any relevant evidence from the parties regarding the subject protest and, at the conclusion of the hearing, the city manager or his designee shall make a written determination as to the fairness or unfairness of the protest. An offer shall not be deemed to be unfair if it provides for prices, terms, and services as would be provided to buildings of comparable size and character within the area, and which is competitive within the local industry standards. If the offer is deemed unfair, the city manager, or the city manager's designee, shall require the contractor to provide the aggrieved party with a new offer that meets the minimum criteria for fairness (as established in the preceding sentence). The contractor's failure or refusal to provide a fair alternate bid and/or quote may be grounds for suspension or revocation of contractor's franchise agreement.

**Sec. 90-232. Bankruptcy or insolvency.**

If the franchise waste contractor becomes insolvent or if the contractor files a petition of voluntary or involuntary bankruptcy, its franchise shall automatically terminate no later than the date of filing of the bankruptcy petition.

**Sec. 90-233. Exemption to provide for recycling.**

- (a) Notwithstanding any other provisions of sections 90-221 through 90-231, until such time as the city commission approves and implements a city-wide recycling program for multifamily residences, which program may also include recycling for commercial establishments, subject to and as permitted by section 403.7046, Florida Statutes (hereinafter, the "city-wide recycling program"), the city manager may continue to license individual recycling contractors (pursuant to section 90-306 et seq.).
- (b) If the city commission determines at any time to approve and implement a city-wide recycling program, the city manager shall then meet with the current franchise waste contractors (subject to and as permitted by Section 403.7046, Florida Statutes), for the purpose of negotiating terms and conditions connected with the provision of recycling pursuant to the city's program, and as to that portion of the program pertaining to multifamily residences. The terms, including rates to be charged by contractors shall be comparable to those established in municipalities in Miami-Dade, Broward and Palm Beach Counties for provision of similar recycling services.
- (c) Each franchise agreement between the city and a franchise waste contractor shall require that, in the event that the city commission approves and implements a city-wide recycling program, any franchise waste contractor who opts not to provide the required recycling services for multifamily residences under the city's program, must notify its account holder, in writing, informing them that they may, within 60 days of receipt of the notice, elect to terminate their account and then existing contracts with said contractor, without liability to the account holder.

- (d) If none of the franchise waste contractors come to an agreement with the city manager within 60 days, the city manager may, at his/her option, provide recycling pursuant to the approved city-wide program by:
  - (1) Entering into an agreement with other persons to provide recycling to accounts serviced by franchise waste contractors;
  - (2) Entering into an interlocal agreement(s); and/or
  - (3) Granting additional franchises to waste contractors who are willing to provide the recycling services required by the city, and who shall also have all privileges and duties of franchise waste contractors as set forth in this chapter (including those pertaining to collection and disposal of solid waste).
- (e) If the city enters into agreement for provision of recycling services pursuant to the approved city program, except for an interlocal agreement, rates charged for recycling in the city by those contractors shall be set and approved by resolution of the city commission.
- (f) Notwithstanding anything to the contrary in this section 90-233 or the city-wide recycling program (if approved and implemented), selection of recycling contractors to service commercial establishments under the program shall be in accordance with the requirements of Section 403.7046, Florida Statutes, as same be amended from time to time.

**Sec. 90-234. Revocation of franchise.**

Failure on the part of a franchise waste contractor to comply in any material way with the provisions of this chapter or with its franchise agreement shall be cause for termination and revocation of the franchise, but no such termination shall take effect if the reasonableness or propriety thereof is protested by the contractor until a court of competent jurisdiction (with right of appeal in either party) shall have found that the contractor has failed to comply in material respect with any of the provisions of this chapter or of the contractor's franchise agreement with the city. If such protest is filed, the contractor shall continue to pay the city the franchise fee required by this chapter and its franchise agreement with the city.

**Sec. 90-235. Required certification and disclosure form for franchise waste contractors.**

- (a) Effective May 1, 2010, all contracts between a franchise waste contractor and an account holder for the collection and disposal of solid waste in the city shall require the franchise contractor to execute (as well as require the franchise waste contractor to have the contracting party, which is the contractor's customer/account holder, execute) the city's disclosure and certification (for City of Miami Beach franchise waste contractor customers), in the form specified in appendix 1. The executed certification and disclosure forms shall be the franchise waste contractor, maintained along with contractor's books and other records.

- (b) In order to enforce the provisions of this section, the city manager and/or his/her authorized designee may, at any time during the term of the franchise, request that the franchise waste contractor provide true and correct copies of any or all disclosure forms for its customer(s)/account holder(s). Contractor's compliance with this section may also be enforced by city audit, or inspections pursuant to section 90-224.
- (c) A franchise waste contractor's failure to comply with the provisions of this section may be grounds for suspension or revocation of contractor's franchise agreement with the city.

**Secs. 90-236 - 90-255. Reserved.**

## **DIVISION 4. SPECIALTY CONTRACTORS**

### **Subdivision I. Generally**

**Secs. 90-256 - 90-275. - Reserved.**

### ***Subdivision II. Rolloff/Rolloff Container/Portable Waste Container/Dumpster Contractors***

**Sec. 90-276. Permit Business tax receipt required.**

Except as provided elsewhere in this chapter, no person shall engage in the business of removing or disposing of construction and demolition debris or large quantities of trash from any premises within the city limits without first securing a permit for such activities from the city by paying the business tax receipt amount as set forth in chapter 18, and without showing proof of insurance, as required in section 90-191 et seq. However, franchise waste contractors shall not be required to obtain a separate business tax receipt to service rollofs or portable containers within the city.

**Sec. 90-277. Permits required.**

No rolloff, rolloff container, ~~dumpster~~ or portable container shall be placed or located within the city without a permit from the city for each location. ~~Failure to obtain a permit will result in a penalty of \$100.00 per location.~~

**Sec. 90-278. Fees and requirements; penalties for non-payment.**

The permit fees and requirements for rolloff container and grapple service contractors shall be as follows:

- (1) *On-street permit fee.* When the rolloff container is to be located on the street, the permit fee shall be 18 percent of the contractor's total monthly gross receipts for the month in which the permit was issued and every month thereafter that the permit is valid. Four barricades with flashing lights shall be posted. In addition, when the rolloff container is to be located in parking meter spaces, an additional fee shall be due, as set forth in appendix A, per meter, per day.

- (2) *Off-street permit fee.* When the rolloff container is to be located on private property, the permit fee shall be 18 percent of the contractor's total monthly gross receipts for the month in which the permit was issued and every month thereafter that the permit is valid.
- (3) *List of accounts.* Each contractor shall provide the city manager with a current list of the names and addresses of each account, upon initial application, and upon any application for renewal, of its permit, the frequency of service, and the permit number and capacity of each rolloff container or dumpster as per account and the address serviced by each rolloff container or dumpster. No property owner may share an account with another property owner.
- (4) *Monthly report.* Each contractor shall deliver to the city's finance department a true and correct monthly report of gross receipts generated during the previous month (from accounts within the city) on or before the last day of each month. This monthly report shall include the customer names, service addresses, account numbers, and the actual amount collected from each customer. Payments of any fees required in this section shall be made monthly to the finance department, on or before the last day of each month, for gross receipts of the previous month. Contractors having annual gross receipts reported to the city over \$200,000.00 shall, on or before 60 days following the close of their fiscal year, deliver to the finance department a statement of annual gross receipts (generated from accounts within the city) certified by an independent certified public accountant, reflecting gross receipts within the city for the preceding fiscal year.
- (5) *Audit or inspection of contractor's books and records.* Each contractor shall allow the city auditors, upon reasonable notice and during normal business hours, to audit, inspect and examine the contractor's books and records, and state and federal tax returns, insofar as they relate to city accounts, to confirm the contractor's compliance with this section. This information shall include, but not be limited to, the following: billing rates, billing amounts, sequentially pre-numbered invoices, signed receipts, trip tickets, computer records, general ledgers and accounts receivable sorted by service address. Additionally, the city auditors may communicate directly with customers of the contractor for the purpose of confirming compliance with this section. Failure to provide requested and complete records in a timely manner shall be cause for revocation of the permit pursuant to ch. 18.
- (6) *Failure to pay permit fee; penalties for late payment.* If the contractor fails to timely pay the full permit fee as set forth in subsections (1) and (2) of this section, the contractor shall pay any and all of the city's expenses for collection of such fees, including, but not limited to, court costs, audit costs and reasonable attorney fees. If the contractor fails to pay the full permit fee on or before the last day of each month, penalty fees for specialty contractors shall be as follows:
- (a) *Original delinquency.* Any specialty contractor who fails to remit any permit fee imposed by this division within the time required shall pay a penalty of ten percent of the amount of the delinquent fee in addition to the amount of the fee.

- (b) *Continued delinquency.* Any specialty contractor who fails to remit the permit fee on or before the 30th day following the date on which the fee first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the fee in addition to the amount of the fee and the ten percent penalty imposed pursuant to subsection (1). An additional penalty of ten percent of the amount of the delinquent fee shall be paid for each additional 30-day period, or part thereof, during which the permit fee is delinquent, provided that the total penalty imposed by subsection (a) and this subsection (b) shall not exceed 50 percent of the amount of the permit fee. This penalty shall be in addition to the permit fee and interest imposed by this division.
- (c) *Interest.* In addition to the penalties imposed in subsections (a) and (b), any specialty contractor who fails to remit any permit fee imposed by this division shall pay interest at the, highest legal rate of interest permitted by law on the amount of fee, exclusive of penalties, from the date on which the permit fee first became delinquent until paid.
- (d) *Penalties merged with permit fee.* Every penalty imposed and all interest accrued under the provisions of this section shall become a part of the permit fee required to be paid.
- (7) *Evidence of payment.* In order to effectively provide for the collection of the permit fee by the contractor to the city, any person seeking to renew his/her annual business tax receipt pursuant to the provisions of chapter 102, article V, in addition to the requirements contained therein, shall provide to the finance director evidence of payment of all outstanding permit fees, fines and other charges as a condition to reissuance or renewal of the business license.
- (8) *Identification of equipment.* All equipment utilized to collect and transport solid waste in the city must be conspicuously marked on both sides of the automotive unit with the name of the hauler, tare weight and cubic yard capacity. Identification information must also be marked on all trailer and container units. All markings must be in letters and numerals at least two inches in height.

**Sec. 90-279. Location restrictions.**

The city has the right to restrict the location of any rolloff, rolloff containers, portable containers, or dumpsters in order to ensure the public's safety and to prevent traffic hazards. It is prohibited to place rollofs and portable containers in the following locations and areas:

- (1) Alleys, lanes, bridges.
- (2) Ocean Drive, from ~~Biscayne Street~~ South Pointe Drive to 15th Street.
- (3) Collins Avenue, from Biscayne Street to 87th Terrace.
- (4) Washington Avenue, from ~~Biscayne Street~~ South Point Drive to 17th Street.

(5) 41st Street, from Collins Avenue to Alton Road.

(6) 71st Street, from Collins Avenue to Bay Drive.

**Sec. 90-280. Requirements for rollofs, rolloff containers, and portable containers, and dumpsters. Use restrictions; condition.**

- a. Rollofs, rolloff containers, and portable containers, or dumpsters, respectively, shall be used only for the temporary storage and removal of construction and demolition debris, or for the removal of large quantities of trash and/or bulky waste. None of those materials is ever Construction and demolition debris, and bulky waste is never to be stored or permitted to overflow directly on the ground, or to be permitted to rise at any time above the top of the rolloff, rolloff container, or portable container, as rolloff and portable containers must be used at all times. Rolloff and portable containers shall not be used for the removal of garbage or commercial waste.
- b. All rollofs, rolloff containers, and portable containers, shall be:
  - (1) maintained in good condition and repair, painted, and clean. Graffiti violations are subject to the provisions of sec. 70-121, et seq.
  - (2) provided with a secure cover sufficiently tight and non-permeable to prevent the escape of its contents. In addition, the cover shall comply with the requirements of Sec. 316.520(2) of the Florida Statutes or any comparable successor provisions, and all administrative regulations and interpretations thereunder;
  - (3) subject to inspection and approval, or to condemnation. An appeal from a condemnation shall be to the city manager or the city manager's designee.

**Sec. 90-281. Reserved. Overflowing rollofs and portable containers.**

~~Overflowing rollofs and portable containers and dumpsters are prohibited. The city manager shall have the authority to order the removal by the property owner of any such overflowing rolloff or portable container or dumpster.~~

**Secs. 90-282 - 90-305. Reserved.**

**Subdivision III. Recycling Waste Contractors**

**Sec. 90-306. License required.**

No person shall engage in the business of removing, disposing of, or collecting any recycling materials from any property and/or premises within the city limits without first having secured a business tax receipt for such activities from the city by paying the fee set forth in chapter 18, and by showing proof of insurance, as required in section 90-191 et seq.

**Sec. 90-307. Expiration of licenses.**

Effective October 1, 2008, permits issued to recycling contractors shall be for a term of one year, unless such recycling is pursuant to a franchise agreement, in which case, the



permit shall be for the term of the franchise agreement. The city may at any time approve and implement a citywide recycling program, and may then cease permitting individual recycling contractors. Recycling contractors operating under a valid business tax receipt at the time of commencement of such city-wide program may continue operation until the expiration date of said receipt, but will thereafter cease operation within the city.

**Sec. 90-308. Monthly report.**

Each recycling contractor shall deliver monthly to the city manager or his authorized designee, an accurate report regarding the nature and disposition and volume of recyclable materials collected by it from each account in the city. Upon request by the city manager or his authorized designee, each contractor shall also furnish the city with verifiable information regarding the method and place of final disposal or distribution of said materials.

**Sec. 90-309. Exemption for interlocal agreements.**

Activities of recycling contractors within the city shall be subject to and may not interfere with recycling activities conducted within the city pursuant to interlocal agreements existing at the time of issuance of the recycling contractor's permit and/or business tax receipt.

**Sec. 90-310. Regulations applicable.**

All recycling contractors must comply with all of the requirements set forth in sections 90-98, 90-99, 90-227, and 90-228 of the City Code.

**Secs. 90-311 - 90-330. Reserved.**

**Subdivision IV. Hazardous, Biohazardous Waste Contractors**

**Sec. 90-331. Permit required.**

Except as provided elsewhere in this division, no person shall engage in the business of removing, disposing or collecting any hazardous or biohazardous wastes from any premises within the city without first having secured a business tax receipt for such activities from the city by paying the fee set forth in chapter 18, and by showing proof of insurance, as required in section 90-191 et seq., and proof of required state licenses and fee.

**Sec. 90-332. Requirements and fees.**

- (a) *List of accounts.* To obtain the permit required by section 90-331, each contractor must provide the city manager or his authorized representative with a list of all of his accounts within the city, expressly stating whether there is hand collection of bags or collection by dumpsters; frequency of service per week; and a description of services.
- (b) *Permit and approval of location required.* After an inspection of the location where the account is going to be serviced and approval of the location by the city manager or his authorized designee, a biohazardous waste permit, valid for one city fiscal year, will be issued by the city. The fee for each permit will be as specified in appendix A. This permit is not transferable.

(c) *Disposal restrictions.* Disposal of hazardous or biohazardous wastes shall be done only in accordance with section 90-103.

**Secs. 90-333 - 90-339. Reserved.**

Sustainability and Resiliency Committee  
March 8, 2017

**Discussion on Stormwater Best Management Practices**

Item to be presented by Margarita Wells, Interim Environment and Sustainability  
Director

**ITEM # 2**

## **VERBAL REPORT AT COMMITTEE MEETING**

**Sustainability and Resiliency Committee**  
**March 8, 2017**

**Discussion on Best Practices for Beach Sand Sifting and Maintenance**

John Ripple, Beach Maintenance Director/ Margarita Wells, Interim Environment and Sustainability Director


**ITEM #3**

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Sustainability and Resiliency Committee

FROM: Jimmy L. Morales, City Manager 

DATE: March 8, 2017

SUBJECT: **DISCUSSION ON BEST PRACTICES FOR BEACH SAND SIFTING AND MAINTENANCE**

At the City Commission meeting on January 11, 2017, the Mayor and City Commission referred a discussion to the Sustainability and Resiliency Committee (SRC) regarding best practices for beach sand sifting and maintenance. This item was sponsored by Commissioner Michael Grieco.

### **BACKGROUND**

The City has over seven miles of white, sandy beaches that were artificially created through nourishment between 1975 and 1980 by the U.S. Army Corps of Engineers and the Florida Department of Environmental Protection as part of the Miami-Dade County Beach Erosion Control and Hurricane Protection Project. The City's beaches are a critical economic, recreational, environmental, storm protection, and erosion control asset for the City of Miami Beach, Miami-Dade County, and the State of Florida. Last year, they attracted approximately 7 million overnight visitors to Miami Beach which spent \$11.4 billion. Additionally, the beaches are the first line of defense in protecting over \$30 billion in taxable property value in Miami Beach against storm surge and sea level rise. Keeping the City's beaches clean is a critical component of retaining their recreational and environmental value.

The beaches are owned by the State of Florida but are leased and managed by the City in accordance with a state-approved beachfront management plan. The current City of Miami Beach Beachfront Management Plan was adopted in August 2016. The Plan defines management responsibilities and details concession rules and regulations, special event permit requirements, habitat restoration, and other key beach management activities.

### **ANALYSIS**

Miami-Dade County is responsible for beach maintenance, including sand sifting and litter control. Sand sifting is a best practice for removing small debris that is difficult to pick up with hand crews. The County currently aims to sift the area between Government Cut and 29 Street twelve times per year and areas north of 29 Street a minimum of eight times per year. However, they regularly sift heavily used beach areas, such as those adjacent to Lummus Park, more frequently than regularly scheduled. Additionally, during spring break and high use periods, the County sifts the section of beach between 5 Street and 13 Street nearly every day to keep up with the greater volumes of litter.

The City has one sifter that supplements County efforts during high impact periods by servicing beaches waterward of City parks on a rotating basis. Outside of these periods, the City sifter is operated once per week in the spoil areas west of the dunes and to supplement County efforts east of the dune following special events. Special events that occur on the beach are also

required to contract the City, County, or an outside contractor to sift the areas permitted for their use. The City charges special events \$50 per hour, including set-up and travel time, for a minimum of four hours.

Beach sifting manufacturers recently participated in an equipment demonstration in South Beach attended by Miami-Dade County and City of Miami Beach representatives. Equipment features that were evaluated include mesh size, sifter width, hopper sizes, and maintenance requirements. The County and City favored two different machines, both of which can be purchased in varying mesh sizes and widths depending on the level of service desired. The City's sifter was purchased in March 2016 and is in good condition, requiring only \$2,246 in maintenance since it was purchased.

There are no established best practice standards for beach maintenance. Each maintaining agency executes a plan that is best suited to meet the needs of their community. Current beach maintenance operations in Miami Beach were developed to address the impacts of the high volume of users and to maintain the high standard residents and visitors expect of the City's beaches. The City and County regularly evaluate these practices and modify them accordingly as the community's needs change.

## **CONCLUSION**

The following is presented to the members of the Sustainability and Resiliency Committee for discussion.

SMT/ESW/MKW

**Sustainability and Resiliency Committee**  
**March 8, 2017**

**Discussion on the City to offer Christmas Tree Recycling, Commencing in 2017**

Item to be presented by Jay Fink, Assistant Public Works Director

**ITEM #4**



## **VERBAL REPORT AT COMMITTEE MEETING**

**Sustainability and Resiliency Committee**  
**March 8, 2017**

**Discussion to Incentivize Solar Panel Installations In The City By Waiving Permit Fees.**

Item to be presented by Flavia Tonioli, Sustainability Manager

**ITEM # 5**

**ITEM DEFERRED TO NEXT MEETING**

**Sustainability and Resiliency Committee**  
**March 8, 2017**

**Discussion on Receiving an Update Regarding City Action and Fines Given To Garbage Operators for Leaking Trucks**

Item to be presented by Hernan Cardeno, Code Compliance Director/ Al Zamora, Sanitation Division Director

**ITEM # 6**

Commission Committee Assignments - C4 C

## MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Commissioner John Elizabeth Aleman  
DATE: March 1, 2017

SUBJECT: REFERRAL TO THE SUSTAINABILITY AND RESILIENCY COMMITTEE TO RECEIVE AN UPDATE REGARDING CITY ACTION AND FINES GIVEN TO GARBAGE OPERATORS FOR LEAKING TRUCKS.

---

**ANALYSIS**

Please place a referral item to the Sustainability and Resiliency Committee on the March 1, 2017 City Commission Meeting Agenda to receive an update regarding City action and fines given to garbage operators for leaking trucks.

I sponsored a discussion item on the June 8, 2016 Commission Agenda regarding leaking by Waste Management garbage trucks and the steps the city should take to address the situation. The item was fueled by residents' concerns about the trucks leaking liquids and spilling garbage onto the streets along their trash pickup routes. At that time, I felt that it would be important to assess the state of the trucks in addition to learning more about the procedures that waste haulers follow and actions taken by the City to remedy the situation.

While a campaign to encourage residents to report leaking trucks was implemented mid 2016 (see the attached flyer), I have continued to receive complaints from residents with evidence that trucks consistently leak liquids and spill garbage along their routes. I include pictures shared with me of the trash being left behind by the trucks and request an update on all actions taken by the City over the past year to remedy the situation.

I would ask the Sustainability and Resiliency Committee to consider your update and determine any action necessary.

If you have any questions, please do not hesitate to call our office at ext. 6437.

**Legislative Tracking**

Commissioner John Elizabeth Aleman

**ATTACHMENTS:****Description**

- [1320 Drexel Avenue - 2-6-2017](#)
- [1320 Drexel Avenue - 2-6-2017 \(2\)](#)
- [Lincoln Lane Alley - 2-6-2017](#)
- [Lincoln Lane Alley - 2-6-2017 \(2\)](#)
- [Lincoln Lane Alley - 2-6-2017 \(3\)](#)
- [Leaking Truck Reporting Campaign Poster](#)







See a leaking truck?  
**REPORT IT!**



Call 305.604.CITY (2489)  
or use the eGOV app

MIAMI BEACH  
RISING  
ABOVE

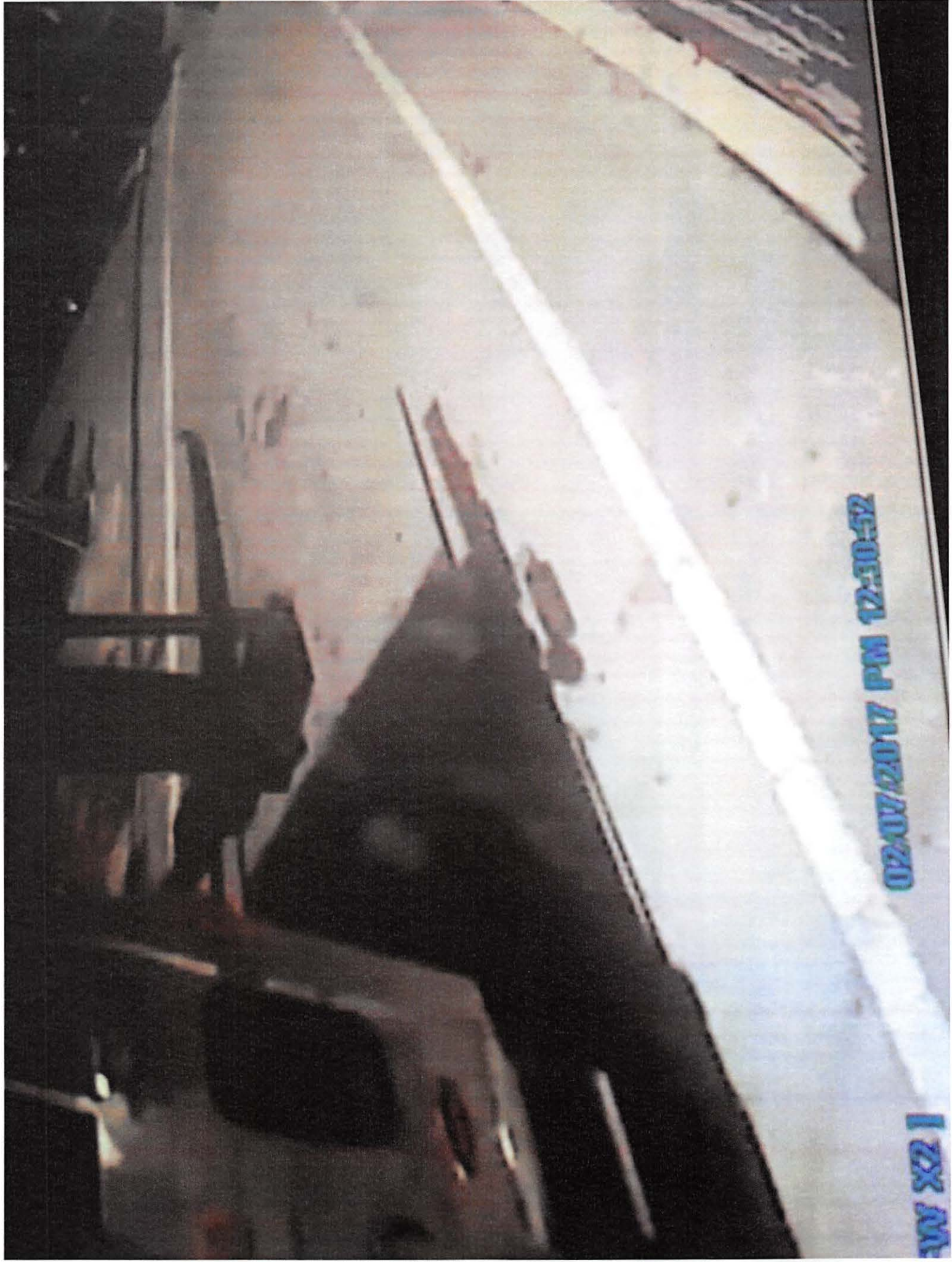




MEAT MARKET







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Sustainability and Resiliency Committee  
March 8, 2017

**Mayor's Blue Ribbon Panel on Flooding and Sea Level Rise**

Item to be presented by Bruce Mowry, City Engineer

**ITEM # 7**



## **MAYOR'S BLUE RIBBON PANEL ON SEA LEVEL RISE**

*Our Mission: to monitor the progress of the City's stormwater management program and comprehensive flood management plan; to study and recommend options for historic preservation in the face of climate change; to evaluate and recommend recommendations related to current floor to area ratio (FAR) in light of the need for climate adaptation and the resiliency of the City of Miami Beach; to evaluate and recommend green infrastructure design and to provide resident/business subject matter expertise and input into the development of the citywide Resiliency Strategy.*

**Tuesday, March 7, 2017, 1:00 PM – 3:00 PM**

**City Manager's Large Conference Room**

### **Draft Agenda**

1. Welcome and Call to Order – Scott Robins, Chair
2. Approval of Minutes from meeting held February 7, 2017
3. Old Business
  - a. Project Review – Dr. Bruce Mowry, City Engineer & David Martinez, Director, CIP
4. New Business
  - a. Work Plan Update – Susy Torriente, Assistant City Manager/Chief Resiliency Officer
5. Panel Discussion
6. Summary & Assignments
7. Schedule for upcoming meetings
8. Adjournment

**Sustainability and Resiliency Committee**  
**March 8, 2017**

**Sustainability Committee**

Item to be presented by Dave Doeblar, Committee Chairman

**ITEM # 8**





City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

**TO: Members of the Sustainability Committee**

David Doeblar, Chair – Appointed by Commissioner Micky Steinberg  
Steve Vincenti – Appointed by Commissioner Michael Grieco  
Nancy Bernstein – Appointed by Mayor Philip Levine  
Michael DeFilippi – Appointed by Commissioner Ricky Arriola  
Cheryl Jacobs – Appointed by Commissioner Joy Malakoff  
Richard Conlin – Appointed by Commissioner Kristen Rosen-Gonzalez  
Scott Diffenderfer – Appointed by Commissioner John Elizabeth Aleman

**DATE:** March 8, 2017

**SUBJECT: MINUTES OF THE SUSTAINABILITY COMMITTEE MEETING OF FEBRUARY 28, 2017**

**The attendees were as follows:** Dave Doeblar and Richard Conlin.

**Absentees:** Michael DeFilippi, Nancy Bernstein, Scott Diffenderfer, Cheryl Jacobs and Steve Vincenti.

**City Staff:** Al Zamora, Sanitation Director; Adrian Morales, Property Management Director, Francisco Garcia, Construction Manager, Flavia Tonioli, Sustainability Manager; and Yanira Pineda, Sustainability Coordinator; Mark Morgan, Maintenance Management Coordinator.

**1. Minutes**

- a. No quorum to approve the January 31, 2017 meeting minutes.

**2. SRC**

- a. Update of the February 15, 2017 Sustainability and Resiliency Committee (SRC) meeting provided by Mr. Dave Doeblar.

**3. Sustainability Committee Work Plan**

**a. New Business**

- i. 2017 items. Mr. Doeblar went over all the main topics selected for discussion for the 2017 Sustainability Committee. The topics were distributed throughout the year for discussion as following:

**A) MARCH: TRANSPORTATION**

- EV stations
- Water taxis (N-S route within the City)
- Public transportation (Busses frequency)
- Traffic lights (to improve traffic flow)

**B) APRIL: WASTE MANAGEMENT & LITTER**

- Unified branding and messaging for waste and recycling dumpsters
- Waste Management accountability for litter

**C) MAY: WASTE MANAGEMENT & LITTER**

- Multilingual educational recycling campaign
- Recycling during special events
- Citizen voluntary service program ("mind your block")

**D) JUNE: WASTE MANAGEMENT & LITTER**

- Beach recycling

E) JULY: ENERGY

- Solar initiatives and regulations
- Retrofits to LED lights
- Green roofs

F) SEPTEMBER: CLIMATE CHANGE/RESILIENCY/GHG EMISSIONS

- Personal adaption resiliency tool-kit
- Farmers market in North beach

G) OCTOBER: WATER QUALITY

- Storm gratings for new construction project areas
- Frequency of cleaning schedules and audits

H) NOVEMBER:

- Water quality testing (Ocean rescue)
- Waste collectors in canals to capture trash

I) DECEMBER

Wrap-up of all items and 2017 achievements

- ii. Earth Day. Ms. Flavia Tonioli provided a brief update on potential activities for Earth month, including: the Rain-Barrel and Composting workshop; Tree/Balcony give-away; Dune restoration; and Waterways Clean-up. During the next Sustainability Meeting, Ms. Tonioli will provide an update on the confirmed activities and dates.

**b. Old Business**

- i. Implementing doggie bag stations around Miami Beach. Mr. Doebler mentioned there is a need for more bag stations in some locations within the City, such as Flamingo Park. Mr. Al Zamora explained that the City policy is not to install more doggie bags stations in the right-of-way (ROW). Mr. Zamora explained that the largest cost is not the station itself, but the replenishment of the bags. Mr. Zamora mentioned that staff talked with several property associations to have them install the stations and provide the bags for it, as well as tried to get sponsorships for it, but given the amount of bags used and the cost associated to it, there was no interest. The members of the Committee discussed how the litter issue is an educational matter and the City should have a greater outreach with the property associations. Ms. Yanira Pineda mentioned the City has staff that can participate in associations meeting and can bring the issue to their attention. As part of the litter discussion, this item will be brought again for the Committee to discuss how educational efforts can improve the issue.
- ii. Converting FPL lights in alleys to LED. Ms. Tonioli explained that since 2013 Public Works has been substituting the existing lights for LED lights in the ROW. Mr. Adrian Morales mentioned they would like to retrofit all parking garages with LED lights and explained the benefits relating to overall sustainability, efficiency and safety. He also mentioned they were looking at other retrofit improvements, including occupancy sensors. Mr. Doebler mentioned the Committee could pass a motion to support the retrofits for all garages, supporting the property management budget request for FY17/18. This item will be rebought to the next Committee meeting since there was no quorum to pass the motion.

**4. Next Meeting**

- a. March 28, 2017.



Sustainability and Resiliency Committee  
March 8, 2017

**Resiliency Strategy**

Item to be presented by Susanne Torriente, Assistant City Manager/ Amy Knowles, Deputy Resiliency Officer

**ITEM # 9**

## Residential Parking ORDINANCE

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF  
THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY  
CODE, BY; PROVIDING FOR CODIFICATION; REPEALER;  
SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS,** ; and,

**WHEREAS,** ; and,

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

**SECTION 1.** Chapter 130 of the City Code, entitled "Off-Street Parking," Article II, "Districts; Requirements," Section 130-32, is hereby amended as follows:

**Sec. 130-32. - Off-street parking requirements for parking district no. 1.**

Except as otherwise provided in these land development regulations, when any building or structure is erected or altered in parking district no. 1, accessory off-street parking spaces shall be provided for the building, structure or additional floor area as follows:

\* \* \*

**(6) Apartment building and apartment-hotel:**

- a. Apartment buildings on lots that are ~~50~~ 65 feet in width or less: ~~1.5 spaces per unit. There shall be no parking requirement, provided secure storage for alternative transportation such as scooters, bicycles, and motorcycles, is provided.~~
- b. Apartment buildings on lots wider than ~~50~~ 65 feet:
  - ~~1.5~~ 1 (one) spaces per unit for units between 550 and ~~999~~ 1,600 square feet;
  - ~~1.75 spaces per unit for units between 1,000 and 1,200 square feet;~~
  - 2.0 spaces per unit for units above ~~1,200~~ 1,600 square feet.
- c. Designated guest parking: Developments of 20 units or less shall have no designated guest parking requirements. Multi-family buildings and suites-hotels with more than 20 units shall be required to provide supplemental designated guest parking equal to ten percent of the required residential parking spaces.
- d. For existing apartment and apartment-hotel buildings, which are classified as "contributing" are located within the Normandy Isles National Register District or the North Shore National Register District, and which are being substantially retained, preserved and restored, there shall be no parking requirement for the existing structure, and any addition up to a maximum of 2,500 square feet, whether attached or detached. The proposed addition to the existing structure

shall be subject to the review and approval of the Design Review Board or Historic Preservation Board, whichever has jurisdiction, and shall include a renovation plan for the existing structure that is fully consistent with the Secretary of the Interior Guidelines and

\* \* \*

**SECTION 2.** Chapter 130 of the City Code, entitled "Off-Street Parking," Article II, "Districts; Requirements," Section 130-38, is hereby amended as follows:

**Sec. 130-38. - Mechanical and robotic parking systems.**

- (1) Definitions.
  - (a) *Mechanical parking* means mechanical parking lifts, robotic parking systems, and/or vehicle elevators.
  - (b) *Mechanical parking lift* means an automated mechanism that lifts vehicles to make space available to park other vehicles below it in a vertical tandem fashion.
  - (c) *Robotic parking system* means a mechanical garage using elevator systems to hoist individual vehicles from receiving areas to separate auto storage areas.
  - (d) *Vehicle elevator* means an elevator used for motor vehicles in lieu of ramps within a parking structure.
- (2) Parking spaces to be used to satisfy accessory off-street parking requirements must conform to the provisions of article III "design standards" of this chapter, with respect to all-weather surface area, minimum parking space dimensions, drive width, interior aisle width, and required markings. Therefore, the use of mechanical parking devices, robotic parking systems and vehicle elevators to satisfy accessory off-street parking requirements shall not be permitted, except as hereinafter provided.
- (3) Exceptions to the mechanical parking prohibition may be considered by the planning board, pursuant to the conditional use process in chapter 118, article IV of the City Code, if the proposed project meets the following conditions:
  - (a) Commercial main use parking garages on a separate lot.
    - (i) Commercial main use parking garages, open to the public, may utilize mechanical parking devices, robotic parking systems and/or vehicle elevators, subject to all other provisions of section 130-68.
    - (ii) Parking spaces within commercial main use parking garages utilizing mechanical parking may be used to satisfy off street parking requirements for residential or commercial uses required within the building by section 130-68 for the cladding of such garages, as may be required by the design review procedures. Notwithstanding the foregoing, any accessory commercial use within commercial main use parking garages utilizing mechanical parking shall not generate an off-street parking requirement in excess of 25 percent of the total number of spaces in the garage.
    - (iii) Parking spaces within commercial main use parking garages utilizing mechanical parking, constructed on land:
      - a. Located within a local historic district (except not within the Ocean Beach local historic district); and
      - b. On land which was vacant as of October 17, 2008; and

- c. On land within 300 feet of a proposed new hotel development;
 

May be used to satisfy off street parking requirements for the proposed new hotel units and the following hotel accessory uses: retail (at a maximum of 75 square feet per hotel unit), auditorium, ballroom, convention hall, gymnasium, spa, meeting rooms or other similar places of assembly (not including restaurants or alcoholic beverage establishments). However, in order to utilize mechanical parking to satisfy off street parking requirements for the foregoing uses, the following conditions must be satisfied:

  - 1. At least one-half of all parking spaces within the commercial main use parking garage shall be reserved for use by the general public (not to be used for valet storage for offsite valet services);
  - 2. Mechanical parking permitted under this subsection shall be for the sole purpose of new hotel development. For purposes of this subsection, new hotel development means newly constructed hotel units and the following hotel accessory uses, provided that such hotel accessory uses are part of the same development project as the newly constructed hotel units: retail (at a maximum of 75 square feet per hotel unit), auditorium, ballroom, convention hall, gymnasium, spa, meeting rooms or other similar places of assembly (not including restaurants or alcoholic beverage establishments);
  - 3. A restrictive covenant in a form acceptable to the city attorney committing the parking garage to providing parking for the related hotel property, and maintaining such hotel property as a hotel, for at least 30 years, subject to release by the planning board if such board determines that the restriction is no longer necessary, shall be recorded prior to the issuance of a full building permit; and
  - 4. Suite hotel units, as defined by section 142-1105, cannot satisfy their off-street parking requirements by using mechanical parking.
- (iv) Except as described above in subsections 3(a)(ii) and (iii), mechanical parking system within main use parking garages, operating either as commercial garages open to the public, or, as private noncommercial garages, may not be used to satisfy off street parking requirements for uses on a separate lot. This provision may be waived through the procedures detailed in subsection (c), below.
- (b) Existing multifamily buildings.
  - (i) Existing multifamily buildings with a deficiency of parking may utilize mechanical parking devices within the space of the existing parking structure area. All parking lifts shall be located within a fully enclosed parking garage and shall not be visible from exterior view. No outside parking lifts shall be permitted.
  - (ii) The increased number of parking spaces as a result of mechanical parking under this provision shall not be used to satisfy any accessory off-street parking requirements.
- (c) Projects proposing to use mechanical parking devices, robotic parking systems and/or vehicle elevators to satisfy accessory and main use off-street parking requirements.

- (i) Projects proposing to use mechanical parking devices, robotic parking systems and/or vehicle elevators to satisfy accessory and main use off-street parking requirements shall prepare schematic floor plans prior to site plan review by the applicable land use board. Two sets of schematic floor plans shall be required:
  - 1. One set of schematic plans sufficient to show the proposed development project with accessory and main use off-street parking requirements satisfied by traditional, nonmechanical means, meeting all aspects of the design standards for parking spaces required in article III of chapter 130, and other provisions of these land development regulations, and requiring no variances from these provisions; and
  - 2. A second set of schematic plans, sufficient to show the same proposed development project, utilizing mechanical parking devices, robotic parking systems and/or vehicle elevators to satisfy accessory and main use off-street parking requirements.

The first set of schematic plans shall be reviewed by planning department staff for zoning compliance prior to the site plan review hearing by the applicable land use board. This first set of schematic plans may include one level of below-grade parking spaces, provided such below grade spaces are within the confines of the subject development site and are not located below city property, adjacent private property that is not part of the development site or any rights-of-way. If it is determined that these schematic plans meet the requirements of the design standards of the city code, then the total number of parking spaces shown on the plans shall be noted. Henceforth, the project may proceed to site plan approval based on the second set of plans, using mechanical parking. However, if the first set of schematic plans includes below grade parking spaces, at least 50 percent of the number of below grade parking spaces shown in the first set of plans must be located below grade in the second set of plans utilizing mechanical parking. Further, the allowable residential density, and the intensity of the uses permitted for the proposed project, shall not exceed that which would have been permitted using the number of parking spaces noted on the first set of plans using traditional parking. No variances to these provisions shall be permitted.

(d) Apartment buildings utilizing mechanical lifts with 20 apartment units or less shall be exempt from the requirements of section 138-38 (3)(c), and may be approved by the design review board or historic preservation board, as applicable, in accordance with the review criteria of section 138-38(4), provided the parking area is accessed from a rear alley and secure storage for alternative transportation such as scooters, bicycles, and motorcycles is provided on site.

- (4) As part of the conditional use, design review board, or historic preservation board review process for the use of mechanical parking devices, robotic parking systems and/or vehicle elevators under any of the provisions of this section, ~~the planning board shall consider~~ the following review criteria shall be evaluated when considering each application for the use of mechanical parking systems:

- (a) Whether the scale of the proposed structure is compatible with the existing urban character of the surrounding neighborhood;
  - (b) Whether the proposed use of mechanical parking results in an improvement of design characteristics and compatibility with the surrounding neighborhood and has demonstrated to the planning board how the scale, mass, volume and height of the building are reduced by the use of mechanical parking;
  - (c) Whether the proposed use of mechanical parking does not result in an increase in density or intensity over what could be constructed with conventional parking;
  - (d) Whether parking lifts or mechanisms are located inside, within a fully enclosed building, and not visible from exterior view;
  - (e) In cases where mechanical parking lifts are used for self-parking in multifamily residential buildings; whether approval is conditioned upon the proper restrictive covenant being provided limiting the use of each lift to the same unit owner;
  - (f) In cases where mechanical parking lifts are used for valet parking; whether approval is conditioned upon the proper restrictive covenant being provided stipulating that a valet service or operator must be provided for such parking for so long as the use continues;
  - (g) Whether a traffic study has been provided that details the ingress, egress and circulation within the mechanical parking facility, and the technical and staffing requirements necessary to ensure that the proposed mechanical parking system does not cause excessive stacking, waiting, or backups onto the public right-of-way;
  - (h) Whether a proposed operations plan, including hours of operation, number of employees, maintenance requirements, noise specifications, and emergency procedures, has been provided;
  - (i) In cases where the proposed facility includes accessory uses in addition to the parking garage, whether the accessory uses are in proportion to the facility as a whole, and delivery of merchandise and removal of refuse, and any additional impacts upon the surrounding neighborhood created by the scale and intensity of the proposed accessory uses, are adequately addressed;
  - (j) Whether the proximity of the proposed facility to similar size structures and to residential uses creates adverse impacts and how such impacts are mitigated;
  - (k) Whether a cumulative effect from the proposed facility with adjacent and nearby structures arises, and how such cumulative effect will be addressed;
- (5) Mechanical parking devices, robotic parking systems and/or vehicle elevators must also satisfy the following conditions:
- (a) The noise or vibration from the operation of mechanical parking lifts, car elevators, or robotic parking systems shall not be plainly audible to or felt by any individual standing outside an apartment or hotel unit at any adjacent or nearby property. In addition, noise and vibration barriers shall be utilized to ensure that surrounding walls decrease sound and vibration emissions outside of the parking garage;

- (b) For mechanical lifts, the parking lift platform must be fully load-bearing, and must be sealed and of a sufficient width and length to prevent dripping liquids or debris onto the vehicle below;
  - (c) All free-standing mechanical parking lifts must be designed so that power is required to lift the car, but that no power is required to lower the car, in order to ensure that the lift can be lowered and the top vehicle can be accessed in the event of a power outage; robotic garages and vehicle elevators must have backup generators sufficient to power the system;
  - (d) All mechanical lifts must be designed to prevent lowering of the lift when a vehicle is parked below the lift;
  - (e) The ceiling heights of any parking level with parking lifts within the parking garage shall be a minimum of 11 feet by six inches;
  - (f) All mechanical parking systems, including lifts, elevators and robotic systems, must be inspected and certified as safe and in good working order by a licensed mechanical engineer at least once per year and the findings of the inspection shall be summarized in a report signed by the same licensed mechanical engineer or firm. Such report shall be furnished to the planning director and the building official; and
  - (g) All parking lifts shall be maintained and kept in good working order.
- (6) The proposed use of mechanical parking systems, including mechanical parking lifts, robotic parking systems or vehicular elevators, for any type of development or improvement, including, but not limited to, vehicle storage, whether proposed under the provisions of section 130-38, or any other section of the City Code, shall require compliance with the provisions of subsections 130-38(4) and 130-38(5), and, with the exception of mechanical parking used to provide parking on a property containing less than 20 units, shall require the review and approval of the planning board, pursuant to the conditional use process in chapter 118, article IV of the Code.

#### **SECTION 4. REPEALER.**

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

#### **SECTION 5. 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 6. SEVERABILITY.**

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

**SECTION 7. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED** and **ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Philip Levine  
Mayor

ATTEST:

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

Underline denotes additions  
~~Strike through~~ denotes deletions

First Reading: \_\_\_\_\_, 2017

Second Reading: \_\_\_\_\_, 2017

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

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## COMMERCIAL HEIGHT STANDARDS

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

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE, BY AMENDING CHAPTER 114, "GENERAL PROVISIONS," BY AMENDING SECTION 114-1, "DEFINITIONS," AND BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS", BY AMENDING DIVISION 4, "CD-1, COMMERCIAL, LOW-INTENSITY DISTRICT," SECTION 142-276, "DEVELOPMENT REGULATIONS, AND DIVISION 5, "CD-2, COMMERCIAL, MEDIUM-INTENSITY DISTRICT," SECTION 142-306, "DEVELOPEMENT REGULATIONS," AND DIVISION 6, "CD-3, COMMERCIAL, HIGH-INTENSITY DISTRICT, "SECTION 142-336, "DEVELOPMENT REGULATIONS AND AREA REQUIREMENTS," AND DIVISION 13, "MXE, MIXED USE ENTERTAINMENT DISTRICT," SECTION 142-545, "DEVELOPMENT REGULATIONS," AND DIVISION 18, "PS, PERFORMANCE STANDARD DISTRICT," SECTION 142-698, "COMMERCIAL PERFORMANCE STANDARD AREA REQUIREMENTS," TO MODIFY ALLOWABLE HEIGHTS FOR THE PURPOSE OF SEA-LEVEL RISE MITIGATION; AND BY AMENDING ARTICLE IV, "SUPPLEMENTARY DISTRICT REGULATIONS", DIVISION 5, "HEIGHT REGULATIONS," SECTION 142-1161, "HEIGHT REGULATION EXCEPTIONS," TO ALLOW FOR SOLAR PANELS, WIND TURBINE AND SUSTAINABLE ROOFING SYSTEMS; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY, AND AN EFFECTIVE DATE.

**WHEREAS**, the City of Miami Beach seeks to encourage and incentivize new development and the preservation and restoration of structures located within the City; and

**WHEREAS**, the City of Miami Beach has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

**WHEREAS**, the City of Miami Beach recognizes Sea level rise and it responsibility to the citizens to adapt to meet those needs; and

**WHEREAS**, the City of Miami Beach understands how important it is to build resilient buildings that will be able to survive Sea Level Rise; and

**WHEREAS**, to mitigate the impacts of Climate Change the City must allow for the residents and buildings to reduce their vulnerability; and

**WHEREAS**, the City of Miami Beach understands that to combat the harmful effects of Climate Change, Local Municipalities are the front line of adaptation and must if there is no example to follow; and

**WHEREAS**, it is in the best interest of the City to promote the economic environmental health in the City through sustainable and environmentally friendly design and construction which reduces demand for energy and reduces greenhouse gas emissions; and

**WHEREAS**, studies have indicated that green buildings have lower maintenance costs associated with low energy consumption, which will improve the City's long-term economic well-being; and

**WHEREAS**, it is in the interest of the health, safety and welfare of the residents of the City to ensure sustainable construction and to ensure that the City safeguard natural resources and ensure that efficient buildings are constructed; and

**WHEREAS**, the amendment set forth below is 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.** Amending Chapter 114 of the City Code, entitled "General Provisions," Section 114-11, "Definitions," of the Land Development Regulations, is hereby amended to read as follows:

#### **Chapter 114 – GENERAL PROVISIONS**

##### **Sec. 114-1 – Definitions**

*Blue roof* means a non-vegetated source control to detain storm-water. A blue roof slows or stores storm-water runoff by using various kinds of flow controls that regulate, block, or store water instead of vegetation.

\* \* \*

*Cool roof* see white roof

\* \* \*

*Green roof* means a green space created by layers of growing medium and vegetation added on top of a traditional roofing system. It may also include additional layers such as a root barrier and drainage and irrigation systems.

\* \* \*

*Height of building* means the vertical distance from the lowest floor according to the following, as applicable:

- (a) When the minimum finished floor elevation is located between grade and base flood elevation plus "City of Miami Beach Freeboard", height shall be measured from the minimum finished floor elevation to the highest point of the roof;

(b) When the minimum finished floor elevation is located above the base flood elevation plus Freeboard, height shall be measured from the base flood elevation plus Freeboard.

The highest point of a roof is as follows:

1. The highest point of a flat roof;
2. The deck line of a mansard roof;
3. The average height between eaves and ridge for gable hip and gambrel roofs; or
4. The average height between high and low points for a shed roof.

(c) ~~As all rights-of-way have not yet been elevated,~~ For commercial properties, height shall be measured from the base flood elevation, plus freeboard, provided that the height of the first floor shall be tall enough to allow the first floor to eventually be elevated to base flood elevation, plus minimum freeboard, with a future minimum interior height of at least ten (10) feet once the adjacent right-of-way is elevated as provided under the City's Public Works Manual.

\* \* \*

Roof top farm means a garden on the roof of a building, roof plantings may provide food, temperature control, hydrological benefits, architectural enhancement, habitats or corridors for wildlife, recreational opportunities, and in large scale it may even have ecological benefits.

\* \* \*

White roof means a roof that has been painted white or is surfaced with some other light or reflective material.

\* \* \*

**SECTION 2.** Amending Chapter 142 of the City Code, entitled "Zoning Districts and Regulations," Article II. "District Requirements," Section 142-276, "Development Regulations," of the Land Development Regulations, is hereby amended to read as follows:

#### **Chapter 142 - ZONING DISTRICTS AND REGULATIONS**

\* \* \*

#### **ARTICLE II. - SUPPLEMENTARY DISTRICT REGULATIONS**

\* \* \*

#### **DIVISION 4. – CD-1 COMMERCIAL, LOW INTENSITY DISTRICT**

\* \* \*

**Sec. 142-276. - Development regulations.**

The development regulations in the CD-1 commercial, low intensity district are as follows:

Maximum  
Building  
Height  
(Feet)

40

Notwithstanding the foregoing, at the discretion of the Design Review Board or Historic Preservation Board, as applicable, the maximum building height may be increased by 10 feet, provided the first story has a minimum height of 18 feet

\* \* \*

**DIVISION 5. – CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT**

\* \* \*

**Sec. 142-306. - Development regulations.**

The development regulations in the CD-2 commercial, medium intensity district are as follows:

Maximum  
Building  
Height  
(Feet)

50

Notwithstanding the foregoing, at the discretion of the Design Review Board or Historic Preservation Board, as applicable, the maximum building height may be increased by 10 feet, provided the first story has a minimum height of 18 feet

\* \* \*

**DIVISION 6. – CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT**

\* \* \*

**Sec. 142-337. - Development regulations and area requirements.**

(a) The development regulations in the CD-3 commercial, high intensity district are as follows:

- (1) Max FAR: Lot area equal to or less than 45,000 sq. ft.—2.25; Lot area greater than 45,000 sq. ft.—2.75; Oceanfront lots with lot area greater than 45,000 sq. ft.—3.0.
- (2) Notwithstanding the above, oceanfront lots in architectural district shall have a maximum FAR of 2.0.
- (3) Notwithstanding the above, lots located between Drexel Avenue and Collins Avenue and between 16th Street and 17th Street shall have a maximum FAR of 2.75.
- (4) Notwithstanding the above, lots which, as of the effective date of this ordinance (November 14, 1998), are oceanfront lots with a lot area greater than 100,000 sq. ft. with an existing building, shall have a maximum FAR of 3.0; however, additional FAR shall be available for the sole purpose of providing hotel amenities as follows: the lesser of 0.15 FAR or 20,000 sq. ft.
- (b) However, the floor area ratio maximum for residential development, inclusive of hotels, in the architectural district shall be 2.50.
- (c) The lot area, lot width, unit size and building height requirements for the CD-3 commercial, high intensity district are as follows:

50

Notwithstanding the foregoing, at the discretion of the Design Review Board or Historic Preservation Board, as applicable, the maximum building height may be increased by 10 feet, provided the first story has a minimum height of 18 feet

\* \* \*

### **DIVISION 13. – MXE MIXED USE ENTERTAINMENT DISTRICT**

\* \* \*

#### **Sec. 142-545. - Development regulations.**

The development regulations in the MXE mixed use entertainment district are as follows:

Maximum  
Building  
Height  
(Feet)

75

Notwithstanding the foregoing, at the discretion of the Design Review Board or Historic Preservation Board, as applicable, the maximum building height may be increased by 10 feet, provided the first story has a minimum height of 18 feet.

\* \* \*

### **DIVISION 18. – PS PERFORMANCE STANDARD DISTRICT**

\* \* \*

**Sec. 142-698. – Commercial Performance standard area requirements.**

(b)The commercial performance standard area requirements are as follows:

**C-PS1**

Maximum  
Building  
Height

40

Notwithstanding the foregoing, at the discretion of the Design Review Board or Historic Preservation Board, as applicable, the maximum building height may be increased by 10 feet, provided the first story has a minimum height of 18 feet.

**C-PS2**

Maximum  
Building  
Height

50

Notwithstanding the foregoing, at the discretion of the Design Review Board or Historic Preservation Board, as applicable, the maximum building height may be increased by 10 feet, provided the first story has a minimum height of 18 feet.

**C-PS3**

Maximum  
Building  
Height

80

Notwithstanding the foregoing, at the discretion of the Design Review Board or Historic Preservation Board, as applicable, the maximum building height may be increased by 10 feet, provided the first story has a minimum height of 18 feet.

**C-PS4**

Maximum  
Building  
Height

150

Notwithstanding the foregoing, at the discretion of the Design Review Board or Historic Preservation Board, as applicable, the maximum building height may be increased by 10 feet, provided the first story has a minimum height of 18 feet.

**SECTION 3.** Amending Chapter 142 of the City Code, entitled “Zoning Districts and Regulations,” Article IV, “Supplementary District Regulations,” Division 5, “Height Regulations,” Section 142-1161, “Height Regulation Exceptions,” of the Land Development Regulations, is hereby amended to read as follows:

\* \* \*

## **DIVISION 5. – HEIGHT REGULATIONS**

### **Sec. 142-1161. - Height regulation exceptions.**

For all districts, except RS-1, 2, 3 and 4 (single-family residential districts).

- (a) The height regulations as prescribed in these land development regulations shall not apply to the following when located on the roof of a structure or attached to the main structure. For exceptions to the single-family residential districts, see subsection 142-105(e).
  - (1) Air conditioning, ventilation, electrical, plumbing equipment or equipment rooms.
  - (2) Chimneys and air vents.
  - (3) Decks, not to exceed three feet above the main roofline and not exceeding a combined deck area of 50 percent of the enclosed floor area immediately one floor below.
  - (4) Decorative structures used only for ornamental or aesthetic purposes such as spires, domes, belfries, not intended for habitation or to extend interior habitable space. Such structures shall not exceed a combined area of 20 percent of the enclosed floor area immediately one floor below.
  - (5) Elevator bulkheads or elevator mechanical rooms.
  - (6) Flagpoles subject to the provisions of section 138-72.
  - (7) Parapet walls, not to exceed three and one-half feet above the main roofline unless otherwise approved by the design review board up to a maximum of 25 feet in height.
  - (8) Planters, not to exceed three feet in height above the main roofline.
  - (9) Radio, television, and cellular telephone towers or antennas, and rooftop wind turbines.
  - (10) Stairwell bulkheads.
  - (11) Skylights, not to exceed five feet above the main roofline.
  - (12) Stage towers or scenery lofts for theaters.
  - (13) Swimming pools, whirlpools or similar structures, which shall have a four-foot wide walkway surrounding such structures, not to exceed five feet above the main roofline.
  - (14) Trellis, pergolas or similar structures that have an open roof of cross rafters or latticework.
  - (15) Water towers.

(16) Bathrooms required by the Florida Building Code, not to exceed the minimum size dimensions required under the Building Code, provided such bathrooms are not visible when viewed at eye level (five feet, six inches from grade) from the opposite side of the adjacent right-of-way; for corner properties. Such bathrooms shall also not be visible when viewed at eye level (five feet, six inches from grade) from the diagonal corner at the opposite side of the right-of-way and from the opposite side of the side street right-of-way.

(17) Solar Panels, wind turbines and other alternative energy fixtures.

(18) Sustainable roofing systems.

- (b) The height of all allowable items in subsection (a) of this section, unless otherwise specified, shall not exceed 25 feet above the height of the roofline of the main structure. With the exception of items described in subsection (a)(17) of this section, when any of the above items are freestanding, they shall follow the height limitations of the underlying zoning district (except flagpoles which are subject to section 138-72).
- (c) Notwithstanding other provisions of these regulations, the height of all structures and natural growth shall be limited by the requirements of the Federal Aviation Agency and any airport zoning regulations applicable to structure and natural growth.

### **SECTION 3. REPEALER.**

All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

### **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. 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 6. EFFECTIVE DATE.**

This ordinance shall take effect 10 days after adoption.

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_



CITY CLERK

APPROVED AS TO FORM  
AND LANGUAGE  
AND FOR EXECUTION

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

\_\_\_\_\_  
Date

First Reading: \_\_\_\_\_, 2017  
Second Reading: \_\_\_\_\_, 2017

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

Underline = new language  
~~Strikethrough~~ = deleted language

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**SUSTAINABLE ROOFING****ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE, BY AMENDING CHAPTER 114, "GENERAL PROVISIONS," BY AMENDING SECTION 114-1, "DEFINITIONS," AND BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE IV, "SUPPLEMENTARY DISTRICT REGULATIONS", BY AMENDING DIVISION 1, "GENERALLY," SECTION 142-875, "ROOF REPLACEMENTS AND NEW ROOFS," PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach seeks to encourage and incentivize new development and the preservation and restoration of structures located within the City; and

**WHEREAS**, the City of Miami Beach has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

**WHEREAS**, the City of Miami Beach recognizes Sea level rise and its responsibility to the citizens to adapt to meet those needs; and

**WHEREAS**, the City of Miami Beach understands how important it is to build resilient buildings that will be able to survive Sea Level Rise; and

**WHEREAS**, to mitigate the impacts of Climate Change the City must allow for the residents and buildings to reduce their vulnerability; and

**WHEREAS**, the City of Miami Beach understands that to combat the harmful effects of Climate Change, Local Municipalities are the front line of adaptation and must if there is no example to follow; and

**WHEREAS**, it is in the best interest of the City to promote the economic environmental health in the City through sustainable and environmentally friendly design and construction which reduces demand for energy and reduces greenhouse gas emissions; and

**WHEREAS**, studies have indicated that green buildings have lower maintenance costs associated with low energy consumption, which will improve the City's long-term economic well-being; and

**WHEREAS**, it is in the interest of the health, safety and welfare of the residents of the City to ensure sustainable construction and to ensure that the City safeguard natural resources and ensure that efficient buildings are constructed; and

**WHEREAS**, the amendment set forth below is 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.** Amending Chapter 114 of the City Code, entitled “General Provisions,” Section 114-11, “Definitions,” of the Land Development Regulations, is hereby amended to read as follows:

## **Chapter 114 – GENERAL PROVISIONS**

### **Sec. 114-1 – Definitions**

\* \* \*

Sustainable roofing system means a solar roof, blue roof, white roof, cool roof, green roof, rooftop farming roofing system, or any other roofing system recognized by a green building certification agency that reduces heat island effect, allows for the reuse or retention of stormwater or reduces greenhouse gases.

**SECTION 2.** Amending Chapter 142 of the City Code, entitled “Zoning Districts and Regulations,” Article IV. “Supplementary District Regulations,” Division 1, “Generally, Section 142-875, “Roof replacements and new roofs,” of the Land Development Regulations, is hereby amended to read as follows:

## **Chapter 142 - ZONING DISTRICTS AND REGULATIONS**

\* \* \*

### **ARTICLE IV. - SUPPLEMENTARY DISTRICT REGULATIONS**

#### **DIVISION 1. – GENERALLY**

\* \* \*

#### **Sec. 142-875. - Roof replacements and new roofs.**

- (a) In all districts, ~~except locally designated historic districts, sites or structures,~~ the new construction, repair or replacement of any pitched roof shall consist of flat or barrel tile, which shall be composed of concrete or, clay or ceramic material. Asphalt shingles shall be prohibited.
- (b) For properties located outside of a locally designated historic district, site or structure, metal, glass or sustainable roofing systems may be proposed for new construction, existing multifamily and townhome structures, existing commercial buildings, single-family homes constructed after 1942, and nonarchitecturally significant single-family homes constructed prior to 1942, and shall be subject to the review and approval of the planning department, in accordance with the following criteria:
  - (1) In single-family residential districts, the style, design and material used for the main structure and all accessory structures shall be compatible when located on the same property.
  - (2) The color of the roof shall be neutral and shall not overwhelm or cause the roof to stand out in a significant manner.

(3) The design, details, dimensions, surface texture and color shall be consistent with the architectural design, style and composition of the structure.

(4) The design, details, dimensions, surface texture and color shall be consistent with the established scale, context and character of the surrounding area.

(5) Asphalt shingles shall be prohibited.

(c) For architecturally significant single-family homes constructed prior to 1942, the planning director, or designee, may approve a metal, glass or sustainable roofing system if it is determined that the scale, massing and design of the subject home can accommodate a metal, glass or sustainable roofing system, and that ~~the metal or glass~~ such roofing system will not negatively impact the established architectural context of the immediate area. Such review by the planning director, or designee, shall be subject to the criteria in subsections (a) ~~(b)~~ (1)—(4) above.

(d) The appeal of any decision of the planning department under subsections (a), ~~and (b) or (c)~~ above, shall be to the ~~design review board, board of adjustment~~ in accordance with chapter 118, article VIII of these land development regulations. The review by the ~~design review board, board of adjustment~~, either by appeal or if the metal, glass or sustainable roofing system does not qualify for planning director approval as provided above, shall also be pursuant to the criteria in subsections (a) ~~(b)~~ (1)—(4) above.

(e) Within any locally designated historic district, site or structure, ~~the new construction, repair or replacement of any pitched roof shall consist of flat or barrel tile, which shall be composed of concrete, clay or ceramic material. The following shall apply:~~

(1) The use of metal, glass or sustainable roofing systems on new construction shall require the review and approval of the historic preservation board, in accordance with the criteria in subsections (a) (b) (1)—(4) above, and chapter 118, article X of these land development regulations. For non-contributing buildings, or if new construction is eligible for administrative review under Chapter 118, Article X of the Land Development Regulations, the planning director, or designee, may approve a metal, glass or sustainable roofing system if it is determined that the scale, massing and design of the proposed new structure can accommodate a metal, glass or sustainable roofing system, and that such roofing system will not negatively impact the established architectural context of the immediate area. Such review by the planning director, or designee, shall be subject to the criteria in subsections (b)(1)—(4) above.

(2) Metal, glass or sustainable roofing systems shall not be permitted on proposed for contributing buildings shall require the review and approval of the historic preservation board, in accordance with the criteria in subsections (b) (1)—(4) above, and chapter 118, article X of these land development regulations, except as hereinafter provided. Within all zoning districts, except single family districts, and subject to the approval of the historic preservation board, metal or glass roofing systems may be permitted on roof-top additions to contributing buildings, subject to the criteria in subsections (a)(1)—(4) above, and chapter 118, article X of these land development regulations, provided the metal or glass roofing system is not visible when viewed at eye level (five feet, six inches from grade) from the opposite side of the adjacent right of way; for corner properties, the metal or glass roofing system shall also not be visible when viewed at eye level from the diagonal corner at the opposite side of the right of way and from the opposite side of the side street right of way. The use of metal or glass roofing systems on existing noncontributing structures may be reviewed and approved by the planning director, or designee, in accordance with the criteria in subsections (a)(1)—(4) above, and chapter 118, article X of these land development regulations, if it is determined that the scale, massing and design of an existing noncontributing structure can accommodate a metal or glass roofing

~~system, and that such metal or glass roofing system will not negatively impact the established historic and architectural context of the immediate area.~~

(3) The appeal of any decision of the planning ~~director, or designee department~~ under this subsection shall be to the ~~historic preservation board~~ of adjustment. The review by the ~~historic preservation board~~ of adjustment, either by appeal or if the metal, glass or sustainable roofing system does not qualify for planning director approval as provided above, shall also be pursuant to the criteria in subsections ~~(a)(b)(1)–(4)~~ above and section 118-564.

- (f) Notwithstanding the above, for those structures constructed and substantially maintained in the Mediterranean revival or mission style of architecture, only the use of roof material other than concrete, clay or ceramic tile may be utilized shall be subject to the review and approval of the design review board or historic preservation board, as applicable. For purposes of this subsection, Mediterranean revival or mission architecture shall be defined as those structures built between 1915 through 1942 and characterized by, but not limited to, stucco walls, low pitch terra cotta or historic Cuban tile roofs, arches, scrolled or tile capped parapet walls and articulated door surrounds, or Spanish baroque decorative motifs and classical elements.
- (g) Notwithstanding the above, in the event a material other than flat or barrel tile was permitted for a pitched roof in any district, such roof may be replaced with the same material, subject to the criteria in subsection (a) above.
- (h) For those structures which contain historic Cuban barrel tiles, such tiles shall be retained and preserved, subject to the provisions of the applicable building codes.
- (i) No variances from any of these provisions shall be granted. However, in the event that the building official determines that limitations exist regarding the load capacity of an existing roof, a roofing material other than concrete, clay or ceramic tile may be approved by the planning department for any type of structure, in accordance with the criteria specified in subsections ~~142-875(a)(b)(1)–(4)~~ above.

### **SECTION 3. REPEALER.**

All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

### **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. 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 6. EFFECTIVE DATE.**

This ordinance shall take effect 10 days after adoption.

PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2017.

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MAYOR

ATTEST:

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

APPROVED AS TO FORM  
AND LANGUAGE  
AND FOR EXECUTION

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

\_\_\_\_\_  
Date

First Reading: \_\_\_\_\_, 2017  
Second Reading: \_\_\_\_\_, 2017

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

Underline = new language  
~~Strikethrough~~ = deleted language

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**NONCONFORMING BUILDINGS SUSTAINABILITY INCENTIVES**

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

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," BY AMENDING ARTICLE IX, "NONCONFORMANCES," TO CLARIFY AND UPDATE CERTAIN TERMS AND DESCRIPTIONS, AND TO PROVIDE MORE DEFINED PARAMETERS FOR WHAT CONSTITUTES A NONCONFORMING STRUCTURE, AND TO ESTABLISH REVISED STANDARDS FOR NON-CONFORMING STRUCTURES; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the Mayor's Blue Ribbon Panel on Flooding & Sea Level Rise has recommended that the nonconforming building regulations (as well as all related regulations) should be amended to address long term sustainability and resiliency city wide; and

**WHEREAS**, the City of Miami Beach continually seeks to update and clearly define the requirements of the Land Development Regulations of the Code of the City of Miami Beach as they pertain to nonconforming structures; and

**WHEREAS**, the City of Miami Beach has adopted regulations pertaining to the maintenance and improvement of existing nonconforming structures and,

**WHEREAS**, The City of Miami Beach desires to refine, clarify, expand and enhance existing procedures and requirements for improvements to existing non-conforming structures in order to ensure that a substantial portion of any such structure is retained and preserved; 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 118, Entitled "Administration and Review Procedures", Article IX, Entitled "Nonconformances", of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

\* \* \*

Sec. 118-395. - Repair and/or rehabilitation of nonconforming buildings and uses.

\* \* \*

(b) Nonconforming buildings.

(1) Nonconforming buildings which are repaired or rehabilitated by less than fifty (50) percent of the value of the building as determined by the building official shall be subject to the following conditions:

- ~~a. Repaired or rehabilitated residential and/or hotel units shall meet the minimum unit size requirements as set forth for the zoning district in which the property is located. The number of units in the building shall not be increased.~~
- ab. The building shall have previously been issued a certificate of use, certificate of completion, certificate of occupancy or occupational license by the city to reflect its current use.
- be. Such repairs or rehabilitation shall meet the requirements of the city property maintenance standards, the applicable Florida Building Code, and the Fire Safety Code.
- cd. If located within a designated historic district, or an historic site, the repairs or rehabilitations shall comply substantially with the Secretary of Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures, as amended, as well as the certificate of appropriateness criteria in Article X of these Land Development Regulations. If the repair or rehabilitation of a contributing structure conflicts with any of these regulations, the property owner shall seek relief from the applicable building or Fire Safety Code.
- de. Any new construction shall comply with the existing development regulations in the zoning district in which the property is located, provided, however, that open private balconies, including projecting balconies and balconies supported by columns, not to exceed a depth of 30 feet from an existing building wall, may be permitted as a height exception. The addition of balconies may be permitted up to the height of the highest habitable floor for a building non-conforming in height, provided such balconies meet applicable FAR and setback regulations. Any addition of a balcony in a nonconforming building shall be subject to the review and approval of the design review board or historic preservation board, as may be applicable.

(2) Nonconforming buildings which are repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official shall be subject to the following conditions:

- a. All residential and hotel units shall meet the minimum and average unit size requirements for rehabilitated buildings as set forth in the zoning district in which the property is located.
- b. The entire building and any new construction shall meet all requirements of the city property maintenance standards, the applicable Florida Building Code and the Life Safety Code.
- c. ~~The entire building and a~~Any new construction shall comply with the current development regulations in the zoning district in which the property is located. No new floor area may be added if the floor area ratio is presently at maximum or exceeded.
- d. Development regulations for buildings located within a designated historic district or for an historic site:
  - 1. The existing structure's floor area may remain or be relocated within the building, and the existing height, setbacks and any existing parking credits may remain if the following portions of the building remain substantially intact, and are retained, preserved and restored:

- i. At least 75 percent of the front and street side ~~facades; walls, exclusive of window openings;~~
  - ~~ii. At least 75 percent of the original first floor slab;~~
  - iii. For structures that are set back two or more feet from interior side property lines, at least 66 percent of the remaining interior side walls, exclusive of window openings; and
  - iv. All architecturally significant public interiors.
- 2. For the replication or restoration of contributing buildings, but not for noncontributing buildings, the historic preservation board may, at their discretion, waive the requirements of subsection(b)(2)d.1. above, and allow for the retention or replication of the existing structure's floor area, height, setbacks or parking credits, if at least one of the following criteria is satisfied, as determined by the historic preservation board:
  - i. The structure is architecturally significant in terms of design, scale, or massing;
  - ii. The structure embodies a distinctive style that is unique to Miami Beach or the historic district in which it is located;
  - iii. The structure is associated with the life or events of significant persons in the city;
  - iv. The structure represents the outstanding work of a master designer, architect or builder who contributed to our historical, aesthetic or architectural heritage;
  - v. The structure has yielded or is likely to yield information important in prehistory or history; or
  - vi. The structure is listed in the National Register of Historic Places.

Notwithstanding the above, for buildings over three stories in height, at least 75 percent of the front facade and 75 percent of any architecturally significant portions of the street side facades shall be retained and preserved, in order to retain or replicate any non-conforming floor area, height, setbacks or parking credits. If the historic preservation board does not waive the requirements of subsection (b)(2)d.1. above for any reason, including the inability of a reconstructed building to meet the requirements of the applicable building code, any new structure shall be required to meet all current development regulations for the zoning district in which the property is located.
- 3. The building shall comply substantially with the secretary of interior standards for rehabilitation and guidelines for rehabilitating historic structures, as amended, as well as the certificate of appropriateness criteria in Article X of these Land Development Regulations.
- 4. If the repair or rehabilitation of a contributing structure or historic site conflicts with any of the requirements (as amended) in the applicable Florida Building Code or the Life Safety Code, the property owner shall seek relief from such code.
- 5. Regardless of its classification on the Miami Beach Historic Properties database, a building may be re-classified as contributing by the historic preservation board if it meets the relevant criteria set forth in the City Code.
- 6. Contributing structures shall be subject to all requirements in section 118-503 of these Land Development Regulations.
- 7. The existing building shall comply with the sustainability and resiliency requirements for new construction of Chapter 133; however, notwithstanding the requirements in Chapter 133, for such buildings, the Sustainability Fee

shall be valued at two (2) percent the of the total construction valuation of the building permit and the certification compliance schedule in section 133-6 (a) shall be revised as follows:

Certification Compliance Schedule

<u>Level of Certification Achieved</u>	<u>Sustainability Fee Reimbursement to Participant for Meeting Certain Green Building Certification Levels</u>
<u>Failure to obtain Certification</u>	<u>0% refund of bond or payment of Sustainability fee</u>
<u>LEED Certified</u>	<u>100% refund of bond or payment of Sustainability fee</u>
<u>LEED Silver Certified</u>	<u>100% refund of bond or payment of Sustainability fee</u>
<u>LEED Gold Certified or International Living Future Institute Petals or Net Zero Energy Certified</u>	<u>100% refund of bond or payment of Sustainability fee</u>
<u>LEED Platinum Certified or International Living Future Institute Living Building Challenge Certified</u>	<u>100% refund of bond or payment of Sustainability fee</u>

8. Replicated buildings shall be subject to the sustainability and resiliency requirements for new construction of Chapter 133.

- e. Development regulations for buildings not located within a designated historic district and not an historic site.
1. ~~Buildings constructed prior to 1965 and determined to be architecturally significant by the planning director, or designee, may retain the existing floor area ratio, height, setbacks and parking credits, or relocate existing floor area within the building, if the following portions of the building remain substantially intact and are retained, preserved and restored:~~
    - i. ~~At least 75 percent of the front and street side facades, exclusive of window openings;~~
    - ii. ~~At least 75 percent of the original first floor slab;~~
    - iii. ~~At least 50 percent of all upper level floor plates; and~~
    - iv. ~~At least 50 percent of the interior side walls, exclusive of window openings.~~
  2. For buildings satisfying the above criteria, ~~and whose lot size is less than 20,000 square feet,~~ the parking impact fee program may be utilized, provided that all repairs and rehabilitations, and any new additions or new construction is approved by the design review board and that any existing, required parking, that is conforming, shall not be removed.
  3. Buildings constructed prior to 1965 and determined to be architecturally significant by the planning director, or designee, shall comply with the sustainability and resiliency requirements for new construction of Chapter 133; however, notwithstanding the requirements in Chapter 133, for such buildings, the Sustainability Fee shall be valued at three (3) percent the of the total

construction valuation of the building permit and the certification compliance schedule in section 133-6 (a) shall be revised as follows:

Certification Compliance Schedule

<u>Level of Certification Achieved</u>	<u>Sustainability Fee Reimbursement to Participant for Meeting Certain Green Building Certification Levels</u>
<u>Failure to obtain Certification</u>	<u>0% refund of bond or payment of Sustainability fee</u>
<u>LEED Certified</u>	<u>75% refund of bond or payment of Sustainability fee</u>
<u>LEED Silver Certified</u>	<u>100% refund of bond or payment of Sustainability fee</u>
<u>LEED Gold Certified or International Living Future Institute Petals or Net Zero Energy Certified</u>	<u>100% refund of bond or payment of Sustainability fee</u>
<u>LEED Platinum Certified or International Living Future Institute Living Building Challenge Certified</u>	<u>100% refund of bond or payment of Sustainability fee</u>

4. Buildings constructed in 1965 or thereafter, and buildings constructed prior to 1965 and determined by the planning director, or designee not to be architecturally significant, shall be subject to the sustainability and resiliency requirements for new construction of Chapter 133.

35. For purposes of this subsection, the planning director, or designee shall make a determination as to whether a building is architecturally significant according to the following criteria:

- i. The subject structure is characteristic of a specific architectural style constructed in the city prior to 1965, including, but not limited to, vernacular, Mediterranean revival, art deco, streamline moderne, post-war modern, or variations thereof;
- ii. The exterior of the structure is recognizable as an example of its style and/or period, and its architectural design integrity has not been modified in an irreversible manner; and
- iii. Exterior architectural characteristics, features, or details of the subject structure remain intact.

A property owner may appeal any determination of the planning director, or designee relative to the architectural significance of a building constructed prior to 1965 to the design review board, in accordance with the requirements and procedures set forth in article VI herein.

~~4. Buildings constructed in 1965 or thereafter, and buildings constructed prior to 1965 and determined by the planning director, or designee not to be architecturally significant, shall be subject to the regulations set forth in subsection (b)(2)a - c herein.~~

~~5. If there is a change in use, a building shall receive no parking credits and must either provide the required parking on-site, or within 500 feet of the site, or pay a parking impact fee.~~

- f. Any new construction identified in subsections d. and e., above, shall comply with the existing development regulations in the zoning district in which the property is located, provided, however, that open private balconies, including projecting balconies and balconies supported by columns, not to exceed a depth of 30 feet from an existing building wall, may be permitted as a height exception. The addition of the highest habitable floor for a building nonconforming in height, provided such balconies meet applicable FAR and setback regulations. Any addition of a balcony in a nonconforming building shall be subject to the review and approval of the design review board or historic preservation board, as may be applicable.
- (3) There shall be no variances from any of the provisions herein pertaining to maximum floor area ratio and to parking credits.
- ~~(4) Single family homes shall be treated the same as other buildings, in determining when an existing structures lot coverage, height and setbacks may remain.~~
- (5) Notwithstanding the foregoing, in the event of a catastrophic event, including, but not limited to, fire, tornado, tropical storm, hurricane, or other act of God, which results in the complete demolition of a building or damage to a building that exceeds 50 percent of the value of the building as determined by the building official, such building may be reconstructed, repaired or rehabilitated, and the structure's floor area, height, setbacks and any existing parking credits may remain, if the conditions set forth in subsection (b)(1)a—d herein are met.
- (6) The foregoing regulations shall not apply to any building or structure located on city-owned property or rights-of-way, or property owned by the Miami Beach Redevelopment Agency.
- (7) Gasoline service stations.
- a. Notwithstanding the foregoing provisions, a nonconforming gasoline service station that provides a generator or other suitable equipment that will keep the station operational, and which has been damaged, repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official pursuant to the standards set forth in the Florida Building Code may be repaired or rehabilitated, if the following conditions are met:
1. The entire building and any new addition shall meet all requirements of the city property maintenance standards, the applicable Florida Building Code and the Life Safety Code.
  2. The entire building and any new addition shall comply with the current development regulations in the zoning district in which the property is located, including, but not limited to all landscape requirements. New monument-style signs shall be required. Pole signs shall be prohibited.
  3. No new floor area may be added if the floor area ratio is presently at maximum or exceeded.
- b. Necessary repairs to add an emergency electrical generator and related facilities to a nonconforming gasoline service station shall be permitted.
- c. A nonconforming gasoline service station that provides a generator or other suitable equipment that will keep the station operational, may add new floor area (other than floor area strictly necessary to house an emergency electrical generator and related facilities), or convert existing floor area or land, to add new accessory uses, such as a convenience sales area or a car wash, subject to conditional use approval, notwithstanding the nonconforming status of the gasoline service station.



Sec. 118-396. - Intermittent or illegal uses.

The casual, intermittent, temporary, or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use and the existence of nonconforming use on a part of a lot or tract shall not be sufficient to establish a nonconforming use on the entire lot or tract.

Sec. 118-397. - Existence of a nonconforming building or use.

- (a) The planning and zoning director shall make a determination as to the existence of a nonconforming use or building and in so doing may make use of affidavits and investigation in addition to the data presented on the city's building card, occupational license or any other official record of the city.
- (b) The question as to whether a nonconforming use or building exists shall be a question of fact and in case of doubt or challenge raised to the determination made by the planning and zoning director, the question shall be decided by appeal to the board of adjustment after public notice and hearing and in accordance with the procedures set forth in section 118-134. In making the determination the board may require certain improvements that are necessary to insure that the nonconforming use or building will not have a negative impact on the neighborhood.

Sec. 118-398. - Building nonconforming in height, density, parking, floor area ratio or bulk.

Except as provided in chapter 118, article IX, herein, a nonconforming building shall not be ~~altered or~~ extended, unless such ~~alteration or~~ extension decreases the degree of nonconformity but in no instance shall the floor area requirements of any unit which is being ~~altered or~~ extended be less than the required floor area set forth in the applicable zoning district.

## **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. 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 \_\_\_\_\_, 2017.**

\_\_\_\_\_  
Philip Levine, Mayor

**ATTEST:**

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

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

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

First Reading:                      , 2017  
Second Reading:                      , 2017

Verified By: \_\_\_\_\_  
                    Thomas R. Mooney, AICP  
                    Planning Director

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