

# MIAMI BEACH

## PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members  
Planning Board

DATE: January 26, 2016

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **Ordinance Amendment**  
**File No. 2307. Vacant Store Front Covers and Signs**

### REQUEST

**File No. 2307. VACANT STORE FRONT COVERS AND SIGNS. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 138 OF THE MIAMI BEACH CITY CODE, ENTITLED "SIGNS," ARTICLE IV ENTITLED "TEMPORARY SIGNS," AT SECTION 138-140 ENTITLED "VACANT STOREFRONT COVERS AND SIGNS" TO MANDATE THAT ALL VACANT STOREFRONT WINDOWS AND DOORS BE WRAPPED IN NON-COMMERCIAL PAPER DESIGNS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

### RECOMMENDATION

Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

### HISTORY/ BACKGROUND

On October 14, 2015, at the request of Commissioner Grieco, the City Commission referred the subject Ordinance amendment (Item C4B) to the Land Use and Development Committee and the Planning Board. The Land Use Committee is scheduled to consider the item on January 20, 2016.

### REVIEW CRITERIA

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

- 1. Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

**Consistent** – The proposed ordinance amendment is consistent with the Goals, Objectives, and Policies of the Comprehensive Plan.

The amendment is consistent with *Future Land Use Element Policy 1.1* of the *City of Miami Beach 2025 Comprehensive Plan*, which states the following:

*Continue to administer land development regulations (LDR) consistent with s.163.3202, F.S. that shall contain specific and detailed provisions required to implement the adopted Comprehensive Plan and which at a minimum:*

*6. Regulate signage;*

- 2. Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

**Not applicable** – The proposed amendment does not modify district boundaries.

- 3. Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

**Not applicable** – The proposed Ordinance does not affect the scale of development.

- 4. Whether the proposed change would tax the existing load on public facilities and infrastructure.**

**Consistent** – The proposed ordinance will not increase the level of intensity of development and will not affect the load on public facilities.

- 5. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

**Not applicable** – The proposed change does not modify existing district boundaries.

- 6. Whether changed or changing conditions make the passage of the proposed change necessary.**

**Consistent** – Concerns with the negative impacts that vacant storefronts may have on surrounding businesses and neighborhoods makes the proposed change necessary.

- 7. Whether the proposed change will adversely influence living conditions in the neighborhood.**

**Consistent** – The proposed change will not adversely affect living conditions in the neighborhood.

- 8. Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.**

**Consistent** – The proposed change will not create or increase traffic congestion.

- 9. Whether the proposed change will seriously reduce light and air to adjacent areas.**

**Consistent** – The proposed ordinance will not reduce light and air to adjacent areas.

- 10. Whether the proposed change will adversely affect property values in the adjacent area.**

**Consistent** – The proposed change should not adversely affect property values in the adjacent areas.

11. **Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**

**Consistent** – The proposed change should not be a deterrent to the improvement or development of properties in the City.

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

**Not applicable.**

13. **Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

**Not applicable.**

#### **ANALYSIS**

Section 138-140 of the Land Development Regulations establishes regulations for ground floor storefronts that face the public right-of-way and are vacant. Currently the regulations provide property owners the option of screening such windows with an opaque film while the storefront is vacant. It further encourages the screening of such properties by allowing for the City to provide a screening material at no charge to the property owner.

Several property owners have not taken advantage of the program when their storefronts have become vacant, leaving storefronts with a blighted appearance visible to the public. As a result, the proposed Ordinance amendment modifies Section 138-140 by making vacant storefront screening mandatory, and establishes penalties for not complying.

The Ordinance proposes the following changes to Section 138-140:

- For vacant storefronts that face a public right-of-way, that are vacant for more than 15-days, all glass surfaces visible to the public shall be kept clean, and the interior of a vacant store shall be screened from public view through the two existing options.
- If the applicant is providing signage in their screening, the design and material of any signage shall require the review and approval of the Planning Department, in accordance with applicable design review and historic preservation criteria.
- If the applicant is electing to use a City-provided storefront cover, it will now be provided with a charge.
- Penalties and enforcement procedures for the requirements are established.
- Civil fines are established that range from \$250 for the first violation; \$2,000 for the second violation; \$3,000 for the third violation; and 5,000 for the fourth and subsequent violations within a 12-month period.
- The Land Use Committee is expected to discuss the subject ordinance on January 20, 2016, and may provide additional policy direction. Recommendations from the Committee will be presented on the floor of the Planning Board meeting.

**RECOMMENDATION**

Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

TRM/MAB/RAM

F:\PLAN\PLB\2016\1-26-16\2307 - ORD - Vacant Store Front cover and signs\2307 - Amend Ch 138 Vacant Storefront Covers And Signs - PB Staff Report 1-26-2016.docx

**ORDINANCE NO.**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 138 OF THE MIAMI BEACH CITY CODE, ENTITLED "SIGNS," ARTICLE IV ENTITLED "TEMPORARY SIGNS," AT SECTION 138-140 ENTITLED "VACANT STOREFRONT COVERS AND SIGNS" TO MANDATE THAT ALL VACANT STOREFRONT WINDOWS AND DOORS BE WRAPPED IN NON-COMMERCIAL PAPER DESIGNS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, on May 9, 2012, the City Commission enacted Ordinance No. 2012-3767, creating Section 138-140 of the City Code, as the Commission was concerned with the possible appearance of blight due to vacant storefront displays, and the Commission declared that it was in the interest of the public health, safety and welfare, and the interest of the citizens of Miami Beach, to establish policies, regulations, and standards relating to vacant storefront windows and doors; and

**WHEREAS**, the City Commission found that vacant storefronts create blighted economic and social conditions contrary to the viable and healthy economic, aesthetic, and social fabric that the City has cultivated and encouraged in its commercial zoning districts; and

**WHEREAS**, to encourage and regulate the screening of the interior of vacant storefronts with aesthetically compatible and attractive material, to obscure the deteriorated or deconstructed conditions of vacant storefronts, and to allow temporary signs to be included on this material, the City Commission created temporary sign criteria for wrapping and obscuring vacant storefronts from the community; and

**WHEREAS**, the City Commission believes it is in the best interest of the community to mandate the wrapping of vacant storefronts, rather than to leave this decision to the storefront owner; and

**WHEREAS**, the City Commission also believes it is in the best interest of the City to create an enforcement mechanism and penalties for violations of this requirement; and

**WHEREAS**, the City Commission desires to amend Chapter 138, Article IV, at Section 138-140 to accomplish the above objectives.

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

**SECTION 1.** That Chapter 138, entitled "Signs," Article IV entitled "Temporary Signs" at Section 138-140, entitled "Vacant storefront covers and signs," of the Miami Beach City Code is hereby amended as follows:

**CHAPTER 138  
SIGNS**

\* \* \*

**ARTICLE IV. TEMPORARY SIGNS**

\* \* \*

**Sec. 138-140. Vacant storefront covers and signs.**

(a) *Purpose.* Vacant storefronts create blighted economic and social conditions contrary to the viable and healthy economic, aesthetic and social fabric that the city has cultivated and encouraged in its commercial zoning districts. The purpose of this section is to encourage and regulate the screening of the interior of vacant storefronts with aesthetically compatible and attractive material, to obscure the deteriorated or deconstructed conditions of vacant storefronts, and to allow temporary signs to be included on this material.

(b) *Definition.* For purposes of this section, a vacant storefront is any ground floor business establishment that is unoccupied.

(c) *Applicability.* The requirements of this section apply only to the ground floor windows and doors of vacant storefronts that face a public right-of-way. If a commercial property is vacant for more than 15 days, all glass surfaces visible to the public shall be kept clean, and the interior of such vacant store shall be screened from public view in one of the following ways, until the property is occupied:

- (1) All glass surfaces visible from the public right-of-way shall be covered as provided in subsection (e); or
- (2) All glass surfaces visible from the public right-of-way shall be covered as provided in subsection (f).

(d) *Storefront window cover ~~permitted~~ required for vacant storefronts.* Exterior Windows windows and doors on vacant commercial property may shall be completely screened with an opaque material obscuring the interior. The materials used to satisfy this requirement shall be subject to review and approval by the planning department design review staff, in accordance with applicable design review and historic preservation criteria, and shall consist of 60-pound weight paper, or similar opaque material. Windows covered in accordance with this section shall ~~may~~ remain covered until

issuance of a certificate of use or occupancy for the new occupant, whichever occurs first. If the owner of vacant commercial property elects not to utilize one of the signs identified in subsection (e), the owner shall utilize the window covers identified in subsection (f).

(e) *Temporary signs permitted.* Material applied to windows in conformity with this section shall not contain general advertising signs or other prohibited sign types. Such material may contain signs that comply with the regulations of this chapter, as follows:

- (1) Artistic or super graphics in accordance with section 138-204, which may cover 100 percent of the window; and
- (2) Other types of signage allowed by this chapter, including real estate signs in accordance with section 138-136, and construction signs in accordance with section 138-133; signage under this provision may be incorporated into artistic or super graphics as referenced in (1) above; however, the text of such signage shall be limited to no more than 25 percent of the total window area of the vacant storefront.
- (3) The design and material of all proposed signs under this subsection (e) shall require review by the planning department design review staff, in accordance with applicable design review and historic preservation criteria.

(f) *City-provided storefront cover.* ~~The city may also~~ shall produce and provide preapproved storefront covers, for a charge with or without charge, to encourage the coverage of vacant storefronts not complying with subsection (d) above. Covers provided by the city shall also satisfy the requirements of this section.

(g) *Penalties and enforcement.* Each day of noncompliance shall constitute a separate offense. The code compliance department is empowered and authorized to require compliance with this section within 30 days of written notice to violators.

(1) The following civil fines shall be imposed for a violation of this section:

- a. First violation within a 12-month period: \$ 250.00;
- b. Second violation within a 12-month period: 2,000.00;
- c. Third violation within a 12-month period: \$ 3,000.00;
- d. Fourth or subsequent violation within a 12-month period: \$ 5,000.00.

(2) Enforcement. The code compliance department shall enforce this section. The notice of violation shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(3) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.

a. A violator who has been served with a notice of violation must elect to either

i. pay the civil fine in the manner indicated on the notice of violation; or

ii. request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.

b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.

c. The failure to pay the civil fine, or to timely request an administrative hearing before a special master, shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.

d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. Three (3) months after the recording of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien, for the amount of the lien plus accrued interest.

e. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an

administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.

f. The special master shall not have discretion to alter the penalties prescribed in this section.

g. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

\* \* \*

**SECTION 2. CODIFICATION.**

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

**SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith 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. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

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

\_\_\_\_\_  
Date

First Reading: , 2016  
Second Reading: , 2016

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

Underscore denotes new language  
~~Strike-Thru~~ denotes new language

[Sponsored by Commissioner Michael Grieco]

F:\PLAN\PLB\2016\1-26-16\2307 - ORD - Vacant Store Front cover and signs\2307 - Amend Ch 138 Vacant Storefront Covers  
And Signs - ORD January 26, 2016 PB.docx