

## City of Coral Gables Planning Department Staff Report

**To:** Planning and Zoning Board Members

**From:** Planning Department

**Date:** December 10, 2008

**Subject:** **Zoning Code Text Amendment – Article 8, “Definitions”.** An Ordinance of the City of Coral Gables amending the Zoning Code, Article 8, entitled “Definitions” to amend the definition of “Family” to reflect the appropriate constitutional requirements; and providing for severability, repealer, codification, and an effective date.

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### **Background**

Attached are proposed Zoning Code text amendments requested by the City Attorney regarding the Code's definition of "Family". The City Attorney's Office has provided for the Planning and Zoning Board's review and information a completed Planning Department Zoning Code Text Amendment Request form, cover memorandum providing background for the amendment and a draft Ordinance containing the specific language in ~~strike thru~~ / underline format (see Attachments A, B and C).

The City Attorney's Office will present the proposed amendments to the Board at the meeting and secure input and testimony.

### **Public Hearing Timeline**

This Zoning Code amendment is under the purview of the Planning and Zoning Board and City Commission since it requires public hearing review. Upon recommendations from the Planning and Zoning Board, the proposed text amendments are tentatively scheduled to proceed forward for public hearing before the City Commission as follows:

*City Commission, 1<sup>st</sup> Reading –January 13, 2009, 9:00 a.m.  
City Commission, 2<sup>nd</sup> Reading –February 10, 2009, 9:00 a.m.*

The above dates and times are subject to change.

### **Public Notification**

The Planning and Zoning Board meeting agenda has been advertised and posted on the City web page. The Planning Department staff report and attachments are also posted on the City web page.

**Zoning Code Text Amendment – Definitions**

December 10, 2008

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Respectfully submitted,

  
Eric Riel, Jr.  
Planning Director

**Attachments:**

- A. Planning Department Zoning Code Text Amendment Request form.
- B. 11.24.08 City Attorney cover memorandum.
- C. Draft Ordinance.

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## City of Coral Gables Zoning Code Text Amendment Request

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## Date of request:

11/24/08

## Sponsoring department(s):

Legal

## Code section(s) to be amended (attach additional sheets as necessary):

Article 8, Definitions, "Family"

## Purpose or explanation of text amendment (attach additional sheets as necessary):

Amend the definition of "family" to conform with Constitutional Law requirements.

## Proposed text amendment (attach additional sheets as necessary):

Family means one (1) or more persons occupying a single residential unit when all members are related by blood, marriage, or adoption and three (3) or less persons unrelated to any other occupant (excluding servants). The term "family" shall not be construed to mean fraternity, sorority, club, or institutional group, student housing or more than three (3) unrelated persons as defined herein.

## Sponsoring department(s) signature:

Print name

Lourdes Alfonso Ruiz

Signature

Date

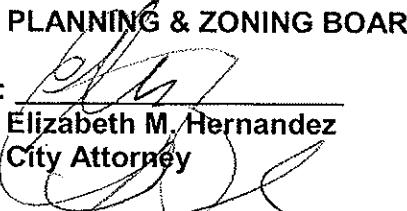
11/24/08

**CITY OF CORAL GABLES**  
**OFFICE OF THE CITY ATTORNEY**  
**-MEMORANDUM-**

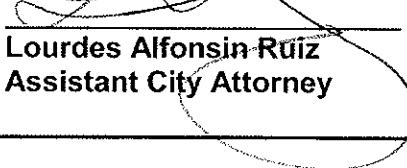
**TO: PLANNING & ZONING BOARD**

**DATE: November 24, 2008**

**FROM:**

  
Elizabeth M. Hernandez  
City Attorney

**SUBJECT: Zoning Code Amendment  
Definition of Family**

  
Lourdes Alfonsin Ruiz  
Assistant City Attorney

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Attached hereto please find a copy of a draft, proposed amended ordinance regarding the definition of "family" in the Zoning Code. The new Zoning Code currently has "family" defined under Article 8 as follows:

Family means one (1) or more persons related by blood, adoption, marriage, or foster care relationship under Florida Statutes Chapter 409, occupying a single residential unit.

This definition does not meet the constitutional requirements addressed by the United States Supreme Court in the cases of Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) and Moore v. City of East Cleveland, 431 U.S. 494 (1977). In these cases, the Supreme Court carefully looked for some reasonable relationship between the zoning regulation and the goals sought to be achieved by the regulation. Generally, they first examine the goal sought to be achieved to see if it furthers a legitimate governmental objective. They then proceed to scrutinize whether the means designed to reach that end are reasonable. An analysis of these two cases will assist in providing for an appropriate definition of "family" to be included in the Zoning Code.

**MOORE V. CITY OF EAST CLEVELAND**

The United States Supreme Court, in Moore v. City of East Cleveland, 431 U.S. 494 (1977), held that, in keeping with due process, a zoning ordinance may not differentiate between relatives of varying degrees of relationship. Mrs. Moore lived in East Cleveland with her son and her two grandchildren who were first cousins. Early in 1973, Mrs. Moore received a notice of violation of the city's housing code ordinance, stating that one of her grandchildren was an "illegal resident." The zoning ordinance limited the definition of a family member to one related to the nominal head of the household, provided that such person is not part of the extended family. Moore refused to remove her grandson from her home, and the city of East Cleveland filed a criminal charge against her. She was convicted and her conviction was upheld in the appeals court. Mrs. Moore appealed this decision to the U.S. Supreme Court.

The Supreme Court ruled that no city should be allowed to force its adults and children to live within certain narrowly defined family patterns and recognized that the ordinance was discriminatory. It concluded that Moore had been deprived of her liberty in violation of the due process clause of the 14th Amendment. The Court identified the fact that the zoning ordinance under dispute was clearly exclusionary in its attempt to restrict certain groups by removing non-immediate family members from households. In his lead opinion, Justice Powell stated that "the tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition." Due process, then, would seem to require that any such definition eliminate distinctions among familial degrees.

### **VILLAGE OF BELLE TERRE V. BORAAS**

However, in Village of Belle Terre v. Boraas, 416 U.S. 1 (1974), a Village zoning ordinance restricted land use to one-family dwellings excluding lodging houses, boarding houses, fraternity houses, or multiple-dwelling houses. The ordinance defined family as:

[o]ne or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family.

The Boraas' owned a house in the village. They leased it to six unrelated college students and were subsequently cited for violating a zoning ordinance that limited occupancy in single-family dwellings to traditional family units or to groups of not more than two unrelated people. The owners of the house plus three of the tenants brought suit challenging the ordinance. Among their claims was the assertion that the ordinance violated their constitutional right of privacy. The Court rejected that argument and upheld the ordinance, saying that it bore a rational relationship to a permissible state objective. In his opinion, Justice Douglas stated that "a quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. The police power is not confined to elimination of filth, stench, and unhealthy places."

### **CONCLUSION**

For a definition of "family" to be constitutionally permissible, it is necessary to ensure that alternative definitions of family include within them both traditional family units and non-traditional groups to whom the courts have extended due process protections. In this case, the attached ordinance shall define "family" as follows:

Family means one (1) or more persons occupying a single residential unit when all members are related by blood, marriage, or adoption and three (3) or less persons unrelated to any other occupant (excluding servants). The term "family" shall not be construed to mean fraternity, sorority, club, or institutional group, student housing or more than three (3) unrelated persons as defined herein.

This definition meets the constitutionally defined requirements as set forth in Village of Belle Terre, supra and Moore, supra.

Attachments.

cc. Maria A. Jimenez, Interim City Manager  
Dona Lubin, Assistant City Manager  
Catherine Swanson, Assistant City Manager  
Eric Riel, Planning Director  
Edward Weller, Interim Director, Building & Zoning  
Martha Salazar-Blanco, Zoning Administrator

## CITY OF CORAL GABLES, FLORIDA

## ORDINANCE NO. 2008-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF CORAL GABLES AMENDING THE ZONING CODE, ARTICLE 8, ENTITLED "DEFINITIONS" TO AMEND THE DEFINITION OF "FAMILY" TO REFLECT THE APPROPRIATE CONSTITUTIONAL REQUIREMENTS; AND PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Coral Gables Zoning Code currently disallows more than two unrelated people to reside in single-family residences; and

WHEREAS, the City of Coral Gables former Zoning Code prohibited three or more unrelated persons to reside in a single-family residence; and

WHEREAS, the City Commission of Coral Gables desires to abide by the United States Supreme Court by not being exclusionary by restricting certain groups from residing in single-family residences (Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) and Moore v. City of East Cleveland, 431 U.S. 494 (1977)); and

WHEREAS, the City Commission also wishes to follow the dictates of the Court in the Village of Belle Terre, supra when restricting the amount of unrelated persons living in single-family residences.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA THAT:

**Section 1.** The recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

**Section 2.** The Zoning Code of the City of Coral Gables, Florida is hereby amended as to Article 8, entitled "Definitions", to amend the definition of "family", and to read as follows:

#### ARTICLE 8. DEFINITIONS

*Family* means one (1) or more persons occupying a single residential unit when all members are related by blood, adoption, marriage, foster care, or three (3) or less persons unrelated to any other occupant (excluding servants). The term "family" shall not be construed to mean fraternity, sorority, club, institutional group, student housing or more than three (3) unrelated persons. relationship under Florida Statutes Chapter 409.

**Section 3.** Severability.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

**Section 4.** Repealer.

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

**Section 5.** Codification.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that 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 such other appropriate word or phrase in order to accomplish such intentions.

**Section 6.** Effective Date.

This ordinance shall become effective immediately upon the date of its adoption by the City Commission.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

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DONALD D. SLESNICK II, MAYOR

ATTEST:

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WALTER FOEMAN  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

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ELIZABETH M. HERNANDEZ  
CITY ATTORNEY