

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA PROVIDING FOR A TEXT AMENDMENT TO ARTICLE III "DEVELOPMENT REVIEW" OF THE CITY OF CORAL GABLES OFFICIAL ZONING CODE TO MODIFY EXISTING PROCEDURES AND CREATE NEW PROCEDURES TO RESOLVE DISPUTES AND PROVIDE RELIEF FROM THE APPLICATION OF THE ZONING CODE; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, City Staff is requesting Zoning Code text amendments to Article III "Development Review" of the Zoning Code to modify existing procedures and create new procedures to facilitate the resolution of disputes involving the City and other governmental agencies that impact the City's Zoning Code; and

WHEREAS, the City's application of its zoning and land development regulations and related rules, policies, and practices must also be consistent with constantly-evolving requirements involving the rights of applicants and affected parties under the Civil Rights Act of 1964, the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the First, Fifth, and Fourteenth Amendments to the U.S. Constitution, the Fair Housing Act, the Americans with Disabilities Act, and other applicable state and federal laws and regulations relating to the protection of the public health, safety and welfare; and

WHEREAS, the City Commission intends to amend the Zoning Code in order to enable the City to resolve claims related to possible violations of state and federal laws and regulations, and to avoid or settle costly litigation or administrative proceedings, while maintaining consistency with and providing appropriate relief under the City's Zoning Code; and

WHEREAS, the City Commission finds that it is in the public interest to establish separate standards and procedures within the Zoning Code in order to facilitate the resolution of these claims; and

WHEREAS, the codification of these standards and procedures will permit the City and qualifying individuals or entities, where warranted based on the facts and law, to avoid or settle costly judicial or administrative litigation, ensure compliance with applicable law, and provide appropriate relief under the City's Zoning Code; and

WHEREAS, the zoning relief procedure is consistent with applicable case law and the legislative history of the subject laws and legal precedent, which encourage local governments to provide an accommodation procedure; and

WHEREAS, the City Commission determines that the adoption of this Ordinance is in the best interests of the health, safety and welfare of its residents and citizens; and

WHEREAS, after notice being duly published, a public hearing was held before the Planning and Zoning Board on March 12, 2014, at which hearing all interested persons were afforded the opportunity to be heard; and

WHEREAS, at the March 12, 2014 Planning and Zoning Board meeting, the Board recommended approval (vote: 7-0) of the text amendment presented to the Board with a comment, and the City Attorney has subsequently addressed the comment and also incorporated the comments of outside land use and zoning counsel as described in the cover memo and at the public hearing for First Reading; and

WHEREAS, after notice duly published, a public hearing for First Reading was held before the City Commission on April 8, 2014 at which hearing all interested parties were afforded the opportunity to be heard; and

WHEREAS, the City Commission was presented with a text amendment to the Zoning Code, and after due consideration and discussion, (approved) the amendment on First Reading (vote: 5-0).

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

SECTION 1. The foregoing ‘WHEREAS’ clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. The Official Zoning Code of the City of Coral Gables is hereby amended as follows (changes in ~~strike-through~~ / underline format):

ARTICLE III. DEVELOPMENT REVIEW.

Division 17. Protection of Landowners’ Rights; Relief from Inordinate Burdens

Section 3-1701. Purpose and applicability.

It is the purpose of this Division to provide a process for applicants to notify the City of potential litigation and invoke the exercise of the City’s authority and discretion pursuant to Article VIII, Sections 2(b) and 6(e) of the Florida Constitution, Section 70.001 of the Florida Statutes, Sections ~~5.01 and 5.02~~ 6.02 of the Charter of Miami-Dade County, Article 1, Section ~~87~~ of the Charter of the City of Coral Gables, and Objectives ADM-1.2, and Policies ADM-1.1.2 and FLU-1.1.9 of the City of Coral Gables Comprehensive Plan, to avoid expensive, uncertain, unnecessary, and protracted litigation regarding the application of these land development regulations to individual properties. The City may grant relief pursuant to this Division ~~only~~ when it is demonstrated that the applicant for said relief has been unfairly, disproportionately and

or inordinately burdened by a final order of the City that either denied development approval to the applicant or imposed one (1) or more conditions of approval on the applicant. The process may also be initiated by the City to settle litigation in order to avoid unfairly, disproportionately, or inordinately burdening a party to that litigation, such as to mitigate the burden where a party to a settlement agrees in the settlement to bear a disproportionate burden of a government use that benefits the public. This Division does not apply to matters that arise from the application of the Florida Building Code.

Section 3-1702. Application.

A. All requests for relief pursuant to this Division shall be made in writing upon an application form approved by the City, and shall be accompanied by applicable fees. All such applications shall be filed with the City Manager's office.

B. Applications pursuant to this Division shall be filed no later than fifteen (15) days from the date a final order is rendered which the applicant alleges unfairly, disproportionately, and inordinately burdens its real property. City staff may initiate this procedure and file an application at any time in order to settle a pending dispute or litigation, as well as a pending matter before a federal or state administrative agency.

Section 3-1703. Guidelines.

A. If the City Commission finds that an applicant has demonstrated that it has suffered an unfair, disproportionate ~~and~~ or inordinate burden as a result of the application of these regulations to its property, the City Commission may grant appropriate relief. Likewise, if the City demonstrates that a settlement would avoid, mitigate, or remedy an unfair, disproportionate, or inordinate burden to a property owner, the City Commission may grant appropriate relief. Proposed terms may include, but are not limited to:

1. Relief from the application of particular provisions of these regulations.
2. The transfer of developmental rights from one (1) parcel to another within the City.
3. Approval of the original application with conditions; or modifications to any previously imposed conditions of approval.
4. Any of the remedies listed in section 70.001(4)(c) of the Florida Statutes

B. The decision to grant relief ~~to an applicant~~ pursuant to this Division rests in the sound discretion of the City Commission in the exercise of its inherent sovereign powers to settle legitimate disputes. The policy of the City is to fashion a proposal for resolving the dispute based on a considered balance of the following factors:

1. The degree of burden suffered by the applicant or property owner.
2. The nature and significance of the public interest that is served by the application of the regulation to the ~~applicant's~~ property.
3. The likelihood of litigation, and its likely cost, the City's potential exposure, the uncertainty of outcome, the timetable for resolving the issues, and whether there is a perceived need for a judicial determination of the issues raised by the application.

C. In general, it is the policy of the City to resolve disputes in a manner that does not require significant financial expenditures by the City.

D. All relief granted pursuant to this Division shall be consistent with the City of Coral Gables Comprehensive Plan and shall not violate any controlling federal law, state statute, or Miami-Dade County ordinance.

E. All relief granted pursuant to this Division is conditioned upon the execution of a release of all claims that may arise from or relate to the application of the land development regulations that allegedly created the unfair, disproportionate ~~and~~ or inordinate burden. The release of claims shall be in a form that is acceptable to the City Attorney and shall be recorded at the applicant's expense.

Section 3-1704. Staff review, report and recommendation.

A. Within five (5) days of receipt of an application pursuant to this Division, the City shall review the application to determine whether it is complete.

B. Within seven (7) days of receipt of a complete application, City Staff shall deliver the complete application to the City Manager, with copies to the ~~Planning Department, Building and Zoning Department, Development Services Department,~~ Historic Resources Department, City Attorney, and any other department as directed by the City Manager.

C. The City Manager shall direct the departments to provide a joint evaluation of the merits of the application, which shall include:

1. The principal purpose or purposes for the regulation that was applied to the applicant's property, or the property that is the subject of a settlement. These purposes may include, but are not limited to:

- a. To address specific, identified public health and safety concerns;
- b. To protect or enhance community character;
- c. To protect archaeological or historic resources;
- d. To protect environmental resources (water supply, listed species, air quality); and
- e. To comply with state infrastructure concurrency mandates.

2. The recommendation of the City departments with regard to whether the applicant has been unfairly, disproportionately ~~and~~ or inordinately burdened by the application of these land development regulations that is the subject of the application or settlement, in light of the purposes for which the regulations that created the alleged burden are intended to serve, and the burden (or potential burden) carried by other property owners who are similarly situated, if any.

D. Within forty-five (45) days of receipt of a complete application pursuant to this Division, the City Manager shall provide the City Commission with a report and

recommendation on the application or settlement and a proposed dispute resolution agreement, and shall place the matter on the agenda of the City Commission.

Section 3-1705. City Commission review and decision; Execution of Dispute Resolution Agreement.

A. The City Commission shall review the application or proposed settlement at a public hearing (noticed in accordance with the provisions of Article 3, Division 3), and shall decide whether to make an offer to resolve the dispute with the applicant, or to approve a settlement proposed by the City, which shall be in the form of a dispute resolution agreement. The hearing is not quasi-judicial, and is not subject to rules of quasi-judicial procedures.

B. The City Commission may approve, approve with conditions, or reject the proposed dispute resolution agreement. If the City Commission requires modifications to the proposed dispute resolution agreement, the City Manager shall cause a new proposed dispute resolution agreement to be drafted within fourteen (14) days.

C. When the City Commission has approved a proposed dispute resolution agreement or approved a proposed dispute resolution agreement with conditions, the City Manager is authorized to execute said dispute resolution agreement (as modified, if applicable).

D. Once executed by the City Manager, the dispute resolution agreement shall be placed on the next available consent agenda of the City Commission for ratification. The item shall not be pulled from the consent agenda except by supermajority vote of the entire membership of the City Commission.

Section 3-1706. Effect of Dispute Resolution Agreement.

A. Dispute resolution agreements that are executed pursuant to this Division shall not be effective until the later of:

1. The date executed by the applicant or other parties to the settlement;
2. The date ratified by the City Commission; or
3. Such other date that is set by the parties to the agreement.

B. When relief is provided in a dispute resolution agreement pursuant to this Division, no further procedures are necessary to give effect to said relief unless:

1. The further procedures are specifically required by the dispute resolution agreement; or
2. The City agreed to consider a zoning district boundary change or text amendment to these land development regulations.

C. Dispute resolution agreements that are executed pursuant to this Division shall run with the land.

Section 3-1707. Recording of Dispute Resolution Agreement.

All dispute resolution agreements that are executed pursuant to this Division shall be recorded in the public records of Miami-Dade County, Florida. If the agreement is silent with regard to who bears the cost of recording, the cost shall be borne by the applicant.

DIVISION 18. GOVERNMENTAL DISPUTE RESOLUTION PROCEDURES

Sec. 3-1801. Purpose, applicability and definitions.

- A. The purpose of this Division is to provide the standards and process for a special, accelerated approval process within the Zoning Code to obtain land use and zoning approvals that can be used to facilitate the resolution of anticipated or pending judicial or administrative proceedings, noncompliance determinations, warning letters, or other proceedings involving federal, state or other governmental agencies, as well as others who have bona fide claims, which are the subject of pending judicial proceedings.
- B. This Division applies to the review of proposals for development and use of public or privately-owned land, buildings and structures that would be authorized by the City as an element of the settlement of any Governmental Proceedings that are brought for the protection of the public health, safety or welfare, including but not limited to proceedings addressing the remediation or prevention of allegedly discriminatory practices and the protection of the public health, environment, or natural resources.
- C. This Division authorizes the City Commission to waive certain otherwise applicable requirements of the Zoning Code in order to facilitate such settlements through Commission approval of the development and use of public or privately-owned land, buildings and structures that would otherwise not be in compliance with the Zoning Code, provided the requirements of this Division are met.
- D. This Division also provides a mechanism whereby the City can implement a resolution of any potential conflict between the Zoning Code and a federal, state, or county statute or provision that pre-empts local regulation in accordance with Section 1-109F of the Zoning Code.
- E. In addition to the other applicable definitions in the Zoning Code, the following definitions shall apply for this Division:
 - 1. “Governmental Proceeding” shall mean a judicial or administrative proceeding, noncompliance determination, warning letter, or other governmental action to which the City is a party, involving federal, state, or other agencies, relating to the protection of the public health, safety or welfare, including but not limited to proceedings addressing the remediation or prevention of discriminatory practices and the protection of the public health, environment, or natural resources. Governmental Proceeding shall also include judicial proceedings involving private parties and the City in which matters of federal or state protected rights or fundamental fairness are implicated or at issue.

2. "Government Settlement" shall mean the proposed settlement of a Government Proceeding to which the City is a party that would require, as part of the settlement, authorization by the City of the development and use of public or privately-owned land, buildings and structures and would be presented to the County Commission for approval.

F. This Division may be applied in conjunction with Division 17 of Article III of the Zoning Code.

Section 3-1802. Application Process

A. On behalf of the City, the City Attorney, with the approval of the City Manager, may initiate a Request for City Commission Approval of Government Settlement by submitting the Government Settlement, along with any supporting documents, to the Development Review Officer for review and recommendation. The Request shall identify the specific zoning or land use approvals being sought as part of the Government Settlement and explain why the City is seeking these approvals from the City Commission.

B. The Development Review Officer shall review the City Attorney's request using the procedures and applying the standards for review set forth in this Division.

Section 3-1803 Notice and hearing procedures

A. The City shall publish in a newspaper of general circulation in the City and shall display on the City's public notice bulletin board and on its website a Notice of a Request for City Commission Review of Government Settlement, and shall maintain copies of the Request available for review in the Development Services Department and the City Clerk's Office. The notice shall advise the public that the City is evaluating whether the specific zoning or land use approvals being sought as part of the proposed Government Settlement comply with applicable provisions of the Zoning Code. The notice shall include a summary of the zoning or land use approvals being sought, how to view a copy of the request, how comments on the request can be presented to the City in writing or in person, and the date, location and time that a public hearing will be held on the request before the City Commission. A notification containing this information shall also be mailed by the City Clerk at least ten (10) days prior to the public hearing to the property owners of record, as well as property owners within a radius of one thousand (1,000) feet of the property described in the request, if the request is site-specific.

B. Development Review Officer report and recommendation. The report and recommendation of the Development Review Officer shall be submitted to the City Manager based upon the requirements of this Division, shall be limited to the proposed zoning and land use approvals, shall be advisory in nature, and shall not be binding in the approval proceedings. The form of the recommendation and the time for receipt of the recommendation shall be as established by the City Manager

E. City Attorney Recommendation. After receipt and consideration of the Development Review Officer recommendation, the City Attorney, in consultation with the City Manager, shall submit a recommendation to the City Commission with regard to approval of the Government Settlement. The City Attorney's recommendations with regard to the proposed land use and zoning approvals in the proposed Government Settlement shall be based upon the requirements of this Division.

Section 3-1804 Commission hearing

A. The City Commission shall have original and exclusive jurisdiction to decide whether to approve the land use and zoning approvals necessitated by the proposed Government Settlement. The City Commission's approval shall be in the form of a resolution. The resolution can be approved only after the City Commission convenes a quasi-judicial public hearing on the Request for Approval of Government Settlement, no sooner than seven days after receipt of the City Attorney's recommendation. In its resolution the City Commission may (i) grant the relief as requested, (ii) grant the relief with modifications, or (iii) deny the request. The resolution shall also state the reasons for the decision, shall identify any zoning or land use approvals granted or denied pursuant to the Zoning Code pursuant to this Division, and shall become final upon adoption.

Section 3-1805 Standards for review

A. In order to achieve the purposes of this Division while remaining consistent with and further the goals, policies and objectives of the Comprehensive Plan and the purposes of these regulations and other City ordinances and actions designed to implement the Plan, the following standards shall apply to review and recommendations by City staff and the decision of the City Commission regarding the elements of the Request for Review of Government to which this Division the Zoning Code applies. To the extent of any inconsistency between these standards and other Zoning Code standards, the standards in this Division shall apply:

1. The City Commission shall weigh the following criteria in determining whether to allow a waiver of or variance from the limitations on any provision of the Zoning Code outside of this Division in order to facilitate approval of the Government Settlement:

a. The property is owned, or partially owned, by the City or will be owned, or partially owned, by the City as part of implementation of the Government Settlement;

b. The proposed use of a property has a combined government and private use and facilitates important public policy objectives that are identified in the Comprehensive Plan, including but not limited to improvement of mobility alternatives to the automobile as described in the Mobility Element;

c. Implementation of the Government Settlement is designed to redress the effects of alleged discrimination on the basis of a protected classification;

d. Implementation of the Government Settlement resolves a federal or state administrative proceeding or will be made part of a consent order;

e. Implementation of the Government Settlement will further the protection of the public health, safety or welfare, including but not limited to the remediation or prevention of allegedly discriminatory practices and the protection of the public health, environment, or natural resources;

f. Implementation of the Government Settlement will facilitate the resolution of any potential conflict between the Zoning Code and a federal, state, or county statute or provision that pre-empts local regulation in accordance with Section 1-109F of the Zoning Code;

g. The proposed use is compatible with the nature, condition and development of adjacent uses, buildings and structures and will not adversely affect the adjacent uses, buildings or structures;

h. The nature of the proposed development is not detrimental to the health, safety and general welfare of the community.

Section 3-1806 Non-exclusivity of remedy.

Use of the review procedures set forth in this Division is optional with the City. Nothing herein shall preclude the City from requiring that any land use approvals involving a Government Settlement be reviewed in accordance with the procedures and standards otherwise set forth in the Zoning Code.

Section 3-1807 Temporary Relief.

While an application for City Commission approval of a Government Settlement is pending before the City, the City Manager or a private party may seek temporary relief.

Section 3-1808 Standing.

A party waives any right to seek judicial relief from a City Commission resolution made under this Division unless the party makes an objection to the City Commission at the quasi-judicial hearing itself.

Section 3-1808 Appeal.

The decision of the City Commission to reject a Government Settlement under this Division is not appealable. The decision of the City Commission to grant land use and zoning approvals as part of an approved Government Settlement under this Division is reviewable through a petition for writ of certiorari to the Circuit Court Appellate Division within 30 days from the date of

adoption of the resolution approving the settlement. The failure to seek review within that time frame is an absolute bar and waiver of any further challenge to those approvals.

Division 1819. Protection of Landowners' Rights; Vested Rights Determinations.

(and renumbering the rest)

SECTION 3. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 4. All ordinances or parts of ordinances that are inconsistent or in conflict with the provisions of this Ordinance are repealed.

SECTION 5. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of Ordinance No. 2007-01 as amended and known as the "Zoning Code" of the City of Coral Gables, Florida, which provisions may be renumbered or re-lettered and that the word ordinance be changed to "section", "article", or other appropriate word to accomplish such intention.

SECTION 6. If the Official Zoning Code of the City of Coral Gables Tables of Contents or other reference portions is affected by these provisions, then changes are approved as a part of this Ordinance.

SECTION 7. This Ordinance shall become effective _____, 2014.

PASSED AND ADOPTED THIS _____ DAY OF _____, A.D. 2014.

APPROVED:

JIM CASON
MAYOR

ATTEST:

WALTER FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

CRAIG E. LEEN
CITY ATTORNEY

