

MEMORANDUM

Agenda Item No. 7(I)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

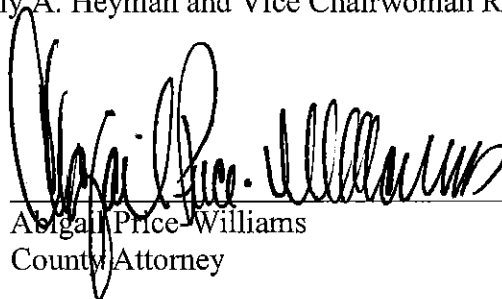
DATE: June 4, 2019

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to zoning; amending sections 33-1, 33-13, 33-201, 33-203, 33-207.2, 33-207.3, 33-208, and 33-217 of the Code; revising definitions and standards related to single family, duplex, and multiple family dwellings, hotels, motels, and rooming houses; amending section 33-20.1.1; providing prima facie evidence and rebuttable presumption of rooming house use and amending rebuttable presumption of illegal multiple use or illegal subdivision of a residence; creating section 33-304.2; establishing process and criteria to obtain reasonable accommodations for persons with disabilities related to certain zoning regulations

This item was amended from the original version as stated in the County Mayor's memorandum.

The accompanying ordinance was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez, and Co-Sponsors Commissioner Sally A. Heyman and Vice Chairwoman Rebeca Sosa.


Abigail Price-Williams
County Attorney

APW/uw

Memorandum



Date: June 4, 2019

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez". The signature is fluid and cursive, written over the printed name.

Subject: Zoning Ordinance Updating Definitions and Standards Related to Family, Dwelling Unit, Hotel, Motel and Rooming House and Establishing a Process for Review and Approval of Requests for Reasonable Accommodation from Certain Zoning Regulations

This item was amended at the May 14, 2019 Infrastructure & Capital Improvements Committee meeting to insert a sentence regarding State and Local Land Use Laws and Practices and the Application of the Fair Housing Act, in paragraph five of the Background section in this Memorandum.

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the attached ordinance updating current zoning code definitions and standards related to single-family dwellings, other types of dwelling units, hotels, motels, and rooming houses, and establishing a process for review and approval of requests for reasonable accommodations from certain regulations for persons with disabilities.

Scope

Unincorporated Miami-Dade County.

Fiscal Impact/Funding Source

Approval of this item is not anticipated to create a fiscal impact to the County as the proposed changes will not require additional staffing resources nor generate additional operational expenses.

Social Equity

The proposed ordinance seeks to protect the character of single-family residential neighborhoods while recognizing modern living arrangements. In addition, the proposed ordinance seeks to address reasonable accommodations from zoning regulations for persons with disabilities.

Track Record/Monitor

The ordinance will be administered by Nathan Kogon, Assistant Director, Development Services Division, Department of Regulatory and Economic Resources (RER).

Background

The County's Zoning Code relies on definitions of family, dwelling types, hotels, motels, and rooming houses that have not been updated since first adopted in 1957. These definitions are fundamental to the distinctions in the County's Zoning Code between single-family residential districts and more intense districts where multi-family developments, rooming houses, hotels, motels, and commercial uses may be allowed.

The proposed update to these definitions is intended to better address modern living arrangements and the requirements of federal law such as the Fair Housing Act and the Americans with Disabilities Act, while preserving the unique character of single-family neighborhoods that County residents have enjoyed for decades. Clarifying the distinctions between single-family uses and multi-family uses and transient and commercial lodging establishments that have higher levels of turnover among occupants will better protect the tranquility of single-family neighborhoods against intrusion and disruption from essentially incompatible uses, as when multitudes of unrelated people live in a single-family home and have constant and frequent turnover of occupants and guests. The proposed ordinance also clarifies definitions to better distinguish between primary residential buildings and accessory residential buildings, such as guesthouses and garages.

Specifically, the proposed ordinance:

1. Revises the definitions of the following terms: accessory building; apartment; apartment building; dwelling, one family; dwelling, duplex; guesthouse; hotel; motel; multiple-family housing development; residential; rooming house; and servants' quarters.
2. Introduces the following defined terms: dwelling, multiple family; dwelling unit; habitable space; and single housekeeping unit.
3. Defines family in accordance with modern federal and state law regarding familial relations, such as domestic partnerships and guardianship relationships that do not involve consanguinity or legal adoption. The proposed definition of family is also consistent with that of recent code updates around the nation. In recognizing modern familial arrangements, the ordinance also allows the family to have up to two domestic staff, non-paying temporary guests, or roomers. But the ordinance also introduces limits on the number of unrelated individuals who may live together to five residents, plus up to two domestic staff or non-paying temporary guests. In keeping with this modernization, the proposed ordinance defines a single-family home based on the newly-defined concept of a single housekeeping unit, which ensures that the occupants of the home are tied together in shared responsibility for the residence rather than being a recurring series of transient occupants who have no relationship to each other or responsibility for the property.
4. Revises the regulatory framework for rooming houses, including revising the definition and providing new criteria for where and under what conditions the use can be established, to better differentiate this type of living arrangement from that of a single-family home. In particular, the proposed ordinance provides that:
 - a. A rooming house consists of a residential building or dwelling unit for three or more unrelated persons that have no relationship to each other; the term "rooming house" may be used interchangeably with the term "boarding house."
 - b. A rooming house may only be established as a matter of right in multi-family zoning districts, from RU-3, Four Unit Apartment House District to more intense residential districts. Rooming houses in less intense residential districts require public hearing.
 - c. A rooming house may be either a single building on a lot, or one dwelling unit out of several dwelling units in an apartment building.

- d. Where a rooming house is the only residential building on a lot, the maximum number of residents allowed as a matter of right is 14, provided that the building contains no more than one cooking area.
- e. Where a rooming house is an individual dwelling unit of a residential lot with two or more dwelling units, the maximum number of residents allowed in the rooming house unit as a matter of right is 3; provided that, where multiple units on a single lot are used as rooming houses, a rooming house unit may have up to 5 residents so long as the average number of residents living in rooming house units is 3 or less. The latter number is based on the County's average number of persons per household, currently at 3:1.
- f. A public hearing would be required to approve a higher number of residents in a rooming house. Any such application would be analyzed in accordance with the Comprehensive Development Master Plan standards for congregate living facilities (*each 2.5 occupants shall be considered to be one dwelling unit, and the maximum number of dwelling units allowed shall be no greater than the number allowed in the next higher residential category than that for which the site is designated*).

The ordinance also introduces, for enforcement purposes, rebuttable presumptions of an illegal rooming house, and amends the rebuttable presumption criteria applicable to illegal multi-family uses or illegal subdivisions of residences accordingly.

- 5. Additionally, the proposed ordinance seeks to provide a process for reasonable accommodations from these and other zoning regulations, to ensure that people with disabilities enjoy equal access to housing opportunities while still preserving the overall intent and purpose of the County's zoning regulations. The reasonable accommodation process is similar to that found in other codes around the nation. The proposed ordinance authorizes the Department to relax zoning regulations without a public hearing, upon a showing, among other criteria, that the requested accommodation is reasonable, necessary, and appropriately tailored to make a dwelling unit available to a person with a disability. This reasonable accommodation process is relevant to the new dwelling unit regulations in this ordinance, to ensure that the limitations on unrelated people living together do not unreasonably affect persons with disabilities who require unique living arrangements or caregivers. In the November 10, 2016 Joint Statement of Housing and Urban Development (HUD) and the Department of Justice (DOJ) on State and Local Land Use Laws and Practices and the Application of the Fair Housing Act, HUD and DOJ "strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests," particularly with regard to local zoning regulations."



Jack Osterholt
Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: June 4, 2019

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(I)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(I)

6-4-19

ORDINANCE NO. _____

ORDINANCE RELATING TO ZONING; AMENDING SECTIONS 33-1, 33-13, 33-201, 33-203, 33-207.2, 33-207.3, 33-208, AND 33-217 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REVISING DEFINITIONS AND STANDARDS RELATED TO SINGLE FAMILY, DUPLEX, AND MULTIPLE FAMILY DWELLINGS, HOTELS, MOTELS, AND ROOMING HOUSES; AMENDING SECTION 33-20.1.1; PROVIDING PRIMA FACIE EVIDENCE AND REBUTTABLE PRESUMPTION OF ROOMING HOUSE USE AND AMENDING REBUTTABLE PRESUMPTION OF ILLEGAL MULTIPLE USE OR ILLEGAL SUBDIVISION OF A RESIDENCE; CREATING SECTION 33-304.2; ESTABLISHING PROCESS AND CRITERIA TO OBTAIN REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES RELATED TO CERTAIN ZONING REGULATIONS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, this Board desires to accomplish the purposes set forth in the accompanying memorandum, a copy of which is incorporated herein by reference,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. The Board ratifies and adopts the accompanying memorandum, as if fully set forth herein.

Section 2. Section 33-1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

Sec. 33-1. Definitions.

For the purpose of this chapter, the following definitions for terms used herein shall apply to all sections of this chapter unless the context clearly indicates otherwise:

- (1) *Accessory building.* A secondary residence, garage, or other building or structure on a lot or parcel subordinate to and not forming an integral part of the main or principal building but pertaining to the use of the main building. ~~[[An accessory building may include servant's quarters unless prohibited by existing deed restrictions.]]~~ >>In a residential district, use of an accessory building by a family other than the residents of the principal residential building may constitute a duplex or multiple family use and shall only be permitted where authorized by this chapter.<< Also see *Guesthouse* >>and *Servants' quarters*<<.

* * *

- (6) *Apartment.* A >>dwelling unit consisting of a<< room or a suite of rooms within an apartment house, arranged, intended or designed to be used as a home or residence of one ~~[[4]]~~ family with ~~[[kitchen]]~~ >>cooking<< facilities for the exclusive use of the one ~~[[4]]~~ family.

- (6.1) *Apartment building* >>or apartment house<<. A >>multiple-family dwelling<< building which is used or intended to be used as a home or residence for three ~~[[3]]~~ or more families living in separate apartments, in which the yard areas, hallways, stairways, balconies and other common areas and facilities are shared by families living in the apartment units.

* * *

- (41) *Dwelling, one family* >>or single family, or one-family residence<<. A >>single dwelling unit on a single lot<< ~~[[private residence building used or intended to be used as a home or residence in which all living rooms are accessible to each other from within the building and in which the use and management of all sleeping quarters, all appliances for sanitation, cooking, ventilating, heating or lighting are designed]]~~ for the use of one ~~[[4]]~~ family only.

(42) Dwelling, duplex >>or two family, or two-family residence<<. A >>single<< residence building >>with two dwelling units, or two dwelling units in separate buildings,<< designed for, or used as the separate homes or residences of two ~~[(2) separate and distinct]~~ families >>on a single lot.<< ~~[[, but having the appearance of a single-family dwelling house. Each individual unit in the duplex shall comply with the definition for a one (1) family dwelling.]]~~

(42.1) >>Dwelling, multiple family or multi-family. A single residence building or a group of buildings designed for, or used as the separate homes or residences of, three or more families in separate dwelling units on a single lot.

(42.2) Dwelling unit. A single unit used or intended to be used exclusively for residential purposes, in which all habitable spaces are accessible to each other from within the unit and in which there is at least one bathroom and no more than one cooking area.

(42.3)<< Electrical power plant >>. Any<< ~~[[means any]]~~ electrical generating facility of ~~[[twenty (2)]]~~ 20 ~~[[)]]~~ megawatts or more using any process or fuel and includes associated facilities except those electrical generating facilities the regulation and certification of which are expressly preempted by Chapter 403, Florida Statutes.

* * *

(44) Family. ~~[[One (1) person, or group of two (2) or more persons living together and interrelated by blood, marriage or legal adoption, occupying a dwelling unit designed as a single family use, as a separate housekeeping unit with a single set of kitchen facilities. The persons thus constituting a family may also include gratuitous guests and domestic servants.]] >>A natural person living in a dwelling unit; or two or more natural persons related by blood, marriage, adoption, domestic partnership, or other analogous union or relation, but excluding fraternities, sororities, and other similar clubs or organizations, and up to two gratuitous guests, domestic staff, or roomers, all living together as a single housekeeping unit in a dwelling unit; or no more than five unrelated natural persons, and up to two gratuitous guests or domestic staff, all living together as a single housekeeping unit in a dwelling unit.<<~~

* * *

(54) *Guesthouse.* >>An accessory<< [~~A single family~~] building [~~in the rear yard area~~] of a residence >>₁<< which >>accessory building<< is not occupied year around, but which is used as temporary residence, only. Such a building shall conform to the requirements for accessory buildings, except that a sink, bathtub and cooking facilities may be provided. Only nonpaying and personal guests of the occupant of the principal residence shall occupy a guesthouse. Year around occupancy shall not be permitted by the same guest, nor shall the owner occupy the guesthouse and rent the principal residence. >>Use of a guesthouse in violation of these provisions constitutes an unlawful duplex or multiple family use.<<

>>(54.1) Habitable Space. Building space the use of which involves regular human presence. Habitable space shall not include areas devoted to parking, storage, or warehouses.<<

* * *

(58) *Hotel.* [~~A building in which lodging, or boarding and lodging, are provided as the more or less temporary residence of individuals who are lodged therein and in which ingress and egress to and from all rooms are made through an inside lobby supervised by a person in charge at all times. As such, it is open to the public in contradistinction to a boarding, lodging house or an apartment building. Keys to the rooms and mail for the occupant of the hotel are received and generally kept by the attendant at the desk in the lobby. Daily linen service and other normal and customary hotel services shall be offered to the individuals lodged therein. No more than five (5) percent of the individual hotel units shall be occupied for more than six (6) months. Kitchen facilities in individual units may be offered.~~] >>A commercial lodging establishment containing guest rooms, suites, or other dwelling units intended or designed to be occupied by travelers or transient guests, and where ingress or egress may but need not be through a common lobby or office.<<

* * *

(61) *Lot.* Parcel of land shown on a recorded plat or on the official County zoning maps or any piece of land described by a legally recorded deed.

* * *

(71) *Motel.* ~~[[A building or a group of two (2) or more buildings designed to provide sleeping accommodations for transient or overnight guests. Each building shall contain a minimum of ten (10) residential units or rooms which shall generally have direct, private openings to a street, drive, court, patio, or the like.]]~~ >>A commercial lodging establishment containing guest rooms, suites, or other dwelling units intended or designed to be occupied by travelers or transient guests, and where some or all of the units have a separate entrance leading directly from the outside of the building with garage attached or automobile parking space conveniently located on the lot or parcel of land. Motels include, but are not limited to, auto courts, motor lodges, and tourist courts.<<

(71.1) *Multiple-family housing development or project* >>or multiple family apartment house. See *Dwelling, multiple family*<<. ~~[[Three or more single family buildings, or more than one (1) two family building or more than one (1) multiple family building on a building site, or any combination thereof.]]~~

* * *

(87) >>Residence or<< *Residential.* The term “residential” or “residence” >>means<< ~~[[is applied herein to]]~~ any lot, plot, parcel, tract, area>>₁<< or piece of land>>₂<< or any building >>or portion thereof,<< used >>or intended to be used<< exclusively for family dwelling purposes ~~[[or intended to be used]]~~, including concomitant uses specified herein. >>See also, *Dwelling, one-family; Dwelling, duplex; Dwelling, multiple family; Dwelling unit.*<<

* * *

(91) *Rooming house.* A residential building >>or portion thereof<< used, or intended to be used, as a place where sleeping ~~[[or housekeeping]]~~ accommodations are furnished or provided for pay>>, and where meals may be provided,<< to >>three or more unrelated persons for temporary or permanent residence that are not a single housekeeping unit

and that may each operate under separate rental agreements or leases. This use may also be referred to as a boarding house.<< [[less than five (5) transient or permanent guests or tenants and in which less than five (5) and more than three (3) rooms are used for the accommodation of such guests or tenants, but which does not maintain a public dining room or cafe in the same building, nor in any building in connection therewith]].

* * *

- (93) *Servants' quarters.* ~~[[A secondary]]~~ >>An accessory<< residential building occupied by an employee of the principal residential building and conforming to the restrictions of this chapter, including those for accessory buildings.

* * *

>>(96.1) Single Housekeeping Unit. One person, or two or more individuals living together and sharing the entire dwelling unit and household activities and responsibilities, which may include, without limitation: (i) sharing expenses for food, rent, utilities, or other household items; (ii) sharing chores; (iii) eating meals together; (iv) participating in recreational activities together; or (v) having close social, economic, and psychological commitments to each other. Except where roomers are expressly authorized by this chapter, where unrelated persons are living together, the occupants must jointly occupy the unit under a single lease, either written or oral, whether for monetary or non-monetary consideration.<<

* * *

Section 3. Section 33-13 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-13. - Unusual uses.

* * *

- (e) *Unusual and new uses.*
 - (i) Unless approved upon public hearing, the following unusual uses or uses similar thereto shall not be

permitted in any district save and except in those districts that permit such uses without a public hearing:

* * *

(57) Rock quarries;

>>(57.1) Rooming house.<<

* * *

Section 4. Section 33-20.1.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-20.1.1. - Prima facie evidence of illegal multiple family use, illegal subdivision of a residence, or illegal rooming house use.

(a) >>Presumption of illegal multiple family use or subdivision.<< It shall be presumed that a multi-family use has been established, or a residential lot has been illegally subdivided, when one ~~[(1)]~~ or more of the following conditions are observed:

- (1) There are two ~~[(2)]~~ or more electrical, water gas or other types of utility meters, or mailboxes on the premises.
- (2) There is evidence of a liquid propane (LP) gas tank installed in an unauthorized detached structure on the premises.
- (3) There is more than one ~~[(1)]~~ cooking area in the primary structure >>or an accessory building has a cooking area<<.
- (4) All living areas in the dwelling >>unit<< are not interconnected.
- (5) Multiple ~~[[paved]]~~ numbered >>, lettered, or otherwise labelled<< parking spaces.
- (6) An unauthorized detached building with air conditioning, interior cooking areas or utility meters.
- (7) There is more than one ~~[(1)]~~ different house address unit number posted on the premises.
- (8) An advertisement >>or sign<< indicating the availability of more than one >>dwelling<< ~~[[1] living]]~~ unit on the premises.
- (9) An unpermitted exterior door.

>>(10) Disproportionately high utility bill or bills in comparison to similarly-sized residences in the area, or disproportionately high utility bill or bills in relation to the number of bedrooms.

(11) Disproportionate number of vehicles parked overnight at or registered to the property in relation to the number of bedrooms.

(b) Presumption of illegal rooming house. It shall be presumed that a rooming house has been established when one or more of the following conditions are observed:

(1) An advertisement or sign indicating the availability of rooms, beds, or living spaces for rent.

(2) Interior locks, partitions, or hasps.

(3) Provision of cooking or kitchen appliances, such as electric fry pans, toaster ovens, or refrigerators, in individual rooms.

(4) Individual storage of food in bedrooms.

(5) Alphabetical, numeric, or other labeling of bedrooms or living areas.

(6) Multiple numbered, lettered, or otherwise labelled parking spaces.

(7) Alterations to structures which enhance or facilitate its use as a rooming house.

(8) Disproportionately high utility bill or bills in comparison to similarly-sized residences in the area, or disproportionately high utility bill or bills in relation to the number of bedrooms.

(9) Disproportionate number of vehicles parked overnight at or registered to the property in relation to the number of bedrooms.

(c)<<[[~~(b)~~]] For duplex or triplex structures, the terms “structure” and “dwelling” as used herein shall apply as to each >>dwelling<< unit.

[[~~(e)~~]] >>(d) Rebutting the presumption.

(1) The absence of any factor set forth in subsections (a) or (b) shall not create any presumption.

(2)<< The presumption may be rebutted by the submission of >>a notarized affidavit in a form acceptable to the Director from the property owner attesting that the entire dwelling unit and accessory structures are being maintained for single-family dwelling use only, and one of the following:

- >>(i) The property owner submits<< a current >>as-built<< floor plan prepared by ~~[[an]]~~ >>a licensed<< engineer or architect, surveying the ~~[[residence]]~~ >>entire dwelling unit<< and accessory structures and showing all rooms are interconnected as a single-family dwelling ~~[[accompanied by]]~~ >>and attesting that no conditions on the property show an illegal subdivision of the residence or illegal multi-family or rooming house use; or<< ~~[[a notarized affidavit from the property owner attesting that the residence or accessory structure is being maintained for single family occupaney and/or substantiated by an interior inspection of the dwelling by a compliance officer. If the]]~~
- >>(ii) A<< compliance officer is able to enter the >>property, inspect the<< interior of the >>dwelling unit and accessory structures<< ~~[[property]]~~ and verify its use as a single-family dwelling ~~[[, the property owner is exempt from the above submission]].~~

~~[[d]]~~ >>(e)<< Nothing contained in this section shall prevent the enforcement actions authorized by the Code of Miami-Dade County, Florida independent of this section.

Section 5. Section 33-201 of the Code of Miami-Dade County, Florida, is hereby

amended to read as follows:

Sec. 33-201. - Uses permitted.

No land, body of water and/or structure shall be used or permitted to be used and no structure shall be hereafter erected, constructed, moved, reconstructed or structurally altered for any purpose in an RU-2 District which is designed, arranged, or intended to be used or occupied for any purpose, unless otherwise provided for, excepting for one ~~[[1]]~~ or more of the following uses:

* * *

- (2) On lots meeting the requirements for two-family use, every use as a duplex or two-family residence, including two ~~[(2)]~~ private garages.

>>(a) Where a single building is erected for separate families, the building shall have the appearance of a single-family dwelling house.

(b)<<Where two ~~[(2)]~~ separate buildings are erected to house separate families on a single lot, one ~~[(1)]~~ shall be placed to the rear of the other and not side by side within the minimum lot width required herein.

* * *

Section 6. Section 33-203 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-203. - Uses permitted.

No land, body of water and/or structure shall be used or permitted to be used and no structure shall be hereafter erected, constructed, reconstructed, or moved or structurally altered or maintained for any purpose in an RU-3 District, unless otherwise provided herein, excepting for one ~~[(1)]~~ or more of the following uses:

- (1) Every use permitted in RU-1, RU-1M(a), RU-1M(b) and RU-2 Districts.
- (1.1) Workforce housing units in compliance with the provisions of Article XIIA of this Code.
- (2) Rooming houses >>only in accordance with the following:
 - (i) Administrative site plan review is required.
 - (ii) Where the only residential building on a lot is a rooming house, the maximum number of residents allowed shall be 14, provided that the building contains no more than one cooking area.

(iii) Where an individual dwelling unit of a residential lot with two or more dwelling units is used as a rooming house, the maximum number of residents allowed in the rooming house unit shall be 3; provided that, where multiple units on a single lot are used as rooming houses, a rooming house unit may have up to 5 residents so long as the average number of residents living in rooming house units is 3 or less<<.

- (3) Day nurseries serving the adjacent neighborhood.
- (4) Garage apartments.
- (5) Churches, schools, colleges and universities, including dormitories.
- (6) Not more than four (4) families shall occupy a building in an RU-3 District.
- (6.1) Multiple family housing developments. Multiple family housing developments on sites zoned RU-3 prior to >>November 13, 2005<< ~~[[the effective date of this ordinance]]~~ shall be permitted only after staff review of the site plan to insure compliance with (i) the following, and (ii) with the site plan review criteria contained within Section 33-203.7 ~~[[of this Code]]~~, except that interior side setbacks and spacing requirements shall not apply.

* * *

Section 7. Section 33-207.2 of the Code of Miami-Dade County, Florida, is hereby

amended to read as follows:

Sec. 33-207.2. - Uses permitted.

No land, body of water or structure shall be used, or permitted to be used and no structure shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in a RU-4L District which is designed, arranged or intended to be used or occupied for any purpose, except for one ~~[[1]]~~ of the following uses:

* * *

>>(F) Rooming house, only in accordance with the requirements set forth in section 33-203(2), except that the total number of residents in a rooming house that is the only residential building on the lot may exceed 14 if approved after public hearing.<<

Section 8. Section 33-207.3 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-207.3. - Uses permitted.

No land, body of water or structure shall be used, or permitted to be used and no structures shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in a RU-4M District which is designed, arranged or intended to be used or occupied for any purpose, except for one ~~[[4]]~~ of the following uses:

* * *

>>(F) Rooming house, only in accordance with the requirements set forth in section 33-203(2), except that the total number of residents in a rooming house that is the only residential building on the lot may exceed 14 if approved after public hearing.<<

Section 9. Section 33-208 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-208. - Uses permitted.

No land, body of water or structure shall be used, or permitted to be used and no structure shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in an RU-4, High Density Residential District, which is designed, arranged or intended to be used or occupied for any purpose, except for one ~~[[4]]~~ of the following uses:

* * *

>>(7) Rooming house, only in accordance with the requirements set forth in section 33-203(2), except that the total number of residents in a rooming house that is the only residential building on the lot may exceed 14 if approved after public hearing.<<

Section 10. Section 33-217 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-217. - Uses permitted.

No land, body of water or structure shall be used, or permitted to be used and no structure shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in an RU-4A District which is designed, arranged, or intended to be used or occupied for any purpose, except for one ~~[(1)]~~ of the following uses:

* * *

>>(11) Rooming house, only in accordance with the requirements set forth in section 33-203(2), except that the total number of residents in a rooming house that is the only residential building on the lot may exceed 14 if approved after public hearing.<<

Section 11. Section 33-304.2 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>>Sec. 33-304.2 --Reasonable Accommodation for Persons with Disabilities.

(A) *Policy and Intent.* It is the policy of Miami-Dade County to provide for a reasonable accommodation to the application of its zoning regulations for the siting, development, and use of housing, as well as other related residential services and facilities, to persons with disabilities who demonstrate the need for such reasonable accommodation to obtain fair and equal access to, and use of, housing. The purpose of this section is to provide persons with disabilities a process for making a request for, and obtaining, such reasonable accommodation.

(B) Applicability and Definitions. Any person who, because of a disability, requires a reasonable accommodation in the application of a zoning law that may be acting as a barrier to equal opportunity for housing, or any person or persons acting on behalf of or for the benefit of, such a person may request such accommodation pursuant to this section. A request for a reasonable accommodation shall be made in the manner prescribed in this section, which shall be the exclusive administrative remedies. As used in this section:

(1) “Disabled,” “disability,” “handicap,” and other related terms shall be defined as in the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102, the federal Fair Housing Act of 1968, 42 U.S.C. § 3602, 24 C.F.R. part 100, and the Florida Fair Housing Act, Fla. Stat. § 760.22, as may be amended from time to time.

(2) “Applicant” means the person who seeks an accommodation, regardless of whether the application is filed by that person or by persons acting on his or her behalf or for his or her benefit, or a person or entity operating a facility that is credentialed pursuant to Chapter 397, Florida Statutes, or other state or federal law.

(C) Application for Reasonable Accommodation. An application for a reasonable accommodation shall provide the following information on forms prescribed by the Director:

(1) Applicant’s name, address, and telephone number;

(2) That the applicant is disabled or handicapped under the above-referenced federal or state laws; provided, however, that any information related to such disability or handicap shall be kept confidential and exempt to the extent permitted by Florida public records laws;

(3) Address of the property for which the request for a reasonable accommodation is made;

(4) The current actual use of the property;

(5) The zoning regulation, requirement, provision, or policy from which a reasonable accommodation is sought;

- (6) The manner in which the applicant seeks to use the property that is the subject of the requested accomodation, and the effect that the requested accomodation would have on the intended use if granted; and
 - (7) An explanation as to why the requested accommodation is reasonable and is necessary for the applicant to obtain fair access to, and use of, housing or to have equal opportunity to use and enjoy the subject property.
 - (8) A statement from a licensed medical provider, if necessary; provided, however, that any information related to such disability or handicap shall be kept confidential and exempt to the extent permitted by Florida public records laws.
 - (9) Such other information as the Director may require to verify that the applicant is disabled or that the requested accommodation is necessary.
- (D) Review and Approval Procedures. An application for a reasonable accommodation shall be reviewed and decided in accordance with the following procedures:
- (1) Reviewing authority. The Director shall designate a Reasonable Acommodation Evaluator (the "RA Evaluator") to review and decide all applications for reasonable accommodations in consultation with the Department's ADA Coordinator. Appeals of such decisions shall be permitted only in accordance with the procedures below and shall be decided by the Director, whose decision shall be final, notwithstanding any other provisions of the code governing appeals of administrative decisions.
 - (2) Decision. The RA Evaluator shall make a written determination within 21 days of the filing of a complete reasonable accommodation application, as determined by the Director, and shall either grant, grant with modifications, or deny the application.
 - (a) The decision shall be made in accordance with the review criteria set forth below and, when necessary, shall involve consultation with the applicant or, where appropriate, the

person or persons acting on behalf of, or for the benefit of, the applicant.

- (b) The RA Evaluator may impose any conditions of approval deemed reasonable and necessary, including the condition that the accommodation shall not run with the land and shall terminate when the applicant no longer resides at the subject property, to ensure that the accommodation does not result in negative or detrimental impacts, including to the County, its land use regulatory scheme, or the neighborhood and uses surrounding the applicant's property.

- (3) Review criteria. The written decision to grant or deny a request for a reasonable accommodation shall be consistent with the above-referenced federal and state laws and shall be based on consideration of the following criteria:

- (a) Whether the requested accommodation is necessary to make specific housing available to an individual with a disability in accordance with federal or state law;
- (b) Whether the requested accommodation, if granted, would alleviate the effect of the applicant's disability on the applicant's lawful use of the property;
- (c) Whether the requested accommodation is tailored to meet the applicant's need without providing undue benefit to the applicant;
- (d) Whether the requested accommodation, if granted, would impose an undue financial or administrative burden on the County; and
- (e) Whether the requested accommodation, if granted, would result in a fundamental or detrimental alteration to the County's land use regulatory scheme, including its comprehensive planning and zoning regulatory framework, or create any negative or detrimental impacts on the neighborhood and surrounding uses; for purposes of this paragraph, it shall be a rebuttable presumption that an accommodation that, but for this process, would otherwise require a (i) district boundary change, (ii) use variance, (iii) special exception, (iv) unusual

use, (v) non-use variance of more than 50 percent, or (vi) other request that requires public hearing prior to approval results in a fundamental alteration, and this list shall not be construed to limit the authority to determine that another type of request also creates a fundamental alteration;

- (f) Whether a sufficient alternative to the initial request exists, if the request is determined to have negative or detrimental impacts based on the foregoing criteria.

(E) Notice of Approval of Reasonable Accommodation. Within 14 days of a written decision to grant or grant with modifications an application for reasonable accommodation, mailed notice shall be provided to all property owners of record, as reflected on the Miami-Dade County Property Appraiser's tax roll, located within a 100-foot radius of the property that is the subject of the request, or such greater distance as the Director may prescribe.

- (1) This notice shall identify the property subject to the accomodation and shall describe the nature of the accomodation granted, along with the conditions of approval, if any.

- (2) The notice shall also indicate that any aggrieved person may appeal the decision to the Director within 30 days of the date of the notice and that the Director's decision shall be final.

(F) Appeal of Determination. An aggrieved or adversely affected party may appeal the RA Evaluator's decision to the Director in accordance with the following procedure:

- (1) Time to appeal.

- (a) The applicant may file an appeal within 30 days of the date of the RA Evaluator's written decision.

- (b) Any other aggrieved or adversely affected party may appeal the RA Evaluator's decision within the greater of 30 days of the date of the written decision or of the date of the mailed notice required by this section.

- (2) Filing the appeal. Appeals shall be filed with the Department on a form prescribed by the Director. Where the appeal is filed by a party other than the applicant, the Department shall provide the applicant written notice of such appeal, and the applicant may submit a written response within 30 days of the date of such written notice.
- (3) Director's decision. Within 60 days of the date the appeal is filed or the date the applicant submits a written response, whichever is greater, the Director shall approve or deny the appeal and may affirm, modify, or reverse the decision under review.
- (a) The Director's decision shall be consistent with the above-referenced federal and state laws and shall consider the review criteria set forth above, the stated basis for the appeal, and the applicant's response, if any.
- (b) Except as provided in this section, the Director's decision shall be set forth in writing and shall be final, notwithstanding any other provisions of the code governing appeals of administrative decisions.
- (4) Presentation of request to applicable zoning board. Where the RA Evaluator denies a requested accommodation because it would fundamentally or detrimentally alter the County's land use regulatory scheme or it necessitates a zoning request that requires a public hearing, then, in lieu of appealing to the Director, the applicant may file an application for public hearing and may request that the applicable zoning board consider the application based on the criteria set forth in this section, in addition to any other criteria that may govern the requested zoning action. The Department's recommendation to the applicable zoning board shall also include analysis based on the criteria set forth in this section. If the applicant appeals the RA Evaluator's decision to the Director and the Director does not grant the requested accommodation, then the applicant may thereafter present the request to the applicable zoning board in accordance with this paragraph.

(G) Other Zoning Applications. If the project for which the request for accommodation is made also independently requires other zoning approvals, actions, or permits pursuant to this chapter (including, but not limited to: district boundary change, special exception, unusual use, non-use variance, administrative modification, or administrative site plan review), then the applicant may elect the order in which to submit such applications or may submit them concurrently. The request for reasonable accommodation shall be reviewed and processed in accordance with the procedures and requirements of this section, while such other applications shall be reviewed and processed in accordance with such other provisions of this chapter as may apply.

(H) Fees.

(1) There shall be no fee for an application requesting reasonable accommodation from the RA Evaluator in accordance with this section.

(2) There shall be no fee for an applicant's appeal of the RA Evaluator's decision in accordance with this section. All other parties appealing the RA Evaluator's decision may be assessed a fee established by implementing order approved by the Board of County Commissioners.

(3) If the project for which the request is being made includes requests for other approvals or permits, such other application fees shall continue to apply.

(4) If an applicant opts to present to the zoning board a request for accommodation that the RA Evaluator or the Director has denied pursuant to this section because it would fundamentally or detrimentally alter the County's land use regulatory scheme or it necessitates a zoning request that requires a public hearing, then the application fees for zoning hearing applications shall continue to apply.

(I) Exhaustion of remedies.

(1) To the extent permitted by federal and state laws, any applicant that is aggrieved or adversely affected by any decision or determination of an administrative official shall make a good faith effort to exhaust the

administrative remedies prescribed in this section prior to applying to any enforcing agency or court for relief.

- (2) No other party that is aggrieved or adversely affected by any decision or determination or an administrative official may apply to any court for relief unless such person has first exhausted the remedies provided for in this section and taken all available steps provided for herein.<<

Section 12. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 13. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, 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 14. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Dennis A. Kerbel

APW
DAK