Memorandum

MIAMI-DADE COUNTY

Date: December 4, 2012

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

From: Carlos A. Gimenez, Mayor

Subject: Ordinance Comprehensively Updating the Regulations Guiding the Zoning Process

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Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the attached ordinance comprehensively updating the County's Zoning Code (Chapter 33).

Scope

This ordinance impacts unincorporated Miami-Dade County.

Fiscal Impact/Funding Source

The proposed ordinance creates no fiscal impact on Miami-Dade County.

Track Record/Monitor

Eric Silva, Assistant Director of Development Services in the Department of Regulatory and Economic Resources, will be responsible for implementation of the proposed ordinance.

Background

The proposed ordinance is part of a series of initiatives being pursued in order to facilitate economic development and streamline land development processes in our County. Specifically, this ordinance provides for improvements to the zoning hearing process resulting from staff's work with members of the Development Process Advisory Group and other stakeholders. Information on the proposed Code changes and notice of the June 6, 2012 public workshop were posted on the County's website and sent to more than 150 representatives of development industry, environmental organizations, County agencies and other stakeholders. Staff presented the proposed Code changes to attendees at the public workshop which included both industry and citizen groups and feedback was positive.

Zoning Process Improvements: In addition to various modifications to improve and clarify Code language, specific examples of changes in this ordinance include:

- ***Developmental Impact Committee (DIC):*** Amends the membership composition of the DIC to increase participation and ensure that required quorum requirements are met. Specific changes include expanding the DIC membership to include Miami-Dade Transit and expanding the membership of the Executive Council of the DIC to include the Parks, Recreation and Open Spaces Department, in addition to making it easier for Department Director's to appoint a designee to serve on their behalf.
- ***Application Deadlines:*** Amends the timeframe for withdrawal of applications to 40 days prior to the public hearing. This provides a more certain deadline over the current language that allows for withdrawal prior to the mailing of final notices. The application can be amended at public hearing to correct scrivener's errors.
- ***Application Review Period:*** Adds a 21 day deadline for Departments to provide comments on zoning applications. This reduces the current time frame by 9 days (from 30 days) and will allow for more timely review of proposed zoning applications.
- ***Appeals:*** Clarifies that applications for appeal of decisions of the Community Zoning Appeals Board (CZAB) shall be presented to the Board of County Commissioners as it was presented to the CZAB.

- ***Notification:*** Amends the notification requirements for zoning hearing applications to reduce review time. In addition to these changes, the Department is working to enhance the use of electronic mediums to keep the public apprised of pending zoning applications. Below is a description of the current notification requirements and proposed changes:
  - ***Preliminary Mailed Notice:*** The preliminary notice is sent shortly after receipt of an application to provide notice that an application is being reviewed and provide contact information to allow interested parties to remain apprised on the status. Specific changes include clarification that the preliminary notice is provided as a courtesy and errors in the preliminary mailed notice will not prevent the application from being considered at public hearing. The deadline for mailing the preliminary notice was reduced from 40 days to 30 days after filing.
  - ***Legal Newspaper Ad:*** The legal advertisement was amended to provide the necessary information in a format that is more easily understandable by the public. This includes deletion of the legal description requirement in favor of the property location and street address (when available).
  - ***Final Mailed Notice:*** Amends the deadline for sending the final mailed notices to no sooner than 30 days and no later than 20 days prior to hearing. The Code currently requires that mailed notices be sent no later than 30 days prior to the hearing.
  - ***Property Posting:*** Adds the application number to the list of required information on the property posting to make it easier for the public to find information pertaining to the specific application. The proposed ordinance also clarifies that the property owner is responsible for removing the sign within two weeks following completion of the public hearing.
- ***Extensions Granted by State Law:*** Amends the review procedures for extensions of development orders and development permits granted by state law to allow for administrative approval rather than approval at public hearing. This change implements the statutory language which requires the local government to grant the extension when specified criteria are met.
- ***Administrative Modification:*** Amends the requirements for administrative modifications to allow for reformation of restrictive covenants to correct clerical errors or scrivener's errors when specified criteria are met. In addition, the proposed ordinance amends the publication requirements for substantial compliance determinations to require publication in a newspaper of largest circulation, thereby allowing the notification to reach a larger audience.

Jack Osterholt, Deputy Mayor

Approved _____ Mayor Agenda Item No.

Veto _____

Override _____

ORDINANCE NO. _____

ORDINANCE RELATED TO ZONING; MODIFYING NOTICE AND APPLICATION REQUIREMENTS FOR ZONING HEARINGS, PROCEDURES FOR ZONING APPEALS TO BOARD OF COUNTY COMMISSIONERS, MEMBERSHIP OF DEVELOPMENTAL IMPACT COMMITTEE AND EXECUTIVE COUNCIL, AND PROCEDURES GOVERNING EXTENSIONS OF TIME, CORRECTION OF SCRIVENER'S ERRORS AND CLERICAL ERRORS, AND DECLARATIONS OF RESTRICTIVE COVENANTS; AMENDING SECTIONS 33-6, 33-302, 33-303.1, 33-304, 33-309, 33-310, 33-310.1, 33-311, 33-313, 33-314, AND 33-316 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

Section 1. Section 33-6 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 33-6. - Permits not to be issued for violations.

No permits shall be issued for work that would violate any provision of this chapter, or any recorded restriction which runs with the land that are >>accepted in connection with a public hearing or<< required by the County pursuant to the Community Zoning Appeals Board or County Commission resolutions.

[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.

Section 2. Section 33-302 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-302. - Definitions.

In construing the provisions hereof and each and every word, term, phrase or part thereof where the context will permit the definitions provided in Section 1.01, Florida Statutes, and Chapter 33 of the Code of Miami-Dade County, Florida, and the following additional definitions, shall apply:

* * *

(q) *Zoning actions.* The words "zoning action" shall refer to any action pursuant to Chapter 33 of the Code of Miami-Dade County taken after a public hearing>>, including the acceptance of a declaration of restrictive covenants proffered at a public hearing<<.

* * *

Section 3. Section 33-303.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec 33-303.1. - Developmental Impact Committee.

(A) There is hereby established a Developmental Impact Committee composed of [[~~thirteen (13)~~]] members representing the following County departments and agencies >>or their successor departments or agencies<<:

(1) >>Department of<< Public Works >>and Waste Management;<< [[~~Department~~]], >>two (2) members<< consisting of >>one representative from the Traffic Division and one representative from the Solid Waste Division.<< [[~~a representative from the Traffic Division and a representative from the Subdivision Platting Division.~~]]

(2) Department of [[~~Planning and Zoning~~]] >>Regulatory and Economic Resources; three (3) members consisting of one representative from the Division of Environmental Resource Management,

one representative from the Division of Planning, and one representative from the Development Services Division,

(3) Park>>s,<< [[~~and~~]] Recreation >>and Open Spaces<< Department.

[[~~(4) Environmental Resources Management Department.~~]]

([[~~5~~]]>>4<<) Miami-Dade Water and Sewer.

([[~~6~~]]>>5<<) Miami-Dade Police Department, consisting of a representative >>with responsibility for budget<< [[~~of the Budget and Planning Bureau~~]] and the District Commander of the district where the application is located, or his or her designee.

([[~~7~~]]>>6<<) Fire >>Rescue<< Department.

([[~~8~~]]>>7<<) Miami-Dade [[~~County Transportation Administration~~]] >>Transit Department.<<

>>(8) Metropolitan Planning Organization.<<

[[~~(9) Department of Solid Waste Management.~~]]

([[~~10~~]]>>9<<) The County [[~~Manager~~]]>>Mayor<< shall invite the School Board of Miami-Dade County, Florida and the South Florida Water Management District each to assign a permanent representative to the Developmental Impact Committee who shall remain permanent employees of the School Board and the district respectively.

([[~~11~~]]>>10<<) Whenever the Developmental Impact Committee is to consider a development of County impact that is proposed in a municipality, representatives of the municipal government shall be invited to serve and participate as ex officio members of the Committee upon all matters relating to the said development.

(B) >>The Executive Council of the Developmental Impact Committee shall consist of representatives from the following Departments: Department of Regulatory and Economic Resources; Department of Public Works and Waste Management; Water and Sewer Department; Parks, Recreation and Open Spaces Department; Transit Department; the Secretariat of the Metropolitan Planning Organization (MPO); and the County Mayor or his or her designee. Each Department shall be represented by the Director or an Assistant Director, except that the Department of Regulatory and Economic Resources shall be represented by two of the following: the Director, the

Assistant Director for Development Services, or the Assistant Director for Environmental Resources Management.<< [[~~The Director of the Department of Planning and Zoning, the Director of the Department of Environmental Resources Management, the Director of the Public Works Department, the Director of Miami-Dade Water and Sewer Department, the Secretariat of the Metropolitan Planning Organization (MPO), the Director of the Miami-Dade Fire-Rescue Department and the County Manager or his or her designee shall constitute the membership of the Executive Council of the Developmental Impact Committee.~~]] Each member may >>assign staff<<[[~~appoint one (1) Assistant Director or Deputy Director~~]] of the respective department to act on his/her behalf as needed. [[~~Such appointment shall be confirmed by written memorandum to the County Manager's office.~~]] The Executive Council shall discharge such duties and functions as conferred by the Code of Miami-Dade County, Florida and by the ordinances, rules and regulations approved by the Board of County Commissioners. The duties and functions of the Executive Council Chair shall be assumed by each of its members on a rotating basis as needed.

* * *

(D) Duties of the Developmental Impact Committee. The Developmental Impact Committee shall perform the following duties:

* * *

(6) Upon request, assist the Director and the Zoning Official in the preparation of written recommendations >>and conditions<< to the >>Community Zoning Appeals Board and the<< Board of County Commissioners as required by Chapter 33 of the Code of Miami-Dade County. The nature and extent of such assistance shall be established by the Executive Council, after consultation with the Director and the Zoning Official, and shall be specified and adopted as part of the committee's rules and regulations, as herein prescribed.

* * *

Section 4. Section 33-304 of the Code of Miami-Dade County, Florida, is hereby

amended to read as follows:

Sec 33-304. - Applications.

(a) All requests for a district boundary change, changes in the zoning regulations, appeals of administrative decisions, special exceptions or unusual uses, new uses, variances, approvals of or modifications to developments of regional impact ("DRI"), including substantial deviation determinations, and determinations that a DRI is essentially built out, shall be made by filing an application therefor with the Director on application forms prescribed by the Director or by rule and regulation of the Developmental Impact Committee. Forms shall include, but not be limited to, disclosure forms for corporations, trusts, and partnerships, and disclosure of information regarding contract purchasers and their percentage(s) of interest. Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or ii) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or iii) any entity where ownership interests are held in a partnership, corporation or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, and where no one (1) person or entity holds more than a total of five (5) percent of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in a partnership, corporation, or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, shall only be required to disclose those ownership interest which exceed five (5) percent of the ownership interest in the partnership, corporation, or trust. Disclosure forms shall be established by administrative order to be approved by the Board of County Commissioners. Such disclosure forms shall be included in the agendas distributed in connection with the public hearing on the application. Where applicable, requests shall specify whether, and the extent to which, the requested change in land use or proposed development conforms to the Comprehensive Development Master Plan for Miami-Dade County, Florida.

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An application may be withdrawn without prejudice by the applicant as a matter of right, provided the request for withdrawal is in writing and executed in the same manner as provided by Section 33-309 for the executing of application, and filed with the Department >>no later than forty (40) days prior to the public hearing;<< [[~~prior to the mailing of final notices, as provided by Section 33-310(c)(2);~~]] otherwise all such requests for withdrawal shall be with prejudice save and except that the Community Zoning Appeals Boards or the Board of County Commissioners may permit withdrawals without prejudice at the time the matter is considered by such Boards; provided, further, no application may be withdrawn after final action has been taken.

(b) All zoning hearing applications delineated in this chapter [[~~may only be filed and accepted for filing~~]] >>shall only be accepted during the established filing periods, which shall consist of three consecutive days beginning on the first and third Monday of each month.<< [[~~(i) on the first Monday of each month and the following Tuesday and Wednesday of that week; or (ii) on the third Monday of each month followed by the Tuesday and Wednesday of that week~~]]. It is provided however that no zoning application will be accepted on a day set forth above which occurs on a legal holiday. Administrative variances may be filed at any time.

(c) At the end of each said time period set forth in subpart (b) the Director shall promptly identify and group those applications for district boundary changes, use special exceptions, unusual and new uses and use variances which relate to or affect any particular or immediate neighborhood or area as determined by the Director, and, to the extent possible, shall notice public hearings thereon, in accordance with Section 33-310 of the Code of Miami-Dade County, so as to allow the appropriate board to consider and determine the effect of the said applications on the said neighborhood or area as a whole and their relation to and conformity with the Comprehensive Development Master Plan. >>Upon receipt of an application, the Director shall forward the application to the appropriate Departments, as determined by the Director, for review. To allow for timely processing of applications,

Department comments are to be provided to the Director within twenty-one (21) days following transmittal of the request for review, unless a greater review period is allowed by the Director.<<

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(c) Amendments to an application shall be permitted; provided that, unless otherwise requested, suggested or concurred in by the Developmental Impact Committee, no substantial amendment shall be accepted by the Director within thirty (30) days prior to the first scheduled hearing on the application by the appropriate board or once the application has been heard and determined by the Community Zoning Appeals Board; provided further that an applicant may petition the appropriate board to permit such amendment at the time of hearing on the application and such amendment shall be accepted if approved by majority vote of those present upon good cause shown and provided it falls within the scope of the legal advertisement. In determining good cause, the appropriate board shall consider, among other factors, the timeliness of the amendment and the degree of inconvenience or surprise to objectors to the application. >>It is further provided that an amendment to correct a scrivener's error shall be permitted at any time up to and including the time of hearing.<<

(f) All planned area development applications shall adhere to the following procedures which shall be deemed exclusive notwithstanding any other section herein: The Department shall submit the required exhibits for the total development plan to the Developmental Impact Committee for review in accordance with standards and review procedures of the Developmental Impact Committee. At a public hearing held by the Community Zoning Appeals Board, the developer shall present the proposal. The Community Zoning Appeals Board shall have the recommendations of the Developmental Impact Committee. The Community Zoning Appeals Board shall consider the information presented by the applicant, the recommendations of the Developmental Impact Committee and viewpoints of the public expressed at the hearing. The Community Zoning Appeals Board shall take formal action either approving the plan as presented, approving it subject to certain specified modifications, or disapproving it. Upon approval, plans,

documents and recordable development agreements shall be filed with the Department and recorded in the official records and shall thereby constitute the planned area development district. If the planned area development is approved with specific modifications, as incorporated in the Community Zoning Appeals Board resolution, those modifications shall be made by the applicant prior to filing documents and plans with the Department. Such filing shall be completed within sixty (60) working days from the date the action of the Community Zoning Appeals Board becomes final including all appeals. Failure to do so shall nullify the Community Zoning Appeals Board's action unless waived by the Community Zoning Appeals Board or if appealed, by the County Commission. The Director shall review all modifications in accordance with the Community Zoning Appeals Board's resolution. The approved planned area development shall be indicated on the zoning map as would any other district boundary change. Review at the development tract level may then be initiated pursuant to the provisions of the planned area development districts.

>>(g) Extensions granted by the Florida Legislature for development orders or development permits shall be approved administratively upon application on a form prescribed by the Director and shall not be subject to the provisions of Sections 33-310 and 33-310.1 of this Chapter. It is provided, however, that an extension shall not be approved administratively where the Director determines: (i) that the permit holder is in significant noncompliance with the conditions of the permit or order, as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action; (ii) that extension of the permit or order would delay or prevent compliance with a court order; or (iii) that extension of the permit or order would create an immediate threat to public safety or health.<<

Section 5. Section 33-309 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-309. - Community Zoning Appeals Board/Board of County Commissioners Applications for public hearing.

>>(a)<< All hearings before the Community Zoning Appeals Board or the Board of County Commissioners shall be initiated by the filing with the Department an application on forms prescribed by the Director, executed and sworn to by the owner or owners of at least seventy-five (75) percent of the property described in the application, or by tenant or tenants, with owner's written sworn-to consent or by duly authorized agents, evidenced by a written power of attorney, if not a member of the Florida Bar, or by the Director, or by any person aggrieved by an order, requirement, decision or determination of an administrative official when appealing the same, or by anyone desiring an amendment or repeal to the zoning regulations. All properties described in one (1) application must be contiguous and immediately adjacent to one (1) another, and the Director may require more than one (1) application if the property concerned contains more than forty (40) acres, or the fee paid for one (1) application would not equal the cost of processing the same. Only applications which the Community Zoning Appeals Board or the Board of County Commissioners are authorized to consider and act upon shall be accepted for filing.

[[~~For property that is the subject of a currently valid DRI development order, the director shall file an application to extend all commencement, phase, buildout, expiration dates, and applicable mitigation requirements of the DRI for the maximum period of time declared by state law regardless of any previous extension. Such extension shall not constitute a substantial deviation from the existing DRI development order, shall not be subject to further DRI review, and shall not be considered when determining whether a subsequent extension is a substantial deviation under Florida law, provided that the owner of the property consents to the application no later than December 31, 2011 and that funds sufficient to pay the costs of processing, reviewing, advertising and notice as required under Section 33-310 of this code, or sufficient security for such sums, have been provided by or on behalf of the property owner. It is provided, however, that, pursuant to F.S. § 380.06(19)(c)(2), the foregoing provision shall not apply to development orders for which, before December 1, 2011, the County has notified a developer that has commenced any construction within the phase for which mitigation is required that the County has entered into a contract for construction of a facility with funds to be provided from the development's mitigation funds for that phase as specified in the development order or written agreement with the developer.~~]]

>>(b)<< Applications which are to be considered by the Community Zoning Appeals Boards in accordance with this chapter shall be assigned by the Director to the Community Zoning Appeals Board which has jurisdiction based upon the location of the property which is encompassed by the application. In the event that the property which is encompassed by the application is located in more than one (1) Community Zoning Appeals Board's district the application shall be heard directly by the County Commission.

>>(c)<< Whenever any hearing is initiated by the Director or the Zoning Official, pursuant to this section, the County >>Mayor<< [[~~Manager~~]] may order that no building permits shall be issued for any construction work on the property involved in the hearing, until the hearing has been finally concluded in accordance with the provisions of this Code. Should the County >>Mayor<< [[~~Manager~~]] issue such an order the administrative personnel shall schedule the application for the first public hearing date after appropriate legal notice.

Section 5. Section 33-310 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec 33-310. - Notice and hearing prerequisite to action by the Community Zoning Appeals Boards or Board of County Commissioners.

(a) When an application as prescribed by Sections 33-304 and 33-309 has been filed hereunder the Director shall, no later than [[~~forty (40)~~]]>>thirty (30)<< days after filing, at the cost of the applicant, provide mailed >>courtesy<< notice of such filing as provided in Section 33-310(d)>>, provided, however, that the failure to mail or receive this courtesy notice shall not affect any action or proceeding taken hereunder<<. The >>courtesy<< notice shall include the applicant's name, the processing number, the property size, the location (and street address, if available) of the property, a general description of the action requested in the application, and a statement that the application was filed and is being reviewed by the Department [[~~and, where applicable, the Developmental Impact Committee,~~]] and that a future notice will be provided prior to the public hearing thereon. The notice shall additionally state and

make clear that any interested person is entitled to discuss the application with the County employees processing and reviewing the application to the same extent as the applicant is so entitled and that the application may change during the hearing process. The person or persons mailing the >>courtesy<< notice provided herein shall attach an affidavit or affidavits thereof to the application's file setting forth the compliance with this subsection. [[~~Failure to mail the said written notice as provided herein shall render voidable any hearing held on the application. If, after this initial notice is mailed, the application is changed in a manner such that additional land area is encompassed within the application, then the initial notice described herein shall be repeated by the Director at the expense of the applicant. Such modifications that require repeating the initial notice shall be permitted only during the regular working days that fall within the first seven (7) days of the month.~~]] The >>courtesy<< notice provided in this paragraph shall not be required for appeals filed in conjunction with Section 33-313 or 33-314 of the Code.

(b) Applications filed hereunder shall be promptly transmitted to the appropriate board, together with the written recommendation of the Director. Where applicable the Developmental Impact Committee shall issue its recommendation, which shall include a statement of the Director as to the application's relationship to the Comprehensive Development Master Plan. All such recommendations shall state all facts relevant to the application, including an accurate depiction of known living, working, traffic and transportation conditions in the vicinity of the property that is the subject of the application, and also a description of all projected effects of the proposed zoning action on those conditions. Before reaching a conclusion, each recommendation shall list all known factors both in favor of and against each application. All such recommendations shall be signed and considered final no earlier than thirty (30) days prior to the public hearing to give the public an opportunity to provide information to the staff prior to the recommendations becoming final. This shall not preclude earlier, preliminary recommendations. All documents of the County departments evaluating the application, which documents pertain to the application, are open for public inspection to applicants or other interested persons.

(c) No action on any application shall be taken by the Community Zoning Appeals Boards or the Board of County Commissioners on any appeal, until a public hearing has been held upon notice of the time, place and purpose of such hearing, the cost of said notice to be borne by the applicant. Notice shall be provided as follows:

(1) Said notice shall be published twice in >>a<< newspaper[[s]] of general circulation in Miami-Dade County, as follows: (A) a full legal notice, to be published no later than twenty (20) days and no earlier than thirty (30) days prior to the public hearing, to contain the date, time and place of the hearing, the property's location (and street address, if available)[[~~ and legal description~~]], and nature of the application, including all specific variances and other requests; and (B) a layman's notice, to be published in the newspaper of largest circulation in Miami-Dade County, no later than twenty-five (25) days and no earlier than thirty-five (35) days prior to the public hearing, to contain the same information as the above described full legal notice except that the property's legal description may be omitted and the nature of the application and requests contained therein may be summarized in a more concise, abbreviated fashion. The layman's notice may be published in a section or a supplement of the newspaper distributed only in the locality where the property subject to the application lies. In the event that any time periods specified in this subsection shall conflict with any applicable provision of the Florida Statutes, the provision of the Florida Statutes shall govern.

(2) Mailed notice containing general information, including, but not limited to, the date, time and place of the hearing, the property's location (and street address, if available), and nature of the application shall be sent as provided by Subsection 33-310(d) >>no sooner than thirty (30) days and<< no later than [[~~thirty (30)~~]] >>twenty (20)<< days prior to the hearing.

(3) The property shall be posted no later than twenty (20) days prior to the hearing in a manner conspicuous to the public, by a sign or signs containing information including, but not limited to, the applied for zoning action>>, application number,<< and the time and place of the public hearing. >>The property owner shall be responsible for ensuring that the sign is maintained on the site until completion of the public hearing and for removal of the sign within two (2) weeks following completion of the public hearing.<<

(d) Mailed notice shall be accomplished by placing in the United States mail a written notice to all property owners of record, as reflected on the Miami-Dade County Property Appraiser's tax roll as updated, within the following radius of the property described in the application, or such greater distance as the Director may prescribe:

(1) Approvals of or modifications to Developments of Regional Impact ("DRI"), including substantial deviation determinations or modifications thereof, one (1) mile [[~~except applications to extend a commencement date, build-out date, expiration date, phasing deadline, or applicable mitigation requirement for the maximum period of time declared by state law regardless of any previous extension not to constitute a substantial deviation from development orders for currently valid developments of regional impact development orders and related applications for zoning actions to accomplish only the requested extension (1,500 feet)~~]].

(2) For applications, other than for Development>>s<< of Regional Impact, required to be reviewed by the Development Impact Committee; for district boundary changes, use variances, special exceptions, or unusual uses unless the foregoing are specifically itemized in subsection (d)(3) >>or (d)(4)<<; for any modification of a covenant accepted or condition imposed in connection with a prior district boundary change or use variance; but this subsection shall not apply to residential uses of less than five (5) units, one-half (½) mile.

(3) For modification or elimination of conditions or restrictive covenants, or parts thereof, after public hearing, mailed notice shall be accomplished by placing in the United States mail a written notice to all property owners of record, as reflected on the Miami-Dade County Property Appraiser's tax roll as updated, within the same radius of the property as required to be noticed for zoning action imposing or accepting the condition or restrictive covenant sought to be modified or eliminated, or such greater distance as the Director may prescribe.

(4) For district boundary change involving a change of prefix within BU (Business) or IU (Industrial) and use variance involving such a use prefix change; for unusual use for outdoor patio dining, outdoor display, adult congregate living facility, day nursery, convalescent home, day camp, home for the aged, institution for the handicapped, kindergarten, nursing home, retirement village, entrance feature, mobile home as watchman's quarters, bathing beach; for special exception for resubdividing/refacing of platted lots, servant's quarters in RU-1 district, convalescent home, eleemosynary and philanthropic institution in RU-4 districts, [[~~barn (spacing from residences) in AU district,~~]] dude ranch in AU district, temporary farm labor housing in AU district; and for all other applications for zoning action not specified in Subsections (d)(1), (2), (3) and (4), five hundred (500) feet.

[[~~Such notice~~]]>>A courtesy notice<< shall also be mailed to the president of any homeowners' association having any member who resides within the area of mailed notice described above when such residency is shown upon a current updated notice filed with the >>D<<[[~~d~~]]irector>>, provided, however, that the failure to mail or receive this courtesy notice shall not affect any action or proceeding taken hereunder<<. The Director shall establish and maintain a process by which homeowners' associations may provide notice of the areas in which their members reside.

Homeowners' associations shall keep these notices current by updating them in accordance with procedures to be prescribed by the Director.

(e) The person or persons responsible for providing the notices provided in Subsection (c) above shall attach to the application file a sworn affidavit or affidavits setting forth that they have complied with said subsection. Failure to provide the newspaper notices as provided, or failure to mail the >>required<< written notices as provided, or failure to post the property as provided renders voidable any hearing held on the application. >>The failure to send out courtesy notices shall not render a hearing voidable.<<

(f) The Director shall have the discretion to expand any of the notice provisions contained in this section to provide more information if deemed appropriate.

(g) If the notices described in Subsection (c)(1) above are published, and the affidavits required by >>Subsection (e)<< [[~~Subsections (a) and (d) above~~]] are of record, no judicial proceeding to void a hearing shall be commenced after the time for appeal from a resolution of an administrative or quasijudicial tribunal as provided in the Florida Rules of Appellate Procedures.

Section 6. Section 33-310.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-310.1. - Administrative modification or elimination of conditions and restrictive covenants.

A. *Standards.* The Director is authorized to consider and approve applications to modify or eliminate any condition or part thereof which has been imposed by any final decision adopted by resolution, and to modify or eliminate any restrictive covenant, or part thereof, accepted at public hearing, where the requirements of at least one of the following subsections have been demonstrated. Upon demonstration that such requirements have been met, an application may be approved as to a portion of the property encumbered by the condition or the restrictive covenant

where the condition or restrictive covenant is capable of being applied separately and in full force as to the remaining portion of the property that is not a part of the application and both the application portion and the remaining portion of the property will be in compliance with all other applicable requirements of prior zoning actions and of this chapter.

* * *

II. *Reformation of Resolutions* >>*and Declarations of Restrictive Covenants*<< *to Correct Clerical or Scrivener's Errors.*

(A) The Director shall approve an application to reform a clerical or scrivener's error in a prior zoning action, including an error in an application >>, declaration of restrictive covenants accepted upon public hearing,<< or notice, which error causes the zoning action not to accurately reflect the board's intent, and where it is demonstrated that all of the following requirements are met:

1. the reformation shall not include a change of judgment, policy, or prior intent of the board;
2. prior to the conclusion of the public hearing at which the zoning action for which reformation is sought was taken, the current applicant either did not know of the error, or knew of the error and made it known to the adopting board;
3. the reformation of the previous resolution >>or declaration<< is essential to insure that the zoning action reflects the intent of the adopting board;
4. the record, including, but not limited to, the staff recommendation, minutes, and motion, evidences the clear intent of the board;
5. the substance of the decision of the board was evident at the time of the adoption of the zoning action, and there was no intent to deceive the public or the board on the part of the current applicant at any time;
6. failure to approve the reformation would lead to an unjust result;
7. the error in the prior zoning action did not mislead anyone in a way that would cause them to be prejudiced by the reformation; and

8. any errors related to public notice did not affect the legal sufficiency of the required notice.

(B) Notwithstanding the foregoing provisions, the Director, within thirty (30) days of the transmittal of a resolution, may reform a clerical or scrivener's error in a zoning action >>including a declaration of restrictive covenants accepted upon public hearing,<< without public notice, if:

1. the error is not related to public notice, and
2. the error causes the resolution >>or declaration<< as written to inaccurately reflect the clear decision of the board.

(C) A reformed zoning action shall relate back to the original zoning action and the effective date of the corrected language shall be deemed to be the same as the effective date of the previous resolution.

* * *

B. *Procedures for Administrative Determinations.*

>>(1) *Applications.*<< An application for administrative determination of substantial compliance with a prior administrative approval or zoning action, for reformation to correct a clerical or scrivener's error, for modification or elimination of conditions and restrictive covenants associated with voluntarily abandoned zoning actions or administrative approvals, or for modification or elimination of conditions or restrictive covenants which are satisfied or moot, or for modification or elimination of conditions or restrictive covenants where no new adverse impacts will result, or for modifications of conditions or restrictive covenants to extend timing or phasing deadlines, or for parts of any of the foregoing, shall be submitted to the Department on a form required by the Director. If the application involves a restrictive covenant, the application shall demonstrate that any procedural or other consent or approval requirements to modify or eliminate the restrictive covenant have been satisfied.

>>(2) *Notice.*<< Within fifteen (15) days after the determination, notice of the Director's decision shall be published in a newspaper of general circulation>>; except that substantial compliance determinations shall be published in the newspaper of largest circulation in Miami-Dade County<<. Additionally, for applications for

administrative modification or elimination of conditions and restrictive covenants associated with voluntarily abandoned zoning actions or administrative approvals, or conditions or restrictive covenants which are satisfied or moot, or for modification or elimination of conditions or restrictive covenants where no new adverse impacts will result, or for modifications of conditions or restrictive covenants to extend timing or phasing deadlines, mailed written notice shall be provided to all property owners of record, as reflected on the Miami-Dade County Property Appraiser's tax roll as updated, within the same radius of the property as required to be noticed for the zoning action adopting or accepting the condition or restrictive covenant, or such greater distance as the Director may prescribe.

>>(3) *Appeals.*<< Any aggrieved person may appeal the Director's decision pursuant to Section 33-314 within thirty (30) days after the date of newspaper publication. For purposes of this section, an applicant for a substantial compliance determination shall not be considered an aggrieved person. If no timely appeal is taken, the decision shall become final, and the necessary changes shall be made upon the zoning maps and records. Any modifications or releases of recorded restrictive covenants, or parts thereof, shall be promptly recorded in the public records of Miami-Dade County, Florida.

* * *

Section 7. Section 33-311 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

(A) Except as otherwise provided by this chapter, the Community Zoning Appeals Boards and Board of County Commissioners shall have the authority and duty to consider and act upon applications, as hereinafter set forth, after first considering the written recommendations thereon of the Director or Developmental Impact Committee. Provided, however, no such action shall be taken until notice of time and place of the hearing at which the Community Zoning Appeals Boards will consider the application has been first published as provided in Section 33-310.2.

* * *

(3) *Special exceptions (for all applications other than public charter schools), unusual and new uses.* Hear application for and grant or deny special exceptions, except applications for public charter schools; that is, those exceptions permitted by the regulations only upon approval after public hearing, new uses and unusual uses which by the regulations are only permitted upon approval after public hearing; provided the applied for exception or use, including exception for site or plot plan approval, in the opinion of the Community Zoning Appeals Board, would not have an unfavorable effect on the economy of Miami-Dade County, Florida, would not generate or result in excessive noise or traffic, cause undue or excessive burden on public facilities, including water, sewer, solid waste disposal, recreation, transportation, streets, roads, highways or other such facilities which have been constructed or which are planned and budgeted for construction, are accessible by private or public roads, streets or highways, tend to create a fire or other equally or greater dangerous hazards, or provoke excessive overcrowding or concentration of people or population, when considering the necessity for and reasonableness of such applied for exception or use in relation to the present and future development of the area concerned and the compatibility of the applied for exception or use with such area and its development. [[~~For purposes of public hearing, a site plan shall be considered one (1) special exception, and upon approval of a site plan by the Community Zoning Appeals Board and/or the Board of County Commissioners, all non-use variances incorporated within and reflected upon the site plan shall be considered a part thereof, and official approval of the site plan shall constitute approval of all such non-use variances, unless otherwise so moved by the approving board.~~]]

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Section 8. Section 33-313 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec 33-313. - Appeals to Board of County Commissioners.

>>(A)<< Any appealable decision of the Community Zoning Appeals Board may be appealed by an applicant, governing body of any municipality, if affected, or any aggrieved party, including neighborhood, community and civic associations, whose name appears in the record of the appropriate Community Zoning Appeals Board by filing with the Department a petition in a form prescribed by the Director and a written statement specifying in brief, concise language the grounds and reasons for reversal of the ruling made by the Community Zoning Appeals Board, together with a fee for the processing of the appeal, as provided by Administrative Order No. 4-40, as amended from time to time, within the fourteen (14) days provided by Section 33-312 hereof>>.<<

>>(B) Upon the timely filing of an application for appeal<< [[~~, whereupon~~]], the Director shall transmit to the County Commission the >>application as presented to the Community Zoning Appeals Board and any associated supporting documents, the<< appeal papers, and the decision and record of the Community Zoning Appeals Board. If the ground for reversal is a failure to provide notice as required by Section 33-310, the name of the appellant need not appear in the record.

>>(C)<< If the decision of the Community Zoning Appeals Board [[~~is for approval and~~]] has not been appealed within the fourteen-day period, [[~~the County Manager pursuant to Section 33-314(B)(8) or~~]] the Director may appeal such decision within four (4) additional days in the manner aforestated, except that a fee will not be required.

>>(D)<< Upon the taking of an appeal, the County Commission shall conduct a de novo hearing and shall consider why the decision of the Community Zoning Appeals Board should or should not be sustained or modified. By resolution, the Board shall either affirm, modify or reverse the Community Zoning Appeals Board's decision and such action of the County Commission shall be by a majority vote of all members present except that a two-thirds (2/3) vote of all members present shall be required to reverse any Community Zoning Appeals Board decision denying a request for zoning action or to approve any Development of Regional Impact or modifications thereof, substantial deviation determination or related request pursuant to Section 33-314 where a Community Zoning Appeals Board's recommendation is for denial.

>>(E)<< No appeal shall be heard or considered until notice has been provided in accordance with the provisions of Section 33-310(c), (d), (e) and (f).

>>(F)<< With respect to appeals arising from the Downtown Kendall Urban Center District a two-thirds (2/3) vote of all members present shall be required to reverse any Community Zoning Appeals Board decision denying a request for zoning action for a development proposed within the Center or Edge Sub-Districts of the Downtown Kendall Urban Center District. For any application for a development proposed within the Core Sub-District of the Downtown Kendall Urban Center District pursuant to Section 33-311 shall be decided by a majority vote of all members then in office.

Section 9. Section 33-314 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-314. - Direct applications and appeals to the County Commission.

* * *

(B) The County Commission shall have jurisdiction to hear appeals from decisions of the Community Zoning Appeals Boards as follows:

* * *

(5) Any appeal filed by the >>Director<<[[~~County Manager~~]] from any action of the Community Zoning >>Appeals <<Boards [[~~where it is the opinion of the County Manager that a Community Zoning Appeals Board's resolution has either (a) an overall impact to the County or (b) is inconsistent with the Miami-Dade County Comprehensive Development Master Plan, or (c) is incompatible with aviation activity or aviation safety~~]].

* * *

Section 10. Section 33-316 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-316. - Exhaustion of remedies; court review.

No person aggrieved by any zoning resolution order, requirement, decision or determination of an administrative official or by any decision of the Community Zoning Appeals Board may apply to the Court for relief unless such person has first exhausted the remedies provided for herein and taken all available steps provided in this article. It is the intention of the Board of County Commissioners that all steps as provided by this article shall be taken before any application is made to the Court for relief; and no application shall be made to the Court for relief except from a resolution adopted by the Board of County Commissioners, or where applicable from a resolution adopted by a Community Zoning Appeals Board pursuant to this article. Zoning resolutions of the Board of County Commissioners or>>,<< where applicable>>,<< zoning resolutions of Community Zoning Appeals Board>>s<< shall be reviewed [[~~by the filing of a notice of appeal in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida,~~]] in accordance with the procedure and within the time provided by the Florida Rules of Appellate Procedure for the review of the >>quasi-judicial<< rulings of any commission or board; and such time shall commence to run from the date the zoning resolution sought to be reviewed is transmitted to the Clerk of the Commission.

* * *

Section 11. 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 12. 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 13. 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: _____

Abbie S. Raurell/Dennis A. Kerbel

Prime Sponsor: