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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

# MEMORANDUM

Amended
Agenda Item No. 7(G)

**TO:** Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

**DATE:** June 30, 2009

**FROM:** R. A. Cuevas, Jr. County Attorney

**SUBJECT:** Ordinance creating a section of the Code that establishes guidelines for the classification of structures identified as being used for the production or manufacturing of illegal narcotics or drugs as an unsafe structure

**Ordinance No. 09-57**

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto.

R. A. Cuevas, Jr.
County Attorney

RAC/ jls

# Memorandum

MIAMI-DADE COUNTY

**Date:** June 30, 2009

**To:** Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

**From:** George M. Burgess
County Manager

**Subject:** Ordinance establishing guidelines for the classification of structures identified as being used for the production or manufacturing of illegal narcotics or drugs as an unsafe structure

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The ordinance establishing guidelines for the classification of structures identified as being used for the production or manufacturing of illegal narcotics or drugs will have an estimated impact of $17,500 for programming modifications to the current Unsafe Structures automated enforcement system. The modifications to the system are needed to separately track these cases which have different timelines.

Assistant County Manager

fis04009

# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

**DATE:** June 30, 2009

**FROM:** R. A. Cuevas, Jr. County Attorney

**SUBJECT:** Amended Agenda Item No. 7(G)

**Please note any items checked.**

_____ **"4-Day Rule" ("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**

_____ **Bid waiver requiring County Mayor's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 7(G)
6-30-09

ORDINANCE NO. **09-57**

ORDINANCE RELATING TO THE BUILDING CODE AND UNSAFE STRUCTURES; CREATING A SECTION OF THE CODE OF THE MIAMI-DADE COUNTY, FLORIDA THAT ESTABLISHES GUIDELINES FOR THE CLASSIFICATION OF STRUCTURES IDENTIFIED AS BEING USED FOR THE PRODUCTION OR MANUFACTURING OF ILLEGAL NARCOTICS OR DRUGS AS AN UNSAFE STRUCTURE; 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. Chapter 8 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

**Chapter 8**

**Building Code**

**Art. I. Administration**

* * *

**Sec. 8-5 Unsafe Structures.**

* * *

[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.

>>(c) Grow Houses

(1) A building or structure that has been identified by any law enforcement officer as being used to grow or manufacture controlled substances as defined by Chapter 893 of the Florida Statutes or any drugs, as defined in Chapter 499 of the Florida Statute (a "Grow House") shall be presumed to be unsafe if any one of the following criteria has been satisfied:

(i) There is an open and obvious modification or addition to any of the structure's electrical wiring or electrical components, or there exists any exposed wires or exposed electrical components; or

(ii) There is an open and obvious modification or addition to any of the structure's plumbing, and or any discharge of water or other effluent that is not into an ordinarily available drain; or

(iii) The structure's interior walls have been destroyed, moved, or modified in any way. This may be evidenced by marks on the ceiling and or floor that are indicative of a wall having been moved or removed, holes or passages in a wall that are not ordinary and may be unfinished in appearance. This list shall not be considered exhaustive such that any other evidence of walls being destroyed, moved or modified shall be proper; or

(iv) Any exterior window has been modified or covered in such a way, so as to inhibit or reduce egress or which inhibits or prevents normal use for ventilation purposes; this shall not include curtains and other ordinary window coverings; or

(v) Any of the structure's exterior or interior doors have been modified or covered in such a way to prevent or inhibit ingress or egress.

Upon observation of any one of the above criteria, any law enforcement personnel shall be authorized to post and shall post a notice in a conspicuous location on the building or structure that has been determined to be unsafe. The posted notice shall read substantially as follows:

UNSAFE BUILDING. This building or structure is, in the opinion of the Miami-Dade Police Department, unsafe. THIS BUILDING SHALL BE VACATED--SHALL NOT BE OCCUPIED. The

owner should contact the Miami-Dade County Building Department immediately. THIS NOTICE SHALL NOT BE REMOVED EXCEPT BY THE BUILDING OFFICIAL. DATE (insert date posted).

(2) Entry to any structure posted with such a notice shall be prohibited except by an Order issued by a Court of competent jurisdiction, until such time as all necessary inspections listed in (6)(i) have been completed.

(3) Within twenty-four (24) hours of the notice being posted by a law enforcement official, the Miami-Dade County Police Department shall notify the Building Department of any such notice and violations. Upon receiving such notification from the Miami-Dade County Police Department, the Building Department shall immediately send a Notice of Violation in accordance with the provisions of this section within.. This notice shall also state that a Building Official will conduct an inspection of the structure and issue a Notice of Violation within five (5) business days of being notified of any such violations by the Miami-Dade County Police Department.

(4) All structures that meet any of the criteria from Section (c)(1) and have been posted with the requisite notice, must be approved by the Building Department based upon all of the following inspections before the structure can be deemed safe for use:

(i) An electrical inspection;
(ii) A plumbing inspection;
(iii) An inspection by a certified mold inspector; and
(iv) An inspection by a structural engineer

Upon completion of the inspections described herein, an inspection report shall be filed with the Building Department for approval. The Director shall proscribe the forms to be used for the inspections described herein and shall be authorized to charge a fee for the review of the inspection reports. Each inspection report shall certify that there is currently no unsafe or hazardous conditions currently existing in the structure, all building code violations corrected and the structure is safe for occupancy. No building deemed unsafe pursuant to this section shall be occupied until the results from the required inspections have been reviewed, and all permits have been obtained to bring the structure back into compliance with the Building Code. Nothing herein shall relieve

the owner from the requirement to obtain permits for any repairs required to meet the requirements of this section.

(d)<< [[~~(c)~~]] Valuation criteria.

(1) If the cost of completion, alteration, repair and/or replacement of an unsafe building or structure or part thereof exceeds 50 percent of its value, such building shall be demolished and removed from the premises. If the cost of completion, alteration, repair and/or replacement of an unsafe building or structure or part thereof does not exceed 50 percent of its value, such building or structure may be repaired and made safe, as provided herein.

(2) For purposes of application of this formula value shall be the estimated cost to replace the building in kind, excluding depreciation. The estimate shall be derived from multiplying the value of the square foot of construction used by the building department of the appointing authority to calculate the applicable permit fee. That estimate shall be broken down on a percentage basis into an estimate of the following critical elements of construction, as applicable: structural, roofing, other building, electrical, plumbing and mechanical ("Valuation of Construction Components"). The cost of completion, alteration, repair or replacement shall be estimated by application of the percentage of deterioration found on site for each of the critical elements of construction to the Valuation of Construction Components for the structure, to arrive at an overall estimated cost to repair the affected structure. The appointing authority shall by administrative order provide a form for the application of the formula set forth above for the various types of construction.

(3) If a building or structure may be repaired and made safe pursuant to the valuation criteria set forth above, and the building or structure is otherwise unsafe in accordance with the physical criteria set forth in this section, the Building Official may order such building or structure to be temporarily secured in the manner and subject to the limitations set forth in this Section. Such building must be completed and brought into full compliance with the Florida Building Code within such time as the Building Official, Unsafe Structures Appeal Panel or the Unsafe Structures Board may determine to be reasonable for such completion. If the building or structure is not temporarily secured, completed and brought into full compliance with the Florida Building Code within

the reasonable periods allowed, such building or structure shall be demolished and removed from the premises.

>>(e)<< [[~~(d)~~]] Inspection of unsafe buildings and structures. The Building Official, on his own initiative or as a result of reports by others, shall examine or cause to be examined every building or structure appearing or reported to be unsafe, and if such is found to be an unsafe building or structure as defined in this section, the Building Official shall proceed in the manner set forth in this Section.

>>(f)<< [[~~(e)~~]] Emergency action. When in the opinion of the Building Official, there is actual or immediate danger of the failure or collapse of a building or structure, or there is a health, windstorm or fire hazard, he may order the occupants to vacate, temporarily close for use or occupancy the rights of way thereto, sidewalks, streets or adjacent buildings or nearby area and institute such other temporary safeguards, including securing the building or structure, as he may deem necessary under the circumstances, and may employ the necessary labor and materials to perform the required work as expeditiously as possible. In such event, the operation of the notice and hearing requirements of this Section shall be suspended as reasonably necessary in the opinion of the Building Official to redress the emergency situation Costs incurred in the performance of such emergency work shall be paid by the appropriate governmental authority and upon the recording in the public records of this county a certificate executed by the Building Official, certifying the amount so expended, the same shall become a lien against the property involved.

>>(g)<<[[~~(f)~~]] Unsafe structures meeting valuation criteria for immediate demolition.

(1) The provisions of this Subsection (f) shall apply to structures meeting the valuation criteria for demolition set forth above.

(2) The Building Official shall prepare a notice of violation. The notice shall state in summary form the nature of the defects which constitute a violation of this Section and shall order the structure to be demolished within such time as is reasonable, subject to extension when requested in writing within the reasonable discretion of the Building Official. The notice shall state that the specific details concerning the violations can be obtained in writing from the Building Official upon request. In

addition, the notice will explain the right of appeal of the decision of the Building Official to the Unsafe Structures Board or an Unsafe Structures Appeal Panel, and advise that unless the decision is appealed, the building or structure shall be demolished without further notice.

(3) The notice of violation shall be affixed to the structure concerned. The Building Official shall also affix to the structure notice of the hearing of the Unsafe Structures Board or Unsafe Structures Appeal Panel scheduled to consider any appeal of the decision of the Building Official in connection with the structure. The notice of hearing shall be issued by the Secretary of the Unsafe Structures Board where applicable and the Director of the Building Department or his designee for appeals to an Unsafe Structures Appeal Panel advising persons to appear before the board or panel to show cause why the decision of the Building Official should not be carried out. The hearing shall not be scheduled earlier than thirty days following the date of posting of the notice of hearing and notice of violation.

(4) The Building Official shall post a notice bearing his or her facsimile signature in a conspicuous location on the building or structure that has been determined to be unsafe. The posted notice shall read substantially as follows: "UNSAFE BUILDING". This building or structure is, in the opinion of the Building Official, unsafe. "THIS BUILDING SHALL BE VACATED--SHALL NOT BE OCCUPIED." Action shall be taken by the owner as prescribed by written notice. "THIS NOTICE SHALL NOT BE REMOVED EXCEPT BY THE BUILDING OFFICIAL. DATE . . . ."

(5) Within ten (10) working days of posting the notice of violation and notice of hearing, the Building Official shall send written notice of violation and notice of hearing to the owner and any interested party. For these purposes, the owner shall be the taxpayer as reflected in the most recently certified real property ad valorem tax roll of Miami-Dade County; provided however, where the records of the Dade County Property Appraiser indicate that ownership has changed, the owner shall be the taxpayer as reflected in those records. An interested party shall be the owner and any other person or entity who has previously requested real property ad valorem tax notices with respect to the subject property in accordance with Section 197.344 of the Florida Statutes, as the same may be renumbered or amended from time to time. The notice of violation and notice of hearing shall be sent by certified

or first-class mail to all such parties' last known addresses as reflected in the records of the Miami-Dade County Property Appraiser. Failure to receive such notice, or the lack of a signed return receipt shall not invalidate the notice.

(6) Upon expiration of the period of appeal provided in the Notice of Violation, the Building Official may file an appropriate instrument in the Office of the Clerk of the Circuit Court to be recorded in the public records of this County, indicating that the property is in violation of the Building Code. The recording of the notice shall constitute constructive notice of the violation to all concerned, subsequent purchasers, transferees, mortgagees, lessees, grantees and all persons claiming or acquiring interest in the property. In the event that the violation is corrected, the Building Official shall file proof of the same upon payment for fees incurred.

(7) The Building Official shall publish a notice in a newspaper of general circulation once a week for two (2) consecutive weeks. The published notice shall contain the address of the subject property and the names of the owner and any interested party, and state that the subject property has been found to be in violation of the Building Code and subject to demolition. The published notice shall also state the time and place of the hearing scheduled before the Unsafe Structures Board or Unsafe Structures Appeal Panel.

(8) The notices provided in this Section are intended to serve as full and effective notice of the hearing and the violations related to the structure. Failure of one form of notice shall not invalidate or impair the full effectiveness of notice provided by other means pursuant to this Section.

>>(h)<<[[~~(g)~~]] Unsafe Structures not meeting the valuation criteria for immediate demolition.

(1) If a building or structure may be repaired and made safe pursuant to the valuation criteria set forth above, and the building or structure is otherwise unsafe in accordance with the physical criteria set forth in this section, the Building Official may order such building or structure to be temporarily secured in the manner and subject to the limitations set forth in this Section. Such building must be completed and brought into full compliance with the Building Code within such time as the Building Official, an Unsafe Structures Appeal Panel or the Unsafe Structures Board

may determine to be reasonable for such completion. If the building or structure is not temporarily secured, or once served, not completed and brought into compliance with the Building Code within the reasonable periods allowed, such building or structure shall be demolished and removed from the premises.

(2) The Building Official shall prepare a notice of violation. This written notice shall state in summary form the nature of defects which constitute a violation of this section and shall prescribe the action to be taken to comply and the time within which compliance must be accomplished, such time not to exceed ten (10) days to secure an open structure to the reasonable satisfaction of the Building Official ninety (90) days to obtain permits to repair the structure and one hundred and twenty (120) days bring it into compliance with the Building Code. This notice shall also state that the specific details concerning the violations can be obtained in writing from the Building Official on request. In addition, this notice will explain the right of appeal of the decision of the Building Official to the Unsafe Structures Board or an Unsafe Structures Appeal Panel, and also advise that unless there is compliance with the directions of the Building Official a case will be commenced before the Unsafe Structures Board or an Unsafe Structures Appeal Panel after time for compliance has expired, or that the Building Official's order will be enforced.

(3) The notice of violation shall be affixed to the structure concerned.

(4) Within ten (10) working days of posting the notice of violation, the Building Official shall send the written notice of violation to the owner and any interested party, in the same manner provided in Subsection (f)(5) above.

(5) In the event that the building or structure is not secured or brought into compliance with the requirements of the Building Code within the periods specified in the notice of violation, and no application for extension is made in the manner set forth in this Section, the Building Official may schedule the case for hearing before the Unsafe Structures Board or an Unsafe Structures Appeal Panel to secure an order for demolition of the building or structure or to obtain any other appropriate remedy.

(6) In the event that the Building Official requests that the Secretary to the Board or Director of the Building Department or his designee schedule a hearing, or in the event that the owner or

interested party files a timely appeal of the decision of the Building Official, the Secretary to the Board or Director of the Building Department or his designee shall issue a notice of hearing which shall be affixed to the property, mailed to the owner and interested party, in the same manner provided in Subsections (f)(3) and (f)(5) above. Notice of the hearing shall be published in the same manner provided in Subsection (f) (7) above.

(7) Upon expiration of the period of appeal provided in the Notice of Violation, if the property has not been secured or permits for repair obtained in the manner stipulated in the notice, the Building Official may file an appropriate instrument in the Office of the Clerk of the Circuit Court in the manner provided in Subsection (f)(6) above.

(8) The periods set forth in the Notice of Violation for bringing the structure into compliance with the Building Code may be extended by the Building Official for one or more additional periods which in the aggregate do not exceed an additional 180 days provided all of the conditions of this Subsection are met. Application for the extension must be made in writing by the interested party to the Building Official prior to the expiration of the period allowed for compliance, and shall set forth to the reasonable satisfaction of the Building Official that the extension is warranted by one or more of the following circumstances:

(i) The interested party has a demonstrated financial hardship that will prevent the interested party from completing a building or structure;

(ii) The interested party has filed a completed zoning hearing application which affects the final completion of the building or structure and which zoning hearing request has not received final approval or rejection from the applicable governmental agency, excluding any or all appeals to Court, for circumstances outside of the control for the interested party;

(iii) The building or structure is a multiple dwelling structure as defined in the Building Code and demolition of any unit comprising that structure compromises the structural integrity of the entire multi-unit structure, where the completion of the structure is outside of the control of the interested party;
(i) The building or structure is the subject of pending litigation or foreclosure action that renders it impossible for the building or structure to be completed;

(ii) The building or structure is the subject of a good faith insurance claim, the proceeds of which are intended to be utilized for repair and completion;

(iii) The building or structure is the subject of a pending sale to be closed within a reasonable time from the date the extension is requested, where the buyer has executed a written commitment to the Building Official to complete the structure within the applicable extension period.

The written application for extension shall further represent to the Building Official that the building or structure is and has at all times been in full compliance with all of the conditions set forth in this Subsection.

9) Upon receipt of the written application, the Building Official shall be authorized to extend the date of full completion and compliance with the Building Code provided:

(i) The completed written application demonstrates to the reasonable satisfaction of the Building Official that one or more of the conditions set forth above exist with respect to the building or structure;

(ii) The building or structure is not open, vacant or abandoned, having been secured at doors and windows in a manner acceptable to the Building Official; and

(iii) The interested party has paid all reasonable costs of enforcement.

(10) Any interested party may appeal to the Unsafe Structures Board or Unsafe Structures Appeal Panel a decision to grant or deny the extension. Such appeal must be filed within 30 days of the date of mailing of the Building Official's written notice of his or her decision with respect to the application for extension.

>>(i)<< [[~~(h)~~]] Public hearing.

(1) On the day established in the notice of public hearing the Unsafe Structures Board or Unsafe Structures Appeal Panel shall review all pertinent evidence and hear all testimony from the Building Official, the owner and other parties in interest and their respective witnesses.

(2) The Board or Appeal Panel may order repair, securing, and/or demolition of the structure upon application of the standards set forth in this Section. The Board or Appeal Panel may modify, rescind, or uphold the decision of the Building Official as recited in the Notice of Violation. The Unsafe Structures Board or Unsafe Structures Appeal Panel shall modify or rescind a decision of the Building Official only upon a finding that the Building Official was in error in the interpretation or application of the Building Code. The Board or Appeal Panel shall not exceed the time frames allowed for repair and completion of buildings and structures specifically set forth in this Section except where the work involved reasonably requires such additional time.

(3) A copy of the order shall be forwarded to the owner, and all interested parties by registered or certified mail, and a copy thereof posted on the premises.

(4) If the owner or those responsible shall fail to comply with the order of the Unsafe Structures Board or an Unsafe Structures Appeal Panel within the time stipulated therein and such order is to repair, complete or secure the building to make safe, then the Building Official shall cause such building to be vacated, if occupied; and shall through his employees or through a contractor enforce the order of the Unsafe Structures Board, Unsafe Structures Appeal Panel or Building Official. Buildings shall be secured with concrete block or other materials of the same durability as determined by the Building Official. Swimming pools shall be secured by fencing or by using another approved method as determined by the Building Official.

(5) If the order of the Unsafe Structures Board or an Unsafe Structures Appeal Panel is to demolish the building or structure and to remove the salvage, contents, debris and abandoned property from the premises, and the owner or those responsible shall have failed to comply with such order, then the Building Official may do so. Swimming pools shall be demolished by removal of any stagnant water and any above ground parts of the structure, breaking open the bottom and filling with sand or clean fill level to the existing grade.

(6) The Building Official may either sell to the highest bidder or bidders for cash the salvage and the contents of such building or other structure so demolished which have not been removed by the owner of the land or require the demolition

contractor to dispose of the salvage and the contents of the structure demolished.

>>(j)<<[[~~(i)~~]] Multi-Unit Structures.

(1) This Subsection shall be applicable to all multi-unit structures. As used in this Subsection, the term multi-unit structures means all townhouses and other structures which contain units divided by one or more common walls, where the structural integrity of any component unit depends upon the structural integrity of one or more other units in the same structure. In the event that the owner or other interested party fails to comply with any order of the Unsafe Structures Board or an Unsafe Structures Appeal Panel in connection with any multi-unit structure, then in addition to any other right or remedy contained in this Section, Miami-Dade County or any municipality with jurisdiction over such structure shall be authorized, but not required, to secure the structure in the manner set forth in this Subsection. In addition, and not in derogation of the use of other methods contemplated by this Section for enforcing the Building Code with respect to any structure, multi-unit structures may be secured by performing whatever work the Building Official may determine is reasonably necessary to preserve the structural integrity, watertightness, or safety of adjacent units or the surrounding community, which work may include, but not be limited to roofing, windows, and electrical.

(2) The procedures for enforcement of this Code set forth above shall be in addition to, and not in derogation of, other procedures available to the Building Official pursuant to the Building Code. The provisions of this subsection are not intended to exonerate any owner or other interested party from compliance with the Building Code or any order of the Unsafe Structures Board or an Unsafe Structures Appeal Panel.

>>(k)<<[[~~(j)~~]] Recovery of cost.

(1) All costs incurred pursuant to any of the provisions of this Section shall be paid by the owner or occupant of the premises on which the violation occurred.

(2) The Building Official shall file among his records an affidavit stating with fairness and accuracy the items of expense and the date of execution of actions authorized by this Section.

>>(3) Any other employee, official, or agency who incurs costs while executing any provision within this Section shall create an affidavit stating with fairness and accuracy the items of expense and the date of execution of actions authorized by this Section. That affidavit shall be given to the Building Official responsible for the unsafe structure at issue and filed among his records for that property.

(4)<< [[~~(3)~~]] The enforcing agency may institute a suit to recover such expenses against any liable person or may cause such expenses to be charged against the property on which the violation occurred as a lien or as a special assessment collectible according to established procedures.

>>(5)<<[[~~(4)~~]] Except with respect to a lien imposed in accordance with Paragraph (3) of this Subsection, nothing in this Section shall be construed as placing a lien upon property that supersedes the lien of any mortgage on such property executed and recorded prior to the existence of a lien for enforcement costs.

>>(6)<<[[~~(5)~~]] Any lien imposed pursuant to this Subsection shall be a lien prior in dignity to all liens, excepting county tax liens and liens of equal dignity with the county tax liens.

>>(7)<<[[~~(6)~~]] Liens created pursuant to this Section may be discharged and satisfied by paying to the appointing authority the amount specified in the notice of lien, together with interest thereon from the date of the filing of the lien computed at the rate of twelve (12) percent per annum, together with the administrative costs, filing and recording fees and fees paid to file a satisfaction of the lien in the public records. When any such lien has been discharged, the appointing authority shall promptly cause evidence of the satisfaction and discharge of such lien to be recorded in the public records.

>>(8)<< [[~~(7)~~]] The remedies and procedures for recovery of costs provided in this Subsection shall be in addition to and not in derogation of other provided in the Building Code or otherwise provided by law.

>>(l)<< [[~~(k)~~]] Unsafe Structures Board. The Unsafe Structures Board is hereby created, consisting of 13 members who shall be appointed by the Board of County Commissioners of Miami-Dade County, Florida.

(1) Qualification of Members: Members of the Board shall be permanent residents of Miami-Dade County who possess outstanding reputations for civic activity, interest, integrity, responsibility, and business or professional ability. The composition of the Board shall include a registered Engineer, a registered Architect, a General Building Contractor, an Electrical Contractor, an attorney, a Plumbing Contractor, a Real Estate Appraiser, a real estate Property Manager, and a citizen with experience and background in the field of social problems.

(2) Terms of Office: All appointments shall be for the term of 3 years, provided, however, that the term, in all instances, shall continue until a successor is appointed and qualified. Appointments to fill any vacancy on the Board shall be for the remainder of the unexpired term.

(3) Organization of the Board:

(i) The members of the Board shall elect a Chairman and a Vice Chairman and such other officers as may be deemed necessary or desirable, who shall serve at the will of the Board. Election of officers shall be held at the first meeting of February and such officers shall hold office for one year.

(ii) Seven (7) members of the Board shall constitute a quorum necessary to hold a meeting or take any action.

(iii) A majority vote of the membership present and voting at a duly constituted meeting of the Board shall be sufficient to overrule, modify or affirm any action or decision of the Building Official or to take any other action within the scope of the powers and duties of the Board.

(iv) Members shall serve without compensation but shall be entitled to reimbursement for necessary expenses incurred in the performance of their official duties, upon approval by the appointing authority.

(v) No member of the Board shall sit as a voting member in any hearing on a matter in which he has a personal or financial interest.

(vi) The Director of the Miami-Dade County Building Code Compliance Office, or his designee, shall be the Secretary of the Board but shall have no vote.

(vii) The Chairman or the Secretary may call meetings of the Board, and meetings of the Board may be called by written notice signed by three members of the Board.

(viii) Minutes and records shall be kept of all meetings of the Board and all meetings shall be public.

(ix) All hearings shall be open to the public, and any person whose interest may be affected by the matter on appeal shall be given an opportunity to be heard in person, or through his attorney.

(x) Witnesses may be sworn and subpoenaed by the Board in a like manner as they are subpoenaed by the court or courts in Miami-Dade County.

(xi) The hearings shall be informal and need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.

(xii) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(xiii) The rules of privilege shall be effective to the same extent that they are now, or hereafter may be, recognized in civil actions; and irrelevant and unduly repetitious evidence shall be excluded.

(xiv) The Board may establish rules and regulations for its own procedure.

(xi) The Secretary of the Board shall provide adequate and competent clerical and administrative personnel and such technical or scientific personnel as may be reasonably required by the Board for the proper performance of its duties, subject to budget limitations. The Secretary shall maintain a record of all proceedings, including but not limited to a court reporter's

transcript of the proceeding, and may clarify the same as a true copy and make a reasonable charge therefor; provided, the court reporter shall certify the copy of his or her transcript.

(xii) The Secretary of the Board shall provide a regular meeting place for the Board.

(4) Duties and Powers of the Board: The Board shall have the following duties, functions, powers and responsibilities:
(i) Hear and determine appeals from actions and decisions of the Building Official pursuant to the provisions of this Section.

(ii) Hear and review the application of the Building Official for the review of his or her action where his or her decision as indicated in a Notice of Violations has not been complied with.

(iii) Affirm, modify or reverse the decision of the Building Official upon appeal or on application for review.

(iv) The Board, through its Secretary, shall transmit the record with all exhibits, instruments, papers, and transcripts of its proceedings to the appointing authority in the event that authority shall wish to consider the matter.

(5) Duties of Legal Counsel. It shall be the duty of the attorney for the Authority having jurisdiction, when so requested, to appear at all hearings before the Unsafe Structures Board and to represent and advise the Board.

>>(m)<< [[~~(l)~~]] Unsafe Structure Appeal Panels. Unsafe Structures Appeal Panels are hereby created to conduct hearings as provided for under this Section.

(1) Composition: Unsafe Structures Appeal Panels shall consist of three Hearing Officers appointed by the County Manager as provided for under Chapter 8CC of this Code. A member in good standing of the Unsafe Structures Board shall be appointed by that Board to serve as an ex-officio, non-voting member of each Appeal Panel, to act as a liaison to the Unsafe Structures Board. The ex-officio member shall not count toward a quorum of the Appeal Panel.

2) Designation: At the request of the Director of the Building Department, the Clerk of the Court shall designate three Hearing Officers to constitute an Unsafe Structures Appeal Panel

to conduct hearings on the dates scheduled by the Director of the Building Department or his designee. At least one of the Hearing Officers on each panel shall have knowledge of construction gained from experience as an architect, engineer or general contractor. The Director of the Building Department shall not have any input into which hearing officers are designated to comprise a particular panel.

3) Organization of the Panels:

(i) The Director of the Building Department may utilize one or more Panels as needed to conduct hearings.

(ii) Three (3) Panel members must be present to conduct a hearing or take any action.

(iii) A majority vote of Panel members present and voting shall be sufficient to overrule, modify or affirm any action or decision of the Building Official or to take any action within the scope of the powers and duties of the Panel.

(iv) Members shall be compensated as provided for under Administrative Order No. 2-5.

(v) No member of a Panel shall sit as a voting member in any hearing on a matter in which he has a personal or financial interest.

(vi) The Director of the Miami-Dade County Building Department, or his designee, shall assist the Panels, but shall have no vote.

(vii) The Director of the Miami-Dade County Building Department or his designee may call and schedule Appeal Panel hearings.

(viii) Audio record shall be kept of all Appeal Panel hearings and all hearings shall be public.

(ix) All hearings shall be open to the public, and any person whose interest may be affected by the matter on appeal shall be given an opportunity to be heard in person, or through his attorney.

(x) Witnesses may be sworn and subpoenaed by the Appeal Panels in a like manner as they are subpoenaed by the court or courts in Miami-Dade County.

(xi) The hearings shall be informal and need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.

(xii) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(xiii) The rules of privilege shall be effective to the same extent that they are now, or hereafter may be, recognized in civil actions; and irrelevant and unduly repetitious evidence shall be excluded.

(xiv) The Director of the Miami-Dade County Building Department shall provide adequate and competent clerical and administrative personnel and such technical or scientific personnel as may be reasonably required by the Appeal Panels for the proper performance of their duties, subject to budget limitations. The Director of the Miami-Dade County Building Department shall maintain a record of all proceedings, including but not limited to a court reporter's transcript of the proceeding, and may clarify the same as a true copy and make a reasonable charge therefor; provided, the court reporter shall certify the copy of his or her transcript.

(xv) The Director of the Miami-Dade County Building Department shall provide a regular meeting place for the Appeal Panels.

4) Duties and Powers of the Appeal Panels: The Appeal Panels shall have the following duties, functions, powers and responsibilities:

(i) Hear and determine appeals from actions and decisions of the Building Official pursuant to the provisions of this Section.

(ii) Hear and review the application of the Building Official for the review of his or her action where his or her decision as indicated in a Notice of Violations has not been complied with.

(iii) Affirm, modify or reverse the decision of the Building Official upon appeal or on application for review.

(iv) In the event of judicial review of an Unsafe Structure Appeal Panel order, the Director of the Miami-Dade Building Department or his designee shall transmit the records with all exhibits, instruments, papers and transcripts of its proceedings to the reviewing authority if so requested.

5) Duties of Legal Counsel: It shall be the duty of the County Attorney, when so requested, to appear at all hearings before the Unsafe Structures Appeal Panels and to represent and advise the Appeal Panels.

>>(n)<< [[~~(m)~~]] Judicial Review. Any person aggrieved by a decision of the Unsafe Structures Board or an Unsafe Structures Appeal Panel may seek judicial review of that decision in accordance with the Florida Rules of Appellate Procedure. Any order, requirement, decision or determination of the Unsafe Structures Board or an Unsafe Structures Appeal Panel 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 rulings of any commission, hearing officer or board; and such time commences to run from the date that the Board's or Appeal Panel's order, requirement, decision or determination sought to be reviewed is transmitted to the Secretary of the Board or Director of the Miami-Dade County Building Department or his designee. The Secretary or the Director of the Miami-Dade County Building Department shall affix to each order, requirement, decision or determination of the Board or Appeal Panel the date said order, requirement, decision or determination is transmitted. The Secretary to the Board and Director of the Miami-Dade County Building Department shall comply with all requirements of the Florida Rules of Appellate Procedure.

Section 2. 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 3. 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 4. 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: **June 30, 2009**

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Michael B. Nadler

Prime Sponsor: Senator Javier D. Souto