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

MEMORANDUM

Amended
Agenda Item No. 7 (D)

TO:	Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners	**DATE:**	July 3, 2012
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Ordinance relating to zoning; modifying vote requirements to delete or modify common spaces or amenities previously approved at public hearing

Ordinance No.12-49

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan and Co-Sponsor Commissioner Jean Monestime.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: July 3, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Requirements to delete or modify common open spaces relating to zoning

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The proposed ordinance modifies vote requirements related to common open spaces or amenities. The implementation of this ordinance will not have a fiscal impact to the County.

Jack Osterholt
Deputy Mayor

fis5712

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: July 3, 2012

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

SUBJECT: Amended Agenda Item No. 7(D)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 7(D)
7-3-12

ORDINANCE NO. 12-49

ORDINANCE RELATING TO ZONING; MODIFYING VOTE REQUIREMENTS TO DELETE OR MODIFY COMMON OPEN SPACES OR AMENITIES PREVIOUSLY APPROVED AT PUBLIC HEARING; AMENDING SECTIONS 33-1, 33-311, AND 33-313.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA ("CODE"); 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 33-1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 33-1. - Definitions.

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

* * * *

>>(30.02) *Common use amenity.* Feature provided for the common and exclusive enjoyment of residents within a residential site plan, including, without limitation, a recreational or entertainment facility, swimming pool, outdoor recreational area or facility, passive park, or water body set aside as park area.<<

* * * *

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

Sec. 33-311. - **Community Zoning Appeals Board—Authority and duties.**

(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.

* * * *

The Community Zoning Appeals Boards shall have authority over the following zoning applications except where the Board of County Commissioners has direct jurisdiction.

* * * *

(7) Hear 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 provisions of restrictive covenants, or parts thereof, accepted at public hearing, except as otherwise provided in Section 33-314(C)(3); provided, that the appropriate board finds after public hearing (a) that the modification or elimination, in the opinion of the Community Zoning Appeals Board, would not generate excessive noise or traffic, tend to create a fire or other equally or greater dangerous hazard, or provoke excessive overcrowding of people, or would not tend to provoke a nuisance, or would not be incompatible with the area concerned, when considering the necessity and reasonableness of the modification or elimination in relation to the present and future development of the area concerned, or (b) (i) that the resolution that contains the condition approved a school use that was permitted only as a special exception, (ii) that subsequent law permits that use as of right without the requirement of approval after public hearing, and (iii) that the requested modification or elimination would not result in development exceeding the standards provided for schools authorized as a matter of

right without the requirement of approval after public hearing. >>It is further provided, however, that no zoning application to delete or modify, in a manner inconsistent with Section 33-310.1(A)(I)(B)(7), a common open space or common use amenity within a residential site plan that was previously approved upon public hearing shall be approved except upon a two-thirds vote of the members present at the hearing at which the application is decided; this provision shall not apply to an application to modify or delete a condition or restrictive covenant, or parts thereof, within an urban center district or urban area district.<<

Section 3. Section 33-313.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-313.1. - **Deletion or modification of covenants >>or common open spaces or amenities<<.**

For zoning applications heard by the County Commission, no zoning application >>(i)<< to delete or amend a declaration of restrictive covenants that was submitted in connection with a prior zoning application that would result in an increase in the density or intensity of a use >>or (ii) to delete or modify, in a manner inconsistent with Section 33-310.1(A)(I)(B)(7), a common open space or common use amenity within a residential site plan that was previously approved upon public hearing that was previously approved upon public hearing,<< shall be approved except upon a two-thirds vote of the members present at the hearing at which the application is decided. It is provided, however, that this section shall not apply to an application to delete or amend a declaration of restrictive covenants >>or a condition in a resolution, or parts thereof,<< for a property within an urban center district or urban area district.

Section 4. 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 5. 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 6. 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: July 3. 2012

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Dennis A. Kerbel

Prime Sponsor: Commissioner Barbara J. Jordan
Co-Sponsor: Commissioner Jean Monestime