

ORDINANCE NO. 09-112

**AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, AMENDING ARTICLE 2, DECISION MAKING AND ADMINISTRATIVE BODIES, AND ARTICLE 3, DEVELOPMENT APPROVAL PROCEDURES OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE; PROVIDING FOR DELEGATION AUTHORITY; DELEGATING CERTAIN DUTIES OF THE TOWN COUNCIL TO A PLANNING AND ZONING BOARD TO ACT UPON CERTAIN DEVELOPMENT APPLICATIONS; PROVIDING FOR THE CREATION OF A PLANNING AND ZONING BOARD; PROVIDING FOR COMPOSITION, DUTIES, TERMS, SUPPORT, EX-PARTE COMMUNICATION PROCEDURES, APPEALS AND MEETINGS OF THE PLANNING AND ZONING BOARD; PROVIDING FOR ADMINISTRATIVE OFFICIAL SUPPORT OF THE PLANNING AND ZONING BOARD; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Miami Lakes (the "Town") adopted Chapter 33 of the Miami -Dade County Code (2000), entitled "Zoning" as the Town of Miami Lakes Land Development Code ("the Town LDC") by Section 8.3 of the Town Charter; and

WHEREAS, subsequent to its adoption, the Town LDC has been amended by various ordinances adopted by the Town of Miami Lakes (the "LDC Ordinances") to better address and serve the needs of the Town; and

WHEREAS, the Town Council desires to create a Planning and Zoning Board to hear and decide certain Variance and Conditional Use applications; and

WHEREAS, the Town Council desires to provide for qualifications, membership, terms of office, duties and other administrative functions of the Planning and Zoning Board; and

**WHEREAS**, the Local Planning Agency reviewed this request at its December 16, 2008 meeting, and voted to recommend approval; and

**WHEREAS**, the Town Council has reviewed this Ordinance at a duly noticed hearing, considered the recommendations of the Local Planning Agency, the Town staff, and comments from the public, and determined that it is consistent with all policies contained in the Town's Comprehensive Plan; and

**WHEREAS**, the Town Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate and advances the public interest.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** Each of the above stated recitals are true and correct and are incorporated herein by this reference.

**Section 2. Creation of Planning and Zoning Board.** Article 2, Decision Making and Administrative Bodies, of the Town LDC is hereby amended as follows<sup>1</sup>:

## **ARTICLE 2 DECISION MAKING AND ADMINISTRATIVE BODIES**

### **DIVISION 2.1 - TOWN COUNCIL**

In addition to any authority granted to the Town Council by state law or by provisions of the Town Charter, the Town Council shall have the powers and duties listed herein concerning this Land Development Code. The Town Council's authority shall include, but not be limited to approval, approval with modifications and/or conditions or denial or as may otherwise be provided herein. Specifically, but without limitation, the Town Council shall have the authority to:

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<sup>1</sup> Additions to the text are shown in underline and deletions from the text are shown in ~~strikethrough~~.

(l) Delegate to a designated Town board or agency, such duties as are permitted under State law and the Town Charter.

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## DIVISION 2.25 – PLANNING AND ZONING BOARD

### (a) Creation.

For the purpose of promoting the orderly development of the Town in accordance with the goals and objectives of the comprehensive plan and standards specified in the Land Development Code, of protecting property values and the health, safety and welfare of the community at large, of promoting the aesthetic quality of development in the town, and of ensuring the suitability of development for its intended purpose, a Planning and Zoning Board (the “P&Z Board”) is hereby created and established.

### (b) Membership and Qualifications.

1. The P&Z Board shall consist of seven regular voting members.
2. The Mayor and each Member of the Town Council shall nominate a candidate for appointment to the P&Z Board, which appointment shall be subject to approval by a majority vote of the Town Council, subject to verification of Candidate residency.
3. For a period of one year prior to appointment and at all times during which they serve, Members of the P&Z Board must reside within the Town limits.
4. Candidates selected for appointment shall be subject to a criminal background check prior to submittal of the appointment to the Town Council for approval.
5. At the time of appointment and at all times during which they serve, all members shall:
  - (i) not serve on the Town Council or any other Town board or committee; and
  - (ii) not be employed by the Town or any of its contractors.
6. A member may be selected from the categories in the list below:
  - (1) Architect or Engineer.
  - (2) Developer or General Contractor.
  - (3) Real Estate Professional.
  - (4) Planner.
  - (5) Land use Attorney.
  - (6) Citizen at Large.

(c). **Officers.**

1. The Mayor shall appoint the first Chair from among the appointed members on April 1, 2009. Every year thereafter, at its first meeting in April of each year, the P&Z Board shall elect one of its members as Chair. The Chair shall carry out all duties and responsibilities as designated in the Land Development Code and by Town Council.
2. At its first meeting in April of each year, the P&Z Board shall elect one of its members as Vice-chair who shall, in the absence of the Chair, fulfill all the duties and responsibilities of the Chair as designated in the Land Development Code and by Town Council.

(d) **Term.**

Terms shall consist of two year terms beginning April 1 of the year appointed. For purposes of the P&Z Board's creation, the initial terms shall consist of one (1) year terms for Residential Areas 2 and 4 and At-Large Seat 6, and two (2) year terms for Residential Areas 1 and 3, At-Large Seat 5 and the Mayor's appointments.

(e) **Removal.**

1. The Mayor or a Town Councilmember may recommend the removal of their appointed P&Z Board member, for any reason, subject to approval by a majority vote of the Town Council.
2. Any Town Councilmember may recommend the removal of any appointed P&Z Board member for violation of any Town Code, Ordinance or applicable ethical rule subject to approval by a majority vote of the Town Council.
3. Any Member of the P&Z Board shall automatically be removed from the P&Z Board upon three consecutive P&Z Board meeting absences which have not been excused by a majority vote of the P&Z Board.

(f) **Vacancies.**

Vacancies shall be filled in the same manner as original appointments and the appointee shall sit for the remainder of the term for the seat to which they are appointed.

(g) **Duties.**

The P&Z Board shall have the following powers and duties:

1. To review and act upon variances to setback lines, frontage requirements, height limitations, lots size restrictions, yard requirements, fences and walls, lot coverage, impervious surface ratio, open space, landscaping, signs and any other provisions of this Land Development Code, in accordance with the provisions of this Land Development Code governing variances, where such applications do not also require a public hearing for a related site plan application. Any variance application which also requires a public hearing for a related site plan application shall be heard by the Town Council jointly with the site plan application.
2. To review and act upon applications for conditional uses, in accordance with the provisions of this Land Development Code governing conditional uses, where such applications do not also require a public hearing for a related site plan application. Any conditional use application which also requires a public hearing for a related site plan application shall be heard by the Town Council jointly with the site plan application.
3. To review and act upon any and all matters referred to it by the Town Council or by the provisions of any Town ordinance and to submit its findings and recommendations on such matters to the Town Council.
4. To fulfill all assigned responsibilities in accordance with the procedures and criteria of this Land Development Code and the Town's Comprehensive Plan.
5. The Chair or his/her designee shall annually present a written report of the P&Z Board's activity to the Town Council through the Administrative Official. All reports shall be approved by the P&Z Board prior to submission to the Town or presentation to the Town Council.

(h) **Meetings.**

1. The P&Z Board shall meet at such times as deemed necessary for conducting business, but not less than once a month, unless there is no business to be conducted.
2. A majority of the full membership shall constitute a quorum for conducting business.

3. All meetings and business of the P&Z Board shall comply with the requirements of Chapters 119 and 286 of the Florida Statutes. Meetings shall be open to the public and reasonable public notice shall be provided at least 48 hours prior to any meeting.
4. Meetings shall be conducted in accordance with Roberts Rules of Order (newly revised, 10<sup>th</sup> edition). Any Committee Procedures or Rules adopted by the Town shall not apply to the P&Z Board.
5. All public hearings shall be conducted in accordance with the Quasi-judicial procedures provided in this Land Development Code.
6. Audio recordings shall be made of all meetings.
7. Public hearings before the P&Z Board shall be noticed as provided in the Land Development Code.

(i) Appeal of Planning and Zoning Board Actions.

Appeals of P&Z Board decisions shall be processed in accordance with Division 3.10 – Appeals - of this Land Development Code. A P&Z Board final Development Order may be appealed by the filing of an appeal or writ of certiorari in the appropriate court as prescribed in the Florida Rules of Appellate Procedure. A Development Order is final, or rendered, for purposes of filing an appeal or writ of certiorari to the court only upon the Order’s execution by the Town Clerk.

(j) Conflict of Interest.

A member of the P&Z Board shall not participate in review of an application for which he or she has a conflict of interest in accordance with the Town Charter, Town Code or Miami-Dade County Conflict of Interest and Code of Ethics Ordinance. Planning and Zoning Board members may not serve on any other Town Board or Committee.

(k) Oath Requirement.

All P&Z Board members shall be required to subscribe to an oath or affirmation to be filed by the Town Clerk, swearing to support, protect and defend the Constitution and laws of the United States, and the State, the Charter and all ordinances of the Town and Miami Dade County and in all respects to faithfully discharge their duties.

(l) Ex-Parte Communications.

1. Except as authorized below, there shall be no ex-parte communication with or by a member of the P&Z Board regarding any matter which may come before the P&Z Board for action.

2. Site visits may be conducted by any individual member of the P&Z Board provided such site visits are disclosed on a form provided by the Town. The Town Clerk shall provide a copy of the form to all parties to the relevant application and shall make the disclosure a part of the hearing record before final action is taken on the matter.
3. Any communication inadvertently received by a P&Z Board member shall be submitted to the Town Clerk and the Town Clerk shall provide a copy of the written communication to all parties to the relevant application and shall make the written communication a part of the hearing record before final action is taken on the matter.

### **DIVISION 2.3 - ADMINISTRATIVE OFFICIAL**

The Administrative Official shall be the Town Manager or his or her designee, who shall provide technical support and advice for the preparation and implementation of the Comprehensive Plan and this Land Development Code, and shall perform such other functions as requested by the Town Council and authorized by this Land Development Code, and consistent with the Florida Building Code. Specifically, and without limitation, the Administrative Official shall have the following duties:

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- (g) Review and prepare recommendations for the Town Council's or designated Town board's review of all conditional use and variance applications;
- (h) Review and approve permits for moving a building or structure from one lot or premises to another;
- (i) Review applications for zoning compliance for uses that have received necessary approvals by the Town Council or designated Town board pursuant to this Land Development Code;
- (j) Approve minor changes to approved site plans consistent with this Land Development Code;
- (k) Issue plat approval for lot splits;
- (l) Review and approve certificates of occupancy and certificates of use for zoning compliance;
- (m) Prepare as necessary the record upon which each final decision of the Town Council or designated Town board pursuant to the Land Development Code is based, for purposes of any appeal to the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County;



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**Section 3.** Article 3, Development Approval Procedures, of the Town LDC is hereby amended as follows:

**ARTICLE 3  
DEVELOPMENT APPROVAL PROCEDURES**

**DIVISION 3.1 – GENERALLY**

\* \* \*

**(g) Administrative Official Review and Recommendation.**

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3. In cases where the Administrative Official must provide review and recommendation to the Town Council or a designated Town board, the Administrative Official shall provide a written staff report, together with recommendations for denial, approval or approval with modifications and/or conditions. The Administrative Official shall schedule any public hearing that may be required and shall advise the applicant as to any public notice requirements for the approval. Public notices shall be provided pursuant to Division 3.9 of this Land Development Code.

**(h) Continuance, Withdrawal, or Deferral.**

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2. The Administrative Official may administratively defer or remove an application from the agenda if it requires additional research or information, or would otherwise be prematurely before the Council or designated Town board. Any public hearing which is held after a deferral which is required due to insufficiencies in the application, information or materials provided by the applicant, or which is deferred due to actions of the applicant, shall, as necessary, be re-noticed at the expense of the applicant.

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## DIVISION 3.3 - CONDITIONAL USE APPROVAL

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### (b) Review Procedures.

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2. Action by Town Council or Designated Town Board. The Town Council or designated Town board shall follow the procedures in Division 3.1 and shall, prior to taking action on a conditional use application, hold a quasi-judicial public hearing. Notice of the public hearing shall be given as provided in Division 3.9
3. Specific Criteria for Approving a Conditional Use. A conditional use shall be permitted upon a finding by the Town Council or designated Town board that the proposed use satisfies the criteria herein specified. A conditional use shall be denied if the Town Council or designated Town board determines that the proposed use does not meet the criteria herein provided or is adverse to the public interest. The applicant shall demonstrate the following:

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- e. Hazardous Waste. No conditional use which generates hazardous waste or uses hazardous materials shall be located in the Town unless the specific location is consistent with the Comprehensive Plan and Land Development Code, and does not adversely impact wellfields, aquifer recharge areas, or other conservation resources, as may be applicable now or in the future. The proposed use shall not generate hazardous waste or require use of hazardous materials in its operation unless the Town Council or designated Town board approves conditions requiring mitigative techniques designed to prevent any adverse impact to the general health, safety and welfare. The mitigation plan and conditions imposed by the Town Council or designated Town board shall provide for appropriate identification of hazardous waste and hazardous material, and regulate its use, storage and transfer consistent with best management principles and practices as required by the appropriate permitting agencies.

**Section 3. Repeal of Conflicting Provisions.** All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason

be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Inclusion in the Town Land Development Code.** It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Town LDC and that if necessary the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Article”, “Division” or other appropriate word.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon its adoption on second reading, however the Town Council shall continue to hear any items under the purview of the Planning and Zoning Board until the terms of the initial Planning and Zoning Board members commence on April 1, 2009.

The foregoing Ordinance was offered by Councilmember Robert Meador, who moved its adoption on first reading. The motion was seconded by Councilmember George Lopez and upon being put to a vote, the vote was as follows:

Mayor Michael Pizzi	yes
Vice-Mayor Richard Pulido	yes
Councilmember Mary Collins	absent
Councilmember George Lopez	yes
Councilmember Robert Meador	yes
Councilmember Nick Perdomo	yes
Councilmember Nancy Simon	yes

PASSED AND ADOPTED on first reading this 16th day of December, 2008.

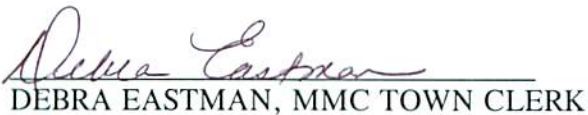
The foregoing Ordinance was offered by Councilmember Mary Collins, who moved its adoption on second reading. The motion was seconded by Councilmember George Lopez, and upon being put to a vote, the vote was as follows:

Mayor Michael Pizzi	Yes
Vice-Mayor Richard Pulido	No
Councilmember Mary Collins	Yes
Councilmember George Lopez	Yes
Councilmember Robert Meador	Yes
Councilmember Nick Perdomo	Yes
Councilmember Nancy Simon	No

PASSED AND ADOPTED on second reading this 17th day of February, 2009.

  
MICHAEL PIZZI  
MAYOR

ATTEST:

  
DEBRA EASTMAN, MMC TOWN CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND BENEFIT OF THE TOWN OF MIAMI LAKES ONLY:

  
WEISS, SEROTA, HELFMAN, PASTORIZA,  
COLE & BONISKE, P.L.  
TOWN ATTORNEY