

**ORDINANCE NO. 16-189**

**AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, AMENDING THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE BY AMENDING ARTICLE VI, SECTION 13-1612, NONCONFORMING USES; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Objective 1.2 of the Town’s Comprehensive Plan states that the Town shall maintain an effective and efficient Land Development Code (LDC); 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 provide regulations for nonconformities that will more clearly distinguish between nonconforming uses, nonconforming structures and nonconforming site improvements, and make clear under what circumstances replacements and repairs of nonconformities may take place, and under what circumstances each type of nonconformity must be brought into compliance with current regulations; and

**WHEREAS**, the Town’s Planning and Zoning Board, as the Local Planning Agency, considered the proposed amendments at a duly advertised Public Hearing on December 8, 2015, and voted 6-0 to recommend adoption of the ordinance; and

**WHEREAS**, after conducting a properly noticed public hearing, hearing public comments, and considering the recommendations of the Local Planning Agency, Town staff, and the public, the Town Council wishes to adopt the amendments to the Town LDC attached hereto as Exhibit A; and

**WHEREAS**, the proposed amendments are in conformance with all applicable requirements of the Town’s Code of Ordinances, including the LDC; and

**WHEREAS**, the proposed amendments will not be in conflict with the public interest, and are consistent and in harmony with the purpose and intent of the 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 RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

**Section 2. Adoption of Amendments to Town Code.** The Town Council hereby adopts the amendments to Article VI, Division 1, Section 13-1312 of the Town LDC, which are attached hereto as Exhibit A, and are incorporated herein<sup>1</sup>.

**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 Code.** It is the intention of the Town Council, and it is hereby ordained, that the provisions of Exhibit A of this Ordinance shall become and be made part of the Town Code 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 become effective immediately upon its adoption on second reading.

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

**FIRST READING**

The foregoing ordinance was offered by Councilmember TONY LAMA who moved its adoption on first reading. The motion was seconded by Councilmember TIM DAUBERT and upon being put to a vote, the vote was as follows:

- Mayor Michael A. Pizzi, Jr. yes
- Vice Mayor Tim Daubert yes
- Councilmember Manny Cid yes
- Councilmember Tony Lama yes
- Councilmember Ceasar Mestre yes
- Councilmember Frank Mingo yes
- Councilmember Nelson Rodriguez yes

Passed and adopted on first reading this 1<sup>st</sup> day of December, 2015.

**THIS SPACE INTENTIONALLY LEFT BLANK**

**SECOND READING**

The foregoing ordinance was offered by Councilmember Manny Cid who moved its adoption on second reading. The motion was seconded by Councilmember Nelson Rodriguez and upon being put to a vote, the vote was as follows:

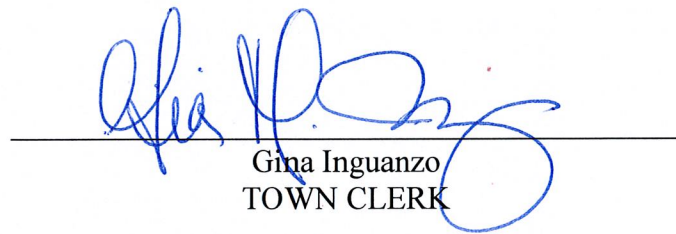
Mayor Michael A. Pizzi, Jr.	<u>Y/N</u>
Vice Mayor Tim Daubert	<u>Y/N</u>
Councilmember Manny Cid	<u>Y/N</u>
Councilmember Tony Lama	<u>Y/N</u>
Councilmember Ceasar Mestre	<u>Y/N</u>
Councilmember Frank Mingo	<u>Y/N</u>
Councilmember Nelson Rodriguez	<u>Y/N</u>

Passed and adopted on second reading this 5<sup>th</sup> day of January, 2016.



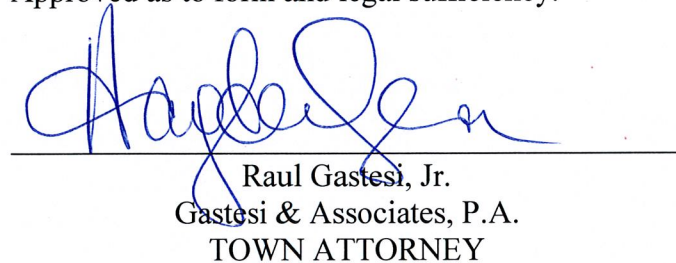
Michael A. Pizzi, Jr.  
MAYOR

Attest:



Gina Inguanzo  
TOWN CLERK

Approved as to form and legal sufficiency:



Raul Gastesi, Jr.  
Gastesi & Associates, P.A.  
TOWN ATTORNEY

# **EXHIBIT A**

## Chapter 13 LAND DEVELOPMENT CODE

### ARTICLE VI. SUPPLEMENTARY REGULATIONS

#### DIVISION 1. - GENERALLY

##### Section 13-1612. – Nonconforming uses, structures and site improvements.

- (a) ~~A nonconforming use shall not be extended in any direction nor shall such use be replaced by another use not specifically permitted in the district concerned.~~
- (b) ~~No building or premises wherein or whereon a nonconforming use is discontinued for a period of at least six months, or is superseded by a use permitted under the provisions of this chapter in the district in which said building or premises are situated, shall again be devoted to any use prohibited by this chapter in the district.~~
- (c) ~~Any building which does not conform in use, occupancy or construction, or in some other way, with the provisions of this chapter (said structure, use of occupancy having existed prior to the adoption of these regulations) which becomes damaged as to roof and/or structure to an extent of 50 percent or more of its reasonable market value at the time, by fire, flood, explosion, wind, war, riot or any other act of God or man, shall not be reconstructed or used or occupied as before said damage, but, if damage to an extent of less than 50 percent of the reasonable market value at the time of the damage, the building may be reconstructed or used as before, provided such reconstruction is completed or such use is started within six months of the date of such damage.~~
- (d) ~~When a nonconforming building is vacated, the Director may attach, or have attached, a notice to the effect that new occupancy shall require conformance to this chapter, but the absence of such notice shall not relieve the owner of full compliance with this chapter.~~
- (e) ~~Where any premises, whereon a building containing a nonconforming use is located, is partially acquired by an official public body for a public purpose, the use shall be permitted to continue on remaining portion of the premises under the following conditions:~~
  - (1) ~~Where part of the structure is taken, an amount equal to that portion required may be added to the remaining structure.~~
  - (2) ~~If the entire structure is acquired, a new structure may be erected on the remaining portion of the premises, if such premises conform to the requirements of this chapter, providing said new structure does not exceed in size the original structure that was taken.~~
  - (3) ~~If such existing structure does not warrant remodeling or relocating, then a new structure may be erected on the remaining portion of the premises, providing the same does not exceed in size the original structure and providing that the new structure can be erected on the site in accordance with applicable zoning regulations.~~
  - (4) ~~If the existing structure is such that it can be relocated on the portion of premises remaining, then the same can be relocated providing it complies with applicable zoning and building regulations.~~

- ~~(5) Where a new structure is erected for several uses and it is desired to reestablish a nonconforming use, the same shall be permitted providing the area to be devoted to the nonconforming use shall not exceed the original area devoted to the nonconforming use.~~
- ~~(f) In the event a nonconforming use is created by resolution pursuant to an application filed by the Director, an application requesting a variance pursuant to Section 13-305 of the Code which furthers the original purpose and intent of the nonconforming use may be filed at no fee to the applicant. The application filed under this subsection must be filed within 12 months of the date the zoning resolution is transmitted to the Town Clerk and shall only apply to those nonuse variances and special exceptions which are necessitated by a change of zoning and that would not have been required under the prior zoning district.~~
- (a) For purposes of this Section, the terms "nonconforming use," "nonconforming structure" and "nonconforming site improvement," collectively referred to as nonconformities, shall have the meanings set forth as follows:
- (1) "Nonconforming use" shall mean a land use, whether such use occurs within or outside a structure or in some combination thereof, that was in compliance with the zoning regulations that were applicable to it when it was established, and for which all required permits were issued, but which would not be allowed under the current regulations of this Chapter.
  - (2) "Nonconforming structure" shall mean any structure meeting the definition of a "building" according to the definition in Section 13-1(24) which was legally established in its current form, but which would not be allowed under the current regulations of this Chapter.
  - (3) "Nonconforming site improvement" shall mean a deliberate man-made improvement to a site, other than the principal structure, including but not limited to parking and loading areas; walkways; fences and walls; lighting; landscaping; fill, digging and other changes in grade, decks and similar improvements which were legally established with all required permits, but which would not be allowed under the current regulations of this Chapter. Provided, however, that site improvements located on single family residential properties, and for which no original permit can be found, may be granted nonconforming status through the administrative site plan process, where the Administrative Official finds that all of the following are true:
    - a. The site improvement is not a fence, wall or hedge located waterward of the top of the slope on a waterfront property;
    - b. The site improvement has existed since at least January 5, 2001;
    - c. The site improvement is eligible to receive a building permit under the terms of the Florida Building Code; and,
    - d. The site improvement does not limit or impair the reasonable use and enjoyment of any other property.
- (b) Intent and applicability.
- (1) It is the intent of this section to regulate nonconforming uses, structures and site improvements in the Town so as to manage their impacts and allow necessary maintenance and limited

expansions where appropriate, while encouraging their conversion to conforming status over time.

- (2) A change in tenancy, ownership or management of a nonconforming use, structure or site improvement shall not be construed to terminate a nonconformity, provided the change is otherwise lawful and in compliance with this Chapter.
- (3) The existence of a nonconformity shall not be used as a reason to add new uses, structures or site improvements that are not allowed by the regulations of this Chapter, and shall not be used as a justification for a variance.
- (4) This section shall govern nonconforming uses, structures and site improvements throughout the Town, except where more specific provisions for nonconformities are explicitly provided for certain types of uses or improvements, or specific provisions are provided for nonconformities for a particular zoning district, in which case the provisions for those uses or site improvements, or in those particular zoning districts, shall control.

(c) Nonconforming uses, as defined in this section, may continue, subject to the following provisions:

- (1) In the event that a nonconforming use is discontinued and replaced by a permitted use, regardless of how brief such period of time is and regardless of whether the permitted use obtains a certificate of use during such period, the nonconforming use shall not be resumed.
- (2) When a nonconforming use ceases for three consecutive months, or for a total of twelve months, whether consecutive or non-consecutive, during any three-year period, whether or not replaced by another use or uses, the nonconforming use shall not be resumed. The issuance or existence of a required license, permit or other governmental authorization to conduct such nonconforming use shall not mean that the use has not ceased, but the lack of any such required license, permit or authority shall create a rebuttable presumption that the use has ceased.
- (3) Where a structure contains, or partially contains, a nonconforming use, the removal or destruction of the structure, whether voluntary or involuntary, to an extent of more than 50 percent of the current replacement value of the structure or to an extent of more than 50 percent of the gross square footage of the structure, shall mean that the nonconforming use shall not be resumed. This shall be true whether the structure in question was conforming or nonconforming at the time of its removal or destruction.
- (4) Where a structure contains, or partially contains, a nonconforming use, and the structure becomes subject to an order to demolish by the Miami-Dade County Unsafe Structures Board, or there is a failure to comply with an order of the Miami-Dade County Unsafe Structures Board to correct one or more violations regarding the structure within the specified time period, the nonconforming use shall cease and may not be resumed.

(d) Nonconforming structures, as defined in this section, may continue, subject to the following provisions:

- (1) Internal and external repairs (including but not limited to re-roofing, painting, window and door replacement, mechanical equipment repair and replacement and plumbing and electrical maintenance), alterations and improvements to a nonconforming structure that do not increase



the size of the nonconforming structure (including but not limited to square footage and height), are permitted, so long as they do not increase the degree of nonconformity in any respect.

(2) The following shall govern the expansion of a nonconforming structure:

a. The expansion of a nonconforming structure shall be permitted if the total square footage of the improvement, and the total cumulative square footage of all expansions since the date that the structure became nonconforming, is less than or equal to 50 percent of the square footage of the structure at the time it became nonconforming. The expansion shall be in compliance with all provisions of this Division, and shall not increase the degree of nonconformity of the structure in any respect.

b. Where the total square footage of the proposed improvement, and the total cumulative square footage of all expansions since the date that the structure became nonconforming, is greater than 50 percent of the square footage of the structure at the time it became nonconforming, the entire structure and site improvements shall be brought into compliance with current regulations.

(3) If a nonconforming structure is subject to an order by the Miami-Dade County Unsafe Structures Board to be demolished, or there is a failure to comply, within the specified time period, with an order of the Miami-Dade County Unsafe Structures Board to correct one or more violations regarding said structure, then any future construction on the site shall be in compliance with current regulations.

(4) If a nonconforming structure is destroyed, or partially destroyed, through deliberate action of the property owner, by explosion, fire, war or similar involuntary means other than a natural disaster, the following shall govern the replacement or reconstruction of the nonconforming structure:

a. Should the nonconforming structure be destroyed to an extent that is both less than 50 percent of the replacement value of the structure on the date of destruction, and less than 50 percent of the gross floor area of the structure on the date of destruction, the portion of the nonconforming structure that remains undamaged may remain; however, the portion of the structure that has been destroyed shall only be replaced such that the replacement portion complies with the provisions of this Chapter.

b. Should the nonconforming structure be destroyed to an extent of 50 percent or more of the replacement value of the structure on the date of destruction, or to an extent of 50 percent or more of the gross floor area of the structure on the date of destruction, said nonconforming structure shall not be reconstructed except in full compliance with the requirements of this Chapter.

(5) If a nonconforming structure is destroyed, or partially destroyed, by a natural disaster, said nonconforming structure may be replaced in the same size, configuration and location as it existed at the time of destruction or partial destruction. Any changes in the nonconforming structure made as part of this replacement may only be permitted to the extent that said changes would reduce the degree of nonconformity.

(6) If a nonconforming structure is moved for any reason in any distance whatsoever, other than as a result of governmental action requiring such movement, it shall thereafter conform to the provisions of this Chapter.

(e) Nonconforming site improvements may continue, subject to the following provisions:

- (1) No change shall be made to any nonconforming site improvement which increases the nonconformity. However, nonconforming site improvements may be repaired or replaced in order to maintain the aesthetic quality of the site improvement, as determined by the Administrative Official. Any such repair or replacement shall maintain or decrease the degree of nonconformity and must maintain the same size and configuration as the existing nonconforming site improvement, except and only to the extent that any changes in this regard would be conforming, or decrease the degree of nonconformity. Further, any such repair or replacement shall maintain the same or substantially visually similar material and color as the existing nonconforming site improvement, as determined by the Administrative Official. Any such repair or replacement shall be completed, and permits shall have been issued for any such repair or replacement, within one year of the removal of the nonconforming site improvement.
- (2) Full compliance with current landscaping requirements on a site, including parking lot landscaping requirements, shall be required when a principal structure on a site is expanded by an amount equal to or greater than either 20 percent of its replacement value or by 20 percent or more of its square footage on the date that this Subsection became effective. For purposes of this provision, all expansions of square footage of any such structure shall be considered cumulatively from the date that this Subsection became effective.
- (3) All nonconforming site improvements on a site shall be brought into full compliance with this Chapter upon the occurrence of any one of the following:
  - a. The total cumulative square footage of all expansions of a principal structure after the effective date of this Subsection equal or exceed 50 percent of the square footage of the structure on said effective date;
  - b. A nonconforming principal structure on the site is required to be brought into full compliance with this Chapter according to the provisions of this Section 13-1612; or,
  - c. A new principal structure is constructed on the site.
  - d. The nonconforming site improvement in question is destroyed to an extent of 50 percent or more of its size or to an extent of 50 percent or more of its replacement value of the nonconforming site improvement on the date of destruction, whether the destruction is voluntary or involuntary on the part of the property owner, except that in the case of destruction caused by natural disaster, the nonconforming site improvement may be replaced in the same size, configuration and location as it existed at the time of destruction.