ORDINANCE NO. 09-55

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AMENDING CHAPTER 98, ENTITLED "ZONING"; ARTICLE V, ZONING DISTRICT REGULATIONS, DIVISION 3. R-1 ONE-FAMILY DISTRICT, OF THE CODE OF ORDINANCES OF THE CITY OF HIALEAH, ADDING A NEW SECTION, SECTION 98-506 ENTITLED "MANGO HILL; WAIVER OF PLAT"; TO PROVIDE FOR A WAIVER OF PLAT PROCEDURE TO ALLOW PROPOSED OR EXISTING OPEN-AIR TERRACES, OPEN-SIDED ROOF-COVERED TERRACES, OPEN-SIDED ALUMINUM TERRACES AND PREFABRICATED UTILITY SHEDS IF LOCATED WITHIN THREE FEET FROM THE REAR-YARD FENCE OR WITHIN TWO FEET FROM THE SIDE-YARD FENCE IN THE MANGO HILL SUBDIVISION, SUBJECT TO A CERTIFICATE OF UNIT VERIFICATION PRIOR TO APPLICATION; PROVIDE MAXIMUM DIMENSION OF 72 SQUARE FEET OF TOTAL AREA AND MAXIMUM HEIGHT OF 7 FEET FOR PREFABRICATED UTILITY SHEDS AND PROVIDE FOR RECORDING OF WAIVERS GRANTED BY THE CITY IN THE MIAMI-DADE COUNTY PUBLIC RECORDS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of June 24, 2009 recommended approval of this ordinance; and

WHEREAS, the subdivision known as Mango Hill was platted in the late 1970's as R-1 One-Family District subject to specific variances and restrictions pursuant to Hialeah, Fla., Ordinance 2603 (July 11, 1972) and Hialeah, Fla., Ordinance 3085 (July 13, 1976); and

WHEREAS, the variances provided for limited common areas for the exclusive use of the individual property owner as long as common areas remained open and clear of any improvements; and

WHEREAS, during the subsequent years, these restrictions, as a practical matter, created a legal distinction that was never fully understood or enforced by the thirteen homeowners' associations comprising Mango Hill; and

WHEREAS, each residence in Mango Hill is enclosed with fences, originally erected by the developer, which created a misleading impression that the backyards were owned by each individual property owner with no limitations as to its use; and

WHEREAS, during the past 30 years property owners have constructed improvements and additions without the benefit of permits; and

WHEREAS, the expense and legal difficulties involved in replatting each of the developments under the jurisdiction of approximately 22 homeowners' associations is daunting and accordingly, this ordinance provides a legislative balance that allows for the legalization, by waiver of plat, of certain structures that do not negatively impact the quality of life in the neighborhood; and

WHEREAS, the general purpose and intent of this ordinance is to provide proper zoning regulations in the best interest of the health, safety, welfare and aesthetics of the community and the proper administration of its government; and

WHEREAS, the City of Hialeah finds that it is in its best interests to provide, with specific limitations, an opportunity to allow property owners to construct or legalize improvements to residences that extend beyond the building envelope in the subdivision known as Mango Hill.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 98, Article V entitled "Zoning District Regulations", Division 3. R-1 One-Family District, of the Code of Ordinances of the City of Hialeah, Florida is hereby amended, by creating Section 98-506 entitled "Mango Hill; waiver of plat", to read as follows:

Chapter 98

ZONING

* * *

ARTICLE V. ZONING DISTRICT REGULATIONS

* * *

DIVISION 3. R-1 ONE-FAMILY DISTRICT

* * *

Sec. 98-506 Mango Hill; waiver of plat.

(a) If a proposed or existing improvement to a residence extends beyond the building envelope in the subdivision known as Mango Hill, encompassing property located between West 8 Avenue and West 12 Avenue, from West 37 Street to West 44 Place, Hialeah, Florida, according to the plat thereof, as recorded in plat book 105, page 30, of the public records of Miami-Dade County, Florida, the property owner may apply for a waiver of plat, provided that the improvement, if approved, satisfies all other requirements as specified in the Mango Hill plat. The property owner must provide written consent from the homeowner's association according to its bylaws, rules or regulations for the improvements.

(b) A property owner may apply for a waiver of plat, provided that the improvements are located in the rear yard enclosed by a fence, but outside three feet from the location of the rear fence or outside two feet from the location of the

side fence, for only the following structures or improvements:

(1) Open-air terraces.

(2) Open-sided, roof-covered terraces.

(3) Open-sided aluminum terraces.

(4) Prefabricated utility sheds constructed of material identified in section 98-1670(a) but not exceeding 72 square feet in total area and not exceeding seven feet in height. Prefabricated utility sheds may not be designed to resemble a barn or installed with a pitched roof that resembles a barn.

(c) A property owner may not apply for a waiver of plat to construct or legalize an addition to the existing residence, an accessory building or any terrace that is enclosed by walls.

(d) A certificate of unit verification must be obtained if the zoning designation of the property requires a certificate of reoccupancy prior to the issuance of the waiver of plat. The certificate of unit verification, if issued, shall state that the city has inspected the dwelling and determined that the dwelling complies with the residential occupancy regulations of the zoning district on the property wherein the dwelling unit is located. If the city grants a waiver of plat, a certified copy of the approved waiver shall be recorded in the county public records, with a notation on the plat retained by the city.

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Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not

to exceed $500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense.

Section 4: **Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 5: **Effective Date.**

This ordinance shall become effective when passed by the City Council and when signed by the Mayor or at the next regularly scheduled city council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 25th day of August, 2009.

Carlos Hernandez
Council President

THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING

Attest: Approved on this 26th day of August, 2009.

Rafael E. Granado, City Clerk

Mayor Julio Robaina

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.

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Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes".