

ORDINANCE NO. 2021-040

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 98, "ZONING", ARTICLE I, ENTITLED "IN GENERAL", BY ADDING A NEW SECTION 98-7 "APPROVAL OF GOVERNMENTAL FACILITIES"; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of March 24, 2021 recommended approval of this ordinance; and

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, pursuant to the referenced provision of the Florida Constitution, a city may exercise any power for municipal purposes, except as otherwise provided by law; and,

WHEREAS, Chapter 166, Florida Statutes, the " Municipal Home Rule Powers Act," reinforces the authority granted under the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and,

WHEREAS, a governmental facility is an attribute of self-government because it allows a municipality to provide essential or necessary services, and works it must perform for the survival and betterment of society, or a undertakes what private enterprise will not or does not want to undertake, as for example, law enforcement, and the powers of taxation, eminent domain, budgeting, and borrowing; and

WHEREAS, the government when acting in a proprietary capacity, frequently collects fees for entry to auditoriums, schools, parks; and

WHEREAS, the distinction between governmental and proprietary functions is inexact and not categorically exact or unclear if the government is acting in one capacity or the other; and

WHEREAS, within the above-referenced grant of powers, the city has the authority to regulate land development and the use of property within the City for the protection of the public health, safety and welfare; and

WHEREAS, consistent with the findings stated above, the City Council has determined that adoption of this ordinance shall allow the city to provide public facilities and serve business and residents in the best interest of the public health, safety and welfare.

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

Section 1.: Chapter 98, entitled “Zoning”, Article I., entitled “In General”, is hereby amended by adding a new section 98-7. - “Approval of Governmental Facilities”, of the Code of Ordinances, as follows:

Chapter 98

ZONING

* * *

ARTICLE I. - IN GENERAL

* * *

Sec. 98-7. - “Approval of Governmental Facilities”

- (a) Governmental facilities. The City of Hialeah and its agencies and authorities shall not be bound by the procedures contained in this chapter in constructing or operating any governmental facility without regard to the zoning or use classification of any particular site or location, including but not limited to: public parks, playgrounds and buildings, and structures supplementary and incidental to such uses, fire stations, police stations, public water and sewer treatment and distribution facilities, public libraries, public buildings and centers, public auditoriums, arenas, museums, art galleries and convention halls, solid-waste collection and disposal facilities, public maintenance and equipment yards, motor vehicle or

transit stations and facilities, and other governmental facility uses as determined by the City.

(b) Notice and public hearing required. The City may only authorize the construction or operation of the governmental facilities as provided in paragraph (a) above by resolution following public hearing upon notice as follows:

(i) The public hearing shall be held upon at least 10 days' notice of the time and place of such hearing published in a newspaper of general circulation in the City; and

(ii) A courtesy notice containing general information as to the date, time, and place of the hearing, the property location and general nature of the application may be mailed to the property owners of record, within a radius of 500 feet of the property proposed for the construction or operation of a governmental facility; provided, however, that failure to mail or receive such courtesy notice shall not affect any action or proceeding taken hereunder; and

(iii) To provide additional notice to the public, the property shall be posted by a sign or signs indicating the action desired and the time and place of the public hearing thereon. Failure to post such property shall not affect any action taken hereunder; and

(iv) At the public hearing the City shall consider, among other factors, the type of function involved, the public need therefor, the existing land use pattern in the area, alternative locations for the facility and the nature of the impact of the facility on the surrounding property. After considering these said factors, the City shall take such action as is necessary to provide for and protect the public health, safety and welfare of the citizens and residents.

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 assessed 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. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Inclusion in Code.

The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

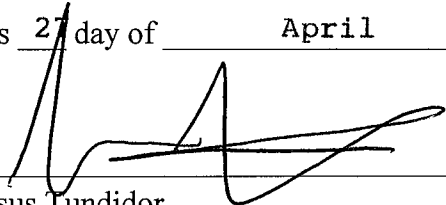
Section 5: Severability Clause.

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 6: Effective Date.

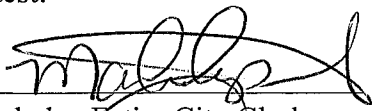
This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 27 day of April, 2021.



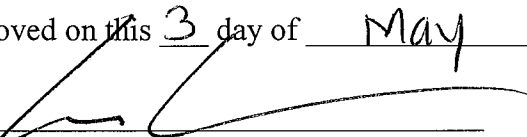
Jesus Tundidor
Council President

Attest:



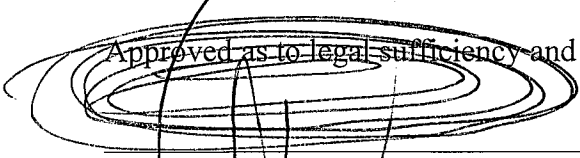
Marbelys Fatjo, City Clerk

Approved on this 3 day of May, 2021.



Mayor Carlos Hernandez

Approved as to legal sufficiency and form:



Lorena E. Bravo, City Attorney

Underline indicates addition.

Ordinance was adopted by 5-0-2 vote with Councilmembers, De la Rosa, Garcia-Roves, Perez, Tundidor, and Zogby voting "Yes" and with Council Member Cue-Fuente and Council Member Hernandez absent.