

ORDINANCE NO. 2021-070

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 98 ENTITLED "ZONING", ARTICLE III. "PLANS AND PLATS", DIVISION 3. SUBDIVISION PLATS; SECTION 98-349 UNITY OF TITLE; COVENANT IN LIEU THEREOF, OF THE CODE OF ORDINANCES OF THE CITY OF HIALEAH, BY CLARIFYING THAT THE EXCEPTION TO THE SUBDIVISION OF PLAT REQUIREMENT FOR THE BDH BUSINESS DEVELOPMENT DISTRICT, IS SUBJECT TO COMPLIANCE WITH THE SUBDIVISION PROVISIONS OF CHAPTER 28 OF THE MIAMI-DADE COUNTY CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of June 23, 2021, recommended approval of this ordinance; and

WHEREAS, the general purpose and intent of this amendment is to clarify required compliance with the subdivision requirements of Chapter 28 of the Miami-Dade County Code, which is expressly applicable to both the incorporated and unincorporated areas of the County.

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

Section 1: Chapter 98, entitled "Zoning", Article III, Plans and Plats, Division 3, Subdivision Plats, Section 98-349 Unity of title; covenant in lieu thereof, of the Code of Ordinances of the City of Hialeah is hereby amended as follows:

Chapter 98

ZONING

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ARTICLE III. - "PLANS AND PLATS"

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DIVISION 3. - SUBDIVISION PLATS

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Sec. 98-349 - Unity of title; covenant in lieu thereof for BDH business development district.

A subdivision of plat is not required in the BDH business development district for division of land into separate parcels, provided compliance with the subdivision provisions of Chapter 28 of the Miami-Dade County Code and notwithstanding anything in this section to the contrary; and provided that all applications for building permits where multiple buildings are proposed for a single site be accompanied by one of the following documents:

- (1) A unity of title, approved for legal form and sufficiency by the city attorney, which shall run with the land and be binding upon the heirs, successors, personal representatives and assigns, and upon all mortgagees or lessees and others presently or in the future having any interest in the property; or
- (2) A declaration of restrictive covenants, approved for legal form and sufficiency by the city attorney, which shall run with the land and be binding upon the heirs, successors, personal representatives and assigns, and upon all mortgagees and lessees and others presently or in the future having any interest in the property. The declaration shall contain the following necessary elements:
 - (a) That the subject site will be developed in substantial accordance with the approved site plan. That no modification shall be effectuated without the written consent of the zoning director and the then owner(s) of the phase or portion of the property for which modification is sought; provided the zoning director finds that the modification 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 tend to provoke a nuisance, or be incompatible with the area concerned, when considering the necessity and reasonableness of the modification in relation to the present and future development of the area concerned. Should the zoning director withhold such approval, the then owner(s) of the phase or portion of the property for which modification is sought shall be permitted to seek such modification by application to modify the plan or covenant at public hearing before the planning and zoning board or the city council of the City of Hialeah (whichever by law has jurisdiction over such matters).
 - (b) That if the subject property will be developed in phases, that each phase will be developed in substantial accordance with the site plan.
 - (c) That in the event of multiple ownerships subsequent to site plan approval, that each of the subsequent owners shall be bound by the terms, provisions and conditions of the declaration

of restrictive covenants. The owner shall further agree that he or she will not convey portions of the subject property to such other parties unless and until the owner and such other party (parties) shall have executed and mutually delivered, in recordable form, an instrument to be known as an "easement and operating agreement" which shall contain, among other things:

- (i) Easements in the common area of each parcel for ingress to and egress from the other parcels;
- (ii) Easements in the common area of each parcel for the passage and parking of vehicles;
- (iii) Easements in the common area of each parcel for the passage and accommodation of pedestrians;
- (iv) Easements for access roads across the common area of each parcel to public and private roadways;
- (v) Easements for the installation, use, operation, maintenance, repair, replacement, relocation and removal of utility facilities in appropriate areas in each such parcel;
- (vi) Easements on each such parcel for construction of buildings and improvements in favor of each such other parcel;
- (vii) Easements upon each such parcel in favor of each adjoining parcel for the installation, use, maintenance, repair, replacement and removal of common construction improvements such as footings, supports and foundations;
- (viii) Easements on each parcel for attachment of buildings;
- (ix) Easements on each parcel for building overhangs and other overhangs and projections encroaching upon such parcel from adjoining parcel such as, by way of example, marquees, canopies, lights, lighting devices, awnings, wing walls and the like;
- (x) Appropriate reservation of rights to grant easements to utility companies;
- (xi) Appropriate reservation of rights to road right-of-ways and curb cuts;
- (xii) Easements in favor of each such parcel for pedestrian and vehicular traffic over dedicated private ring roads and access roads; and
- (xiii) Appropriate agreements between the owners of the several parcels as to the obligation to maintain and repair all private roadways, parking facilities, common areas and common facilities and the like.

These provisions or portions thereof may be waived by the zoning director if they are not applicable to the subject property. These provisions of the easement and operating agreement shall not be amended without prior written approval of the city attorney. In addition, such easement and operating agreement shall contain such other provisions with respect to the operation, maintenance and development of the property as to which the parties thereto may agree, all to the end that although the property may have several owners, it will be constructed, conveyed, maintained and operated in accordance with the approved site plan.

Nonuse variances created solely by separate ownerships, pursuant to subsection (2)(c) shall be waived by the zoning director.

- (d) The declaration of restrictive covenants shall be in effect for a period of 30 years from the date the documents are recorded in the public records of Miami-Dade County, Florida, after which time they shall be extended automatically for successive periods of ten years unless released in writing by the then owners of the property, provided that the same is also approved by the city council and the mayor of the city, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in the city charter, upon the demonstration and affirmative finding that the same is no longer necessary to preserve and protect the property for the purposes herein intended.
- (e) Enforcement of the declaration of restrictive covenants shall be by action at law or in equity with costs and reasonable attorney's fees to the prevailing party.

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 convicted of a violation of 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. 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.

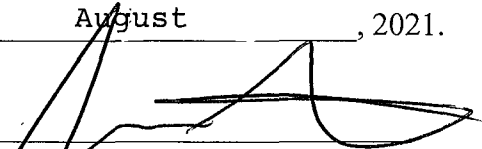
Section 5: Severability Clause.

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 10 day of August, 2021.



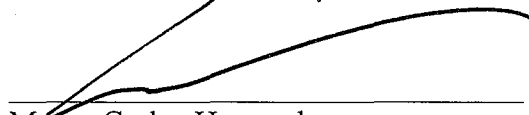
Jesus Fundidor
Council President

Attest:

Approved on this 23 day of August, 2021.

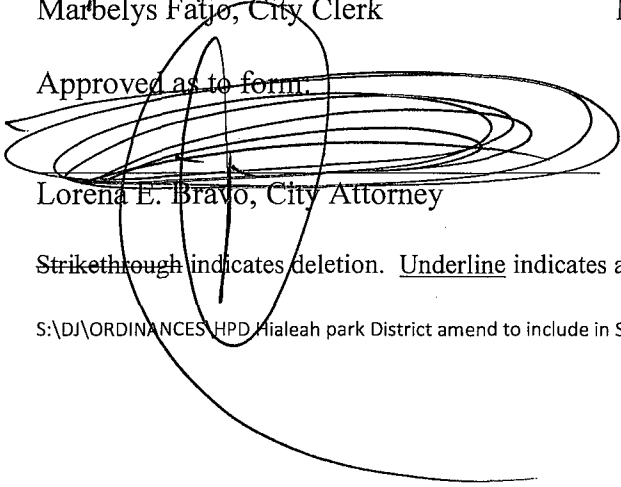


Marbelys Fajó, City Clerk



Mayor Carlos Hernandez

Approved as to form.



Lorena E. Bravo, City Attorney

Strikethrough indicates deletion. Underline indicates addition.