

## TOWN OF CUTLER BAY

Mayor Paul S. Vrooman  
Vice Mayor Edward P. MacDougall  
Council Member Timothy J. Meerbott  
Council Member Ernest N. Sochin  
Council Member Peggy R. Bell

Interim Town Manager Steve Alexander  
Interim Town Attorney Mitchell Bierman  
Interim Town Clerk Elizabeth Sewell

In accordance with the American with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Interim Town Clerk at (305) 234-4262 for assistance no later than four days prior to the meeting.

### TOWN COUNCIL MEETING AGENDA

Thursday, May 25, 2006

7:00 PM

South Dade Governmental Center  
10710 SW 211 Street, Room 203  
(305) 677-7015

#### **INVOCATION:**

#### **I. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE:**

#### **II. PROCLAMATIONS, AWARDS, PRESENTATIONS**

#### **III. TOWN MANAGER'S REPORT**

#### **IV. TOWN ATTORNEY'S REPORT**

#### **V. BOARD AND COMMITTEE REPORTS**

A. Town Clerk/Communications Committee

#### **VI. ADDITIONS, DELETIONS, AND DEFERRALS**

A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION ENTITLED, "NUISANCE VEGETATION ABATEMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE. – Date Certain June 7, 2006

**VII. CONSENT AGENDA**

- A. Minutes of the May 18, 2006 Council Meeting

**VIII. RESOLUTIONS**

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A TOWN CLERK; PROVIDING FOR AN EFFECTIVE DATE.

**IX. RESOLUTIONS REQUIRING PUBLIC HEARING**

**X. ORDINANCES FOR FIRST READING AND EMERGENCY ORDINANCES**

**XI. ORDINANCES FOR SECOND READING AND PUBLIC HEARING**

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION ENTITLED, "FLOODPLAIN MANAGEMENT REGULATIONS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.
- B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING A CHAPTER OF THE TOWN CODE OF ORDINANCES, ENTITLED "VENDORS' CAMPAIGN CONTRIBUTION DISCLOSURE," PROVIDING FOR PROCEDURES FOR DISCLOSURE OF CAMPAIGN CONTRIBUTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.
- C. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TOWN COUNCIL AGENDA FORMAT; CREATING TOWN COUNCIL MEETING PROCEDURES; CREATING ADVERTISEMENT AND NOTICE REQUIREMENTS; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

**XII. PUBLIC COMMENTS**

**XIII. OTHER BUSINESS**

**XIV. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT**

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION ENTITLED, “NUISANCE VEGETATION ABATEMENT”; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, pursuant to Section 8.03 of the Town Charter of the Town of Cutler Bay (the "Town"), there is presently in effect within the Town the provisions of the Code of Ordinances of Metropolitan Dade County (the "County Code") providing for the regulation of nuisances within the Town; and

WHEREAS, as a result of the recent hurricanes and severe weather events which have affected the Nation, State of Florida, and the Town of Cutler Bay (“Town”), it is recognized to be necessary to implement additional regulations to assure the protection of the public health, safety and welfare; and

WHEREAS, the Town Council finds that the adoption of this Ordinance is protective of the public health, safety and welfare; and

WHEREAS, preservation of uniform regulations and continuance of electric and utility services is vital to the maintenance of order and the economic viability of the Town; and

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

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

**Section 2. Nuisance Vegetation Abatement.** The Ordinance Entitled “Nuisance Vegetation Abatement” is hereby created as follows:

## **Nuisance Vegetation Abatement**

### **A. Title; applicability; to constitute minimum standard.**

This chapter shall be known as the "Nuisance Vegetation Abatement" and shall be applicable in the Town of Cutler Bay.

### **B. Declaration of legislative intent.**

The Council finds that certain vegetation may endanger the health, safety and welfare of the Town of Cutler Bay by interfering with utility lines including power lines.

### **C. Definitions**

(1) *Line clearance or Line Clearing* shall mean maintaining, trimming, pruning, or removing all vegetation, including but not limited to all trees, shrubs or vines growing or existing in proximity to any above ground electric transmission line, electric service line, telephone line, cable line or other utility line.

(2) *Qualified line-clearance professional* shall mean an individual who through related training and on-the-job experience, is familiar with the equipment and hazards in line clearance and has demonstrated the ability to perform the specific techniques required to do so effectively and safely. Such professional need not currently be employed by a line-clearance contractor. In conducting the line clearing, the qualified line clearing professional must adhere to the standards set forth in the American National Standards Institute (ANSI) and be certified or licensed to do such work. Additionally, such professional shall be a certified or licensed arborist or shall be

associated with a certified or licensed arborist and shall maintain liability insurance in the minimum amount of \$500,000 per occurrence.

(3) *Vegetation and Vegetative Matter* shall include, but is not limited to all types, maturity and varieties of trees, plants, shrubs, palms or components thereof, whether dead or alive.

**C. Public nuisance declared.**

(1) Any vegetation and/or any vegetative matter located within four (4') feet of any above ground electric transmission line, electric service line, telephone line, cable line or other utility line, are hereby declared a public nuisance.

(2) It shall be the right of every property owner and tenant of any property to abate any nuisance as described in (1) above by causing such nuisance to be remedied by a qualified line-clearance professional.

**D. Notice to remedy condition.**

If the Town Manager or designee finds and determines that a public nuisance as described and declared in Part C, above, hereof exists, he shall so notify the record owner of the offending property in writing and demand that such owner cause the condition to be remedied. The notice shall be given by registered or certified mail, addressed to the owner or owners of the property described, as their names and addresses are shown upon the record of the Miami Dade County Property Appraiser, and shall be deemed complete and sufficient when so addressed and deposited in the United States mail with proper postage prepaid. In the event that such notice is returned by postal authorities the Director shall cause a copy of the notice to be served by a law enforcement officer upon the occupant of the property or upon any agent of the owner thereof. In

the event that personal service upon the occupant of the property or upon any agent of the owner thereof cannot be performed after reasonable search by a law enforcement officer the notice shall be accomplished by physical posting on the said property.

**E. Form of notice.**

The notice shall be in substantially the following form:

NOTICE OF PUBLIC NUISANCE

Name of owner \_\_\_\_\_

Address of owner \_\_\_\_\_

Our records indicate that you are the owner(s) of the following property in the Town of Cutler Bay, Florida:

(described property)

An inspection of this property discloses, and I have found and determined, that a public nuisance exists thereon so as to constitute a violation of the Town of Cutler Bay Nuisance Vegetation Ordinance in that there exists on the above-described property vegetation and/or any vegetative matter located within four (4') feet of any above ground electric transmission line, electric service line, telephone line, cable line or other utility line. You are hereby notified that unless the above-described vegetation and/or vegetative matter are trimmed or removed within twenty (20) days from the date hereof, the Town of Cutler Bay will proceed to trim or remove said vegetation and/or vegetative matter and the cost of the work, including advertising costs and other expenses, will be imposed as a lien on the property if not otherwise paid within thirty (30) days after receipt of billing.

Town of Cutler Bay, Florida

By \_\_\_\_\_

**F. Hearing.**

Within twenty (10) days after the mailing of notice to the property owner, the property owner may make written request to the Town Manager for a hearing before him or a person designated by him to hear such matters, to show that the vegetation and/or vegetative matter referred to in the notice are not located within four (4') feet of any above ground electric transmission line, electric service line, telephone line, cable line or other utility line. At the hearing the Town or the property owner may introduce such evidence as is deemed necessary. The Town Manager or person designated by him shall hold hearings at appropriate times and places, and the Town Manager shall establish rules and regulations for the review procedure. Following the review by the Town Manager or person designated by him, the owner will be deemed to have exhausted his administrative remedies.

**G. Vegetation and/or Vegetative Matter may be trimmed or removed by Town; lien for expenses.**

If within twenty (10) days after mailing of the notice no hearing has been requested and the vegetation and/or vegetative matter described in the notice have not been trimmed or removed, the Town Manager or designee shall have the vegetation and/or vegetative matter trimmed or removed by the Town of Cutler Bay at the expense of the property owner. If a hearing has been held and has concluded adversely to the property owner, the Town Manager or

designee shall have the vegetation and/or vegetative matter trimmed or removed by the Town of Cutler Bay at the expense of the property owner.

After removal of the vegetation and/or vegetative matter the Town Manager shall certify to the Town Clerk the expense incurred and shall include a copy of the notice above-described and a copy of the decision of the Town Manager, or his desigee, if a hearing was held, whereupon such expense shall become payable within thirty (30) days, after which a special assessment lien and charge will be made upon the property, which shall be payable with interest at the rate of six (6) percent per annum from the date of such certification until paid.

Such lien shall be enforceable in the same manner as a tax lien in favor of Town of Cutler Bay and may be satisfied at any time by payment thereof including accrued interest. Notice of such lien shall be filed in the Office of the Clerk of the Circuit Court and recorded among the public records of Dade County, Florida.

#### **H. Duty of the Town Clerk to keep records of liens.**

The Town Clerk shall keep complete records relating to the amount payable for liens above-described.

#### **I. Review by certiorari.**

Any party aggrieved by the administrative decision may have such decision reviewed by the filing of a petition for writ of certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, for a review of the record upon which the decision is based, in accordance with the procedure and within the time provided by the Florida Appellate Rules for the review of the rulings of any commission or Board, which rules of practice and procedure are

hereby adopted. For such purposes, the Town Manager shall make available for public inspection and copying the record of each such decision to be reviewed; provided, the Manager may make a reasonable charge commensurate with the cost, in the event he is able to and does furnish copies of all or any portion of the record at the hearing. Prior to certifying a copy of any record or portion thereof, the Manager or his designee shall make all necessary corrections in order that the copy is a true and correct copy of the record, or those portions thereof requested, and shall make a charge of not more than twenty-five cents (\$0.25) per page, instrument or exhibit; provided the charges here authorized are not intended to repeal or amend any fee or schedule of fees otherwise established.

**Section 3. 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 4. Inclusion In The Code.** It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

**Section 5 Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading on \_\_\_\_\_, 2006

PASSED AND ADOPTED on second reading on \_\_\_\_\_, 2006.

Attest: \_\_\_\_\_  
ELIZABETH SEWELL  
Interim Town Clerk

\_\_\_\_\_  
PAUL S. VROOMAN  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.  
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Council Member Timothy J. Meerbott \_\_\_\_\_

Council Member Ernest N. Sochin \_\_\_\_\_

Council Member Peggy R. Bell \_\_\_\_\_

# TOWN OF CUTLER BAY

## MINUTES TOWN COUNCIL MEETING

Thursday, May 18, 2006

7:00 PM

East Ridge Retirement Village

19301 S.W. 87 Avenue

Cutler Bay, FL 33157

Meeting commenced at 7:14 PM

**INVOCATION:** Mayor Vrooman asked all to join him in a moment of silence.

### **I. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE:**

Mayor Vrooman called the meeting to order. The following members of the town council were present:

Mayor Paul S. Vrooman  
Vice Mayor Edward MacDougall  
Council Member Timothy J. Meerbott  
Council Member Ernest N. Sochin  
Council Member Peggy R. Bell

The following staff members were present:

Interim Town Manager Steve Alexander  
Interim Town Attorney Mitchell Bierman  
Interim Town Attorney Chad Friedman  
Interim Town Attorney Andrew Mai  
Interim Town Clerk Elizabeth Sewell

### **II. PROCLAMATIONS, AWARDS, PRESENTATIONS**

- A. Presentation by United Citizens for South Link concerning the extension of metro rail services from Dadeland to Florida City.

Mr. Ernie Martinez and Mr. Wayne Collins of United Citizens for South Link provided a power point presentation regarding the South Link Metro Rail Project and supporting the need for the extension of metro rail services to citizens residing south of Kendall to Florida City.

- B. Mr. Wilson Fernandez of Miami-Dade Metropolitan Planning Organization provided a report of the status of the development and continuous improvement strategies eventually leading to the metro rail extension project.

Mr. Joe Corradino, the project manager for Metro Rail extension provided a power point presentation regarding the alternative analysis of transportation systems that are being considered for the implementation of the extension of metro rail services from south of Kendall to Florida City.

Mr. James Guilmartin, Secretary for United Citizens for South Link asked the council and public to consider the convenience and travel time of the alternative systems as oppose to the convenience and travel time of the metro rail extension.

Mayor Vrooman asked the council if they would like to take action to support or oppose this effort in the form of a resolution supporting the extension of the Metro Rail South Link.

Council Member Bell made a motion requesting staff to create a resolution supporting the development and implementation of Alternative 5 for the extension of metro rail services to residents residing south of Kendall to Florida City. Seconded by Vice Mayor MacDougall. All voted in favor. The motion was carried unanimously (5-0)

- C. Mr. Subrata Basu, Assistant Director for Miami-Dade County Planning Department, provided a report regarding the charrette area plan report for Old Cutler Road.

Mr. Jess Linn, Senior Planner for Miami-Dade County Planning Department provided a power point presentation regarding the charrette area plan report technical improvements and traffic engineering study for the charette area on Old Cutler Road.

### **III. TOWN MANAGER'S REPORT**

- A. The town manager provided a report regarding the town's first interim budget. He advised that he and the town attorney was working on the interlocal agreements with Miami-Dade County to present at the June council meeting. He advised that the town had achieved an appropriation \$250,000 from the legislature for storm water planning and projects, and he met with the governor last week regarding potential veto of this item by the Governor. He suggested planning a trip to Tallahassee for the Mayor and Council if he received an appointment subsequent to his letter to the governor to meet with him in person. On Monday he had a tour with the Beacon Council around the town and he was able to promote the business community in Cutler Bay. He reported that there have been several committee meetings and the Hurricane/Disaster Committee had a very

productive meeting. He advised that there will always be a police officer at council meetings to act as sergeant of arms. He reported that he would be interviewing a police commander next week.

**IV. TOWN ATTORNEY'S REPORT** – None at this time

**V. BOARD AND COMMITTEE REPORTS**

A. Town Clerk/Communications Committee

Council Member Bell provided a brief report regarding the interviewing process of the town clerk. She reported that the committee had completed all interviews and was working on completing the committee's summary report, and at the next council meeting on May 25, 2006 will present their recommendation to the council for interviews.

**VI. ADDITIONS, DELETIONS, AND DEFERRALS**

A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A MODIFICATION TO AN APPROVED SITE PLAN TO ALLOW FOR REDEVELOPMENT OF A MOVIE THEATER INTO A COMMERCIAL BUILDING AND APPROVAL OF AN UNUSUAL USE FOR OUTDOOR DINING FOR THE SHOPPING CENTER LOCATED AT 18403 SOUTH DIXIE HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE.

The town manager provided a brief report regarding this resolution. The town attorney advised that the applicant was requesting that this matter be deferred to the June 7, 2006 council meeting.

Council Member Meerbott moved to defer with modification of site plan for a date certain June 7, 2006. Seconded by Council Member Bell. All voted in favor. The proposed resolution was deferred unanimously (5-0).

**VII. CONSENT AGENDA**

A. Minutes of the May 4, 2006 Council Meeting

B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ESTABLISHING A TOWN POLICY RELATED TO FLOODS IN ORDER TO BE INCLUDED IN THE NATIONAL FLOOD INSURANCE PLAN; PROVIDING AN EFFECTIVE DATE

- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE INTERIM TOWN MANAGER TO HIRE SUPPORT STAFF; AND PROVIDING FOR AN EFFECTIVE DATE.
- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA RELATING TO FINANCE; AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH MIAMI-DADE COUNTY IN ORDER TO RECEIVE FUNDING FROM MIAMI-DADE COUNTY IN THE AMOUNT OF \$600,000; PROVIDING FOR AN EFFECTIVE DATE.
- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPOINTING MEMBERS TO THE TOWN OF CUTLER BAY TOWN MANAGER MEMBER-CITIZEN COMMITTEE; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Bell moved to approved. Items VII. A through E. Seconded by Council Member Sochin. All voted in favor. Consent Agenda Items VII.A through VII.E. were adopted unanimously (5-0).

**VIII. RESOLUTIONS – None at this time**

**IX. RESOLUTIONS REQUIRING PUBLIC HEARING – None at this time**

**X. ORDINANCES FOR FIRST READING AND EMERGENCY ORDINANCES**

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33, “ZONING” ARTICLE VI, “SIGNS,” DIVISION 2, “GENERAL PROVISIONS” OF THE TOWN’S CODE OF ORDINANCES, BY PROVIDING FOR THE PROHIBITION OF OFF-PREMISES SIGNAGE WITHIN THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Vrooman asked if anyone from the public wished to speak in favor of this ordinance. No one requested an audience.

Mr. Carlos Gimenez, - 200 SE Biscayne Blvd. Miami, he advised that there were two billboards within the town limits located at 20300 South Dixie Highway.

The town attorney advised that these would be essentially grandfather in under the adoption of this ordinance.

Council Member Bell moved to adopt. Seconded by Council Member Sochin.

A roll call vote was taken as follows: Mayor Vrooman, Yes; Vice Mayor MacDougall, Yes; Council Member Meerbott, Yes; Council Member Sochin, Yes; Council Member Bell, Yes. The proposed ordinance was adopted on first reading unanimously (5-0).

- B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AND ADOPTING THE INTERIM BUDGET FOR THE TOWN OF CUTLER BAY FOR FISCAL YEAR 2005-06; PROVIDING FOR EXPENDITURE OF FUNDS; PROVIDING FOR CARRYOVER OF FUNDS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The town manager provided a brief presentation regarding the creation of the first interim budget.

Dianne Wright of Government Services Group, Inc., introduced the team working on the interim budget. She provided a brief presentation regarding the development of the first interim budget for fiscal year 2005-06.

Council Member Meerbott moved to adopt. Seconded by Vice Mayor MacDougall.

A roll call vote was taken as follows: Council Member Bell, Yes; Council Member Meerbott, Yes; Council Member Sochin, Yes; Vice Mayor MacDougall, Yes; Mayor Vrooman, Yes. The proposed ordinance was adopted on first reading unanimously (5-0).

## **XI. ORDINANCES FOR SECOND READING AND PUBLIC HEARING**

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS WITHIN THE AREA GENERALLY LOCATED SOUTH OF THE INTERSECTION OF THE HOMESTEAD EXTENSION OF THE FLORIDA TURNPIKE (HEFT) AND U.S. 1, WEST OF THE HEFT TO THE TOWN LIMITS, AND NORTH OF THE C-1 CANAL (BLACK CREEK CANAL); EXEMPTING CERTAIN DEVELOPMENT; PROVIDING FOR WAIVERS; PROVIDING FOR SEVERABILITY; PROVIDING PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW FOR THE SPECIFIC MATTERS

ADDRESSED HEREIN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

The town attorney provided a brief explanation of this ordinance. He explained that there was one exemption included in the UCD moratorium for buildings being built by Miami-Dade County.

Mayor Vrooman asked if anyone from the public wished to speak. No one requested an audience.

Mayor Vrooman explained that the vision of the moratorium in the urban center district was the citizens were asking private owners of to meet a higher standard in the urban center district and he was expecting the county to meet the same standards. As a result he asked the council if they were in agreement for this ordinance to be amended removing the exemption for projects being built by Miami-Dade County.

Council Member Sochin moved to amend the ordinance removing the exemption for projects being built by Miami-Dade County. Seconded by Council Member Bell.

A roll call vote was taken as follows: Mayor Vrooman, Yes; Vice Mayor MacDougall, Yes; Council Member Meerbott, Yes; Council Member Sochin, Yes; Council Member Bell, Yes. The proposed ordinance was amended on second reading unanimously (5-0).

## **XII. PUBLIC COMMENTS**

The following individual addressed the council: Richard Cruzan, 8781 SW 213 Terrace, Cutler Bay.

## **XIII. OTHER BUSINESS**

- A. Council Member Sochin advised that he attended the Hurricane/Disaster Committee meeting. He asked staff what was the requirement of notification in advance of the citizen committee advisory meetings.
- B. Vice Mayor MacDougall advised that he was pleased with the improvement with the town's web site.
- C. Council Member Meerbott asked about the status report regarding the development of sign-in cards to be given to the public and anyone wishing to address the council at council meetings in advance. He asked for the council's

opinion regarding the attendance at conferences because there is not a travel policy in place at present because he would like to attend the Y5 Conference in Orlando on June 29.

Mayor Vrooman advised that if there is money budgeted for the conference then council members can attend this conference.

The town manager advised that there was money in the budget to attend this conference.

Council Member Bell thanked the town clerk/communications committee for their diligence in the selection process of hiring a town clerk. She provided a brief report of her attendance of the Cutler Bay Business Association meeting. She provided a report on the progress regarding the grant application for Lakes by the Bay Park. Council Member Bell advised that she would begin the process for the Logo Committee in June. She advised that she is the liaison for the United Citizens of South Link and she thanked them for their presentation and asked for continued support for this organization.

- D. Mayor Vrooman advised that there is a need to improve the council's communications with the public regarding what they are doing. He advised that he had spoken with Ms. Alicia Gonzales from Media Relations who has agreed to donate some pro bona services in order to communicate with the public.

Mayor Vrooman thanked Mr. Kramer of East Ridge Retirement Village for their hospitality and hosting the town council meeting at their facility.

#### **XIV. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT**

Special Council Meeting May 25, 2006 at South Dade Governmental Center.

The meeting was officially adjourned at 9:14 pm.

*Prepared and submitted by:*

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*Elizabeth Sewell, Interim Town Clerk*

*Adopted by the Town Council on this  
this 25<sup>th</sup> day of May, 2006.*

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*Paul S. Vrooman, Mayor*

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

**RESOLUTION NO. 06-\_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL  
OF THE TOWN OF CUTLER BAY, FLORIDA,  
APPROVING A TOWN CLERK; PROVIDING FOR AN  
EFFECTIVE DATE.**

**WHEREAS**, Charter Section 3.6 of the Town of Cutler Bay (the "Town") provides that the Town Council shall appoint a Town Clerk; and

**WHEREAS**, the Town Council finds that it is both necessary and appropriate to retain a Town Clerk; and

**WHEREAS**, the Town Clerk Selection Committee has worked diligently and has provided a list of ranked candidates; and

**WHEREAS**, the Town Council has reviewed the qualifications of the candidates and determined that the person named below is the most qualified to hold the position of Town Clerk.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:**

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

**Section 2.** \_\_\_\_\_ is appointed as Town Clerk and the Mayor is authorized to execute an engagement letter on behalf of the Town.

**Section 3.** This resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this \_\_\_\_ day of May, 2006.

\_\_\_\_\_  
PAUL VROOMAN  
Mayor

Attest: \_\_\_\_\_  
ELIZABETH SEWELL  
Interim Town Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE TOWN OF CUTLER BAY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN PASTORIZA  
COLE & BONISKE, P.A.  
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman \_\_\_\_\_

Vice Mayor Ed MacDougall \_\_\_\_\_

Council Member Timothy J. Meerbott \_\_\_\_\_

Council Member Ernest Sochin \_\_\_\_\_

Council Member Peggy Bell \_\_\_\_\_

**ORDINANCE NO. 06 - \_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION ENTITLED, “FLOODPLAIN MANAGEMENT REGULATIONS”; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in order to obtain National Flood Insurance Protection the Town must adopt Floodplain Management Regulations; and

**WHEREAS**, the Town Council finds that the adoption of this Ordinance is in the best interest of the health, safety and welfare of the residents of the Town.

**NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:**

**Section 1.**     **Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

**Section 2.**     **Statutory Authorization, Findings of Fact, Purpose, and Objectives**

**FLOODPLAIN MANAGEMENT REGULATIONS**

**SECTION A. STATUTORY AUTHORIZATION**

The Legislature of the State of Florida has authorized and delegated in Florida Statutes Chapter 166, the responsibility to local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Council of Cutler Bay does hereby adopt the following floodplain management regulations.

**SECTION B. FINDINGS OF FACT**

- (1) The flood hazard areas of Cutler Bay are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

### **SECTION C. STATEMENT OF PURPOSE**

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights and velocities;
- (2) Require that uses vulnerable to floods including facilities which serve such uses be protected against flood damage throughout their intended life span;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

### **SECTION D. OBJECTIVES**

The objectives of this ordinance are to:

- (1) Protect human life, health and to eliminate or minimize property damage;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, roadways, and bridges and culverts located in floodplains;
- (6) Maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and

(7) Ensure that potential homebuyers are notified that property is in a flood hazard area.

## **ARTICLE 2. DEFINITIONS**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**Accessory structure** (Appurtenant structure) means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

**Appeal** means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

**Area of shallow flooding** means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of special flood hazard** is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This term is synonymous with the phrase "special flood hazard area."

**Base flood** means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" and the "regulatory flood"). Base flood is the term used throughout this ordinance.

**Base Flood Elevation** means the water-surface elevation associated with the base flood.

**Basement** means that portion of a building having its floor sub-grade (below ground level) on all sides.

**Breakaway wall** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

**Building** – see **Structure**.

**Coastal high hazard area** means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high

velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1 – V30, VE, or V.

**Datum** A reference surface used to ensure that all elevation records are properly related. Many communities have their own datum that was developed before there was a national standard. The current national datum is the National Geodetic Vertical Datum (NGVD) of 1929, which is expressed in relation to mean sea level, or the North American Vertical Datum (NAVD) of 1988.

**Development** means any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

**Elevated building** means a non-basement building built to have the lowest floor elevated above the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.

**Encroachment** means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**Existing Construction** means, for the purposes of floodplain management, structures for which “the start of construction” commenced before the date of the initial Flood Insurance Rate Map (FIRM). Existing construction, means for the purposes of determining rates structures for which the “start of construction” commenced before **the effective date of the first FIRM or before January 1, 1975, for FIRMs effective before that date.** This term may also be referred to as “existing structures”.

**Existing manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**Expansion to an existing manufactured home park or subdivision** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Flood or flooding** means:

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - (1) The overflow of inland or tidal waters.
  - (2) The unusual and rapid accumulation or runoff of surface waters from any source.

- (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (b) The collapse or subsidence of land along a shore of a lake or other body of water as the result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a) (1) of this definition.

**Flood Boundary and Floodway Map (FBFM)** means the official map of the community on which the Federal Emergency Management Agency (FEMA) has delineated the areas of special flood hazard and regulatory floodways.

**Flood Hazard Boundary Map (FHBM)** means an official map of the community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as only Approximate Zone A.

**Flood Insurance Rate Map (FIRM)** means an official map of the community, issued by FEMA, which delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS)** is the official hydraulic & hydrologic report provided by FEMA. The study contains an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and other flood-related erosion hazards. The study may also contain flood profiles, as well as the FIRM, FHBM (where applicable), and other related data and information.

**Floodplain** means any land area susceptible to being inundated by water from any source (see definition of “flooding”).

**Floodplain management** means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

**Floodplain Administrator** is the individual appointed to administer and enforce the floodplain management regulations of the community.

**Floodplain management regulations** means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power which control development in flood-prone areas. This term describes Federal,

State of Florida, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

**Floodproofing** means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Floodway** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**Floodway fringe** means that area of the floodplain on either side of the regulatory floodway where encroachment may be permitted without additional hydraulic and/or hydrologic analysis.

**Freeboard** means the additional height, usually expressed as a factor of safety in feet, above a flood level for purposes of floodplain management. Freeboard tends to compensate for many unknown factors, such as wave action, bridge openings and hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected frequency flood and floodway conditions.

**Functionally dependent use** means a use that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

**Hardship** as related to variances from this ordinance means the exceptional hardship associated with the land that would result from a failure to grant the requested variance. The community requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**Highest adjacent grade** means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

**Historic Structure** means any structure that is:

- a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register:

- b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district:
- c) Individually listed on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or
- d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - 1. By the approved Florida program as determined by the Secretary of the Interior, or
  - 2. Directly by the Secretary of the Interior.

**Lowest adjacent grade** means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

**Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the nonelevation design standards of this ordinance.

**Mangrove Stand** means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above ground and which contain one or more of the following species: Black mangrove (*Avicennia Nitida*); red mangrove (*Rhizophora mangle*); white mangrove (*Languncularia Racemosa*); and buttonwood (*Conocarpus Erecta*).

**Manufactured home** means a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

**Manufactured home park or subdivision** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Market value** means the building value, which is the property value excluding the land value and that of the detached accessory structures and other improvements on site (as agreed to between a willing buyer and seller) as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a limited or curbside appraisal, or one based on income approach), Actual Cash Value (replacement cost depreciated for age and quality of construction of building), or adjusted tax-assessed values.

**Mean Sea Level** means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this

ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, or North American Vertical Datum (NAVD) of 1988.

**National Geodetic Vertical Datum (NGVD)** of 1929 means a vertical control used as a reference for establishing varying elevations within the floodplain.

**New Construction** means, for floodplain management purposes, any structure for which the “start of construction” commenced on or after the effective date of the initial floodplain management code, ordinance, or standard based upon specific technical base flood elevation data that establishes the area of special flood hazard – include only one date. The term also includes any subsequent improvements to such structures. For flood insurance rates, structures for which the start of construction commenced on or after the effective date of the date of an initial FIRM or after December 31, 1974, whichever is later – include only one date, and includes any subsequent improvements to such structures.

**New manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the first floodplain management code, ordinance or standard.

**North American Vertical Datum (NAVD)** of 1988 means a vertical control used as a reference for establishing varying elevations within the floodplain.

**Free of Obstruction** means any type of lower area enclosure or other construction element that will obstruct the flow of velocity water and wave action beneath the lowest horizontal structural member of the lowest floor of an elevated building during a base flood event is not allowed. This requirement applies to the structures in velocity zones (V-Zones).

**Program deficiency** means a defect in the community’s floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the standards required by the National Flood Insurance Program.

**Public safety and nuisance** means anything which is injurious to safety or health of the entire community or a neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

**Recreational vehicle** means a vehicle that is:

- a) Built on a single chassis;
- b) 400 square feet or less when measured at the largest horizontal projection;
- c) Designed to be self-propelled or permanently towable by a light duty truck; and

- d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regulatory floodway** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**Remedy a deficiency or violation** means to bring the regulation, procedure, structure or other development into compliance with State of Florida, Federal or local floodplain management regulations; or if this is not possible, to reduce the impacts of its noncompliance. Ways the impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

**Riverine** means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Sand dune** means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

**Shallow flooding** means the same as area of shallow flooding.

**Special flood hazard area** means the same as area of special flood hazard.

**Start of construction** For other than new construction or substantial improvements under the Coastal Barrier Resources Act P. L. 97-348, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Storm cellar** means a place below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornadoes or similar windstorm activity.

**Structure** means for floodplain management purposes a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**Substantial damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage” regardless of the actual repair work performed. This term does not, however, include any repair or improvement of a structure to correct existing violations of State of Florida or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for permit for improvement, and which are the minimum necessary to assure safe living conditions.

**Substantially improved existing manufactured home parks or subdivisions** is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

**Variance** is a grant of relief from the requirements of this ordinance.

**Violation** means the failure of a structure or other development to be fully compliant with the requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

**Watercourse** means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

**Water surface elevation** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

## **ARTICLE 3. GENERAL PROVISIONS**

### **SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES**

This ordinance shall apply to all areas of special flood hazard within the jurisdiction of the Council of the Town of Cutler Bay.

### **SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**

The areas of special flood hazard identified by the Federal Emergency Management Agency in the Flood Insurance Study (FIS) for Miami-Dade County, dated March 2, 1994, with the accompanying maps and other supporting data, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and Flood Insurance Rate Map are on file at the Office of the Town Clerk, Town of Cutler Bay.

### **SECTION C. DESIGNATION OF FLOODPLAIN ADMINISTRATOR**

The Council of Cutler Bay hereby appoints the Town Manager to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

### **SECTION D. ESTABLISHMENT OF DEVELOPMENT PERMIT**

A development permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities.

### **SECTION E. COMPLIANCE**

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

### **SECTION F. ABROGATION AND GREATER RESTRICTIONS**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

### **SECTION G. INTERPRETATION**

In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under State of Florida statutes.

### **SECTION H. WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create

liability on the part of Council of Cutler Bay or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

## **SECTION I. PENALTIES FOR VIOLATION**

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall be punishable for a non-criminal violation. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon adjudication therefore, be fined not more than \$500, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Floodplain Administrator from taking such other lawful actions as is necessary to prevent or remedy any violation.

## **ARTICLE 4. ADMINISTRATION**

### **SECTION A. PERMIT PROCEDURES**

Application for a Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) Application Stage:
  - a) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all buildings;
  - b) Elevation in relation to mean sea level to which any non-residential building will be flood-proofed;
  - c) Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing criteria in Article 4, Section A (2) and Article 5, Section B (2);
  - d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
  - (e) Elevation in relation to mean sea level of the bottom of the lowest horizontal structural member of the lowest floor and provide a certification from a registered engineer or architect indicating that they have developed and or reviewed the structural designs, specifications and plans of the construction and certified that

are in accordance with accepted standards of practice in Coastal High Hazard Areas.

(2) Construction Stage:

Upon placement of the lowest floor, or flood-proofing by whatever construction means, or bottom of the lowest horizontal structural member it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NGVD or NAVD elevation of the lowest floor or flood-proofed elevation, or bottom of the lowest horizontal structural member as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood proofing is utilized for a particular building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the lowest floor and flood-proofing elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct violations detected by such review. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

**SECTION B. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

Duties of the Administrator shall include, but are not be limited to:

- (1) Review permits to assure sites are reasonably safe from flooding;
- (2) Review all development permits to assure that the permit requirements of this ordinance have been satisfied;
- (3) Advise permittee that additional Federal, State of Florida, or local permits may be required, and if such additional permits are necessary, especially as it relates to Chapters 161.053; 320.8249; 320.8359; 373.036; 380.05; 381.0065, and 553, Part IV, Florida Statutes, require that copies of such permits be provided and maintained on file with the development permit;
- (4) Notify adjacent communities, the Department of Community Affairs, Division of Emergency Management, the South Florida Water Management District, the Federal Emergency Management Agency and other Federal and/or State of Florida agencies with statutory or regulatory authority prior to any alteration or relocation of a watercourse;
- (5) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained;

- (6) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (A-Zones) or bottom of the lowest horizontal structural member of the lowest floor (V-Zones) of all new or substantially improved buildings, in accordance with Article 5, Section B (1) and (2) and Section E (2), respectively;
- (7) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved buildings have been flood-proofed, in accordance with Article 5, Section B (2);
- (8) Review certified plans and specifications for compliance. When flood-proofing is utilized for a particular building, certification shall be obtained from a registered engineer or architect certifying that all areas of the building below the required elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy in compliance with Article 5, Section B (2) of this ordinance. In Coastal High Hazard Areas, certification shall be obtained from a registered professional engineer or architect that the building is designed and securely anchored to pilings or columns in order to withstand velocity waters and hurricane wave wash. Additionally in Coastal High Hazard Areas, if the area below the lowest horizontal structural member of the lowest floor is enclosed, it may be done so with open wood lattice and insect screening or with non-supporting breakaway walls that meet the standards of Article 5, Section E (6) of this ordinance;
- (9) Interpret the exact location of boundaries of the areas of special flood hazard. When there appears to be a conflict between a mapped boundary and actual field conditions, the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article;
- (10) When base flood elevation data or floodway data have not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of Article 5;
- (11) Coordinate all change requests to the FIS, FIRM and FBFM with the requester, State of Florida, and FEMA, and
- (12) Where Base Flood Elevation is utilized, obtain and maintain records of lowest floor and floodproofing elevations for new construction and substantial improvements in accordance with Article 5, Sections B (1) and (2), respectively.

## **ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION**

### **SECTION A. GENERAL STANDARDS**

In all areas of special flood hazard, all development sites including new construction and substantial improvements shall be reasonably safe from flooding, and meet the following provisions:

- (1) New construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State of Florida requirements for resisting wind forces;
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage. See the applicable Technical Bulletin or Bulletins for guidance;
- (4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage. See the applicable Technical Bulletin or Bulletins for guidance;
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- (9) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance;
- (10) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced;
- (11) All applicable additional Federal, State of Florida, and local permits shall be obtained and submitted to the Floodplain Administrator. Copies of such permits shall be maintained

on file with the development permit. State of Florida permits may include, but not be limited to the following:

- (a) South Florida Water Management District(s): in accordance with Chapter 373.036 Florida Statutes, Section (2)(a) – Flood Protection and Floodplain Management.
- (b) Department of Community Affairs: in accordance with Chapter 380.05 F.S. Areas of Critical State Concern, and Chapter 553, Part IV F.S., Florida Building Code.
- (c) Department of Health: in accordance with Chapter 381.0065 F.S. Onsite Sewage Treatment and Disposal Systems.
- (d) Department of Environmental Protection, Coastal Construction Control Line: in accordance with Chapter 161.053 F.S. Coastal Construction and Excavation.

(12) Standards for Subdivision Proposals and other Proposed Development (including manufactured homes):

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

## **SECTION B. SPECIFIC STANDARDS.**

In all A-Zones where base flood elevation data have been provided (Zones AE, A1–30, and AH), as set forth in Article 3, Section B, the following provisions shall apply:

- (1) *Residential Construction.* All new construction or substantial improvement of any residential building (including manufactured home) shall have the lowest floor, including basement, elevated to no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate automatic equalization of flood hydrostatic forces on both sides of the exterior walls shall be provided in accordance with standards of Article 5, Section B (3).
- (2) *Non-Residential Construction.* All new construction or substantial improvement of any commercial, industrial, or non-residential building (including manufactured home) shall

have the lowest floor, including basement, elevated to no lower than one foot above the base flood elevation. All buildings located in A-Zones may be flood-proofed, in lieu of being elevated, provided that all areas of the building components below the base flood elevation plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied using the FEMA Floodproofing Certificate. Such certification along with the corresponding engineering data, and the operational and maintenance plans shall be provided to the Floodplain Administrator.

- (3) *Elevated Buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.
- (a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
- (i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  - (ii) The bottom of all openings shall be no higher than one foot above foundation adjacent interior grade (which must be equal to or higher in elevation than the adjacent exterior grade); and
  - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions.
- (b) Fully enclosed areas below the lowest floor shall solely be used for parking of vehicles, storage, and building access. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator); and
- (c) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.
- (4) **Standards for Manufactured Homes and Recreational Vehicles**
- (a) All manufactured homes that are placed, or substantially improved within Zones A1-30, AH, and AE, on sites (i) outside of an existing manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an

existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood, the lowest floor be elevated on a permanent foundation to no lower than one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- (b) All manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision within Zones A-1, AH, and AE, that are not subject to the provisions of paragraph 4 (a) of this Section, must be elevated so that either:
  - (i) The lowest floor of the manufactured home is elevated to no lower than one foot above the base flood elevation, or
  - (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength that are no less than 48 inches in height above the grade and securely anchored to an adequate foundation system to resist flotation, collapse, and lateral movement.
- (c) All recreational vehicles placed on sites within Zones A1-30. AH, and AE must either:
  - (i) Be on the site for fewer than 180 consecutive days,
  - (ii) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions), or
  - (iii) Meet all the requirements for new construction, including anchoring and elevation requirements in accordance with Section B, provisions (4) (a) and (b) of this Article.
- (5) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures.
- (6) Standards for streams with established Base Flood Elevations, without Regulatory Floodways

Located within the areas of special flood hazard established in Article 3, Section B, where streams exist for which base flood elevation data has been provided by the Federal Emergency Management Agency without the delineation of the regulatory floodway (Zones AE and A1–30), the following additional provisions shall also apply.

- (a) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development including fill shall be permitted within the

areas of special flood hazard, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

- (b) Development activities which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of the Federal Emergency Management Agency.
- (7) Floodways. Located within areas of special flood hazard established in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and have significant erosion potential, the following additional provisions shall also apply:
- (a) Prohibit encroachments, including fill, new construction, substantial improvements and other developments within the regulatory floodway unless certification (with supporting technical data) by a registered professional engineer is provided through hydraulic and hydrologic analyses performed in accordance with standard engineering practice demonstrating that encroachments would not result in any increase in flood levels during occurrence of the base flood discharge.
  - (b) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Article 5, Section A (2), and the elevation standards of Article 5, Section B (1) and (2), and the encroachment standards of Article 5, Section B (7) (a), are met.
  - (c) Development activities including new construction and substantial improvements that increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of FEMA.
  - (d) When fill is proposed, in accordance with the permit issued by the Florida Department of Health, within the regulatory floodway, the development permit shall be issued only upon demonstration by appropriate engineering analyses that the proposed fill will not increase the water surface elevation of the base flood in accordance with Article 5, Section (7) (a).
- (8) For all structures located seaward of the Coastal Construction Control Line (CCCL), the lowest floor of all new construction and substantial improvements shall be elevated to the regulatory flood elevation established by the Florida Department of Environmental

Protection or by FEMA in accordance with Article 3, Section B, whichever is higher. All non-elevation design requirements of Article 5, Section E shall apply.

### **SECTION C. SPECIFIC STANDARDS FOR A-ZONES WITHOUT BASE FLOOD ELEVATIONS AND REGULATORY FLOODWAYS.**

Located within the areas of special flood hazard established in Article 3, Section B, where there exist A Zones for which no base flood elevation data and regulatory floodway have been provided or designated by the Federal Emergency Management Agency, the following provisions shall apply:

- (1) Require standards of Article 5, Section A.
- (2) The Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of this ordinance. When such data is utilized, provisions of Article 5, Section B shall apply. The Floodplain Administrator shall:
  - a) Obtain the elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures,
  - b) Obtain, if the structure has been floodproofed in accordance with the requirements of Section B (2) of Article 5, the elevation in relation to the mean sea level to which the structure has been floodproofed, and
  - c) Maintain a record of all such information.
- (3) Notify, in riverine situations, adjacent communities, the State of Florida, Department of Community Affairs, NFIP Coordinating Office, and the applicable Water Management District prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (4) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (5) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State of Florida and local anchoring requirements for resisting wind forces.
- (6) When the data is not available from any source as in paragraph (2) of this Section, the lowest floor of the structure shall be elevated to no lower than three feet above the highest adjacent grade.

- (7) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data.

#### **SECTION D. STANDARDS FOR AO-ZONES**

Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet, where a clearly defined channel does not exist and the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures in all AO Zones shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to no less than two feet above the highest adjacent grade.
- (2) All new construction and substantial improvements of non-residential structures shall:
  - (a) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to at least two feet above the highest adjacent grade, or
  - (b) Together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in Article 5, Section B (2).
- (3) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures.

#### **SECTION E. COASTAL HIGH HAZARD AREAS (V-ZONES)**

Located within areas of special flood hazard established in Article 3, Section B are Coastal High Hazard Areas, designated as Zones V1–30, VE, or V (with BFE). The following provisions shall apply for all development activities:

- (1) Meet the Requirements of Article 4, Section A, and Article 5, Sections A, B (except B (7)), C, and D.
- (2) All new construction and substantial improvements in Zones V1–V30, VE, and V (with BFE) shall be elevated on pilings or columns so that:

- a) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to no lower than one foot above the base flood elevation whether or not the structure contains a basement; and
  - b) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading will be those values associated with the base flood. Wind loading values will be those required by applicable State of Florida or local, if more stringent than those of the State of Florida, building standards.
- (3) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Section.
- (4) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures. The Floodplain Administrator shall maintain a record of all such information.
- (5) All new construction and substantial improvements shall be located landward of the reach of mean high tide.
- (6) Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:
- a) Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and
  - b) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). The water loading shall be those values associated with the base flood. The wind loading values shall be those required by applicable Florida or local, if more stringent than those of the State of Florida, building standards.

- (c) Such enclosed space shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be finished, partitioned into multiple rooms, or temperature-controlled.
- (7) Prohibit the use of fill for structural support. No development permit shall be issued for development involving fill in coastal high hazard areas unless it has been demonstrated through appropriate engineering analyses that the subject fill does not cause any adverse impacts to the structure on site or adjacent structures. Placement of fill that would result in an increase in the base flood elevation or cause adverse impacts by wave ramping and deflection may be permitted, provided that the permit applicant first applies for and receives a conditional FIRM revision, fulfilling the requirements for such revisions as established by FEMA.
- (8) Prohibit man-made alteration of sand dunes and mangrove stands that would increase potential flood damage.
- (9) Standards for Manufactured Homes
- (a) All manufactured homes to be placed or substantially improved on sites: (i) Outside a manufactured home park or subdivision, (ii) In a new manufactured home park or subdivision, (iii) In an expansion to an existing manufactured home park or subdivision, or, (iv) In an existing manufactured home park or subdivision in which a manufactured home has incurred “substantial damage” as the result of a flood, must meet the standards of Article 5, Section E (2) though (8),
  - (b) All manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision shall meet the requirements of Article 5, Section B (4) (b).
- (10) Recreational vehicles placed on sites within Zones VE, V1–V30, V (with base flood elevation) on the FIRM either
- (a) Be on the site for fewer than 180 consecutive days,
  - (b) Be fully licensed and ready for highway use (on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
  - (c) Meet the requirements of Article 5, Section E (2) through (8).
  - (d) Prohibit the placement of recreational vehicles, except in an existing recreational vehicle park. They must be on site for fewer than 180 consecutive days, fully licensed and ready for highway use (on its wheels or jacking system, is attached to the site by quick disconnect type utilities and security devices, and has no permanently attached additions). They shall also have a plan for removal in case of a threat.

- (11) For all structures located seaward of the Coastal Construction Control Line (CCCL), the bottom of the lowest horizontal structural member of the lowest floor of all new construction and substantial improvements shall be elevated to the flood elevation established by the Florida Department of Environmental Protection or the base flood elevation, whichever is the higher. All non-elevation design requirements Article 5, Section E (2) through (11) shall apply.
- (12) When fill is proposed, in accordance with the permit issued by the Florida Department of Health, in coastal high hazard area, the development permit shall be issued only upon demonstration by appropriate engineering analyses that the proposed fill will not increase the water surface elevation of the base flood nor cause any adverse impacts to adjacent properties by wave ramping and deflection.

## **ARTICLE 6. VARIANCE PROCEDURES.**

### **SECTION A. DESIGNATION OF VARIANCE AND APPEALS BOARD.**

The Town Council of the Town of Cutler Bay shall hear and decide appeals and requests for variances from the requirements of this ordinance.

### **SECTION B. DUTIES OF VARIANCE AND APPEALS BOARD.**

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Management Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Circuit Court.

### **SECTION C. VARIANCE PROCEDURES.**

In acting upon such applications, the Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

#### **SECTION D. CONDITIONS FOR VARIANCES.**

- (1) Variances shall only be issued when there is:
  - a) A showing of good and sufficient cause;
  - b) A determination that failure to grant the variance would result in exceptional hardship; and
  - c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (2) Variances shall only be issued upon a determination that the variance is the minimum necessary deviation from the requirements of this ordinance.
- (3) Variances shall not be granted after-the-fact.
- (4) The Floodplain Administrator shall maintain the records of all variance actions, including justification for their issuance or denial, and report such variances in the community's NFIP Biennial Report or upon request to FEMA and the State of Florida, Department of Community Affairs, NFIP Coordinating Office.

#### **SECTION E. VARIANCE NOTIFICATION.**

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
- (2) Such construction below the base flood level increases risks to life and property.

A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Clerk of Court and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

#### **SECTION F. HISTORIC STRUCTURES.**

Variances may be issued for the repair or rehabilitation of “historic” structures – meeting the definition in this ordinance – upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a “historic” structure.

#### **SECTION G. STRUCTURES IN REGULATORY FLOODWAY.**

Variances shall not be issued within any designated floodway if any impact in flood conditions or increase in flood levels during the base flood discharge would result.

**Section 4. Severability.** That 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 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 Code.** It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

**Section 6. Conflicts.** Any and all Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

**Section 7.**     **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading on \_\_\_\_\_, 2006

PASSED AND ADOPTED on second reading on \_\_\_\_\_, 2006.

\_\_\_\_\_  
PAUL VROOMAN  
Mayor

Attest: \_\_\_\_\_  
ELIZABETH SEWELL  
Interim Town Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE TOWN OF CUTLER BAY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.  
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Council Member Timothy J. Meerbott \_\_\_\_\_

Council Member Ernest Sochin \_\_\_\_\_

Council Member Peggy Bell \_\_\_\_\_

ORDINANCE NO. 06-\_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING A CHAPTER OF THE TOWN CODE OF ORDINANCES, ENTITLED “VENDORS’ CAMPAIGN CONTRIBUTION DISCLOSURE,” PROVIDING FOR PROCEDURES FOR DISCLOSURE OF CAMPAIGN CONTRIBUTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 7.5 of the Town Charter requires that vendors of products or services must disclose any campaign contributions made to a candidate who was elected to Town Council; and

WHEREAS, the Charter does not provide any direction as to how or when this disclosure is to be made; and

WHEREAS, the wishes to clarify how, when and to whom such disclosures shall be made.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:**

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

**Section 2. Vendors’ campaign contribution disclosure requirement.** The Town Council hereby creates a campaign contribution disclosure ordinance, entitled “Vendors’ Campaign Contribution Disclosure,” to read as set forth below:

### **Vendors' Campaign Contribution Disclosure**

(A) Any vendor required to disclose campaign contributions pursuant to the Charter of the Town of Cutler Bay, as may be amended, shall file a written disclosure with the Town Clerk, stating all contributions made that were accepted by an elected official, the official to whom they were made and the date they were made. The Town Clerk may develop a form to be used by vendors for such disclosure.

(B) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the Vendor.

(C) The Town Clerk shall inform the Council of any disclosures which were made in relation to any items before the Council prior to the hearing on the item or prior to the award of the contract.

(D) If an existing vendor makes a contribution the vendor must report the same to the clerk within ten days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first.

(E) The Town Clerk shall file a quarterly report with the Council, which lists all the vendor disclosures in the quarter.

**Section 3. 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 4. Inclusion In The Code.** It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

**Section 5.** This Ordinance shall become effective immediately upon its adoption.

PASSED on first reading this \_\_\_\_ day of \_\_\_\_\_, 2006.

PASSED and ADOPTED on second reading this \_\_\_ day of \_\_\_\_\_, 2006.

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PAUL S. VROOMAN  
MAYOR

ATTEST:

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ELIZABETH SEWELL  
INTERIM TOWN CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE TOWN OF CUTLER BAY:

---

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

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Council Member Timothy J. Meerbott \_\_\_\_\_

Council Member Ernest N. Sochin \_\_\_\_\_

Council Member Peggy R. Bell \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TOWN COUNCIL AGENDA FORMAT; CREATING TOWN COUNCIL MEETING PROCEDURES; CREATING ADVERTISEMENT AND NOTICE REQUIREMENTS; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Cutler Bay (the “Town”) desires to amend the Town Council meeting agenda format to provide for quasi-judicial and other meeting procedures; and

**WHEREAS**, the Town Council also desires to create advertisement and notice requirements for amendments to the comprehensive plan and land development code, and for other development permit approvals; and

**WHEREAS**, the Town Council intends that the agenda format provided in this Ordinance shall replace the format adopted pursuant to Resolution 06-04; and

**WHEREAS**, the Town Council also intends that the notice and advertisement requirements adopted in this Ordinance shall amend those provided in Section 33-310 of the existing Town Code of Ordinances; and

**WHEREAS**, the Town Council finds that adoption of these regulations is in the best interest and welfare of the citizens of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:**

**Section 1.    Agenda Format and Council Meeting Procedures.**

(A)    *Agenda.* The town manager shall be responsible for the preparation of all town council meeting agendas.

(B)    *Procedures.* The mayor will decide on any procedures or format to be followed during town council meetings which are not otherwise provided in this section.

(C)    *Time limitation.* A time limitation of two (2) minutes is established for each individual who desires to speak under the subjective categories of “public comments and public hearings.” There will be no responses to those speaking by any member of the town council. The total time allotted to this category will be thirty (30) minutes. Exceptions to these limitations may be approved by the mayor.

(D) *Meeting Time.* Unless otherwise directed by the mayor, regular council meetings will commence at 7:00 p.m.

(E) *Agenda Format.* The format of the council meeting agenda is hereby established as follows:

- I. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE
- II. INVOCATION
- III. PROCLAMATIONS, AWARDS, PRESENTATIONS
- IV. APPROVAL OF MINUTES
- V. ADDITIONS, DELETIONS, AND DEFERRALS
- VI. TOWN MANAGER'S REPORT
- VII. TOWN ATTORNEY'S REPORT
- VIII. BOARD AND COMMITTEE REPORTS
- IX. CONSENT AGENDA (ANY ITEM SHALL BE REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION OR SEPARATE VOTE IF REQUESTED BY A COUNCILMEMBER)
- X. QUASI-JUDICIAL CONSENT AGENDA (ANY ITEM MAY BE REMOVED FROM THE CONSENT AGENDA IF REQUESTED BY A MEMBER OF THE TOWN COUNCIL, THE TOWN STAFF, THE APPLICANT, OR ANY AFFECTED PARTY. ANY ITEM REMOVED SHALL BE TABLED TO THE NEXT REGULARLY SCHEDULED COUNCIL MEETING FOR A QUASI-JUDICIAL HEARING.)
- XI. QUASI-JUDICIAL HEARINGS
- XII. PUBLIC HEARINGS
  - A. RESOLUTIONS
  - B. ORDINANCES
    1. FIRST READING
    2. SECOND READING

- XIII. PUBLIC COMMENTS ( TWO MINUTES PER PERSON)
- XIV. MAYOR AND COUNCIL MEMBER COMMENTS
- XV. OTHER BUSINESS
- XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT

(F) *Sign-in sheet.* Residents of the town, or property owners or owners of businesses within the town requesting to speak or make a presentation before the town council during public comment, will be required to sign up in a form to be provided by the town which will include their name and address. The sign-in form must be signed prior to the Council's closure of public comment.

(G) *Quasi-judicial consent agenda.* All quasi-judicial land development applications that the staff has determined meet all applicable comprehensive plan requirements and land development regulations shall be placed on the quasi-judicial consent agenda for approval. All such applications that the staff has determined do not meet all applicable requirements and regulations, shall be placed on an agenda for a quasi-judicial hearing. At the appropriate time during the meeting, the mayor will announce that the quasi-judicial consent agenda is the next item on the agenda. The mayor will announce that a member of the town council, town staff, the applicant or any affected party may request that a specific item be removed from the quasi-judicial consent agenda for a hearing. An affected party may participate in the hearing by presenting testimony and cross examining witnesses only if the affected party has filed a notice of appearance at least five (5) days before the hearing with the town manager or his or her designee. The notice of appearance shall state with particularity the comprehensive plan requirement or land development regulation the person contends is not being properly applied and the nature of the legally recognizable interest that may be adversely affected by the town's approval of the quasi-judicial land development application.

(H) *Affected party defined.* For purposes of this Ordinance, the term "affected party" shall mean a person who will suffer an adverse effect to a legally recognizable interest if the town's comprehensive plan requirements and land development regulations are not properly applied to a quasi-judicial land development application. The interest, which may be shared in common generally with other members of the community, must be definite and must exceed in degree the general interest in community good shared by all persons. The town council shall determine the status of any person in question.

(I) *Record.* In a quasi-judicial proceeding, the following are automatically deemed part of the record:

- (1) The town's staff report on file on the land development application;
- (2) The town's comprehensive plan, the town code of ordinances and all other applicable codes.

(J) *Police officer in attendance at council meetings.* It shall be the duty of the chief of police or a police officer assigned by him, who shall have the grade of lieutenant or higher, to be present and on official duty at all special and regular meetings of the town council.

(K) *Interruptions and disturbances.* Except during such times as the town council shall set aside for public comment, it shall be unlawful for any person present as a spectator to interrupt or disturb the proceedings in any manner by voice, actions or otherwise.

(L) *Public participation.* During periods set aside for public hearings, any person desiring to speak shall secure the permission of the mayor by first silently raising his hand and being recognized. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section.

(M) *Removal of persons.* It shall be the duty of the chief of police or officer in attendance, upon the order of the mayor or in his or her absence the vice mayor, to remove from the town council meeting or take into custody any person violating the provisions of this section.

(N) *Firearms.* It shall be unlawful for any person who is not a certified police officer on duty to enter into a town council meeting with a firearm.

**Section 2. Notice and Advertisements of Public Hearings.** Amendments to the Town's comprehensive plan and land development regulations shall be advertised and noticed in accordance with the following provisions:

(A) *Comprehensive plan amendments.* All ordinances which amend the comprehensive plan text or future land use map shall be advertised by publication in accordance with the provisions of Section 163.3184, Florida Statutes. In addition, property owners of record within a \_\_\_\_\_foot radius of the property subject to the future land use map amendment shall be provided mailed notice. [NOTE: The Village of Pincrest provides for 2,500 feet and the Village of Palmetto Bay does not provide for mailed notice].

(B) *Land development regulation amendments.* All ordinances which amend the text of the land development regulations or the town's zoning map shall be advertised in accordance with the requirements set forth in Section 166.041, Florida Statutes. A courtesy mailed notice containing substantially the same information set forth in the published advertisement may be mailed to the property owners of record located within a radius of \_\_\_\_\_feet of the property described in the application or such greater distance as the town manager may prescribe. The failure to mail or receive such courtesy notice shall not affect action or proceedings taken by the town council. [NOTE: The Village of Pincrest requires mailed notice for a 2,500 foot radius and the Village of Palmetto Bay does not provide for mailed notice].

(C) *Other development approvals.* Public hearings on applications for development permit approvals (other than comprehensive plan amendments, rezonings, or changes to the land

development regulations, which shall be governed by section (A) and (B)) including special exceptions, unusual uses, variances, and plats, shall be advertised and noticed as follows:

(1) Mailed notice to the property owners of record within a radius of \_\_\_\_\_ feet of the property described in the application or such greater distance as the town manager may prescribe. [NOTE: The Village of Pincrest requires mailed notice for a 1,000 foot radius and the Village of Palmetto Bay does not provide for mailed notice].

(2) Courtesy publication in the non-legal section of a local newspaper selected by the town.

(D) *Posted notice.* Posted notice shall be provided on the property subject to the public hearing. The property shall be posted by the applicant no later than five (5) days prior to the first town council hearing in a manner conspicuous to the public, by a sign or signs containing information concerning the application including, but not limited to, the applied for action and the time and place of the adoption hearing. The town manager may develop standards for the size, placement and type of sign to be posted, ensuring that the sign is legible from the nearest public right-of-way. The applicant shall remove such posting within ten (10) days following the town council's approval or denial of the application, or upon the applicant's withdrawal of the application.

(E) *Advertising costs.* All costs of advertising, noticing, and posting shall be borne by the applicant. For the purpose of the town council meeting advertisements as set forth above, the applicant shall pay for a pro-rata share of the advertisement cost for each item submitted for review with any other applicant on the same agenda.

(F) *Deferred agenda items.* Hearings on agenda items may be deferred or continued by the local planning agency or town council to a meeting date certain. The town council may waive further notice except as provided for by state statute.

**Section 3. Amendment of Section 33-310 of the Town Code of Ordinances.**  
Section 33-310 of the Town Code of Ordinances is hereby amended as follows:

**Sec. 33-310. Staff report, review, and recommendation. Notice and hearing prerequisite to action by the Community Zoning Appeals Boards or Board of County Commissioners.**

~~(a) When an application as prescribed by Sections 33-304 and 33-309 has been filed hereunder the Director shall, no later than forty (40) days after filing, at the cost of the applicant, provide mailed notice of such filing as provided in Section 33-310(d). The notice shall include the applicant's name, the processing number, the property size, the location (and street address, if available) of the property, a general description of the action requested in the application, and a statement that the application was filed and is being reviewed by the Department and, where applicable, the Developmental Impact Committee, and that a future notice will be provided prior to the public hearing thereon. The notice shall additionally state and make clear that any interested person is entitled to discuss the application with the County employees processing and reviewing the application to the same extent as the applicant is so entitled and that the~~

~~application may change during the hearing process. The person or persons mailing the notice provided herein shall attach an affidavit or affidavits thereof to the application's file setting forth the compliance with this subsection. Failure to mail the said written notice as provided herein shall render voidable any hearing held on the application. If, after this initial notice is mailed, the application is changed in a manner such that additional land area is encompassed within the application, then the initial notice described herein shall be repeated by the Director at the expense of the applicant. Such modifications that require repeating the initial notice shall be permitted only during the regular working days that fall within the first seven (7) days of the month. The notice provided in this paragraph shall not be required for appeals filed in conjunction with Section 33-313 or 33-314 of the Code.~~

(b) Applications filed hereunder shall be promptly transmitted to the appropriate board, together with the written recommendation of the Director. Where applicable the Developmental Impact Committee shall issue its recommendation, which shall include a statement of the Director as to the application's relationship to the Comprehensive Development Master Plan. All such recommendations shall state all facts relevant to the application, including an accurate depiction of known living, working, traffic and transportation conditions in the vicinity of the property that is the subject of the application, and also a description of all projected effects of the proposed zoning action on those conditions. Before reaching a conclusion, each recommendation shall list all known factors both in favor of and against each application. All such recommendations shall be signed and considered final no earlier than thirty (30) days prior to the public hearing to give the public an opportunity to provide information to the staff prior to the recommendations becoming final. This shall not preclude earlier, preliminary recommendations. All documents of the County departments evaluating the application, which documents pertain to the application, are open for public inspection to applicants or other interested persons.

~~(c) No action on any application shall be taken by the Community Zoning Appeals Boards or the Board of County Commissioners on any appeal, until a public hearing has been held upon notice of the time, place and purpose of such hearing, the cost of said notice to be borne by the applicant. Notice shall be provided as follows:~~

~~(1) Said notice shall be published twice in newspapers of general circulation in Miami Dade County, as follows: (A) a full legal notice, to be published no later than twenty (20) days and no earlier than thirty (30) days prior to the public hearing, to contain the date, time and place of the hearing, the property's location (and street address, if available) and legal description, and nature of the application, including all specific variances and other requests; and (B) a layman's notice, to be published in the newspaper of largest circulation in Miami Dade County, no later than twenty five (25) days and no earlier than thirty five (35) days prior to the public hearing, to contain the same information as the above described full legal notice except that the property's legal description may be omitted and the nature of the application and requests contained therein may be summarized in a more concise, abbreviated fashion. The layman's notice may be published in a section or a supplement of the newspaper distributed only in the locality where the property subject to the application lies. In the event that any time periods specified in this subsection shall conflict with any applicable provision of the Florida Statutes, the provision of the Florida Statutes shall govern.~~

~~(2) Mailed notice containing general information, including, but not limited to, the date, time and place of the hearing, the property's location (and street address, if available), and nature of~~

~~the application shall be sent as provided by Subsection 33-310(d) no later than thirty (30) days prior to the hearing.~~

~~(3) The property shall be posted no later than twenty (20) days prior to the hearing in a manner conspicuous to the public, by a sign or signs containing information including but not limited to the applied for zoning action and the time and place of the public hearing.~~

~~(d) Mailed notice shall be accomplished by placing in the United States mail a written notice to all property owners of record, as reflected on the Miami Dade County Property Appraiser's tax roll as updated, within the following radius of the property described in the application, or such greater distance as the Director may prescribe:~~

~~(1) Approvals of or modifications to Developments of Regional Impact ("DRI"), including substantial deviation determinations or modifications thereof, one (1) mile;~~

~~(2) For applications, other than for Development of Regional Impact, required to be reviewed by the Development Impact Committee; for district boundary changes, use variances, special exceptions, or unusual uses unless the foregoing are specifically itemized in Subsection (d)(3); for any modification of a covenant accepted or condition imposed in connection with a prior district boundary change or use variance; but this subsection shall not apply to residential uses of less than five (5) units, one half (1/2) mile;~~

~~(3) For modification or elimination of conditions or restrictive covenants, or parts thereof, after public hearing, mailed notice shall be accomplished by placing in the United States mail a written notice to all property owners of record, as reflected on the Miami Dade County Property Appraiser's tax roll as updated, within the same radius of the property as required to be noticed for zoning action imposing or accepting the condition or restrictive covenant sought to be modified or eliminated, or such greater distance as the Director may prescribe.~~

~~(4) For district boundary change involving a change of prefix within BU (Business) or IU (Industrial) and use variance involving such a use prefix change; for unusual use for outdoor patio dining, outdoor display, adult congregate living facility, day nursery, convalescent home, day camp, home for the aged, institution for the handicapped, kindergarten, nursing home, retirement village, entrance feature, mobile home as watchman's quarters, bathing beach; for special exception for resubdividing/refacing of platted lots, servant's quarters in RU-1 district, convalescent home, eleemosynary and philanthropic institution in RU-4 districts, barn (spacing from residences) in AU district, dude ranch in AU district, temporary farm labor housing in AU district; and for all other applications for zoning action not specified in Subsections (d)(1), (2), (3) and (4), five hundred (500) feet.~~

~~Such notice shall also be mailed to the president of any homeowners association having any member who resides within the area of mailed notice described above when such residency is shown upon a current updated notice filed with the director. The Director shall establish and maintain a process by which homeowners associations may provide notice of the areas in which their members reside. Homeowners associations shall keep these notices current by updating them in accordance with procedures to be prescribed by the Director.~~

~~(e) The person or persons responsible for providing the notices provided in Subsection (e) above shall attach to the application file a sworn affidavit or affidavits setting forth that they have complied with said subsection. Failure to provide the newspaper notices as provided, or failure to mail the written notices as provided, or failure to post the property as provided renders voidable any hearing held on the application.~~

~~(f) The Director shall have the discretion to expand any of the notice provisions contained in this section to provide more information if deemed appropriate.~~

~~(g) If the notices described in Subsection (c)(1) above are published, and the affidavits required by Subsections (a) and (d) above are of record, no judicial proceeding to void a hearing shall be commenced after the time for appeal from a resolution of an administrative or quasijudicial tribunal as provided in the Florida Rules of Appellate Procedures.~~

**Section 4. Severability.** If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

**Section 5. Repealer.** All resolutions or ordinances or parts of resolutions or ordinances in conflict with the provisions of this Ordinance are repealed.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon adoption.

PASSED on first reading this \_\_\_\_\_ day of May, 2006.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of May, 2006.

\_\_\_\_\_  
PAUL VROOMAN  
Mayor

Attest: \_\_\_\_\_  
ELIZABETH SEWELL  
Interim Town Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE TOWN OF CUTLER BAY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.  
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Council Member Timothy J. Meerbott \_\_\_\_\_

Council Member Ernest Sochin \_\_\_\_\_

Council Member Peggy Bell \_\_\_\_\_