

TOWN OF CUTLER BAY

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

Town Manager Steve Alexander
Town Attorney Mitchell Bierman
Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

This meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four (4) days prior to the meeting.

LOCAL PLANNING AGENCY AGENDA

Monday, April 28, 2008, 7:00 PM
South Dade Regional Library
10750 SW 211th ST, 2nd Floor
Cutler Bay, Florida 33189

- I. **CALL TO ORDER, ROLL CALL**
- II. **ADDITIONS, DELETIONS, AND DEFERRALS**
- III. **CONSENT AGENDA**
- IV. **PUBLIC HEARING: (MOTION RECOMMENDING ADOPTION OF THE FOLLOWING ORDINANCE)**
 - A. **AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING SECTION 33-18 OF TOWN CODE RELATING TO RELIGIOUS FACILITIES AND MISSIONS; PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY, PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**
 - B. **AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF SITE PLANS THAT INCLUDE NON RESIDENTIAL OR MIXED USE BUILDINGS THAT EXCEED 50,000 GROSS SQUARE FEET; EXEMPTING SITE PLANS THAT COMMIT TO RECEIVING LEED CERTIFICATION; 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.**
- VI. **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. 08-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING SECTION 33-18 OF TOWN CODE RELATING TO RELIGIOUS FACILITIES AND MISSIONS; PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY, PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, shortly after its incorporation, the Town of Cutler Bay (the “Town”) adopted Chapter 33 of the Miami-Dade County Code of Ordinances, as applicable to the Town (the “Town’s Land Development Code”); and

WHEREAS, since the time of the adoption of Chapter 33 as the Town’s Land Development Code, Miami-Dade County has faced two lawsuits from religious organizations alleging that Section 33-18 of the Miami-Dade County Code violated the Religious Land Use and Institutionalized Persons Act (“RLUIPA”); and

WHEREAS, Section 33-18 prohibits a religious facility or mission to use any site that is less than 2.5 acres in size or a site that has frontage less than 150 feet; and

WHEREAS, to avoid potential similar litigation, the Town desires to eliminate the acreage and frontage requirements for religious facilities and missions from its Land Development Code; and

WHEREAS, the Town Council finds this Ordinance to be in the best interest and welfare of the residents of the Town.

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

Section 1. Section 33-18 of the Town Land Development Code is hereby amended to read as follows:

Sec. 33-18. Same--Religious facilities and schools in certain districts.

(a) Buildings used for public assemblage as defined in Section 33-1, where located in BU or IU Districts may be permitted with the same yard requirements and setbacks as required of the business or industrial buildings legally allowed in these districts; provided that no such building shall be placed closer than twenty-five (25) feet to a side or rear lot line or closer than fifty (50) feet to another building in the district unless separated by an unpierced wall constructed so as to offer at least three (3) hour fire resistance, in which case the setbacks prescribed for any other building in said district shall apply.

(b) With the exception of religious facilities no building for public assemblage

shall be permitted in IU-2 and IU-3 Districts unless directly connected with legally established industrial use.

(c) Churches in RU-1, RU-2, EU-M, EU-1, EU-1C, EU-2, AU and GU Districts will be permitted only upon approval after public hearing; schools in AU, GU, EU-2, EU-1C, EU-1, EU-S, EU-M, RU-1, RU-2, RU-TH, RU-5, RU-5A, IU-1, IU-2, IU-3 and IU-C will be permitted only upon approval after public hearing.

~~(d) No church shall be constructed, operated or permitted upon any site that does not contain a minimum of two and one half (2 1/2) acres of land area, including street dedications, and having a minimum contiguous frontage of at least one hundred fifty (150) feet abutting on a public street right of way. Off street parking facilities shall be provided and maintained within the land area of every church site in conformity with the requirements of Sections 33-122 through 33-132.*~~

~~(e)~~ (d) Duly constituted "missions" ~~may be~~ are permitted to operate under the same conditions and in the same zoning districts that churches are permitted. ~~upon sites containing less than the minimum land area hereinabove prescribed only upon approval after public hearing.~~ For the purposes of this section a "missions" shall mean any body, association, or organization for doing religious and charitable work, devoted entirely to the moral, religious and social improvement of those in need of such missionary work and assistance, which does not constitute a church but is sponsored by a duly constituted church.

Section 2. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed.

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 Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 2008.

PASSED AND ADOPTED on second reading this ___ day of _____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF CUTLER BAY ONLY:

WEISS, SEROTA, HELFMAN, PASTORIZA,
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

ORDINANCE NO. 08- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF SITE PLANS THAT INCLUDE NON RESIDENTIAL OR MIXED USE BUILDINGS THAT EXCEED 50,000 GROSS SQUARE FEET; EXEMPTING SITE PLANS THAT COMMIT TO RECEIVING LEED CERTIFICATION; 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.

WHEREAS, the Town of Cutler Bay (the “Town”) recognizes the importance of environmental stewardship in a variety of media, which include, but are not limited to, water, energy, air, and waste; and

WHEREAS, the State of Florida also recognizes the importance of environmental stewardship through Executive Order 07-126, which provides that all new state buildings shall be Leadership In Energy and Environmental Design (LEED) certified and such buildings shall strive for a Platinum level of certification; and

WHEREAS, the Town is committed to providing a sustainable community for its residents and has applied to the Florida Green Building Coalition, Inc. to become a certified Green Local Government; and

WHEREAS, in furtherance of this commitment, the Town has earmarked \$200,000 for green building initiatives, which include, but are not limited to, the creation of a Green Plan; and

WHEREAS, the Town is presently working to select a qualified consultant or consulting firm to prepare a Green Plan which, upon completion, when coupled with any necessary amendments to the Town’s Comprehensive Plan and Land Development Regulations, shall serve to further guide land use and development, so that development within the Town will further the Town’s goal of creating a sustainable environment; and

WHEREAS, the Town Council adopted Ordinance 07-07, which provided that large nonresidential or mix use buildings are those buildings that exceed 50,000 gross square feet; and

WHEREAS, the Town Council believes that such large buildings may substantially impact the adequacy and sustainability of public facilities and natural resources within the Town; and

WHEREAS, as such, the Town Council finds its necessary to adopt a moratorium on the issuance of site plans approving non residential or mixed use buildings in excess of 50,000 gross square feet, in order to afford the Town the opportunity to create its Green Plan and implement related regulations, which will help to ensure a sustainable environment; and

WHEREAS, the Town Council, in its capacity as the Local Planning Agency, has reviewed this Ordinance and has recommended approval; and

WHEREAS, after due notice and hearing, the Town Council finds that this Ordinance is consistent with the Town's Comprehensive Plan and Code of Ordinances.

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

Section 1. Findings. The foregoing "Whereas" clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Moratorium Imposed. During the time that this Ordinance is in effect as specified in Section 7 below, there shall be a moratorium on the issuance of site plans that include buildings in excess 50,000 gross square feet within the Town. The following categories of development shall be exempt from this moratorium:

- (a) Any site plan that commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Platinum. A LEED Certified Platinum development shall mean a development that obtains at least 52-69 points or >75% of the maximum points on the LEED project checklist. The applicant's commitment shall be demonstrated as follows:

Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 4% of the total cost of the building in order to secure performance and fulfillment of the of the applicant's obligation to obtain a LEED Platinum Certification. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) and provides the certification letter to the Town.

If the project fails to meet the criteria required for Platinum Certification by the United States Green Building Council (USGBC) within two (2) years after receiving the Town's certificate of occupancy, the applicant shall forfeit one hundred percent (100%) of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Green Building Fund established by the Town. These funds shall be utilized for improvements such as landscape, open space improvements, traffic calming, pollution mitigation, drainage and sanitary sewer improvements, sustainability

improvements to public facilities, or similar improvements as deemed appropriate by the Town Council.

In lieu of the bond required by this section, the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the State of Florida in the name of the applicant and the Town. The letter of credit or escrow shall be in the same amount of the bond if it were posted; and

- (b) Any development that has received site plan approval from the Town prior to the enactment of this Ordinance.

Section 3. Waivers. Any property owner seeking a waiver under this Section 3 must file an application with the Town Council, for a determination within 30 days after the effective date of this Ordinance. The Town Council, after a public hearing, may grant a waiver to the moratorium provided above and permit development to proceed on a specific parcel where the Town Council determines, based upon substantial competent evidence, that the proposed site plan requested by the waiver application will not detrimentally affect or be inconsistent with the regulations that will be created and adopted in relation to the Green Plan, will be compatible with surrounding land uses, and will not impair the public health, safety or welfare. The public hearing shall be advertised at least seven days prior to the hearing in a local newspaper. The grant of waiver, if any, shall be by resolution. The applicant shall be responsible for the waiver application fee and any other standard fees and requirements for a public hearing.

Section 4. Determination of Vested Rights or Denial of All Economic Use.

(A) Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:

- (1) A governmental act of development approval was obtained prior to the effective date of this Ordinance; and
- (2) Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures; and
- (3) That it would be highly inequitable to deny the property owner the right to complete the development.

(B) Nothing in this Ordinance shall be construed or applied to prevent development of a particular parcel where the property owner can demonstrate by substantial competent evidence that, because of the moratorium, no economic use can be made of the parcel.

(C) Any property owner claiming vested rights or denial of all use under this Section 3 must file an application with the Town Council for a determination within 30 days after the effective date of this Ordinance. The application shall be accompanied by an application fee of

\$1,500.00 and contain a sworn statement as to the basis upon which the vested rights or denial of all use are asserted, together with documentation required by the Town and other documentary evidence supporting the claim. The Town Council shall hold a public hearing on the application and, based upon the competent substantial evidence submitted, shall make a determination as to whether the property owner has established vested rights or a lack of economic use for the parcel.

Section 5. Judicial Review. Judicial review of final decisions by the Town Council under Section 3 or Section 4 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial decisions of municipalities.

Section 6. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court, unless he or she has first exhausted the applicable administrative remedies provided in Sections 3 and 4 of this Ordinance.

Section 7. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 8. Term. The moratorium imposed by this Ordinance is temporary and shall be effective for a period of nine (9) months from the effective date of this Ordinance, unless dissolved earlier by the Town Council. Further, the moratorium shall automatically dissolve upon the adoption of the Green Plan and implementing land development regulations. The moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council.

Section 9. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 2008.

PASSED AND ADOPTED on second reading this ___ day of _____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF CUTLER BAY ONLY:

WEISS, SEROTA, HELFMAN, PASTORIZA,
COLE & BONISKE, P.L.
Town Attorney

Moved By:
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FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____
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