

CHAPTER 2 ADMINISTRATION AND REVIEW PROCEDURES

Article I. Land Use Boards

2.1.1 Generally

2.1.1.1 Disclosure requirement

Each person or entity requesting approval, relief or other action from the planning board, design review board, historic preservation board (including the joint design review board/historic preservation board), or the board of adjustment shall disclose, at the commencement (or continuance) of the public hearing(s), any consideration provided or committed, directly or on its behalf, for an agreement to support or withhold objection to the requested approval, relief or action, excluding from this requirement consideration for legal or design professional services rendered or to be rendered. The disclosure shall

- (a) be in writing,
- (b) indicate to whom the consideration has been provided or committed,
- (c) generally describe the nature of the consideration, and
- (d) be read into the record by the requesting person or entity prior to submission to the secretary/clerk of the respective board.

Upon determination by the applicable board that the foregoing disclosure requirement was not timely satisfied by the person or entity requesting approval, relief or other action as provided above, then

- (a) the application or order, as applicable, shall immediately be deemed null and void without further force or effect, and
- (b) no application from said person or entity for the subject property shall be reviewed or considered by the applicable board(s) until expiration of a period of one year after the nullification of the application or order.

It shall be unlawful to employ any device, scheme or artifice to circumvent the disclosure requirements of this section and such circumvention shall be deemed a violation of the disclosure requirements of this section.

2.1.1.2 Application requirement for land use boards

No person shall be appointed to the planning board, design review board, historic preservation board, or the board of adjustment unless he has filed an application with the city clerk on the form prescribed, not less than ten days before the date of appointment. The city commission may waive this requirement by a five-sevenths vote, provided such waiver shall only be granted one time per board, per meeting, provided further that any applicant granted such a waiver must file his application prior to being sworn in as a member of these boards.

2.1.1.3 Terms of Office

The term of office on a land use board shall be two years.

2.1.1.4 Quorum and voting

- (a) For each land use board, a quorum shall constitute four regular members, except quorum of five regular members of the Planning Board is required for conditional

uses and any matter that does not require city commission approval. In the event there is a lack of a quorum, all pending or remaining matters shall be automatically continued to the next available meeting of the board.

- (b) A majority vote of the members present shall be necessary to approve all requests or to decide all issues coming before the board with the following exceptions:
 - (1) An affirmative vote of five regular members of the Planning Board shall be required to approve a conditional use request or matter that does not require city commission approval. An affirmative vote of four regular members of the Planning Board shall be required to approve the sale, exchange, conveyance or lease of ten years or longer of certain city-owned property, as provided in City Charter, subsection 1.03(b)4, entitled, "Disposition of city property." An affirmative vote of four regular members shall be required to approve an application for design review.
 - (2) An affirmative vote of five regular members of the Design Review Board shall be necessary to approve any variance request.
 - (3) An affirmative vote of five regular members of the Historic Preservation Board shall be necessary to approve any variance request. An affirmative vote of five regular members of the Historic Preservation Board shall be necessary to approve any certificate of appropriateness (i) for demolition, recommendations for historic designation and reclassification of properties listed as "historic" in the historic properties database; and (ii) pertaining to revisions to any application for a property where a certificate of appropriateness for demolition was previously issued, including an after-the-fact certificate of appropriateness for demolition.
 - (4) An affirmative vote of four regular members of the Historic Preservation Board shall be necessary to approve the issuance of a certificate of appropriateness pertaining to any application for new construction, renovation or rehabilitation, except as otherwise provided in this section.
 - (5) An affirmative vote of five regular members of the Board of Adjustment shall be necessary to approve any variance request.
- (c) In the event of a tie vote on a motion on all requests or issues coming before a land use board, the motion shall be deemed denied.

2.1.1.5 Conflict of Interest

Members of the land use boards shall abide by the applicable provisions of Section 112.311 et seq., Florida Statutes, Dade County Code section 2-11.1 and section 2-446 et seq. of this Code, regarding voting conflicts and disclosures of financial interests and shall be subject to removal from office for the violation of the terms thereof.

2.1.1.6 Meetings

Unless appointed by the city commission, each land use board shall by majority vote select a chairperson and vice chairperson. Meetings of each land use board shall be held within a reasonable time upon receipt of an application, or at such other times as the board may determine, or upon call of the chairperson or the planning director. Each land use board shall follow Robert's Rules of Order, subject to the limitations of the city's Charter and ordinances, and shall keep minutes of its proceedings showing its action on each question considered. All meetings shall be open to the public. Members of the public at the meeting shall have the right to address the land use board and to present evidence.

2.1.1.7 Removal

Removal of a land use board member shall be mandatory when that member:

- (a) Fails to attend three of the regularly scheduled meetings per calendar year; or
- (b) Abstains from voting due to a conflict of interest on four different applications within a calendar year. However, abstentions by a Historic Preservation Board member for reason of conflict for matters relating to amendment of the historic properties database shall not be counted for this purpose.

For purposes of this section, an absence from a meeting shall be defined as missing 50 percent of the scheduled matters unless the member attended 70 percent of the duration of time of that meeting's agenda. A member who is removed shall not be reappointed to membership on the board for at least one year from the date of removal. Any absences or abstentions due to conflict of interest prior to the effective date of these land development regulations shall not apply for purposes of removal from board membership.

2.1.1.8 Temporary Emergency Relief Procedures

2.1.1.8.1 Purpose and Intent.

It is the purpose and objective of this section to establish reasonable and uniform regulations to protect the public health, safety, and welfare, and to provide for streamlined review of applications for temporary uses and other land use approvals following a catastrophic event, including, but not limited to, a fire, tornado, flood, tropical storm, hurricane, or other natural disaster or act of God.

2.1.1.8.2 Approval of temporary emergency uses.

During a state of emergency declared by the city in response to a natural disaster or other catastrophic event, including, but not limited to, a fire, tornado, flood, tropical storm, hurricane, or other natural disaster or act of God, the city manager shall have the authority to approve temporary emergency use permits for a duration of up to 120 days on any lot, regardless of the underlying zoning district, for any temporary use which, as determined by the city manager, will aid in the reconstruction or recovery of an area adversely impacted by the natural disaster or catastrophic event, subject to the following conditions:

- (a) Prior to approving the location of a temporary emergency use, the city manager must find that the use will not have a significant effect on adjoining properties or on the immediate surrounding neighborhood.
- (b) The temporary emergency use shall not be subject to the requirements of chapters 3 through 7 of these land development regulations, unless the city manager determines that it is necessary to enforce a land development regulation against the use in order to protect the peaceful and quiet enjoyment of adjoining properties, or that enforcement of the land development regulation is required pursuant to the City Charter or state law.
- (c) The city manager may impose additional conditions that may be necessary to protect the peaceful and quiet enjoyment of adjoining properties.
- (d) Upon the expiration of the temporary emergency use permit, the site must be fully restored and returned to its pre-emergency state, unless a building permit is obtained to modify the site.

- (e) The city manager may require the posting of a completion bond or other guarantee in an amount that, at a minimum, would cover the cost of the removal of any improvements made to a site or cleaning/restoration of the site following the expiration of the approved temporary emergency use permit.
- (f) An application for a temporary emergency use permit must be made while the declaration of a state of emergency is in effect.
- (g) The city manager shall have the sole and absolute discretion to revoke the temporary emergency use permit at any time.
- (h) The planning department shall maintain records of all temporary emergency use permits issued pursuant to this section.

2.1.2 Planning Board

2.1.2.1 Powers and Duties

The Planning Board shall have the following powers and duties:

- (a) To acquire, compile and collate all available data, materials, statistics, maps, photographs, reports and studies necessary to obtain an understanding of past conditions and present trends, which affect the city and the economic and general welfare of its residents. The board shall evaluate data and determine the past, present and future trends as they relate to population, property values, economic bases, land use, and to evolve the principles and policies required to guide the direction and type of future development and expansion of the city.
- (b) To conduct such public hearings as may be helpful in gathering information and data necessary for the presentation of suitable and appropriate plans for the comprehensive and systematic development of the city and to transmit the same for consideration by the city commission.
- (c) To make, cause to be made, or obtain special studies on the location, condition and adequacy of specific facilities of the city. These may include, but are not limited to, studies on single and multiple-family housing, including hotels, apartment buildings, cooperatives and condominiums, commercial and industrial conditions and facilities, beaches, parks, playgrounds and other recreational facilities, public buildings, public and private utilities, traffic, transportation and parking. The board shall be authorized to study and consider any and all studies made and published by the federal, state and county governments.
- (d) To make appropriate studies of the location and extent of present and anticipated use of land, population, social and economic resources and problems, and to submit such data, with the recommendations of such board, to the city commission.
- (e) To consider and to act upon any and all matters referred to it by the city commission or by the provisions of any city ordinance pertaining to land use and to submit its findings and recommendations on such matters to the city commission.
- (f) In granting a request, the board may prescribe appropriate conditions and safeguards which are consistent and supportive of the city's comprehensive plan, neighborhood plan or capital improvement plan. Violation of such conditions and safeguards shall be deemed a violation of these land development regulations.
- (g) To carry out its responsibilities as the local planning agency pursuant to the state and the Florida Community Planning Act (chapter 163, Florida Statutes).

- (h) To ensure a high degree of aesthetics and promote quality in construction and design of buildings and structures so as to enhance the value of property and the physical environment of the city.
- (i) To consider applications pertaining to conditional use permits, division of land/lot splits, amendments to these land development regulations, change of zoning district boundaries and comprehensive plan amendments and future land use map changes.
- (j) To promote reduced crime and fear of crime through the use of crime prevention through environmental design guidelines and strategies.
- (k) To review the sale, exchange, conveyance or lease of ten years or longer of certain city-owned property, as provided in City Charter, subsection 1.03(b)4, entitled, "Disposition of city property," which requires approval by a majority (four-sevenths) vote of all members of the planning board. In reviewing such an application, the planning board shall consider the following review criteria, when applicable:
 - 1. Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city comprehensive plan.
 - 2. If a sale, a determination as to whether or not alternatives are available for the acquisition of private property as an alternative to the proposed disposition or sale of city-owned properties, including assembly of adjacent properties, and impact of such assemblage on the adjacent neighborhood and the city in general.
 - 3. The impact on adjacent properties, including the potential positive or negative impacts such as diminution of open space, increased traffic, adequate parking, noise level, enhanced property values, improved development patterns, and provision of necessary services.
 - 4. Determination as to whether or not the proposed use is in keeping with the surrounding neighborhood, blocks views or creates other environmental intrusions, and evaluation of design and aesthetic considerations of the project.
 - 5. A traffic circulation analysis and plan that details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated.
 - 6. Determination as to whether or not the proposed use is in keeping with a public purpose and community needs, and improving the community's overall quality of life.
 - 7. If a lease is proposed, the duration and other nonfinancial terms of the lease.

2.1.2.2. Membership and appointment

- (a) The planning board shall be composed of seven regular voting members. Each regular member shall be appointed with the concurrence of at least four members of the city commission. The planning director or designee, and city attorney or designee, shall serve in an advisory capacity.
- (b) All regular voting members of the board shall have considerable experience in general business, land development, land development practices or land use issues; however, the board shall at a minimum be comprised of:
 - (1) One architect registered in the State of Florida; or a member of the faculty of a school of architecture in the state, with practical or academic expertise in the field of design, planning, historic preservation or the history of

architecture; or a landscape architect registered in the State of Florida; or a professional practicing in the fields of architectural or urban design, or urban planning;

- (2) One developer who has experience in developing real property; or an attorney in good standing licensed to practice law within the United States;
- (3) One attorney licensed to practice law in the State of Florida who has considerable experience in land use and zoning issues;
- (4) One person who has education or experience in historic preservation issues. For purposes of this section, the term "education or experience in historic preservation issues" shall be a person who meets one or more of the following criteria:
 - (a) Has earned a college degree in historic preservation;
 - (b) Is responsible for the preservation, revitalization or adaptive reuse of historic buildings; or
 - (c) Is recognized by the city commission for contributions to historic preservation, education or planning;
- (5) Two persons who are citizens at-large or engaged in general business in the city; and
- (6) One of the following:
 - (a) A licensed professional engineer, licensed professional architect, or licensed professional landscape architect with expertise in water resources;
 - (b) A person licensed by the State of Florida in hydrology, water or wastewater treatment;
 - (c) A person with a degree from an accredited college or university in a field of study related to water resources; or
 - (d) A floodplain manager or a principal community administrator responsible for the daily implementation of flood loss reduction activities including enforcing a community's flood damage prevention ordinance, updating flood maps, plans, and policies of the community, and any of the activities related to administration of the National Flood Insurance Program (NFIP) (a "water management expert").
- (c) No person except a resident of the city, who has resided in the city for at least one year, shall be eligible for appointment to the planning board. The residency requirement in this subsection (c) shall not apply to the water management expert appointed to the planning board pursuant to subsection (b)(6).
- (d) The city commission may waive the residency requirements by a 5/7ths vote in the event a person not meeting these requirements is available to serve on the board and is exceptionally qualified by training or experience.

2.1.2.3 Procedures

In addition to all procedures otherwise authorized or required by these land development regulations, the following shall apply to the Planning Board.

- (a) The board is authorized to call public hearings and to create committees and subcommittees when deemed appropriate or convenient for the performance of its duties.

- (b) All requests shall be submitted to the city attorney for a determination whether the request is properly such, and does not constitute a variance of these land development regulations. The jurisdiction of the planning board shall not attach unless and until the board has before it a written certificate of the city attorney that the subject matter of the request is properly before the board. The separate written recommendations of the planning director shall be before the board prior to its consideration of any matter before it.
- (c) Where required by city charter section 1.03(d) to act on proposed sale, exchange, conveyance or lease of ten years or longer of city-owned property, notice of the Planning Board hearing on the matter shall be given by publication in a newspaper of general circulation at least ten days prior to the hearing.
- (d) In matters in which the Planning Board must approve or recommend an action to the city commission, and notice for a hearing at which such action is to be taken is not otherwise set forth in these land development regulations, notice of the Planning Board hearing on the matter shall be given by publication in a newspaper of general circulation at least ten days prior to the hearing

2.1.3. Design Review Board

2.1.3.1 Powers and duties

The Design Review Board shall have the following powers and duties:

- (a) To promote excellence in urban design.
- (b) To review all applications requiring design review approval for all properties not located within a designated historic district or not designated as a historic site. For works of art in the art in public places program, the Design Review Board shall serve as advisor to the City Commission, and may impose binding criteria, as provided in chapter 82, article VII, "art in public places," division 4, "procedures." This authority shall include review and approval of design and location within public rights-of-way outside of locally designated historic districts of all wireless communications facilities as defined in chapter 104, "telecommunications," article I, "communications rights-of-way" under the standards provided therein.
- (c) To prepare and recommend adoption of design plans pertaining to neighborhood studies.
- (d) To promote reduced crime and fear of crime through the use of crime prevention through environmental design guidelines and strategies, as approved by the City Commission.
- (e) To hear and decide appeals of the planning director.
- (f) To authorize, upon application, variances from the terms of these land development regulations, where authorized by subsection 2.8.1, pursuant to the requirements of these land development regulations, as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of provisions of these land development regulations would result in unnecessary and undue hardship.
- (g) To serve as the city's floodplain management board in reviewing applications for properties within the board's jurisdiction, and shall have the authority to exercise all powers and perform all duties assigned to such board pursuant to section 54-31, et seq.; Resolution No. 93-20698; and in accordance with the procedures set forth therein as such ordinance and resolution may be amended from time to time. For the purposes of determining jurisdiction, the criteria in subsection 2.8.3 for a variance shall be utilized.

2.1.3.2 Membership and appointment.

- (a) The Design Review Board shall be composed of seven regular voting members. Each regular member shall be appointed with the concurrence of at least four members of the city commission. One person appointed by the city manager from an eligibility list provided by the disability access committee shall serve in an advisory capacity with no voting authority. The planning director or designee, and city attorney or designee, shall serve in an advisory capacity.
- (b) The Design Review Board shall consist of the following seven regular members:
 - (1) One architect registered in the United States;
 - (2) An architect registered in the State of Florida or a member of the faculty of a school of architecture, urban planning or urban design in the state, with practical or academic expertise in the field of design, planning, historic preservation or the history of architecture; or a professional practicing in the fields of architectural design or urban planning;
 - (3) One landscape architect registered in the State of Florida;
 - (4) One architect registered in the United States, or a professional practicing in the fields of architectural or urban design, or urban planning; or resident with demonstrated interest or background in design issues; or an attorney in good standing licensed to practice law within the United States;
 - (5) Two citizens at-large; and
 - (6) One of the following:
 - (i) A licensed professional engineer, licensed professional architect, or licensed professional landscape architect with expertise in water resources;
 - (ii) A person licensed by the State of Florida in hydrology, water or wastewater treatment;
 - (iii) A person with a degree from an accredited college or university in a field of study related to water resources; or
 - (iv) A floodplain manager or a principal community administrator responsible for the daily implementation of flood loss reduction activities including enforcing a community's flood damage prevention ordinance, updating flood maps, plans, and policies of the community, and any of the activities related to administration of the National Flood Insurance Program (NFIP) (a "water management expert").

c) Eligibility

An eligibility list for these professional membership categories may include, but shall not be limited to, suggestions from the following professional and civic associations as listed below:

- (1) American Institute of Architects, local chapter.
- (2) American Society of Landscape Architects, local chapter.
- (3) The Miami Design Alliance.
- (4) American Planning Association, local chapter.
- (5) The Miami Design Preservation League and Dade Heritage Trust.
- (6) Other city civic, neighborhood and property owner associations.

All regular members shall reside in or have their primary place of business in the county, except for the water management expert appointed pursuant to subsection (b)(6), who need not reside in or have a principal place of business in the county. The two citizen-at-large members and one of the registered landscape architects, registered architects, or professionals practicing in the fields of architectural or urban design or urban planning shall be residents of the city.

2.1.3.3 Procedures

In addition to all procedures otherwise authorized or required by these land development regulations, the following shall apply to the Design Review Board.

- (a) Prior to a decision of the board, the ex officio members shall submit a recommendation for each item on the agenda. In addition, the city attorney shall determine whether a request is properly before the board

2.1.4 Historic Preservation Board

2.1.4.1 Created; authority.

There is hereby created a city Historic Preservation Board for the purposes of carrying out the provisions of this division. The board shall have the authority to recommend the designation of areas, places, buildings, including the public portions of interiors of buildings, structures, landscape features, archeological sites and other improvements or physical features, as individual buildings, structures, improvements, landscape features, sites, districts, or archeological zones that are significant to the city's history, architecture, archeology, or culture or possess an integrity of location, design, setting, material or workmanship, in accordance with the goals of this division to grant certificates of appropriateness and to determine whether any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district may be altered or demolished. For purposes of Sec. 10.6 of the City Charter "Public vote required prior to enacting reduced powers and duties for Historic Preservation Board, or less stringent historic preservation standards or regulations," nothing in these land development regulations shall be interpreted or applied to authorize less stringent historic preservation standards or regulations than those existing as of November 6, 2012, unless authorized by referendum pursuant to Sec. 10.6.

2.1.4.2 Powers and duties.

The Historic Preservation Board shall have the following powers and duties:

- (a) Recommend to the Planning Board and City Commission, the designation of historic buildings, structures, improvements, landscape features, public interiors, and historic sites or districts.
- (c) Prepare and recommend for adoption specific guidelines for each designated site or district to be used to evaluate the appropriateness and compatibility of proposed alteration or development within designated historic sites or historic districts.
- (c) Issue or deny certificates of appropriateness, certificates to dig and certificates of appropriateness for demolition in accordance with procedures specified in this division, excluding certificates of appropriateness for demolition for city-owned buildings and other improvements as hereinafter specified on city-owned property and public rights-of-way, and property owned by the Miami Beach Redevelopment Agency, for which properties the historic preservation board shall serve as advisor to the city commission. This authority shall include review and approval of design and location within public rights-of-way inside of locally designated historic districts of all wireless communications facilities as defined in chapter 104 of General Ordinances, "Telecommunications," article I, "Communications rights-of-way" under the standards provided therein, at subsection 118-104-6(t).
- (d) Recommend restoration of property to its prior condition as required by section 2.13.4 when the property has been altered in violation of this division.
- (e) To authorize, upon application, such variance from the terms of these land development regulations, where authorized by section 2.8.1, pursuant to the

requirements in chapter 2 of these land development regulations, as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of a provision of these land development regulations would result in an unnecessary and undue hardship.

- (f) Facilitate the redevelopment of historic sites and districts by directing the planning department, and other city departments, to provide advisory and technical assistance to property owners, applicants for certificates of appropriateness.
- (g) Make and prescribe by-laws and application procedures that are reasonably necessary and appropriate for the proper administration and enforcement of the provisions of this division. The board shall prescribe forms for use by applicants when requesting action under this division. The board may authorize any one of its members to administer oaths and to certify official documents.
- (h) Award historic markers or plaques upon the recommendation of the city manager and with the consent of the City Commission.
- (i) Update and revise the historic properties database.
- (j) Advocate that the city administration explores and advises the historic preservation board and the building official as to alternatives available for stabilizing and preserving inadequately maintained or unsafe buildings or structures within the city's designated historic districts or on designated historic sites.
- (k) Review all new construction, alterations, modifications and improvements to any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district.
- (l) To review and recommend to the city commission any and all amendments to these land development regulations affecting historic preservation issues; specifically, section 2.1.4 entitled "historic preservation board," and section 2.13 entitled "historic preservation." The review and recommendation process by the historic preservation shall follow the procedures in section 2.4.1(e).
- (m) Serve as the city's floodplain management board for applications concerning properties within its jurisdiction, and shall have the authority to exercise all powers and perform all duties assigned to such board pursuant to section 54-31, et seq., Resolution No. 93-20698, and in accordance with the procedures set forth therein as such ordinance and resolution may be amended from time to time. For the purposes of determining jurisdiction, the criteria in section 2.8.1, for a variance shall be utilized.

2.1.4.3 Membership and appointment.

- (a) The Historic Preservation Board shall be composed of the following seven members, appointed with the concurrence of at least four members of the City Commission:
 - (1) A representative from the Miami Design Preservation League (MDPL), selected from three names nominated by such organization.
 - (2) A representative from Dade Heritage Trust (DHT), selected from three names nominated by such organization.
 - (3) Two at-large members, who have resided in one of the city's historic districts for at least one year, and who have demonstrated interest and knowledge in architectural or urban design and the preservation of historic buildings.
 - (4) An architect registered in the State of Florida with practical experience in the rehabilitation of historic structures.
 - (5) One of the following:

- (i) A licensed professional engineer, licensed professional architect, or licensed professional landscape architect with expertise in water resources;
 - (ii) A person licensed by the State of Florida in hydrology, water or wastewater treatment;
 - (iii) A person with a degree from an accredited college or university in a field of study related to water resources; or
 - (iv) A floodplain manager or a principal community administrator responsible for the daily implementation of flood loss reduction activities including enforcing a community's flood damage prevention ordinance, updating flood maps, plans, and policies of the community, and any of the activities related to administration of the National Flood Insurance Program (NFIP) (a "water management expert"), each of the foregoing with professional experience and demonstrated interest in historic preservation.
- (6) A member of the faculty of a school of architecture in the State of Florida, with academic expertise in the field of design and historic preservation or the history of architecture, with a preference for an individual with practical experience in architecture and the preservation of historic structures.
- (b) All members of the board except the architect, university faculty member, and water management expert shall be residents of the city; provided, however, that the City Commission may waive the residency requirement (if applicable) by a 5/7ths vote, in the event a person not meeting the residency requirements is available to serve on the board and is exceptionally qualified by training or experience in historic preservation matters. All appointments shall be made on the basis of civic pride, integrity, experience and interest in the field of historic preservation.
- (c) Eligibility
An eligibility list solicited from, but not limited to, the organizations listed below may be considered by the City Commission in selecting board members:
 - (1) American Institute of Architects, local chapter.
 - (2) Miami Design Preservation League.
 - (3) Miami Beach Chamber of Commerce.
 - (4) Miami Beach Development Corporation.
 - (5) Dade Heritage Trust.
 - (6) Florida Engineer Society, local chapter.
 - (7) Any other organization deemed appropriate by the city commission.

2.1.4.4 Procedures

In addition to all procedures otherwise authorized or required by these land development regulations, the following shall apply to the Historic Preservation Board:

- (a) The planning department shall provide the necessary staff to assist the board in the performance of its duties.
- (b) The planning director or designee shall attend all meetings of the board and serve as a liaison between the board, the city administration, organizations interested in historic preservation and the general public.

2.1.5. Board of Adjustment

2.1.5.1 Powers and Duties

The board of adjustment shall have the following powers and duties:

- (a) To hear and decide appeals pursuant to the procedural requirements of Section 2.9.
- (b) To authorize, upon application, such variance from the terms of these land development regulations where authorized by section 2.8.1, pursuant to the requirements of chapter 2 of these land development regulations, as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of a provision of these land development regulations would result in unnecessary and undue hardship.
- (c) To serve as the city's floodplain management board in reviewing applications for properties within its jurisdiction and shall have the authority to exercise all powers and perform all duties assigned to such board pursuant to section 54-31 et seq. and Resolution No. 93-20698, and in accordance with the procedures set forth therein as such ordinance and resolution may be amended from time to time. For the purposes of determining jurisdiction, the criteria in section 2.8.1 shall be utilized.

2.1.5.2 Membership

The Board of Adjustment shall be composed of seven voting members. Two members shall be appointed as citizens at-large and five members shall be appointed from each of the following categories (no more than one per category), namely: Law, architecture, engineering, real estate development, certified public accounting, financial consultation and general business. The members representing the professions of law, architecture, engineering and public accounting shall be duly licensed by the State of Florida; the member representing general business shall be of responsible standing in the community; the member representing the field of financial consultation shall be a certified public accountant, chartered financial analyst, certified financial planner, a chartered financial consultant or investment advisor registered with the Securities and Exchange Commission, or someone recognized as having similar credentials and duly licensed by the State of Florida. Members shall be appointed by a five-sevenths vote of the City Commission. Members of the board must be either residents of or have their principal place of business in the city.

Article II. General Development Application and Hearing Procedures

2.2 Purpose.

This article sets forth the general procedures that apply to the review of applications for development approval under these land development regulations. Additional or modified procedures may apply as described for particular development applications in these land development regulations.

2.2.1. Preapplication conference.

- (a) The purposes of a pre-application conference are to provide an opportunity for the applicant to determine the submittal requirements and the procedures and standards applicable to an anticipated application for a development approval or permit; and to allow the planning director and staff to become familiar with, and offer the applicant preliminary courtesy comments about the scope, features, and impacts of the proposed development, as it relates to these land development regulations.

- (b) A pre-application conference is required between the planning director and a potential applicant for applications to include, but not limited to, a comprehensive plan future land use plan amendment, rezoning, land development regulation text amendment, or conditional use application, before an application is filed. The director is authorized in his sole discretion to require a pre-application for other applications and to determine which other city staff shall attend the pre-application conference. The director, in his sole discretion, may waive the requirement for a pre-application conference.
 - (1) The applicant shall request the pre-application conference in writing, and the conference shall be held at a time agreed by the applicant and director.
 - (2) At least 7 business days before a pre-application conference is held, the potential applicant shall submit to the planning director a narrative describing the general nature and scope of the development proposed, a conceptual plan of the proposed development (if appropriate), evidence of authorization to file an application, and any other information requested by the director.
 - (3) At the conference, the city staff may seek any needed clarification from the applicant regarding the proposed application, and identify any concerns, problems, or other factors the applicant should consider regarding the proposed application.
 - (4) Matters discussed at the pre-application conference are a courtesy, for clarification purposes and sharing information, and shall not bind the city staff to any recommendation.

2.2.2 Development Application Submission and Review

2.2.2.1 Authority to Submit

Except where a comprehensive plan amendment, zoning text amendment or zoning map amendment is initiated by the city, all development applications shall be submitted by the owner(s) of the land upon which the development is proposed, or the owner(s) authorized agent. The owner(s) shall submit with its application an owner affidavit on a form provided by the city, and an authorized agent shall submit a power of attorney affidavit on a form provided by the city. If the property that is the subject of the application is owned or leased by a corporation, partnership or limited liability company, the applicant shall list all owners and the percentage of ownership held by each. An applicant for property owned or leased by a trust shall disclose the trustees and beneficiaries of the trust, and the percentage of interest held by each. The intent of this section is to require the identity or entities having the ultimate ownership interest in the property that is subject to the application.

2.2.2.2 Required Application Content and Forms

A development application shall be submitted on the forms provided by the city planning department. For all applications, the following information shall be required, in addition to any other information required by these land development regulations or the planning director.

- (a) Legal description and a certified land survey of the proposed site boundaries. The survey shall be performed in accordance with Florida Administrative Code, and dated within one year proceeding the filing date of the application, providing such survey reflects all current conditions of the subject property.
- (b) Proof of authority to submit the application.
- (c) Any information required for notice of a hearing before a land use board or the city commission, as applicable.
- (d) Proof of any pending code enforcement action or municipal liens on the property.

- (e) Payment of required fees and charges.

2.2.2.3 Site Plans

Where these land development regulations require the submittal of site plans, such site plans shall contain all of the information required by applicable laws and ordinances governing the approval of subdivisions and, in addition, shall show the following:

- (a) The proposed title of the project and the name of the engineer, architect, or landscape architect, and the developer.
- (b) The northpoint, scale, and date.
- (c) Existing zoning and zoning district boundaries.
- (d) The boundaries of the property involved, all existing easements, section lines, and property lines, existing streets, buildings waterways, watercourses, or lakes, and other existing physical features in or adjoining the project.
- (e) The location and sizes of sanitary and storm sewers, water mains, culverts, and other underground structures in or near the project.
- (f) Proposed changes in zoning, if any.
- (g) The location, dimensions, and character of construction of proposed streets, alleys, driveways, curb cuts, entrances and exits, loading areas (including numbers of parking and loading spaces), outdoor lighting systems, storm drainage and sanitary facilities.
- (h) The location and dimensions of proposed lots, setback lines, and easements, and proposed reservations for parks, playgrounds, open spaces, and other common areas.
- (i) Location with respect to each other and to lot lines of all proposed buildings and structures, or major excavations, accessory and main.
- (j) Preliminary plans and elevations of the building or buildings, as may be necessary.
- (k) Location, height, and material of all fences, walls, screen planting, and landscaping.
- (l) Location, character, size, and height and orientation of proposed signs, if any.
- (m) A tabulation of the total number of apartment units of various types in the project and the overall project density in square feet of lot area per apartment unit, gross or net as required by district regulations.

The planning director may establish additional requirements for site plans, and in special cases, may waive a particular requirement if, in his opinion, the requirement is not essential to a proper decision on the project.

2.2.2.4 Unified Development Site

- (a) Where development is proposed on a site that consists of a unified development site, the application shall be accompanied by either a unity of title or covenant in lieu of unity of title, as applicable. A "unified development site" is a site where a development is proposed and consists of multiple lots, all lots touching and not separated by a lot under different ownership, or a public right-of-way. A unified development site does not include any lots separated by a public right-of-way or any non-adjacent, non-contiguous parcels. Additionally, the following shall apply to any unified development site:
 - (1) All lots need not be in the same zoning district; however: the allowable floor area ratio (FAR) shall be limited to the maximum FAR for each zoning district, inclusive of bonus FAR.
 - (2) Lots not located in the same zoning districts may be joined together to create a unified development site, and be permitted to aggregate the allowable floor

area ratio, provided the entire unified development site, including each separate zoning district, has the same maximum FAR, inclusive of bonus FAR. The instrument creating the unified development site shall clearly delineate both the maximum FAR, inclusive of bonus FAR, and total square footage permitted.

- (3) In the event a future change in zoning district classification modifies the maximum floor area ratio (FAR), inclusive of bonus FAR, for a district within a unified development site, the maximum floor area square footage recorded for the unified development site shall not be exceeded.
- (4) The maximum FAR for a unified development site shall not exceed the aggregate maximum FAR of the multiple lots allowed by the underlying zoning districts, inclusive of bonus FAR. Within a locally designated historic district or locally designated historic site within the Ocean Terrace Overlay District, any platted lot(s) with a contributing building(s) that contain legal-nonconforming FAR and were previously separate and apart from other lots that comprise the unified development site, may retain their existing legal nonconforming FAR, provided no additional FAR is added to such platted lot(s).
- (5) Within a unified development site within the Ocean Terrace Overlay District, passageways or other connections that are in allowable FAR exception may be permitted on lots with legal nonconforming FAR.

(b) Unity of Title.

A unity of title shall be utilized when there is solely one owner of the entire unified development site. The unity of title, approved for legal form and sufficiency by the city attorney, shall run with the land and be binding upon the owner's heirs, successors, personal representatives and assigns, and upon all mortgagees or lessees and others presently or in the future having any interest in the property.

(c) Covenant in lieu of unity of title or a declaration of restrictive covenants.

A covenant in lieu of unity of title or a declaration of restrictive covenants, shall be utilized when the unified development site is owned, or is proposed for multiple ownership, including, but not limited to, a condominium form of ownership. The covenant in lieu of unity of title shall be approved for legal form and sufficiency by the city attorney. The covenant in lieu of unity of title shall run with the land and be binding upon the owner's heirs, successors, personal representatives and assigns, and upon all mortgagees and lessees and others presently or in the future having any interest in the property. The covenant shall contain the following necessary elements:

- (1) The unified development site shall be developed in substantial accordance with the approved site plan.
- (2) No modification to the site plan shall be effectuated without the written consent of the then owner(s) of the unified development site for which modification is sought.
- (3) Standards for reviewing a modification to the site plan. A modification may be requested, provided all owners within the original unified development site, or their successors, whose consent shall not be unreasonably withheld, execute the application for modification. The director of the city's planning department shall review the application and determine whether the request is for a minor or substantial modification. If the request is a minor modification, the modification may be approved administratively by the planning director. If the modification is substantial, the request will be reviewed by the applicable board, after public

hearing. This application shall be in addition to all other required approvals necessary for the modification sought.

- (i) A minor modification would not generate excessive noise or traffic; tend to create a fire or other equally or greater dangerous hazard; provoke excessive overcrowding of people; tend to provoke a nuisance; nor be incompatible with the area concerned when considering the necessity and reasonableness of the modification in relation to the present and future development of the area concerned.
 - (ii) A substantial modification would create the conditions identified above. A substantial modification may also include a request to modify the uses on the unified development site; the operation, physical condition or site plan. Substantial modifications shall be required to return to the appropriate development review board or boards for consideration of the effect on prior approvals and the affirmation, modification or release of previously issued approvals or imposed conditions.
- (4) That if the unified development site is to be developed in phases, that each phase will be developed in substantial accordance with the approved site plan.
- (5) In the event of multiple ownerships subsequent to site plan approval that each of the subsequent owners shall be bound by the terms, provisions and conditions of the covenant in lieu of unity of title. The owner shall further agree that he or she will not convey portions of the subject property to such other parties unless and until the owner and such other party or parties shall have executed and mutually delivered, in recordable form, an instrument to be known as an "easement and operating agreement" which shall include, but not be limited to:
- (i) Easements for the common area(s) of each parcel for ingress to and egress from the other parcels;
 - (ii) Easements in the common area(s) of each parcel for the passage and parking of vehicles;
 - (iii) Easements in the common area(s) of each parcel for the passage and accommodation of pedestrians;
 - (iv) Easements for access roads across the common area(s) of the unified development site to public and private roadways;
 - (v) Easements for the installation, use, operation, maintenance, repair, replacement, relocation and removal of utility facilities in appropriate areas in the unified development site;
 - (vi) Easements on each parcel within the unified development site for construction of buildings and improvements in favor of each such other parcel;
 - (vii) Easements upon each such parcel within the unified development site in favor of each adjoining parcel for the installation, use, maintenance, repair, replacement and removal of common construction improvements such as footings, supports and foundations;
 - (viii) Easements on each parcel within the unified development site for attachment of buildings;
 - (ix) Easements on each parcel within the unified development site for building overhangs and other overhangs and projections encroaching upon such parcel from the adjoining parcels such as, by way of example, marquees, canopies, lights, lighting devices, awnings, wing walls and the like;
 - (x) Appropriate reservation of rights to grant easements to utility companies;
 - (xi) Appropriate reservation of rights to road rights-of-way and curb cuts;

- (xii) Easements in favor of each such parcel within the unified development site for pedestrian and vehicular traffic over dedicated private ring roads and access roads; and
- (xiii) Appropriate agreements between the owners of the unified development site as to the obligation to maintain and repair all private roadways, parking facilities, common areas and common facilities and the like.
- (xiv) Such easement and operating agreement shall contain such other provisions with respect to the operation, maintenance and development of the property as to which the parties thereto may agree, or the director may require, all to the end that although the property may have several owners, it will be constructed, conveyed, maintained and operated in accordance with the approved site plan. The planning department shall treat the unified site as one site under these land development regulations, regardless of separate ownerships.
- (6) The provisions or portions thereof in paragraph (5) may be waived by the planning director if they are not applicable to the subject property (such as for conveyances to purchasers of individual condominium units). These provisions of the easement and operating agreement shall not be amended without prior written approval of the city attorney.
- (7) The declaration of restrictive covenants shall be in effect for a period of 30 years from the date the documents are recorded in the public records of Miami-Dade County, Florida, after which time they shall be extended automatically for successive periods of ten years unless released in writing by the then owners and the planning director, acting for and on behalf of the City of Miami Beach, Florida, upon the demonstration and affirmative finding that the same is no longer necessary to preserve and protect the property for the purposes herein intended.
- (8) Enforcement of the declaration of restrictive covenants shall be by action at law or in equity with costs and reasonable attorneys' fees to the prevailing party.

2.2.2.5 Fees for the administration of land development regulations

- (a) *Application fees, generally.* Any applicant other than the city commission, a city board or other city official applicant requesting review and approval of any land development application shall pay, upon submission, the applicable fees set forth herein. The fees set forth herein, and as outlined in appendix A, are for the purpose of defraying expenses for public notices, and administrative costs associated with processing and analyzing each request or application. These fees shall be evaluated and adjusted annually based on the consumer price index for all urban consumers (CPI-U). No application shall be considered complete until all requested information has been submitted and all applicable fees are paid. The costs associated with notices are the responsibility of the applicant. There shall be no refund or adjustment of fees. Any unpaid fees, including fees assessed for failure to appear before a board, shall become a lien against the property.
- (b) *Waiver of specified fees.* The public hearing application fee relating to any of the following alternative, sustainable systems shall be waived: a renewable energy system, sustainable roofing system, solar carport, porous pavement, or cool pavement on an existing building or parking facility. If an application for any of the aforesaid alternative, sustainable systems includes other requests pursuant to

these land development regulations, the standard public hearing application fee shall apply to those particular portions of the application. Additionally, the filing fee associated with a variances application relating to the installation of a renewable energy system, sustainable roofing system, solar carport, porous pavement, or cool pavement shall also be waived.

- (c) *Amendment to the land use regulations, zoning map, comprehensive plan, future land use map.* Any applicant requesting a public hearing on any application for an amendment pursuant to section 2.4 and subsection 2.5.1 shall pay, upon submission, all applicable fees in subsections (1) through (4) below:
 - (1) Application for public hearing (text or map amendment).
 - (2) Amendment pursuant to section 2.4 shall pay a fee for each:
 - (i) Amendment to permitted, conditional, or prohibited uses in a zoning category, or
 - (ii) Amendment to permitted, conditional, or prohibited uses in the comprehensive plan.
 - (iii) Amendment to the future land use map of the comprehensive plan (per square foot of lot area)
 - (3) Amendment pursuant to subsection 2.5.1 shall pay a fee per square foot of lot area for amendment of zoning map designation.
 - (4) Amendment pursuant to section 2.4 shall pay a fee for each:
 - (i) Amendment to the land development regulations (per section), or
 - (ii) Amendment to the comprehensive plan (per goal, policy or objective).
- (d) *Conditional use permits.* Any applicant requesting a public hearing on any application for conditional use permits, pursuant to section 2.5.2 shall pay upon submission all applicable fees in subsection (1) through (10) below:
 - (1) Application for public hearing (conditional use permit).
 - (2) Per bed fee for an adult congregate living facility.
 - (3) Application for amendment of an approved board order.
 - (4) Application for clarification of an approved board order.
 - (5) Application for extensions of time of an approved board order.
 - (6) Withdrawals and continuances. If an applicant withdraws or requests a continuance of an application prior to the date of the public hearing a fee to defray the costs of scheduling the new public hearing shall be assessed. Payment of a mail notice fee to notify the property owners of the cancellation of the original public hearing and establishment of the revised hearing date may be required.
 - (7) Deferral of public hearing. If the applicant requests a deferral of a public hearing, a fee equal to the total application fee shall be assessed. Payment of a mail notice fee to notify the property owners of the deferral of the original public hearing and establishment of the revised hearing date

shall be required. If deferment or clarification of conditions is requested by the administration or the board. There will be no additional fee.

- (8) Application for after-the-fact approval shall incur triple fees, excluding advertisement, mail, and posting fees as applicable.
 - (9) Status report.
 - (10) Progress report.
- (e) *Design review.* Any applicant requesting a public hearing on any application for design review board approval, pursuant to sections 2.5.3, shall pay, upon submission, all applicable fees in subsection (1) through (11) below:
- (1) Application for a preliminary evaluation of a project before the design review board.
 - (2) Application for public hearing (board approval).
 - (3) Application for design review approval fee per square foot of floor area.
 - (4) Application for amendment of an approved board order.
 - (5) Withdrawals and continuances. If an applicant withdraws or requests a continuance of an application prior to the date of the public hearing a fee to defray the costs of scheduling the new public hearing shall be assessed. Payment of a mail notice fee to notify the property owners of the cancellation of the original public hearing and establishment of the revised hearing date may be required.
 - (6) Deferral of public hearing. If the applicant requests a deferral of a public hearing, a fee equal to the total application fee shall be assessed. Payment of a mail notice fee to notify the property owners of the deferral of the original public hearing and establishment of the revised hearing date shall be required. If deferment or clarification of conditions is requested by the administration or the board, there will be no additional fee.
 - (7) Application for clarification of an approved board order.
 - (8) Application for extensions of time of an approved board order.
 - (9) Application for after-the-fact approval shall incur triple fees, excluding advertisement, mail, and posting fees as applicable.
 - (10) Status report.
 - (11) Progress report.
- (f) *Land/lot split.* Any applicant requesting a public hearing on any application for a lot split pursuant to section 2.5.4 shall pay, upon submission, all applicable fees in subsection (1) through (10) below:
- (1) Application for public hearing.
 - (2) Application for amendment of an approved board order.
 - (3) Withdrawals and continuances. If an applicant withdraws or requests a continuance of an application prior to the date of the public hearing a fee to defray the costs of scheduling the new public hearing shall be assessed.

Payment of a mail notice fee to notify the property owners of the cancellation of the original public hearing and establishment of the revised hearing date may be required.

- (4) Deferral of public hearing. If the applicant requests a deferral of a public hearing, a fee equal to the total application fee shall be assessed. Payment of a mail notice fee to notify the property owners of the deferral of the original public hearing and establishment of the revised hearing date shall be required. If deferment or clarification of conditions is requested by the administration or the board, there will be no additional fee.
 - (5) Application for clarification of an approved board order.
 - (6) Application for extensions of time of an approved board order.
 - (7) Application for after-the-fact approval shall incur triple fees, excluding advertisement, mail, and posting fees as applicable.
 - (9) Status report.
 - (10) Progress report.
- (g) *Variances.* Any applicant requesting a public hearing on any application pursuant to section 2.8.4 shall pay, upon submission, the applicable fees in subsection (1) through (11) below:
- (1) Application for public hearing.
 - (2) Fee per variance requested.
 - (3) Application for amendment of an approved board order.
 - (4) Withdrawals and continuances. If an applicant withdraws or requests a continuance of an application prior to the date of the public hearing a fee to defray the costs of scheduling the new public hearing shall be assessed. Payment of a mail notice fee to notify the property owners of the cancellation of the original public hearing and establishment of the revised hearing date may be required.
 - (5) Deferral of public hearing. If the applicant requests a deferral of a public hearing, a fee equal to the total application fee shall be assessed. Payment of a mail notice fee to notify the property owners of the deferral of the original public hearing and establishment of the revised hearing date shall be required. If deferment or clarification of conditions is requested by the administration or the board, there will be no additional fee.
 - (6) Application for clarification of an approved board order.
 - (7) Application for extensions of time of an approved board order.
 - (8) Application for after-the-fact approval shall incur triple fees, excluding advertisement, mail, and posting fees as applicable.
 - (9) Status report.
 - (10) Progress report.

- (11) Applicant/homeowners requesting a variance shall pay one-half of the total fee with proof of homestead or primary occupancy of the subject property from the Miami-Dade County Property Appraiser's Office. Applicant/owner shall pay 100 percent of the required notice fee.
- h) *Certificate of appropriateness.* Any applicant requesting a public hearing on any application pursuant to section 2.13, shall pay, upon submission, the applicable fees in subsection (1) through (12), below:
 - (1) Application for a preliminary evaluation of a project before the board.
 - (2) Application for public hearing.
 - (3) Application for certificate of appropriateness fee per square foot of floor area.
 - (4) Application for amendment of an approved board order.
 - (5) Withdrawals and continuances. If an applicant withdraws or requests a continuance of an application prior to the date of the public hearing a fee to defray the costs of scheduling the new public hearing shall be assessed. Payment of a mail notice fee to notify the property owners of the cancellation of the original public hearing and establishment of the revised hearing date may be required.
 - (6) Deferral of public hearing. If the applicant requests a deferral of a public hearing, a fee equal to the total application fee shall be assessed. Payment of a mail notice fee to notify the property owners of the deferral of the original public hearing and establishment of the revised hearing date shall be required. If deferment or clarification of conditions is requested by the administration or the board, there will be no additional fee.
 - (7) Application for clarification of an approved board order.
 - (8) Application for extensions of time of an approved board order.
 - (9) Application for after-the-fact approval shall incur triple fees, excluding advertisement, mail, and posting fees as applicable.
 - (10) Structural engineering reports or reviews as required.
 - (11) Status reports.
 - (12) Progress reports.
- (i) *Historic designation.* Any applicant requesting a public hearing on any application pursuant to section 2.13.9, shall pay, upon submission, the applicable fees in subsection (1) through (9) below:
 - (1) Application for public hearing.
 - (2) Applications for district designation per platted lot fee.
 - (3) Application for amendment of an approved board order.
 - (4) Withdrawals and continuances. If an applicant withdraws or requests a continuance of an application prior to the date of the public hearing a fee to defray the costs of scheduling the new public hearing shall be assessed.

Payment of a mail notice fee to notify the property owners of the cancellation of the original public hearing and establishment of the revised hearing date may be required.

- (5) Deferral of public hearing. If the applicant requests a deferral of a public hearing, a fee equal to the total application fee shall be assessed. Payment of a mail notice fee to notify the property owners of the deferral of the original public hearing and establishment of the revised hearing date shall be required. If deferment or clarification of conditions is requested by the administration or the board, there will be no additional fee.
- (6) Application for clarification of an approved board order.
- (7) Structural engineering reports or reviews as required.
- (8) Status reports.
- (9) Progress reports.

An application for the individual designation of a single-family home shall not require a fee.

- (j) *Determination of architectural significance.* Any applicant requesting a determination of architectural significance, by the planning director, pursuant to section 7.2.7.4.a, shall pay, upon submission, all applicable fees.
- (k) *Staff review and miscellaneous fees.* In the course of the administration of the land development regulations the department shall impose a fee for services and items outlined below:
 - (1) Board order recording.
 - (2) Zoning verification letters.
 - (3) Zoning interpretation letters.
 - (4) Courier.
 - (5) Research.
 - (6) Excessive review.
 - (7) Review of covenants and easements.
 - (8) Failure to appear before a board for status or progress report.
 - (9) Permits for work not identified in appendix A. If it is determined that no specific fee category directly matches a permit application request, the planning director may identify a category that closely matches the level of effort or determine what the work will be charged based on the time dedicated for plans review and inspection. The department director may require an upfront fee and a deposit to cover the estimated cost of the services to be provided.
 - (10) Modification or release of covenant or easement.
 - (11) Recording fee per page.
 - (12) Paint permit (non-online applications).

- (13) Signs (not requiring a building permit).
- (14) Submittal conversion to electronic format.

(l) *Fee in lieu of providing required parking.*

- (1) One-time fee in lieu of providing required parking.
- (2) Yearly payment fee in lieu of providing required parking.

2.2.2.6 Use of, and cost recovery for, consultants for applications for development approval.

- (a) The purpose of this section is to provide for the creation and maintenance of an approved list of qualified consultants to provide impartial expertise for preparation or review of studies and reports required for assessment of impacts of applications for development approval.
- (b) The city's procurement division shall maintain a list of approved consultants of various specialties available to prepare or review studies and reports required for applications for development approval.
- (c) This section shall apply to any application for approval by a city land use board.
- (d) Prior to the submittal of an application for development approval, the applicant shall meet with city staff to determine the types of studies or reports required for the proposed project, as well as the methodology to be followed as part of the production of the study.
 - (1) When as part of an application for development approval, an applicant is required to submit a traffic or any other technical study or report, the applicant shall prepare the required study/report using its own consultant.
 - (2) The city shall review the study/report, and shall retain a consultant from the city's approved list having the necessary expertise to perform such review. The applicant shall be responsible for all costs associated with the city's consultant review, and shall pay for the costs associated with the city's consultant review prior to proceeding to the hearing on the application by the applicable land use board.
- (e) In no event shall the city be held liable, whether to applicants or third parties, for any work or services rendered by any consultant on the city's approved list, or otherwise in connection with a consultant's preparation or review of any study or report contemplated herein.
- (f) *Expert reports and appearances.*
 - (1) All required consultant or expert studies or reports, including those requested by a land use board, shall be provided to the city in written form, supplemented with digital format when available.
 - (2) Applicant's reports or studies shall be submitted to the planning department a minimum of 60 days prior to the board or commission hearing. Rebuttal reports submitted by opponent's consultants shall be submitted to the city no less than 30 working days before the public hearing. Failure to meet these deadlines shall result in the subject report or study being deemed inadmissible for that public hearing, subject to a waiver of this inadmissibility by a five-sevenths vote of the applicable

board. No new expert testimony may be considered by the board or commission after the deadlines for submittal.

- (3) Consultants or experts submitting reports or studies for consideration at public hearings must appear at the public hearing in order to allow for questions from the board or cross-examination. This provision may be waived by a five-sevenths vote of the applicable board, authorizing the report

2.2.2.7 Completeness Determination

- (a) Upon receipt of an application, the Planning Director shall determine if the application is complete for review. The applicant must ensure that an application is accurate and complete. Any additional expenses necessitated because of inaccurate or incomplete information will be borne by the applicant. A complete application is one that:
 - (1) Contains all content required for the particular type of application in accordance with these land development regulations.
 - (2) Is in the form required for the particular type of application, as determined by the Planning Director.
 - (3) Includes information in sufficient detail to allow an evaluation of the application to determine whether it complies with the applicable review standards of these land development regulations.
 - (4) Is accompanied by the fee established for the particular type of application in accordance with Sec. 2.2.2.5 and Sec. 2.2.2.6.
- (b) *Application Incomplete.* If the Planning Director determines that the application is incomplete, the Director shall send written notice to the applicant of the application's deficiencies electronically or by mail within 30 days of receipt of the application, and review of the application shall not proceed. The applicant within 30 days may correct the deficiencies and resubmit the application for completeness determination. If the applicant fails to correct the deficiencies within 30 days, the application will be deemed to be withdrawn, unless prior to the 30 days the applicant requests an extension and the Planning Director subsequently agrees to an extension.
- (c) *Application Complete.* If the application is determined to be complete, it shall be reviewed in accordance with the applicable procedures and standards in these land development regulations. Any established time frame for review of the application shall start on the date the application is determined to be complete. The applicant and the Planning Director may agree to an extension of time if requested prior to the expiration of any time frame.
- (d) *Simultaneous Processing of Applications.* Whenever two or more forms of review and approval are required under these land development regulations, the applications for those development approvals or permits may, at the discretion of the Planning Director, be processed simultaneously, so long as all applicable City requirements are satisfied. Simultaneous processing of applications may result in additional fees to the applicant.

2.2.2.8. Review and Hearing

- (a) Upon the Planning Director's determination of completeness, the Director shall distribute the application to all appropriate City staff and departments, and other review agencies for review and comment. The Planning Director shall review the application, any relevant support material, and any comments or recommendations from the appropriate City staff and departments, and other review agencies. If deficiencies in complying with the applicable standards of these land development regulations are identified, the Planning Department authorized decision-maker shall notify the applicant of such deficiencies and provide the applicant an opportunity to remedy the deficiencies, pursuant to Section 166.033, Florida Statutes, as may be subsequently amended.
- (b) After completion of the staff review, the Planning Director shall transmit the application and staff report with recommendations to the appropriate land use board for hearing. Within 120 days after the Director has deemed the application complete, or 180 days for applications that require final action by a land use board, or the city commission, an application for development approval shall be approved, approved with conditions, or denied, unless an extension is agreed to by the applicant and appropriate city authority.
- (c) If an application is subject to a final decision by the Planning Director, following completion of authorized staff review, the Director shall provide written notice of decision to the applicant. The decision shall be made within 120 days of the determination that the application is complete, unless the applicant and the Director agree to extend the timeframe beyond 120 days. An approval, approval with conditions, or denial of the application must include written findings supporting the decision.

2.2.3. Public Hearing

2.2.3.1 Public Notification

Hearings before a land use board on an application for development approval shall be noticed to the public in accordance with the following provisions, unless otherwise more specifically provided for in these land development regulations, and the applicant shall pay a fee for such notices pursuant to section 2.2.2.5.

- (a) *Advertisement.* At least 30 days prior to the public hearing date, a description of the request, and the date, start time of the meeting and location of the hearing shall be noticed in a newspaper of general circulation.
- (b) *Mail notice.* At least 30 days prior to the public hearing date, a description of the request, and the date, start time of the meeting, and location of the hearing shall be given by mail to the owners of record of land lying within 375 feet of the property subject to the application. Applicants shall submit all information and certifications necessary to meet this requirement, as determined by the planning department. Additionally, courtesy notice shall also be given to any Florida nonprofit community organization which has requested of the Planning Director in writing to be notified of board hearings.
- (c) *Posting.* At least 30 days prior to the public hearing date, a description of the request, and the date, time, and place of such hearing shall be posted on the property. Such posting shall be a minimum dimension of 11 inches by 17 inches, and located in a visible location at the front of the property, and shall not be posted on a fence or wall that would be obstructed by the operation of a gate.

2.2.3.2. General Hearing Procedures

The planning director shall provide the applicant with advance notice of the applicable land use board hearing date and time, including a copy of the agenda and the recommendation of the planning department. At the board hearing, the applicant and interested persons shall have an opportunity to address the board in accordance with the board's adopted rules and procedures. Any development application requiring a quasi-judicial hearing, as determined by the city attorney, shall also comply at a minimum with the standards of section 2.2.3.3. In addition, the city attorney shall determine whether a request is properly before the board. Any decision must take the form of an approval, approval with conditions, or denial, and must include written findings supporting the decision. If the decision is a denial, the city shall include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the application. Any decision of denial is with prejudice unless otherwise specified by the land use board.

2.2.3.3. Quasi-Judicial Hearing Procedures

In cases that the city attorney determines that the hearing shall be conducted as a quasi-judicial hearing, the following shall apply in addition to provisions in chapter 2, article VIII of the City Code, except that the order of proceedings of this subsection shall govern the hearings.

- (a) All persons testifying before the land use board in a quasi-judicial matter must be sworn in with the following oath by any person duly authorized under the laws of the state to administer oaths:
 "I, _____, do hereby swear, under oath, that any and all testimony to be given by me in this proceeding is the truth, the whole truth and nothing but the truth, so help me God."
- (b) The applicant, members of the board and any affected person shall be given the opportunity to question or cross examine any witnesses. Each person, other than the salaried members of city staff, who addresses board shall state their name and address on the record.
- (c) Evidence.
 - (1) All evidence relied upon by reasonably prudent persons in the conduct of their business shall be admissible whether or not such evidence would be admissible in a court of law. However, immaterial or unduly repetitious evidence shall be excluded.
 - (2) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding.
 - (3) Documentary evidence may be presented in the form of a copy or the original, if available. Upon request, parties shall be given an opportunity to compare the copy with the original.
 - (4) A party shall be entitled to conduct cross-examination when testimony is provided or documents are made a part of the record.
 - (5) The office of the city attorney shall represent the board and advise as to the propriety and admissibility of evidence presented at the proceeding.
 - (6) The office of the city clerk shall retain all of the evidence and documents presented at the proceeding, except for large scale exhibits that shall be retained by the planning department, all of which become a part of the public record of the proceeding. Resumes of staff members who testify during a quasi-judicial proceeding will be automatically be entered into the record of the proceeding.

- (d) The proceedings shall be conducted in an informal manner. Each party shall have the right to call and examine witnesses; introduce exhibits; cross examine opposing witnesses on any relevant matter; and rebut evidence.
- (e) To the extent possible, the order of the proceedings shall proceed as follows;
 - (1) Call to order
 - (2) Administration of oath to persons intending to provide testimony
 - (3) Staff presentation
 - (4) Applicant presentation
 - (5) Presentation by other interested persons
 - (6) Rebuttal by applicant
 - (7) Response by staff
 - (8) Board deliberation
- (f) After each witness testifies or documents are made a part of the record, a party shall be permitted to question the witness. The questioning party is not permitted to make any statements, only to ask questions that are directly related to the testimony presented.
- (d) The board members may ask questions of the witnesses, the applicant or the staff as determined by the chairperson of the board.

2.2.3.4 Withdrawal of Application.

An application may be withdrawn by the applicant if such request is in writing and filed with the planning department prior to the public hearing, or requested during the public hearing, provided, however, that no application may be withdrawn after final action has been taken. Upon a withdrawal or final denial of an application for development approval, the same application cannot be filed within six months of the date of the withdrawal or denial unless, however, the decision of the board taking any such action is made without prejudice to refile.

2.2.3.5 Deferral or Continuance.

- (a) An applicant may defer an application before the public hearing only one time. The request to defer shall be in writing. When an application is deferred, it shall be re-noticed at the applicant's expense and the applicant shall pay a deferral fee as provided in section 2.2.2.5. In the event that the application is not presented to the land use board for approval at the meeting date for which the application was deferred, the application shall be deemed null and void. If the application is deferred by the board, the notice requirements shall be the same as for a new application as provided in section 2.2.3.1, and shall be at the city's expense.
- (b) The board may continue an application to a date certain at either the request of the applicant or at its own discretion.
- (c) In the event the application is continued due to the excessive length of an agenda or in order for the applicant to address specific concerns expressed by the land use board or staff, the applicant shall present for approval to the board a revised application inclusive of all required exhibits which attempt to address the concerns of the board or staff, for the date certain set by the board, which shall be no more than 120 days after the date on which the board continues the matter.
- (d) In the event that the applicant fails to present for approval to the board, a revised application as described above within 120 days of the date the application was continued, the application shall be deemed null and void.

- (e) Deferrals or continuances for a specific application shall not exceed one year cumulatively for all such continuances or deferrals made by the board, or the application shall be deemed null and void.

2.2.3.6 Post Decision-making

- (a) Within 14 calendar days after a final decision on an application, the Director shall provide the applicant written notice of the decision and make a copy of the decision available to the public.
- (b) Approval of an application in accordance with these land development regulations authorizes only the particular use, plan, or other specific activity approved, and not any other development requiring separate application and approval. In the event that one development approval is a prerequisite to another development approval (e.g., variance approval prior to a site plan approval), development may not take place until all required approvals or permits are obtained. Approval of one development application does not guarantee approval of any subsequent development application. A development approval automatically revokes existing development approvals of the same type for the property, unless otherwise indicated in the development approval.
- (c) *Timeframes to obtain a building permit.* The applicant shall have up to 18 months, or such lesser time as may be specified by the board, from the date of the land use board meeting at which a development application approval was issued to obtain a full building permit or a phased building permit, a certificate of occupancy, a certificate of use or a certificate of completion, whichever occurs first. The foregoing 18-month time period, or such lesser time as may be specified by the board, includes the time period during which an appeal of the decision of the board may be filed. If the applicant fails to obtain a full building permit or a phased building permit, a certificate of occupancy, a certificate of use or a certificate of completion, whichever occurs first, within 18 months, or such lesser time as may be specified by the board, of the board meeting date at which the development approval was granted or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, the development approval shall be deemed null and void. Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the land use board which approved the original development approval, at its sole discretion, provided the applicant submits a request in writing to the planning director no later than 90 calendar days after the expiration of the original approval, setting forth good cause for such an extension. At the discretion of the planning director, an applicant may have up to 30 days (not to extend beyond 30 months from the date of original approval) to complete the building permit review process and obtain a full building permit, provided that within the time provided by the board to obtain a full building permit a valid full building permit application and plans have been filed with the building department, a building permit process number has been issued and the planning department has reviewed the plans and provided initial comments.

2.2.3.7 Rehearing

The following requirements shall apply to all rehearings from a city land use board unless otherwise more specifically provided for in these land development regulations.

Applicable fees and costs shall be paid to the city as required under section 2.2.2.5 and appendix A to the City Code.

- (a) The types of land use board decisions eligible for a rehearing are as follows:
 - (1) Historic preservation board order relating to the issuance of a certificate of appropriateness, dig or demolition.
 - (2) Design review board final order relating to design review approval, only.
 - (3) Except as delineated above, rehearings are not available for any other application, or for any other land use board action without a final order. There shall only be allowed one rehearing for each final order arising from an application, although multiple persons may participate in or request the rehearing.
- (b) Eligible rehearing applications shall be filed in accordance with the process as outlined in paragraphs (1) through (4) below:
 - (1) *Timeframe to file.* A petition for rehearing shall be submitted to the planning director on or before the 15th day after the rendition of the board order. Rendition shall be the date upon which a signed written order is executed by the board's clerk.
 - (2) *Eligible parties.* Parties eligible to file an application for rehearing are limited to:
 - (i) Original applicant(s);
 - (ii) The city manager on behalf of the city administration;
 - (iii) An affected person, which for purposes of this section shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (directly or represented by counsel), and whose appearance is confirmed in the record of the board's public hearing(s) for such project;
 - (iv) Miami Design Preservation League; and
 - (v) Dade Heritage Trust.
 - (3) *Application requirements.* The application to the board shall be in a writing that contains all facts, law and argument, by or on behalf of an eligible party, and demonstrate the following:
 - (i) Newly discovered evidence which is likely to be relevant to the decision of the board, or
 - (ii) The board has overlooked or failed to consider something which renders the decision issued erroneous.
 - (4) *Notice requirements.* All land use board applications eligible to request a rehearing are subject to the same noticing requirements as an application for a public hearing, in accordance with the notice requirements of section 2.2.3.1. The rehearing applicant shall be responsible for all associated costs and fees.
- (c) *Outside counsel to the planning department.* The planning director may engage the services of an attorney, or utilize a separate, independent, attorney from the city attorney's office, for the purpose of representing the administrative officer and planning staff during the rehearing.
- (d) *Actions by the applicable land use board.* After the rehearing request is heard, the applicable land use board may take the actions outlined in subsections (1) through (4) below:
 - (1) Rehear or not rehear a case,
 - (2) If the decision is to rehear the application, the board may take additional testimony,
 - (3) Reaffirm its previous decision,

- (4) Issue a new decision, or
- (5) Reverse or modify the previous decision.
- (e) *Stay of work.* A rehearing application to the applicable land use board stays all work on the premises and all proceedings in furtherance of the board action; however, nothing herein shall prevent the issuance of building permits or partial building permits necessary to prevent imminent peril to life, health or property, as determined by the building official.
- (f) *Tolling.* The tolling provision under 2.2.3.8(f) shall apply to rehearings.

2.2.3.8 Appeal and court review of land use board decisions

- (a) Decisions of the following shall be final, and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari:
 - (1) Planning board.
 - (2) Board of adjustment.
 - (3) Design review board, with respect to variance decisions and administrative appeals, only.
 - (4) Historic preservation board, with respect to variance decisions and administrative appeals, only.
 - (5) Historic preservation special master.
- (b) Decisions from the following may be appealed as noted:
 - (1) Historic preservation board.
 - (i) Any applicant requesting an appeal of a decision on a certificate of appropriateness from the historic preservation board shall be made to the historic preservation special master, except that an order granting or denying a request for rehearing shall not be reviewed by the historic preservation special master.
 - (ii) The historic preservation special master shall meet the following requirements:
 - a. *Historic preservation special master qualifications.* Historic preservation special masters appointed to hear appeals pursuant to this subsection shall be attorneys who are members in good standing of the Florida Bar and have expertise in the area of historic preservation.
 - b. *Historic preservation special master terms.* Historic preservation special masters shall serve terms of three years, provided however, that they may be removed without cause upon a majority vote of the city commission. Compensation for historic preservation special masters shall be determined by the city commission.
 - (2) Design review board. An appeal of a decision of the design review board for design review approval only shall be made to the city commission, except that an order granting or denying a request for rehearing shall not be reviewed by the city commission.
- (c) Eligible appeals of the design review board or historic preservation board shall proceed in accordance with the process as outlined in subsections (1) through (5) below:

- (1) *Timeframe to file.* A petition for an appeal shall be submitted to city clerk on or before the 20th day after the rendition of the board order. Rendition shall be the date upon which a signed written order is executed by the board's clerk.
- (2) Eligible parties to file an application for an appeal are limited to the following:
 - (i) Original applicant(s);
 - (ii) The city manager on behalf of the city administration;
 - (iii) An affected person, which for purposes of this section shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (directly or represented by counsel) and whose appearance is confirmed in the record of the board's public hearing(s) for such project;
 - (iv) Miami Design Preservation League; and
 - (v) Dade Heritage Trust.
- (3) Application requirements:
 - (i) The appeal shall be in writing, and include all record evidence, facts, law and arguments necessary for the appeal (this appellate document shall be called the "brief"); and
 - (ii) Shall include all applicable fees, as provided in appendix A of the City Code; and
 - (iii) Shall be by or on behalf of a named appellant(s); and
 - (iv) Shall state the factual bases and legal argument in support of the appeal; and
 - (v) A full verbatim transcript of all proceedings which are the subject of the appeal shall be provided by the party filing the petition, along with a written statement identifying those specific portions of the transcript upon which the party filing it will rely for purposes of the appeal. The verbatim transcript and written statement shall be filed no later than two weeks prior to the first scheduled public hearing to consider the appeal.
- (4) *Notice requirements.* All applications for an appeal of the design review board or historic preservation board are subject to the same noticing requirements as an application for a public hearing, in accordance with notice requirements of section 2.2.3.1 The appeal applicant shall be responsible for all associated costs and fees.
- (5) *Deadlines.* Oral argument for a design review board or historic preservation board appeal shall take place within 90 days of the date the appeal is filed, unless a lack of quorum of the city commission, or the availability of the special magistrate, requires the oral argument to be continued to a later date.
 - (i) *Answer brief.* The respondent may serve an answer brief within 30 days of the City's written acceptance of the petition.
 - (ii) *Reply brief.* The petitioner may serve a reply brief within 15 days of the filing of the answer brief.
 - (iii) *Oral argument.* Oral argument shall occur within 90 days of the City's acceptance of the petition, except that oral argument may be continued to a

future date due to lack of quorum of the city commission or the unavailability of the special magistrate.

(iv) *Decision.* A decision of the city commission or special magistrate shall be rendered within 120 days of the date the appeal is filed.

These deadlines may be modified by consent of the parties to the appeal.

(d) *Decision on Appeal.* In order to reverse, amend, modify, or remand amendment, modification, or rehearing the decision of the board, the city commission (for design review board appeals), and the historic preservation special master (for historic preservation board appeals of Certificates of Appropriateness, Dig or Demolition), shall find that the board did not comply with any of the following:

- (1) Provide procedural due process;
- (2) Observe essential requirements of law; and
- (3) Base its decision upon substantial competent evidence.

The decision on the appeal shall be set forth in writing, and shall be promptly mailed to all parties to the appeal. In order to reverse, or remand, a five-sevenths vote of the city commission is required for appeals of the design review board to the city commission.

(e) *Stay of work and proceedings on appeal.* An appeal of a land use board order stays all work on the premises and all proceedings in furtherance of the action appealed from, unless one of the exceptions below applies:

(1) *Imminent peril to life or property.* A stay would cause imminent peril to life or property. In such a case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the board or by a court of competent jurisdiction, upon application for good cause shown;

(2) *Specified appeals from the planning board.* As applicable only to an appeal arising from the planning board's approval of a conditional use permit, the city may accept, for review purposes only, a building permit application during a pending circuit court proceeding on the decision. The applicant shall be required to pay all building permit fees, which fees shall be nonrefundable. Despite the foregoing, no building permit shall issue while the circuit court proceeding is pending. Should the circuit court decision be rendered in favor of the conditional use permit applicant, the applicant may proceed with construction and operations, excluding entertainment operations, pending any further proceedings on the decision at the Third District Court of Appeal or other appropriate court, so long as the following conditions are met:

- (i) The building permit may issue and shall remain active until the final resolution of all appeals to the city and all court proceedings;
- (ii) No final certificate of occupancy (CO) or certificate of completion (CC) shall be issued, and no entertainment operations or entertainment business shall commence or take place, until the final resolution of all appeals to the city and all court proceedings;
- (iii) The conditional use permit was appealed by a party other than (i) the city, or (ii) an applicant appealing a denial of a conditional use permit application;
- (iv) The property subject to the conditional use permit is located within (i) a commercial district, and (ii) a historic district;

- (v) The scope of the conditional use permit is limited to modifications to an existing structure;
- (vi) The applicant shall prior to the issuance of the building permit, either: (i) place funds in escrow, or (ii) obtain a bond, either of which must be in an amount that is at least equal to or greater than 100 percent of the value of the work proposed under the building permit;
- (vii) The applicant is not seeking the demolition of any portion of a contributing structure; and
- (viii) In the event that the conditional use permit is reversed on appeal, the applicant must immediately amend or abandon the building permit or building permit application without any liability to the city, and a certificate of completion or certificate of occupancy shall not be issued. Additionally, no business tax receipt for entertainment shall issue.

In order for a building permit to issue pursuant to this subsection (e)(2), pending any further proceedings on the decision at the Third District Court of Appeal or other court, the applicant shall be required to comply with all of the conditions in subsections (e)(2)(i) through (viii), as well as all conditions of the conditional use permit. The applicant shall also be required to execute a written agreement (in a form acceptable to the city attorney) holding the city harmless and indemnifying the city from any liability or loss resulting from the underlying proceedings before the court or appeal to the city, any civil actions relating to the application of this subsection (e)(2), and any proceedings resulting from the issuance of a building permit, and the non-issuance of a TCO, TCC, CC, CO or BTR for the property. Such written agreement shall also bind the applicant to all requirements of the conditional use permit, including all enforcement, modification, and revocation provisions; except that the applicant shall be ineligible to apply for any modifications to the conditional use permit or any other land use board order impacting the property, until the final resolution of all city appeals and court proceedings as certified by the city attorney. Additionally, the applicant must agree that in the event that the conditional use permit is reversed, the applicant shall be required to restore the property to its original condition. The city may utilize the bond to ensure compliance with the foregoing provisions.

- (3) *Other appeals from land use board decisions.* Except for appeals arising from the planning board's approval of a conditional use permit, which are governed by subsection (e)(2) above, the appeal of any land use board order for a property located outside the RS-1, RS-2, RS-3, or RS-4 single-family zoning districts, if timely and properly filed subject to the requirements of this section or the Florida Rules of Appellate Procedure (as applicable), shall stay all work on the premises and all proceedings in furtherance of the action appealed from for a period of 120 days from the date the appeal is filed or until such time as the applicant obtains a favorable ruling by the body or court with jurisdiction at the first level of appeal (whether the special magistrate, for appeals from the historic preservation board; the city commission, for appeals from the design review board; or the circuit court, for appeals of decisions on variances and appeals from other land use boards), whichever occurs first. Notwithstanding the foregoing, and only as applicable to appeals before the city commission or special magistrate, in the event that a decision is not rendered within 120 days due to a lack of quorum of the city commission or the unavailability of the special magistrate, the stay shall remain in place until such time as the appeal is ruled on by the city commission or special magistrate. The provisions of this paragraph shall not be applicable to appeals filed by the city manager or the

applicant for the land use board approval. In order to lift the automatic stay under this subsection (e)(3), an applicant shall first be required to satisfy the following requirements:

- (i) The applicant shall execute a written agreement (in a form acceptable to the city attorney) to hold harmless and indemnify the city from any claim, liability, or loss resulting from the approval of the application, the underlying appellate proceedings, the application of this subsection (e)(3), the issuance of a building permit, and/or the non-issuance of a final certificate of completion (CC) or a final certificate of occupancy (CO) for the property.
- (ii) The written agreement shall bind the applicant to all requirements of the conditions of the applicable order of the respective land use board, including all enforcement, modification, and revocation provisions; except that the applicant shall be ineligible to apply for any modifications to the board order that are subject to the appeal, until the final resolution of all administrative and court proceedings as certified by the city attorney. Notwithstanding the foregoing, an applicant shall be eligible to apply for modifications that are minor (as determined by the planning director) or that are necessary to effectuate a settlement.
- (iii) The applicant shall agree that in the event that the decision of the board is reversed, the applicant shall be required to restore the property to its previous condition, unless modifications are approved by the DRB or HPB, as applicable.
- (iv) No final certificate of occupancy (CO) or final certificate of completion (CC), shall be issued until the final resolution of the appeal (including all judicial proceedings), as determined by the city attorney.
- (f) *Tolling during all appeals.* Notwithstanding the provision of subsection 2.2.3.6(c), in the event the original decision (board order) of the applicable board, is timely appealed or brought to the circuit court, the applicant shall have 18 months, or such lesser time as may be specified by the board, from the date of final resolution of all appeals to the city or all court proceedings to obtain a full building permit, a certificate of occupancy, a certificate of use, or a certificate of completion, whichever occurs first. This tolling provision shall only be applicable to the original approval of the board and shall not apply to any subsequent requests for revisions or requests for extensions of time.

Article III. Periodic Review and Annual Zoning Cycle

- 2.3.1 *Periodic Review.* It shall be the duty of the planning board and the board of adjustment, in cooperation with the planning director and the city attorney to continuously review the provisions and the regulations in these land development regulations, including the district maps, and the comprehensive plan and from time to time, to offer recommendations to the city commission as to the sufficiency thereof, in accomplishing the development plans of the city.
- 2.3.2 *Annual Zoning Cycle.* The commission shall limit its decisions regarding amendments to these land development regulations, including amendments to the text and to rezonings, to four times per year. For each time in the annual cycle, multiple amendments may be considered at the same meeting. The commission may waive the cycle restriction in the event of an emergency, as determined by a vote of five commissioners. All amendments shall be consistent and compatible with the

comprehensive plan and shall be enacted in accordance with the provisions of this article.

Article IV. Amendments to Comprehensive Plan and to the Text of the Land Development Regulations

2.4.1. Generally.

- (a) A request to amend the comprehensive plan or to amend the text of these land development regulations may be submitted to the planning director by the city manager; city attorney; or upon an adopted motion of the city commission, planning board, board of adjustment, or historic preservation board (with regard to the designation of historic districts or sites, or matters that directly pertain to historic preservation); or by an owner(s) or developer(s) of the property which is the subject of the proposed change (hereinafter, a private applicant). Matters submitted by the city manager or city attorney shall first be referred to the planning board by the city commission for action on the referral.
- (b) An owner applicant or his representative shall file an application pursuant to sections 2.2.2.1 and 2.2.2.2 of this chapter. The city shall not be required to file an application.
- (c) Fees.
 - (1) Any owner applicant requesting a public hearing on any application pursuant to this section shall pay, upon submission, the applicable fees in section 2.2.2.5, 2.2.2.6, and appendix A to the City Code. No application shall be considered complete, nor heard by the planning board or city commission until all requested information has been submitted and all applicable fees paid.
 - (2) The fees and costs associated with an application filed pursuant to this section may be waived by a five-sevenths vote of the city commission, based upon one or more of the following circumstances:
 - (i) The city manager determines, in writing, that the proposed amendment is necessary due to a change in federal or state law, or to implement best practices in urban planning;
 - (ii) Upon written recommendation of the city manager acknowledging a documented financial hardship of a property owner(s) or developer(s); or
 - (iii) If requested, in writing, by a non-profit organization, neighborhood association, or homeowner's association for property owned by any such organization or association, so long as the request demonstrates that a public purpose is achieved by enacting the applicable amendment.
- (d) Upon receipt of a completed application, the planning director shall transmit the application, along with the planning director's analysis and recommendations regarding the proposed amendment, to the planning board for review.
- (e) Review by Planning Board
 - (1) The Planning Board shall review the following requests at a public hearing and provide the city commission with a recommendation as to whether the proposed amendment should be approved or denied. In reviewing the application, the planning board may propose an alternative ordinance on the same subject for consideration by the city commission.
 - (i) Amendment to the actual list of permitted, conditional or prohibited uses in a zoning category or categories;
 - (ii) Amendment otherwise to the text of these land development regulations; and

(iii) Amendment to the Comprehensive Plan.

(2) Notice

- (i) Notices of any public hearing regarding proposed amendments to the city's comprehensive plan shall be in accordance with the applicable requirements of chapter 163, Florida Statutes, and the public participation procedures set forth in the city's comprehensive plan as they may be amended from time to time.
- (ii) Notices of any public hearing before the Planning Board regarding an amendment to the text of these land development regulations, including an amendment to the actual list of permitted, conditional or prohibited uses in a zoning category, shall be by publication in a newspaper of general circulation in the city at least ten days prior to the hearing. The notice of the hearing shall state the date, time and place of the meeting; the title or titles of proposed ordinances; and the place or places within the city where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the hearing and be heard with respect to the proposed ordinance.

(3) Procedures

- (i) Within 60 days of receiving an application the board shall hold a public hearing. Within 30 days from the close of the public hearing the planning director shall submit a report of the board's recommendations on the proposal to the city commission.
- (ii) The following applications may be withdrawn by the owner applicant at any time before a decision of the planning board:
 - a. An application for a change in the actual list of permitted, conditional or prohibited uses in zoning categories;
 - b. An application for any other amendment to these land development regulations; or
 - c. An application for an amendment to the comprehensive plan
- (iii) If the application is withdrawn after advertisement for a public hearing, the same or a substantially similar petition covering the same property shall not be resubmitted except by an official of the city or the city commission for at least one year after the date established for the prior hearing. Filing fees shall not be refunded once the public hearing has been advertised.

(f) Review by city commission.

- (1) Within 60 days of transmission of the recommendation of the planning board to the city commission, the commission shall consider the proposed amendment at a public hearing(s) and adopt, adopt with changes, or deny the application. Notice of the public hearing(s) shall be provided as set forth in subsection 2.4.2.(d) for changes to the text of the land development regulations; and notice of the public hearing regarding proposed amendments to the city's comprehensive plan shall be in accordance with the applicable requirements of chapter 163, Florida Statutes and the public participation procedures set forth in the city's comprehensive plan as they may be amended from time to time.
- (2) The following applications may be withdrawn by the owner applicant at any time before a decision of the city commission:
 - (i) An application for a change in the actual list of permitted, conditional or prohibited uses in zoning categories;

- (ii) An application for any other amendment to these land development regulations; or
- (iii) An application for an amendment to the comprehensive plan.
- (3) If the application is withdrawn after advertisement for a public hearing, the same or a substantially similar petition covering the same property shall not be resubmitted except by an official of the city or the city commission for at least one year after the date established for the prior hearing. Filing fees shall not be refunded once the public hearing has been advertised.

2.4.2 Amendment to the text of land development regulations

- (a) *Oath.* Any person appearing before the planning board or the city commission at a public hearing in regard to an application for any amendment to these land development regulations shall be administered the following oath by any person duly authorized under the laws of the state to administer oaths:
 "I, _____, do hereby swear, under oath, that any and all testimony to be given by me in this proceeding is the truth, the whole truth and nothing but the truth, so help me God."
- (b) Any person giving false testimony before the planning board or city commission at a public hearing in regard to an application for any amendment to these land development regulations shall be subject to the maximum penalty provided by law.
- (c) *Planning Board review criteria.* In reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:
 - (1) Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.
 - (2) Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.
 - (3) Whether the change suggested is out of scale with the needs of the neighborhood or the city.
 - (4) Whether the proposed change would tax the existing load on public facilities and infrastructure.
 - (5) Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.
 - (6) Whether changed or changing conditions make the passage of the proposed change necessary.
 - (7) Whether the proposed change will adversely influence living conditions in the neighborhood.
 - (8) Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.
 - (9) Whether the proposed change will seriously reduce light and air to adjacent areas.
 - (10) Whether the proposed change will adversely affect property values in the adjacent area.
 - (11) Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.
 - (12) Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.
 - (13) Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.
 - (14) Whether the proposed change is consistent with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

(d) *Action by city commission; notice and hearings.*

- (1) In all cases in which the proposed amendment changes the actual list of permitted, conditional or prohibited uses in a zoning category or the proposed amendment involves less than ten contiguous acres, the city commission shall direct the clerk of the city to notify by mail each real property owner whose land the city will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. Provided further, notice shall be given by mail to the owners of record of land lying within 375 feet of the land, which is to be changes by the proposed permitted, conditional or prohibited use change. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of such notice shall be kept available for public inspection during the regular business hours of the office of the city clerk. The city commission shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.
- (2) In all cases in which the proposed amendment changes the actual list of permitted, conditional or prohibited uses within a zoning category regardless of the acreage of the area affected acres or more, the city commission shall provide for public notice and hearings as follows:
 - (i) The city commission shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5:00 p.m. on a weekday, unless the city commission, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least seven days after the day that the first advertisement is published. The second public hearing shall be held at least ten days after the first hearing and shall be advertised at least five days prior to the public hearing.
 - (ii) The required advertisements shall be no less than two columns wide by ten inches long in a standard size or tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the city and of general interest and readership in the city, not one of limited subject matter, pursuant chapter 50, Florida Statutes. Whenever possible, the advertisement shall appear in a newspaper that is published at least five days a week unless the only newspaper in the city is published less than five days a week. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The City of Miami Beach proposes to adopt the following ordinance: (title of ordinance)

A public hearing on the ordinance will be held on (date and time) at (meeting place).

In lieu of or in addition to publishing the advertisement set forth in subsection (2)(ii) of this section, the city may mail a notice to each person owning real property within 375 feet of the area covered by the proposed amendment and to persons owning real property within the area that is the subject of the proposed amendment. Such notice shall clearly explain the proposed ordinance and shall

notify the person of the time, place and location of both public hearings on the proposed ordinance.

- (3) When a request to amend the text of these land development regulations does not change the actual list of permitted, conditional or prohibited uses in a zoning category, the following procedures shall apply in addition to the applicable procedures in subsections (1) and (2) of this section:
 - (i) A proposed ordinance may be read by title or in full on at least two separate days and shall, at least ten days prior to adoption, be noticed once in a newspaper of general circulation in the city. The notice of proposed enactment shall state the date, time and place of the meeting; the title or titles of proposed ordinances; and the place or places within the city where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.
 - (ii) Immediately following the public hearing at the second reading, the city commission may adopt the ordinance.
- (4) An affirmative vote of five-sevenths of all members of the city commission shall be necessary in order to enact any amendment to these land development regulations.

2.4.3 Proposed land development regulation amendments; application of equitable estoppel to permits and approvals.

- (a) Amendments to these land development regulations shall be enforced against all applications or requests for project approval upon the earlier of the favorable recommendation by the planning board or the applicable effective date of the land development regulation amendment, as more particularly provided below. After submission of a completed application for a project approval, to the extent a proposed amendment to these land development regulations would, upon adoption, render the application nonconforming, then the following procedure shall apply to all applications considered by the city or any appropriate city board:

- (1) In the event the applicant:
 - (i) Obtains the following approvals: (i) a design review approval, (ii) a certificate of appropriateness, (iii) a variance approval where no design review approval or certificate of appropriateness is required, (iv) planning board approval, or (v) a full building permit as defined in chapter 1 where no design review approval, certificate of appropriateness or variance approval is required; and
 - (ii) Satisfies subsection (i) above, prior to a favorable recommendation by the planning board with respect to any land development regulation amendment that is adopted by the city commission within 150 days of the planning board's recommendation,

then the project approval shall be presumed to have received a favorable determination that equitable estoppel applies and the subject land development regulation amendment shall not be enforced against the application hereinafter, a "favorable determination", except as otherwise provided in subsection (b), below. If at any time before the expiration of the 150 days the proposed amendment fails before the city commission, then the application shall no longer be deemed nonconforming.

- (2) In the event the applicant:
 - (i) Obtains (i) a design review approval, (ii) a certificate of appropriateness, (iii) a variance approval where no design review approval or certificate of

appropriateness is required, (iv) planning board approval or (v) a full building permit as defined in chapter 1 where no design review approval, certificate of appropriateness or variance approval is required; and

- (ii) Satisfies subsection (i), above, prior to the effective date of any land development regulation amendment where there was an unfavorable recommendation by the planning board with respect to the land development regulation amendment, or when the planning board recommends favorably, but the city commission fails to adopt the amendment within the specified 150-day period,

then the application shall be presumed to have received a favorable determination and the subject land development regulation amendment shall not be enforced against such application, except as otherwise provided in subsection (b), below.

- (3) In the event an applicant does not qualify under subsections (1) or (2) of this subsection (a) for a presumption of a favorable determination to avoid enforcement of adopted amendments against an application, then the applicant may seek a determination from a court of competent jurisdiction as to whether equitable estoppel otherwise exists. If, however, an applicant fails to seek a determination from the court, or if the court has made a determination unfavorable to the applicant, and such determination is not reversed on appeal, then the city shall fully enforce the adopted land development regulation amendment(s) against the applicant's application.
- (4) Any presumption of a favorable determination under subsections (1) and (2) of this subsection (a), or any favorable determination under subsection (3) of this subsection (a), shall lapse contemporaneously with the failure, denial, expiration, withdrawal, or substantial amendment of the application, approval, or permit relative to the project or application to which the favorable determination is applied.
- (5) For purposes of this subsection (a), all references to obtaining design review approval, Planning Board approval, a certificate of appropriateness or variance approval, shall mean the meeting date at which the respective board approved such application or approved such application with conditions. For purposes of this subsection (a), "substantial amendment" shall mean an amendment or modification (or a proposed amendment or modification) to an application, approval or permit which, in the determination of the planning director, is sufficiently different from the original application or request that the amendment would require the submission of a new application/request for approval of same. All references to obtaining a building permit shall mean the date of issuance of the permit.
- (6) After submission of a completed application for a project approval, to the extent a proposed amendment to the land development regulations would, upon adoption, render the application nonconforming, then the city or any appropriate city board shall not approve, process or consider an application unless and until (i) the project has cured the nonconformity or the applicant acknowledges that the city shall fully enforce the adopted land development regulation amendment(s) against the applicant's application or project; (ii) the project qualifies under subsections (1) or (2), and subject to subsection (4), of this subsection (a), above; or (iii) a favorable determination has been made by a court. Except as otherwise provided herein, any proceeding or determination by any city employee, department, agency or board after a project becomes nonconforming shall not be deemed a waiver of the city's right to enforce any adopted land development regulation amendments.

- (b) Subsection 2.4.3(a) shall not apply to proposed amendments to these land development regulations which would designate specific properties or districts as historic. The estoppel provisions applicable to such proposed amendments are set forth in subsection 2.13.9.

2.4.4 Amendment to the Comprehensive Plan

- (a) Notices of any public hearing regarding proposed amendments to the city's comprehensive plan shall be in accordance with the applicable requirements of chapter 163, Florida Statutes and the public participation procedures set forth in the city's comprehensive plan as they may be amended from time to time.
- (b) In reviewing a request for an amendment to the comprehensive plan, the board shall consider whether the amendment meets the criteria for compliance with chapter 163, Florida Statutes.

Article V. Rezoning and Development Approvals

2.5.1 Change to zoning district boundaries (rezoning)

- (a) Procedures. Except as other provided by the general procedures of subsection 2.1 and 2.2, the following shall apply to a land development application for a change to the zoning district boundaries (rezoning) of a parcel or parcels of land.
 - (1) An application for rezoning may be submitted to the planning director by the city manager; city attorney; or upon an adopted motion of the city commission, planning board, board of adjustment, or historic preservation board (with regard to the designation of historic districts or sites, or matters that directly pertain to historic preservation); or by an owner(s) or developer(s) of the property which is the subject of the proposed change (hereinafter, a private applicant). Matters submitted by the city manager or city attorney shall first be referred to the planning board by the city commission.
 - (2) Fees for the application shall not be required for applications by the city. The fees and costs associated with an application filed pursuant to this section may be waived by a five-sevenths vote of the city commission, based upon one or more of the following circumstances:
 - (i) The city manager determines, in writing, that the proposed amendment is necessary due to a change in federal or state law, or to implement best practices in urban planning;
 - (ii) Upon written recommendation of the city manager acknowledging a documented financial hardship of a property owner(s) or developer(s); or
 - (iii) If requested, in writing, by a non-profit organization, neighborhood association, or homeowner's association for property owned by any such organization or association, so long as the request demonstrates that a public purpose is achieved by enacting the applicable amendment.
 - (3) *Review by planning board.* Before the city commission takes any action on a proposed rezoning, the planning board shall review the request and provide the city commission with a recommendation as to whether the proposed amendment should be approved or denied.
 - (i) Notice of the planning board meeting shall be by publication in a newspaper of general circulation in the city at least ten days prior to the hearing. The notice of the hearing shall state the date, time and place of the meeting; the title or titles of proposed ordinances; and the place or places within the city where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the hearing and be heard with respect to the proposed ordinance.

- (ii) In reviewing a request for a rezoning, the board shall consider the following, when applicable:
 - a. Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.
 - b. Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.
 - c. Whether the change suggested is out of scale with the needs of the neighborhood or the city.
 - d. Whether the proposed change would tax the existing load on public facilities and infrastructure.
 - e. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.
 - f. Whether changed or changing conditions make the passage of the proposed change necessary.
 - g. Whether the proposed change will adversely influence living conditions in the neighborhood.
 - h. Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.
 - i. Whether the proposed change will seriously reduce light and air to adjacent areas.
 - j. Whether the proposed change will adversely affect property values in the adjacent area.
 - k. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.
 - l. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.
 - m. Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.
 - n. Whether the proposed change is consistent with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.
 - (iii) An application for a rezoning may be withdrawn by a request from the applicant at any time before a decision of the planning board. If the application is withdrawn after advertisement for a public hearing or posting of the property, the same or a substantially similar petition covering the same property shall not be resubmitted except by an official of the city or the city commission for at least one year after the date established for the prior hearing. Filing fees shall not be refunded once the public hearing has been advertised.
 - (iv) Any person appearing before the planning board or the city commission shall be administered the oath set forth in subsection 2.4.2 (a) and shall be subject to penalty for giving false testimony as provided in 2.4.2 (b). The city attorney shall advise the planning board and the city commission as to whether the hearings should be conducted as quasi-judicial hearings.
- (4) *Review by city commission.*
- (a) Notice.

- (i) When a request to change the actual zoning map designation of a parcel or parcels of land is initiated by an applicant other than the city, the following procedures shall apply in addition to the applicable procedures in subsections (5)(a) (ii) and (iii) of this section. A proposed ordinance may be read by title or in full on at least two separate days and shall, at least ten days prior to adoption, be noticed once in a newspaper of general circulation in the city. The notice of proposed enactment shall state the date, time and place of the meeting; the title or titles of proposed ordinances; and the place or places within the city where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance. Immediately following the public hearing at the second reading, the city commission may adopt the ordinance.
- (ii) In all cases in which the rezoning is initiated by the city and involves less than ten contiguous acres, the city commission shall direct the clerk of the city to notify by mail each real property owner whose land the city will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. Provided further, notice shall be given by mail to the owners of record of land lying within 375 feet of the land, which is to be changes by the proposed rezoning. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of such notice shall be kept available for public inspection during the regular business hours of the office of the city clerk. The city commission shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.
- (iii) In all cases in which the proposed rezoning is initiated by the city and changes the zoning designation of a parcel or parcels of land involving ten acres or more, the city commission shall provide for public notice and hearings as follows:
 - a. The city commission shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5:00 p.m. on a weekday, unless the city commission, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least seven days after the day that the first advertisement is published. The second public hearing shall be held at least ten days after the first hearing and shall be advertised at least five days prior to the public hearing.
 - b. The required advertisements shall be no less than two columns wide by ten inches long in a standard size or tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the city and of general interest and readership in the city, not one of limited subject matter, pursuant chapter 50, Florida Statutes. Whenever possible, the advertisement shall appear in a newspaper that is published at least five days a week unless the only newspaper in the city is published less than five days a week. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The City of Miami Beach proposes to adopt the following ordinance: (title of ordinance)

A public hearing on the ordinance will be held on (date and time) at (meeting place).

The advertisement shall contain a geographical location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area.

In lieu of or in addition to publishing the advertisement set forth in subsection (2)(ii) of this section, the city may mail a notice to each person owning real property within 375 feet of the area covered by the proposed amendment and to persons owning real property within the area that is the subject of the proposed rezoning. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place and location of both public hearings on the proposed ordinance.

- (b) Any application for a rezoning may be withdrawn by a request in writing by the applicant at any time before a decision of the city commission, but if withdrawn after advertisement for a public hearing or after posting of the property, the same rezoning application shall not be resubmitted, except by an official of the city or the city commission, sooner than one year after the date established for the prior hearing. Filing fees shall not be refunded upon any withdrawal.
- (c) In reviewing a request for a rezoning, the city commission shall consider the criteria set out in subsection 2.5.1(a)(3)(ii).
- (d) An affirmative vote of five-sevenths of all members of the city commission shall be necessary in order to enact any rezoning.
- (e) When a proposed change in district boundaries has been acted upon by the city commission and disapproved or failed of passage, such proposed change, in the same or substantially similar form shall not be reconsidered by the city commission for a period of at least one year following the date of such action.
- (f) The application of equitable estoppel to permits and approvals shall apply in the case of a proposed rezoning under the same procedures set forth in subsection 2.4.3.

2.5.2 Conditional Use

2.5.2.1 Purpose

The purpose of this subsection is to establish a process and standards to determine if certain uses, referred to as conditional uses, should be permitted at a given location. Special review of conditional uses is required not only because these generally are of a public or semi-public character and are essential and desirable for the general convenience and welfare of the community, but also because the nature of the uses and their potential impact on neighboring properties requires the exercise of planning judgment as to location and site plan.

2.5.2.2 Standards for approval

A conditional use may be approved if planning board finds that it meets the following general and supplemental standards for approval:

- (a) General standards. The following general standards shall be met by all conditional uses.

- (1) The use shall be consistent with the comprehensive plan or neighborhood plan if one exists for the area in which the property is located.
 - (2) The intended use or construction shall not result in an impact that will exceed the thresholds for the levels of service as set forth in the comprehensive plan.
 - (3) Structures and uses associated with the request shall be consistent with these land development regulations.
 - (4) The public health, safety, morals, and general welfare shall not be adversely affected.
 - (5) Adequate off-street parking facilities will be provided.
 - (6) Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.
 - (7) The concentration of similar types of uses shall not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.
 - (8) The structure and site comply with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.
 - (9) Appropriate consideration is given to the safety of and friendliness to pedestrian traffic; passageways through alleys is encouraged where feasible and driveways shall be minimized to the extent possible.
- (b) Supplemental standards for new structures 50,000 square feet or larger.
- (1) Whether the proposed business operations plan has been provided, including hours of operation, number of employees, goals of business, and other operational characteristics pertinent to the application, and that such plan is compatible with the neighborhood in which the use is proposed to be located.
 - (2) Whether a plan for the mass delivery of merchandise has been provided, including the hours of operation for delivery trucks to come into and exit from the neighborhood and how such plan will mitigate any adverse impacts to adjoining and nearby properties, and neighborhood.
 - (3) Whether the scale of the proposed use is compatible with the urban character of the surrounding area and create adverse impacts on the surrounding area, and how the adverse impacts are proposed to be addressed.
 - (4) Whether the proposed parking plan has been provided, including where and how the parking is located, utilized, and managed, that meets the required parking and operational needs of the structure and proposed uses.
 - (5) Whether an indoor and outdoor customer circulation plan has been provided that facilitates ingress and egress to the site and structure.
 - (6) Whether a security plan for the establishment and supporting parking facility has been provided that addresses the safety of the business and its users and minimizes impacts on the neighborhood.
 - (7) Whether a traffic circulation analysis and plan has been provided that details means of ingress and egress into and out of the neighborhood, addresses the impact of projected traffic on the immediate neighborhood, traffic circulation pattern for the neighborhood, traffic flow through immediate intersections and arterials, and how these impacts are to be mitigated.
 - (8) Whether a noise attenuation plan has been provided that addresses how noise will be controlled in the loading zone, parking structures and delivery and sanitation areas, to minimize adverse impacts to adjoining and nearby properties.
 - (9) Whether a sanitation plan has been provided that addresses on-site facilities as well as off-premises issues resulting from the operation of the structure.

- 10) Whether the proximity of the proposed structure to similar size structures and to residential uses creates adverse impacts and how such impacts are mitigated.
 - (11) Whether a cumulative effect from the proposed structure with adjacent and nearby structures arises, and how such cumulative effect will be addressed.
- (c) Standards for assembly uses. In reviewing an application for an assembly use, the planning board shall apply the following review criteria instead of the standard review guidelines listed in subsection (a) above:
- (1) Whether a proposed operations plan has been provided, including hours of operation, number of employees, and other operational characteristics pertinent to the application, and that such plan will mitigate any adverse impacts to adjoining and nearby properties, and neighborhoods.
 - (2) Whether a plan for the delivery of supplies has been provided, including the hours of operation for delivery trucks to come into and exit from the neighborhood and how such plan will mitigate any adverse impacts to adjoining and nearby properties, and neighborhoods.
 - (3) Whether the design of the proposed structure is permitted by the regulations in the zoning district in which the property is located, and complies with the regulations of an overlay district, if applicable.
 - (4) Whether a proposed parking plan has been provided, including where and how the parking is located, utilized, and managed, that meets the required parking for the use in the zoning district in which the property is located.
 - (5) Whether an indoor and outdoor circulation plan for the occupants of the use has been provided that facilitates ingress and egress to the site and structure.
 - (6) Whether a security plan for the establishment and supporting parking facility, if any, has been provided that addresses the safety of the institution and its users and minimizes impacts on the neighborhood.
 - (7) Whether a traffic circulation analysis and plan has been provided that details means of ingress and egress into and out of the neighborhood, addresses the impact of projected traffic on the immediate neighborhood, traffic circulation pattern for the neighborhood, traffic flow through immediate intersections and arterials, and how these impacts are to be mitigated.
 - (8) Whether a noise attenuation plan has been provided that addresses how noise will be controlled in and around the institution, parking structures or areas, and delivery and sanitation areas, to minimize adverse impacts to adjoining and nearby properties.
 - (9) Whether a sanitation plan has been provided that addresses on-site facilities as well as off-premises issues resulting from the operation of the structure.
 - (10) Whether the proximity of the proposed structure to adjacent and nearby residential uses creates adverse impacts and how such impacts are to be mitigated.
 - (11) Whether a cumulative effect from the proposed structure with adjacent and nearby structures arises, and how such cumulative effect will be addressed.
- (d) Neighborhood Impact Establishment Standards. See section 7.5.5.4.b. of these land development regulations.

2.5.2.2 Application and review. Applications for conditional uses shall follow the applicable procedures set forth in section 2.2. Each application shall be accompanied by a site plan meeting the requirements of subsection 2.2.2.3, and such other information as may be

required for a determination of the nature of the proposed use and its effect on the comprehensive plan, the neighborhood and surrounding properties.

2.5.2.3 *Planning Board.* The planning board shall review and make a decision on the application.

- (a) Deferrals and continuances shall be allowed pursuant to subsection 2.2.3.5.
- (b) Expiration of orders of the planning board.
 - (1) The applicant shall obtain a building permit as provided by subsection 2.2.3.6.
 - (2) Timeframes in development agreements. The time period to obtain a full building permit, a certificate of occupancy, a certificate of use, or a certificate of completion set forth in subsection (b)(2) may be superseded and modified by a development agreement approved and fully executed pursuant to section 2.11 of these land development regulations, so long as the modified time period is expressly negotiated and set forth in the executed development agreement.
 - (3) An approved and operational conditional use which remains idle or unused in whole or in part for a continuous period of six months or for 18 months during any three-year period whether or not the equipment, fixtures, or structures remain, shall be required to seek re-approval of the conditional use from the board. Resumption of such use shall not be permitted unless and until the board approval has been granted.

2.5.2.4 Compliance with conditions; revocation or modification

- (a) No occupational license, certificate of use, certificate of occupancy, or certificate of completion shall be issued until all conditions of approval have been met. The establishment of a conditional use without complying with the conditions of approval shall constitute a violation of these land development regulations and shall be subject to enforcement procedures as set forth chapter 1, and as provided herein.
- (b) Within a reasonable time after a conditional use application or amendment has been approved, the applicant shall record the planning board's action and conditions in the public records of the county. No building permit, certificate of use, certificate of occupancy, certificate of completion or occupational license shall be issued until compliance with this regulation has demonstrated.
- (c) The board may revoke or modify a conditional use approval pursuant to the following procedures:
 - (1) The planning director shall notify the applicant by certified mail of the failure to comply with the conditions of the approval;
 - (2) If, after expiration of a 15-day cure period commencing on the date of the notice, the applicant fails to comply with the conditions, or the applicant has exhibited repeated or intermittent noncompliance with the conditions prior to the cure period and the planning director is concerned about further repeated or intermittent noncompliance, the planning director shall advise the board at the next meeting and the board may consider setting a public hearing for the purpose of examining the noncompliance issues;
 - (3) If the board elects to set a public hearing, the planning director shall place the matter on the board's agenda in a timely manner and all notice requirements imposed for conditional use applications as set forth in subsection 2.2.3.1 shall be applicable, with the addition of notice to the applicant; and
 - (4) The board shall hold a public hearing to consider the issue of noncompliance and the possible revocation or modification of the approval, and, based on substantial competent evidence, the board may revoke the approval, modify the conditions thereof, or impose additional or supplemental conditions.
- (d) In determining whether substantial competent evidence exists to support revocation, modification or the imposition of additional or supplemental conditions to the approval, intermittent noncompliance with the conditions, as well as the frequency, degree and adverse impact of such intermittent noncompliance, may be considered by the board.

- (e) In the event the board takes any of the enforcement actions authorized in this subsection, the applicant shall reimburse the Planning Department for all monies expended to satisfy notice requirements and to copy, prepare or distribute materials in anticipation of the public hearing. The applicant shall not be permitted to submit a new application, for related or unrelated matters, nor shall an application be accepted affecting the subject property for related or unrelated matters, for consideration by the board of adjustment, planning board, design review board, or historic preservation board, until repayment in full of all monies due and payable pursuant to the foregoing sentence.
- (f) In addition to all other enforcement actions available to the board, based upon a board finding that the applicant has failed to comply with the conditions of the approval, the board may recommend that the code compliance director (or his successor in interest with respect to the issuance of occupational licenses and certificates of use), in his discretion, revoke or suspend the certificate of use for the subject property or the applicant's occupational license applicable to the business conducted at the subject property.

2.5.2.5 Amendment of an approved conditional use.

- (a) When an applicant requests an amendment to an approved conditional use, the planning director shall first determine whether the request is a substantial or minor amendment. A minor amendment may be authorized by the planning director, but no amendment to conditions may be approved. If the planning director determines that the request is a substantial amendment, the review process shall be the same as for a new application by the board. In determining whether the request is a substantial or minor amendment, the planning director shall consider the overall impact of the change, increase or decrease in parking or floor area, landscaping and design, consistency with these land development regulations, efficient utilization of the site, circulation pattern and other pertinent facts. Any increase in lot area, parking requirements, floor area ratio, density or lot coverage shall be considered as a substantial amendment.
- (b) If the planning director determines the request is a minor amendment, the applicant may submit an application for a building permit; however, the planning director shall approve the site plan prior to the issuance of a building permit.

2.5.3 Design Review

2.5.3.1 Design review criteria

Design review encompasses the examination of architectural drawings for consistency with the criteria stated below, with regard to the aesthetics, appearance, safety, and function of any new or existing structure and physical attributes of the project in relation to the site, adjacent structures and surrounding community. The design review board and the planning department shall review plans based upon the below stated criteria, criteria listed in neighborhood plans, if applicable, and applicable design guidelines. Recommendations of the planning department may include, but not be limited to, comments from the building department and the public works department.

- (a) The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
- (b) The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
- (c) The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.

- (d) The color, design, selection of landscape materials and architectural elements of exterior building surfaces and primary public interior areas for developments requiring a building permit in areas of the city identified in section 2.5.3.2.
- (e) The proposed site plan, and the location, appearance and design of new and existing buildings and structures are in conformity with the standards of this article and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the design review board and historic preservation board and all pertinent master plans.
- (f) The proposed structure, or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties.
- (g) The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.
- (h) Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safety and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site.
- (i) Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.
- (j) Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.
- (k) Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.
- (l) The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).
- (m) The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.
- (n) The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.
- (o) An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).
- (p) All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.
- (q) The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.
- (r) In addition to the foregoing criteria, subsection 118-104-6(t) of the General Ordinances shall apply to the design review board's review of any proposal to place, construct,

modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.

- (s) The structure and site comply with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

2.5.3.2. *Applicability.* The design criteria in subsection 2.5.3.1 shall apply to all applications involving demolition, new building construction, alteration, rehabilitation, renovation, restoration or any other physical modification of any building, structure, improvement, landscape feature, public interior or site, except as otherwise exempted by this section.

- (a) The following shall be exempt from design review criteria, provided no new construction or additions to existing buildings are required. Notwithstanding, the design review board shall provide advisory review to the city commission per paragraph (b) below.

- (1) All permits for plumbing, heating, air conditioning, elevators, fire alarms and extinguishing equipment, and all other mechanical and electrical equipment when such work is entirely within the interior of the building, excluding public interior areas and interior areas that face a street or sidewalk; however, the planning director may approve such building permit applications for minor work on the exterior of buildings.
- (2) Any permit necessary for the compliance with a lawful order of the building official, fire marshal or public works director related to the immediate public health or safety.
- (3) All single-family dwellings, with the exception of exterior surface color samples and finishes, and the review and approval of all new single-family home construction in accordance with subsection 142-105(d)(7). However, all building permits for new construction, alterations or additions to existing structures shall be subject to compliance with section 7.2.2.3, and all demolition permits must be signed by the planning director, or designee.
- (4) All properties located within designated historic districts and designated historic sites.

- (b) *Advisory review.* The design review board shall be required to review certain specified city neighborhood projects, stormwater pump stations, and related apparatus (which are otherwise exempt from design review, in a non-binding, advisory capacity, and provide written recommendations on such projects to the city commission, subject to the following regulations:

- (1) *City projects subject to advisory review.* The scope of the design review board's advisory review pursuant to this subsection 2.5.3.2(b), shall be limited to the following projects:
 - a. Stormwater pump stations and related apparatus;
 - b. The location and screening of above-ground infrastructure;
 - c. The design of new street lighting;
 - d. The above-ground design of non-standard materials for newly constructed sidewalks, streets and crosswalks;
 - e. The above-ground design of new roadway medians, traffic circles, and plazas;
 - f. Protected bike lanes;
 - g. Roadway elevations in excess of six inches above the existing crown of road;
 - h. Pedestrian bridges; and
 - i. Master neighborhood improvement plans which involve and integrate any of the above elements.
- (2) *Exceptions.* Advisory review pursuant to this subsection (b) shall not be required for:
 - a. Emergency work.

- b. Crosswalk projects that address compliance with the Americans with Disabilities Act and Florida Accessibility Code.
 - c. Lighting improvements for public safety purposes.
 - d. Routine maintenance and utility repair work.
 - e. Projects for which a notice to proceed with construction has been issued on or before September 30, 2020.
- (3) *Timeframe for review.* The design review board shall review the project and provide an advisory recommendation within 35 days of the first design review board meeting at which the project is reviewed. Any recommendations of the design review board shall be transmitted to the city commission via letter to commission. Notwithstanding the foregoing, the requirement set forth in this paragraph shall be deemed to have been satisfied in the event that the design review board fails, for any reason whatsoever, to review a project or provide a recommendation to the city commission within the 35-day period following the first meeting at which the project is reviewed.
- (4) *Substantial changes.* If the design of a project should change substantially, as determined by the planning director, after it has been reviewed by the design review board, the board shall be required to review the changes to the design.
- (5) *Waiver.* Upon a written recommendation of the city manager, the city commission may, by majority vote, waive the advisory review required pursuant to this subsection 2.5.2.3.(b), if the city commission finds such waiver to be in the best interest of the city.
- (6) *Notice.* The advisory review by the design review board shall be noticed by publication in a newspaper of general circulation at least 15 days in advance of the meeting. Additionally, for stormwater pump stations and related apparatus, notice shall be posted on the land subject to the application, and mailed to owners of record of land lying within 375 feet of the land pursuant to section 2.2.3.1.

2.5.3.3 Administrative design review

- (a) The planning director shall have the authority to approve, approve with conditions, or deny an application on behalf of the board, for the following:
- (1) Ground level additions to existing structures, not to exceed two stories in height, which are not substantially visible from the public right-of-way, any waterfront or public park. For those lots which are greater than 10,000 square feet, the floor area of the proposed addition may not exceed ten percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 5,000 square feet.
 - (2) Replacement of windows, doors, storefront frames and windows, or the approval of awnings, canopies, exterior surface colors, storm shutters and signs.
 - (3) Façade and building alterations, renovations and restorations which are minor in nature.
 - (4) Modifications to storefronts or façade alterations in commercial zoning districts that support indoor/outdoor uses, which are compatible with the architecture of the building, except for vehicular drive-through facilities. Such modifications may include the installation of operable window and entry systems such as pass-through windows, take-out counters, sliding or folding panel doors, french doors, or partially-transparent overhead-door systems. Applications submitted pursuant to this subsection (4) shall comply with the following regulations:
 - (i) The property shall not be located within 300 feet of any residential zoning district, measured following a straight line from the proposed operable storefront of the commercial establishment to the nearest point of the property designated as RS, RM, RMPS, RPS, RO or TH on the city's zoning district map; and
 - (ii) The extent of demolition and alterations to the façade of the building shall not permanently alter the character of the building's architecture by

removing original architectural features that cannot be easily replaced, or by compromising the integrity of the architectural design.

Should the proposed storefront modification not comply with any of the above regulations, the proposed modifications to storefronts or facade alterations shall require design review board review and approval.

- (5) Modifications to storefronts or facade alterations utilizing an exterior component within the storefront or facade, which are compatible with the architecture of the building (including, without limitation, the installation of walk-up teller systems and similar 24/7 ATM-style pickup openings, dry-cleaning drop-off and pick-up kiosks, and similar self service facilities; but excluding vehicular drive-through facilities). Any new openings shall be architecturally compatible with the building and minimally sized to facilitate the transfer of goods and services.
 - (6) Minor demolition and alterations to address accessibility, life safety, mechanical and other applicable code requirements.
 - (7) Minor demolition and alterations to rear and secondary facades to accommodate utilities, refuse disposal and storage.
 - (8) Minor work associated with the public interiors of buildings and those interior portions of commercial structures which front a street or sidewalk.
 - (9) Minor work involving public improvements upon public rights-of-way and easements.
 - (10) Minor work which is associated with rehabilitations and additions to existing buildings, or the construction, repair, or rehabilitation of new or existing walls, at-grade parking lots, fences.
 - (11) Applications related to exterior balcony, terrace, porch and stairway rails on existing buildings, which have become nonconforming as it pertains to applicable Florida State Codes, and which have been issued a violation by an agency or city department responsible for the enforcement of Florida Statutes associated with life safety codes. Modifications required to address compliance with applicable state life safety codes shall be consistent with the original design character of the existing rails, and may include the introduction of secondary materials such as fabric mesh, solid panels and glass panels.
- (b) The director's decision shall be based upon the criteria in subsection 2.5.3.1. The applicant may appeal a decision of the planning director pursuant to the procedural requirements of Article IX "Administrative Appeals".

2.5.3.4 Application for design review

- (a) Applications for design review shall follow the applicable procedures set forth in section 2.2, in addition to the requirements of this subsection 2.5.3.4. The planning department shall be responsible for the overall coordination and administration of the design review process with other relevant city departments.
- (b) Preliminary informational guidance. In the event the applicant seeks a preliminary evaluation of a project from the board for information and guidance purposes only, an application for preliminary evaluation shall be required. The planning director shall determine the supplemental documents and exhibits necessary and appropriate to complete an application for a preliminary evaluation; the required supplemental documents and exhibits shall serve to describe and illustrate the project proposed in the application in a manner sufficient to enable the board to provide general comments, feedback, information and guidance with respect to the application. Preliminary evaluations by the board shall be for informational purposes only; a preliminary evaluation by the board shall not constitute a binding approval, nor shall any comments, feedback, information or guidance provided by the board be binding upon the board during subsequent review of the preliminary application or a related final application. The board may provide a general comment, feedback, information and guidance during the initial hearing on the application for preliminary evaluations, and

may continue discussion on a preliminary evaluation to subsequent meetings in order for the applicant to better address any specific concerns raised by the board or staff, or may elect to terminate the preliminary evaluation process after providing general comments. All preliminary evaluations shall be subject to the noticing requirements for public hearings provided in section 2.2.3.1. Preliminary evaluations shall not constitute a design review approval, and therefore an applicant acquires no equitable estoppel rights or protections of any kind, type or nature based upon the filing or review of the preliminary evaluation application. The board will not issue an order either approving or denying a project or take any formal action on preliminary evaluation application. Preliminary evaluations shall not entitle applicants to any of the benefits accorded to applicants who have received design review approval, inclusive of appeals or rehearings. Except as used in this section, the use of the phrase "application" throughout this article refers to a completed application for approval and not to a preliminary evaluation application.

- (c) In addition to the application requirements of subsection 2.2, the application shall include such information and attached exhibits as the board and the planning director determine are needed to allow for complete evaluation of the proposed demolition, construction and other physical improvements, alterations or modifications including, but not limited to, the following:
 - (1) Written description of proposed action with details of application request.
 - (2) Survey (original signed and sealed) dated less than six months old at the time of application (lot area shall be provided by surveyor), identifying grade (if not sidewalk, provide a letter from Public Works, establishing grade), spot elevations and Elevation Certificate.
 - (3) All applicable zoning information.
 - (4) Complete site plan.
 - (5) Materials containing detailed data as to architectural elevations and plans showing proposed changes and existing conditions to be preserved.
 - (6) Preliminary plans showing new construction in cases of demolition.
 - (7) All available data and historic documentation regarding the building, site or features, if required.
 - (8) For a commercial and mixed-use projects over 5,000 gross square feet and multi-family projects with more than four units or 15,000 gross square feet, and those applications that propose an increase in floor area to such commercial, mixed use and multi-family projects, the application shall include a transportation analysis and mitigation plan, prepared by a professional traffic engineer, licensed and registered in the State of Florida. The analysis and plan shall at a minimum provide the following:
 - (i) Details on the impact of projected traffic on the adjacent corridors, intersections, and areas to be determined by the city.
 - (ii) Strategies to mitigate the impact of the proposed development on the adjacent transportation network, to the maximum extent feasible, in a manner consistent with the adopted transportation master plan and adopted mode share goals.
 - (iii) Whenever possible, driveways shall be minimized and use common access points to reduce potential turn movements and conflict points with pedestrians.
 - (iv) Applicable treatments may include, without limitation, transportation demand management strategies included in the transportation element of the comprehensive plan.

2.5.3.5 Design Review Board

- (a) The design review board shall consider applications pursuant to the procedures of section 2.2 and those provided in this subsection. The board may require such changes in the plans and specifications, and conditions, as in its judgment may be requisite and appropriate to the maintenance of a high standard of architecture, as established by the standards contained in these land development regulations and as specified in the city's comprehensive plan and other specific plans adopted by the city of pertaining to the areas identified in subsection 2.5.3.2(b).
- (b) The applicant may withdraw its application pursuant to subsection 2.2.3.4 or defer or continue its application pursuant to subsection 2.2.3.5. In the event there is a lack of a quorum, all pending or remaining matters shall be continued to the next available meeting of the board.
- (c) A phased development permit shall apply to multiple building/structure development only and shall include all plans for each phase of the project as submitted, required and approved by the design review board. The applicant shall request the board approve a phased development at the public hearing and the board shall specify a reasonable time limit within which the phases shall begin or be completed or both. The board shall require a progress report from the applicant at the completion of each phase. A phased development permit shall not be a demolition, electrical, foundation, mechanical or plumbing permit or any other partial permit.
- (d) In granting design review approval, the design review board may prescribe appropriate conditions and safeguards either as part of a written order or on approved plans. Violation of such conditions and safeguards, when made a part of the terms under which the design review approval is granted, shall be deemed a violation of these land development regulations.
- (e) Upon approval of an application by the board, plans shall be submitted to the planning director in the format required by the planning director. Two sets of plans shall be returned to the applicant who may then submit an application for a building permit. The remaining approved plans shall be part of the board's official record and shall be maintained on file with the planning department.
- (f) Should a question arise as to compliance with the conditions as outlined by the design review board, a clarification hearing before the design review board may be called at the request of the planning director, or by the applicant.

2.5.3.6 Building permit application

- (a) The applicant or his authorized agent shall make application for a building permit, in the format required by the planning director.
- (b) No building permit, certificate of occupancy, certificate of completion, or occupational license shall be issued unless all of the plans, including amendments, notes, revisions, or modifications, have been approved by the planning director. Minor modifications, as determined by the director, to plans that have been approved by the board may be approved by the planning director. A minor modification shall not include expansion of a building, including volume, floor area ratio, and height, unless otherwise authorized by the board order.
- (c) No building permit or phased development permit shall be issued for any plan subject to design review except in conformity with the approved plans.

2.5.4 Division of Land/Lot Split

2.5.4.1 Approval for lot split required

- (a) In order to maintain open space and neighborhood character, wherever there may exist a main permitted structure and any accessory/auxiliary building or structure including,

but not limited to, swimming pools, tennis courts, walls, fences, or any other improvement that was heretofore constructed on property containing one or more platted lots or portions thereof, such lots shall thereafter constitute only one building site and no permit shall be issued for the construction of more than one main permitted structure on the site unless the site is approved for the division or lot split by the planning board.

- (b) No lot(s), plot(s) or parcel(s) of land, whether improved or unimproved or building site, as defined herein, designated by number, letter or other description in a plat of a subdivision, shall be further divided or split, for the purpose, whether immediate or future, of transfer of ownership or development, without prior review and approval by the planning board. Lots shall be divided in such a manner that all of the resulting lots are in compliance with the regulations of these land development regulations. All lot lines resulting from the division of a lot shall be straight lines and consistent with the configuration of the adjoining lots.
- (c) If a main permitted structure is demolished or removed therefrom, whether voluntarily, involuntarily, by destruction or disaster, no permit shall be issued for construction of more than one main permitted structure on the building site unless the site is approved for the division or lot split by the planning board.

2.5.4.2 *Review criteria.* In reviewing an application for the division of lot and lot split, the planning board shall apply the following criteria:

- (a) Whether the lots that would be created are divided in such a manner that they are in compliance with the regulations of these land development regulations.
- (b) Whether the building site that would be created would be equal to or larger than the majority of the existing building sites, or the most common existing lot size, and of the same character as the surrounding area.
- (c) Whether the scale of any proposed new construction is compatible with the as-built character of the surrounding area, or creates adverse impacts on the surrounding area; and if so, how the adverse impacts will be mitigated. To determine whether this criterion is satisfied, the applicant shall submit massing and scale studies reflecting structures and uses that would be permitted under the land development regulations as a result of the proposed lot split, even if the applicant presently has no specific plans for construction.
- (d) Whether the building site that would be created would result in existing structures becoming nonconforming as they relate to setbacks and other applicable regulations of these land development regulations, and how the resulting nonconformities will be mitigated.
- (e) Whether the building site that would be created would be free of encroachments from abutting buildable sites.
- (f) Whether the proposed lot split adversely affects architecturally significant or historic homes, and if so, how the adverse effects will be mitigated. The board shall have the authority to require the full or partial retention of structures constructed prior to 1942 and determined by the planning director or designee to be architecturally significant under subsection 7.2.7.4.a,
- (g) The structure and site comply with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

2.5.4.3 Procedure for approval

- (a) In addition to the requirements of section 2.2., all applicants shall provide as part of the application process copies of all deed restrictions, reservations or covenants applicable to the building site, lot, plot or parcel of land being considered for division or split, and an opinion of title that, as of a date not more than 120 days before the planning board's decision upon the application, none of such matters prevent or serve as exceptions to the division or split requested. No variance from this requirement shall be allowed.

- (b) In granting a division of land/lot split, the planning board may prescribe appropriate conditions and safeguards, including, but not limited to, a condition restricting the size of new structures to be built on the resulting lots, based upon the application's satisfaction of and consistency with the criteria in subsection 2.5.4.2, and the board's authority under subsection 2.1.2.1. Violation of such conditions and safeguards, when made a part of the terms under which the division of land/lot split is granted, shall be deemed a violation of these land development regulations.

2.5.4.4 Revocation procedures. The board may revoke or modify a lot split approval pursuant to the following procedures:

- (a) The planning director shall notify the applicant by certified mail of the failure to comply with the conditions of the approval;
- (b) If, after expiration of a 15-day cure period (commencing on the date of the notice), the applicant fails to comply with the conditions, or the applicant has exhibited repeated or intermittent noncompliance with the conditions prior to the cure period and the planning director is concerned about further repeated or intermittent noncompliance, the planning director shall advise the board at the next meeting and the board may consider setting a public hearing for the purpose of examining the noncompliance issues;
- (c) If the board elects to set a public hearing, the planning director shall place the matter on the board's agenda in a timely manner and all notice requirements imposed for lot split applications as set forth in subsection 2.2.3 shall be applicable, with the addition of notice to the applicant;
- (d) The board shall hold a public hearing to consider the issue of noncompliance and the possible revocation or modification of the approval, and, based on substantial competent evidence, the board may revoke the approval, modify the conditions thereof, or impose additional or supplemental conditions.
- (e) All other provisions applicable to revocation procedures for conditional uses as set forth in subsection 2.5.2.4 also shall be applicable to revocation procedures pursuant to this section.

Article VI. Certificates of Occupancy and Certificates of Use

2.6.1. Certificates of occupancy

- (a) No building or structure, or part thereof, or premises, which are hereafter erected or altered, or changed in occupancy, or land upon which a new or different use is established, shall be occupied or used until a certificate of occupancy shall have been applied for and issued by the city building department.
- (b) Certificates of occupancy shall not be issued until the premises have been inspected and found to comply with all requirements of the City Code and of these land development regulations, and with the requirements of all other agencies having regulatory authority over the project. All applications for certificates of compliance shall provide proof of compliance from all applicable county, state and federal regulatory agencies.
- (c) A record of all certificates of occupancy issued hereunder shall be kept on file in the office of the building official

2.6.2 Certificates of Use

- (a) No new building or premises or part thereof, except one-family and two-family residences, shall be occupied until a certificate of use is issued by the city. Certificates of use shall not be issued until the premises have been inspected and found to comply with all requirements of this Code.
 - (1) Apartment buildings, hotels and other multiple residential occupancies containing three or more units and occupied by only residential tenants shall require one certificate of use. Where these occupancies contain commercial activities in

- addition to residential tenants. an additional certificate of use for each commercial activity contained in the building shall be required.
- (2) Industrial. office and commercial buildings being occupied by a single tenant shall require one certificate of use. If an industrial. office or commercial building contains more than one tenant. an additional certificate of use shall be required for each unit occupied therein.
 - (b) A record of all certificates of use issued hereunder shall be kept on file in the department of planning.
 - (c) Board of adjustment review. Denial of a certificate of use for lack of proper zoning shall be appealable to the board of adjustment pursuant to Article IX "Administrative Appeals". All appeals must be submitted to the board of adjustment within 15 days of the date of the denial.

Article VII. Commission Warrant

- 2.7.1 The commission may grant a warrant from the application of these land development regulations to a specific development project, where the warrant improves the design of the project but does not (i) increase its floor area ratio or density from that allowed by these land development regulations; (ii) allow a use not otherwise allowed by these land development regulation; or (iii) modify by more than 25 percent the building bulk requirements of the land development regulations.
- (a) The warrant shall be granted by ordinance, and the procedure for granting a warrant shall require all of the following:
 - (1) A review and recommendation by the planning board in accordance with the process for an amendment to the land development regulations or rezoning;
 - (2) A public hearing by the commission, in accordance with the process for a rezoning that amends the zoning map boundaries;
 - (3) An approval by the design review board or historic preservation board, as applicable, according to the adopted design review guidelines of the land development regulations, which approval shall be conditioned on the subsequent approval of the application by the commission; and
 - (4) A second public hearing by the commission after the design review board or historic preservation board approval, as applicable.
 - (b) In reviewing an application for a commission warrant, the commission shall consider the following criteria:
 - (1) Whether the proposed warrant is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.
 - (2) Whether the proposed warrant would create an isolated development unrelated to the adjacent neighborhood.
 - (3) Whether the proposed warrant is out of scale with the needs of the neighborhood or the city.
 - (4) Whether the proposed warrant will adversely influence living conditions in the neighborhood.
 - (5) Whether the proposed warrant will seriously reduce light and air to adjacent areas.
 - (6) Whether the proposed warrant is consistent with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

Article VIII. Variances

2.8.1 Determination of jurisdiction

- (a) The board of adjustment shall retain jurisdiction to approve variances, except that variances associated with an application that is approved by either the design review board or the historic preservation board shall be reviewed by the respective board.
- (b) All variance requests shall be submitted to the city attorney for a determination of whether the requested variance or administrative appeal is properly before the board of adjustment, design review board, or historic preservation board, and whether it constitutes a change or amendment to these land development regulations. The jurisdiction of each board shall not attach unless and until the board has before it a written opinion from the city attorney that the subject matter of the request is properly before the board. The written recommendations of the planning director shall be before the board prior to its consideration of any matter before it. Comments from other departments, including, but not limited to, the public works department and the planning department, if any, shall be incorporated into these recommendations.

2.8.2. Prohibited variances

- (a) Under no circumstances shall a land use board grant a variance to permit a use not permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of these land development regulations. No nonconforming use of neighboring lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance.
- (b) An application for a variance for the following items is prohibited: Floor area ratio, required parking (except as provided for in these land development regulations), a request pertaining to the reduction of an impact fee, lot area when determining floor area ratios, maximum number of stories, or any maximum building height variance greater than three feet. Notwithstanding the foregoing:
 - (1) In historic districts a variance for maximum floor area ratio and parking credits for nonconforming buildings may be approved; and
 - (2) For purposes of effectuating a lot split for a site (i) within an historic district, and (ii) upon which there are two or more contributing buildings, variances for the limited purpose of achieving compliance with these land development regulations with respect to existing floor area ratio shall be permitted. A lot split contemplated in this subsection shall not be approved unless and until:
 - (i) The resulting lots each contain a contributing building;
 - (ii) Each contributing building has previously received certificates of appropriateness approval from the historic preservation board, for the proposed comprehensive restoration of the buildings and related work;
 - (iii) The applicant provides a payment and performance bond, in form approved by the city attorney's office, for the proposed comprehensive restoration and all other work contemplated in said board approvals; and
 - (iv) A binding covenant, enforceable against all successors in interest which shall run with the land, shall be recorded in the public records declaring and confirming that the floor area ratio of each of the resulting lots shall never exceed the lesser of (A) the floor area ratio as of the date of approval of the lot split, or (B) the floor area ratio permitted under the Code, as amended from time to time, as of the issuance date of a full building permit for any new construction on the lot.
- (c) A variance for hotels of more than 20 percent of the total amount of required parking is prohibited. Notwithstanding, should the board grant a variance pursuant to subsection 5.2.4.1.a (Table, Convention), the parking impact fee program shall not be required.
- (d) No variance may be approved from the requirements of chapter 6 of the General Ordinances.

2.8.3 Variance Criteria

- (a) Hardship criteria. Unless permitted as listed in subsection 2.8.3(b) as a practical difficulty variance, the following findings must be made by the land use board in order to authorize any variance from the terms of these land development regulations and section 6-4 and 6-41(a) and (b) of the General Ordinances:
 - (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
 - (2) The special conditions and circumstances do not result from the action of the applicant;
 - (3) Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;
 - (4) Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;
 - (5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
 - (6) The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;
 - (7) The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan; and
 - (8) The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.
- (b) Practical difficulty variance. *Reserved*

2.8.4 Application and hearing.

- (a) An application for a variance and the board hearing shall follow the procedures of subsection 2.2. The planning director may require applicants to submit documentation to support the finding that the variance criteria are met prior to the scheduling of a public hearing or any time prior to the board voting on the applicant's request.
- (b) In granting a variance, the board may prescribe appropriate conditions and safeguards. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these land development regulations.

2.8.5 Building Permit.

- (a) In the event the decision of the board, with respect to the original variance request, is timely appealed, the applicant shall have 18 months, or such lesser time as may be specified by the board, from the date of final resolution of all administrative or court proceedings to obtain a full building permit. This tolling provision shall only be applicable to the original approval of the board and shall not apply to any subsequent requests for revisions or requests for extensions of time.
- (b) Timeframes in development agreements. The time period to obtain a full building permit set forth in subsection 2.2.3.6 or this subsection 2.8.5(a) may be superseded and modified by a development agreement approved and fully executed pursuant to section 2.11 of these land development regulations, so long as the modified time period is expressly negotiated and set forth in the executed development agreement.
- (c) A building permit shall not be issued until the applicant records the final order against the property in the public records of the county.

2.8.6 Revocation or modification of variance

- (a) The applicable board may revoke or modify a variance pursuant to the following procedures:
 - (1) The planning director shall notify the applicant by certified mail of the failure to comply with the conditions of the variance.
 - (2) If, after expiration of a 15-day cure period (commencing on the date of the notice), the applicant fails to comply with the conditions, or the applicant has exhibited repeated or intermittent noncompliance with the conditions prior to the cure period and the planning director is concerned about further repeated or intermittent noncompliance, the planning director shall advise the board at the next meeting and the board may consider setting a public hearing for the purpose of examining the noncompliance issues.
 - (3) If the board elects to set a public hearing, the planning director shall place the matter on the board's agenda in a timely manner and all notice requirements imposed for variance applications as set forth in section 2.2.3.1 shall be applicable, with the addition of notice to the applicant.
 - (4) The applicable board shall hold a public hearing to consider the issue of noncompliance and the possible revocation or modification of the variance and, based on substantial competent evidence, the board may revoke the variance, modify the conditions thereof, or impose additional or supplemental conditions.
- (b) In determining whether substantial competent evidence exist to support revocation, modification or the imposition of additional or supplemental conditions to the variance, intermittent noncompliance with the conditions, as well as the frequency, degree and adverse impact of such intermittent noncompliance, may be considered by the board.
- (c) In the event the board takes any of the enforcement actions authorized in this subsection, the applicant shall reimburse the planning department for all monies expended to satisfy notice requirements and to copy, prepare or distribute materials in anticipation of the public hearing. The applicant shall not be permitted to submit a new application (for related or unrelated matters), nor shall an application be accepted affecting the subject property (for related or unrelated matters), for consideration by the board of adjustment, planning board, design review board, or historic preservation board, or the design review/historic preservation board until repayment in full of all monies due and payable pursuant to this subsection (c).
- (d) In addition to all other enforcement actions available to the board, based upon a board finding that the applicant has failed to comply with the conditions of the variance, the board may recommend that the city manager or designee, in his discretion, revoke or suspend the certificate of use for the subject property or the applicant's occupational license applicable to the business conducted at the subject property.

Article IX. Administrative Appeals

2.9.1 Board of Adjustment authority

The board of adjustment shall have the exclusive authority to hear and decide all administrative appeals when it is alleged that there is error in any written planning order, requirement, decision, or determination made by the planning director in the enforcement of these land development regulations.

2.9.2 Procedures for appeal

- (a) The planning director's decision shall be published on the city's website within 30 days of the written decision, and remain on the city's website for at least 30 days. An eligible party, as defined in (b) below, shall have 30 days, from posting on the web page to appeal the administrative determination.
- (b) Eligible parties to an appeal are limited to the following:
 - (1) Original applicant for the administrative determination, with permission of the property owner.

- (2) Except for administrative appeals pursuant to subsections 2.5.3.4, "Administrative design review," 2.12.7, "Repair or rehabilitation of nonconforming buildings and uses," 2.13.10(j), "Completion of work" and 7.2.7.4.a, "Provisions for the demolition of single-family homes located outside of historic districts", the following:
 - (i) The city manager on behalf of the city administration,
 - (ii) An affected person, which for purposes of this section shall mean a person owning property within 375 feet of the site or application which is the subject of the administrative appeal;
 - (iii) Miami Design Preservation League; or
 - (iv) Dade Heritage Trust.
- (c) Application for appeal.
 - (1) The application shall be in writing and shall set forth the factual, technical, architectural, historic and legal bases for the appeal.
 - (2) The party filing the appeal shall be responsible for providing all plans and exhibits, subject to planning department procedures, as well as the duplication of all pertinent plans and exhibits.
 - (3) All administrative appeal applications are subject to the same noticing requirements as an application for a public hearing, in accordance with subsection 2.2.3.1. The hearing applicant shall be responsible for all associated costs and fees.
 - (4) The planning director may engage the services of an attorney, or utilize a separate, independent, attorney from the city attorney's office, for the purpose of representing the planning director who made the decision that is the subject of the appeal.
- (d) Board of Adjustment hearing
 - (1) The party appealing the administrative decision bears burden of going forward with evidence and of persuasion at the board of adjustment administrative appeal proceeding. In the appeal, the planning director's determination is presumed to be correct.
 - (2) The hearing shall be conducted as a quasi-judicial hearing pursuant to subsection 2.2.3.3.
 - (3) The board of adjustment may, upon appeal, reverse or affirm, wholly or partly, the order, requirement, decision, or determination. The concurring vote of five members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of the planning director or to decide in favor of the applicant on any matter upon which the board of adjustment is required to pass under these land development regulations.
- (e) Stay of work and proceedings on appeal. No permit shall be issued for work prior to expiration of the appeal period or final disposition of any appeal. An administrative appeal to the board of adjustment stays all work on the premises and all proceedings in furtherance of the action appealed from, unless one of the exceptions below applies:
 - (1) The planning director shall certify to the board of adjustment that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such a case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the board or by a court of competent jurisdiction, upon application, with notice to the officer from whom the appeal is taken and for good cause shown; or
 - (2) Associated land use board hearings may proceed to a final order, provided, however,
 - (i) no building permit, or certificate of occupancy, or business tax receipt, dependent upon such hearing approval, shall be issued until the final resolution of all administrative and court proceedings as certified by the city attorney; and
 - (ii) the applicant for such land use board hearing shall hold the city harmless and agree to indemnify the city from any liability or loss resulting from such proceedings.

Article X. Public Benefit Bonuses. *Reserved*

Article XI. Development Agreement

- 2.11.1 The city commission may enter into a development agreement with any person within the city's jurisdiction if:
- (a) The development agreement meets all of the requirements of the Florida Local Government Development Agreement Act, Section 163.3220 et seq., Florida Statutes, as may be amended from time to time, including but not limited to notice requirements for public hearings; and
 - (b) Such agreement shall have been considered by the city commission after two public hearings. At the option of the city commission, one of the public hearings may be held by the city planning board and approved by the city commission after the city commission holds a second public hearing.
- 2.11.2 Commencing on January 1, 2019, a development agreement approved and fully executed pursuant to this section may extend the expiration date for a city land use board order beyond the time periods set out in subsection 2.2.3.6. In such cases, the expiration date set forth in the approved and executed development agreement shall control over and supersede any earlier expiration date set forth in any city land use board order.

Article XII. Nonconformities

- 2.12.1 Purpose; applicability.
- (a) Nothing contained in this section 2.12 shall be deemed or construed to prohibit the continuation of a legally established nonconforming use, structure, or occupancy, as those terms are defined in these land development regulations. The intent of this section 2.12 is to encourage nonconformities to ultimately be brought into compliance with current regulations. This section shall govern in the event of conflicts with other regulations of this Code pertaining to legally established nonconforming uses, structures, and occupancies.
 - (b) The term "nonconformity" shall refer to a use, building, or lot that does not comply with the regulations of these land development regulations. Only legally established nonconformities shall have rights under this section.
 - (c) For purposes of this section, the term "expansion" shall mean an addition, enlargement, extension, or modification to a structure that results in an increase in the square footage of the structure, an increase in the occupancy as determined by the fire department, or an increase in the number of seats.
 - (d) For the purpose of this section, "legally established" shall apply to the following circumstances:
 - (1) A lot that does not meet the lot frontage, lot width, lot depth, or lot area requirements of the current zoning district, provided that such lot met the regulations in effect at the time of platting.
 - (2) A site or improvement that is rendered nonconforming through the lawful use of eminent domain, an order of a court of competent jurisdiction, or the voluntary dedication of property.
 - (3) An existing use which conformed to the code at the time the use was established.
 - (4) A building, use or site improvement that had received final approval through a public hearing pursuant to these land development regulations or through administrative site plan review and had a valid building permit.

2.12.2 Determination of nonconforming use or building.

- (a) The planning director shall make a determination as to the existence of a nonconforming use or building and in so doing may make use of affidavits and investigation in addition to the data presented on the city's building card, occupational license or any other official record of the city.
- (b) The question as to whether a nonconforming use or building exists shall be a question of fact and in case of doubt or challenge raised to the determination made by the planning director, the question shall be decided by appeal to the board of adjustment pursuant to the requirements of subsection 2.9. In making the determination the board may require certain improvements that are necessary to ensure that the nonconforming use or building will not have a negative impact on the neighborhood.
- (c) The casual, intermittent, temporary, or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use and the existence of nonconforming use on a part of a lot or tract shall not be sufficient to establish a nonconforming use on the entire lot or tract.

2.12.3. Conditional Uses

A use approved as a conditional use pursuant to subsection 2.5.2 of these land development regulations shall be considered a conforming use as long as the conditions of the approval are met.

2.12.4. Nonconforming signs

Nonconforming signs shall be repaired or removed as provided in chapter 6 of these land development regulations. No permits for additional signs shall be issued for any premises on which there are any nonconforming signs

2.12.5 Nonconforming use of buildings

- (a) Except as otherwise provided in these land development regulations, the lawful use of a building existing at the effective date of these land development regulations may be continued, although such use does not conform to the provisions hereof. Whenever a nonconforming use has been changed to a conforming use, the former nonconforming use shall not be permitted at a later date. A nonconforming use shall not be permitted to change to any use other than one permitted in the zoning district in which the use is located.
- (b) A nonconforming use of a building shall not be permitted to extend throughout other parts of that building.
- (c) For specific regulations for nonconforming uses related to medical cannabis treatment centers and pharmacy stores, see section 7.5.5.8.c.iv. Notwithstanding the provisions of this section 2.12, and notwithstanding the provisions of section 7.5.5.8.c, a nonconforming pharmacy store or medical cannabis treatment center may be relocated within the same building, provided that the relocated pharmacy store or medical cannabis treatment center does not exceed 2,000 square feet in size. Such relocated pharmacy store or medical cannabis treatment center shall be exempt from the minimum distance separation requirements of section 7.5.5.8.c.ii.4 or 5. respectively, of these land development regulations.

2.12.6 Discontinuance of nonconforming uses.

- (a) A nonconforming use may not be enlarged, extended, intensified, or changed, except for a change to a use permitted in the district in which the property is located.
- (b) If there is an intentional and voluntary abandonment of a nonconforming use for a period of more than 183 consecutive days, or if a nonconforming use is changed to a

conforming use, said use shall lose its nonconforming status. Thereafter, subsequent occupancy and use of the land, building, or structure shall conform to the regulations of the districts in which the property is located and any structural alterations necessary to make the structure or building conform to the regulations of the district in which the property is located shall be required. An intentional and voluntary abandonment of use includes, but is not limited to, vacancy of the building or structure in which the nonconforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such nonconforming use.

- (c) The planning director shall evaluate the evidence of an intentional and voluntary abandonment of a nonconforming use and determine the status of the nonconforming use. In order for a nonconforming use to retain a nonconforming status, the evidence, collectively, shall at a minimum demonstrate at least one of the following:
 - (1) Continual operation of the use;
 - (2) Continual possession of any necessary and valid state and local permits, building permits, licenses, or active/pending application(s) for approval related to prolonging the existence of the use.
- (d) Evidence of an intentional and voluntary abandonment of a nonconforming use may include, but shall not be limited to:
 - (1) Public records, including those available through applicable City of Miami Beach, Miami-Dade County, and State of Florida agencies;
 - (2) Utility records, including water/sewer accounts, solid waste accounts, and electrical service accounts; or
 - (3) Property records, including executed lease or sales contracts.

2.12.7 Repair or rehabilitation of nonconforming uses.

If a building which contains a nonconforming use is repaired or rehabilitated at a cost exceeding 50 percent of the value of the building, as determined by the building official, it shall not be thereafter used except in conformity with the use regulations in the applicable zoning district contained in these land development regulations and all rights as a nonconforming use are terminated. The foregoing regulations shall not apply to any building or structure located on city-owned property or rights-of-way, or property owned by the Miami Beach Redevelopment Agency. For nonconforming surface parking lots, see Section 5.2.9.

2.12.8 Repair or rehabilitation of nonconforming buildings

(a) *Up to and including 50% value of building.* Nonconforming buildings which are repaired or rehabilitated by up to and including 50 percent of the value of the building as determined by the building official shall be subject to the following conditions:

- (1) The building shall have previously been issued a certificate of use, certificate of completion, certificate of occupancy or occupational license by the city to reflect its current use.
- (2) Such repairs or rehabilitation shall meet the requirements of the city property maintenance standards, the applicable Florida Building Code, and the Fire Safety Code.
- (3) If located within a locally designated historic district or an historic site, the repairs or rehabilitations shall comply substantially with the Secretary of Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures, as amended, as well as the certificate of appropriateness criteria in section 2.13 of these land development regulations. If the repair or rehabilitation

of a contributing structure conflicts with any of these regulations, the property owner shall seek relief from the applicable building or fire safety code.

- (4) Any new construction shall comply with the existing development regulations in the zoning district in which the property is located, provided, however, that open private balconies, including projecting balconies and balconies supported by columns, not to exceed a depth of 30 feet from an existing building wall, may be permitted as a height exception. The addition of balconies may be permitted up to the height of the highest habitable floor for a building non-conforming in height, provided such balconies meet applicable floor area ratio and setback regulations. Any addition of a balcony in a nonconforming building shall be subject to the review and approval of the design review board or historic preservation board, as may be applicable.
- (b) *More than 50% of the value of building.* Nonconforming buildings which are repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official, shall be subject to the following conditions:
- (1) All residential and hotel units shall meet the minimum and average unit size requirements for rehabilitated buildings as set forth in the zoning district in which the property is located.
 - (2) The entire building and any new construction shall meet all requirements of the city property maintenance standards, the applicable Florida Building Code and the Life Safety Code.
 - (3) The entire building and any new construction shall comply with the current development regulations in the zoning district in which the property is located. No new floor area may be added if the floor area ratio is presently at maximum or exceeded.
 - (4) Development regulations for buildings located within a designated historic district or for an historic site:
 - (i) The existing structure's floor area, height, setbacks and any existing parking credits may remain, if the following portions of the building remain substantially intact, and are retained, preserved and restored:
 - a. At least 75 percent of the front and street side walls, exclusive of window openings;
 - b. For structures that are set back two or more feet from interior side property lines, at least 66 percent of the remaining interior side walls, exclusive of window openings; and
 - c. All architecturally significant public interiors.
 - (ii) For the replication or restoration of contributing buildings, but not for noncontributing buildings, the historic preservation board may, at its discretion, waive the requirements of subsection 2.12.8(b)(4)(i) above, and allow for the retention of the existing structure's floor area, height, setbacks or parking credits, if at least one of the following criteria is satisfied, as determined by the historic preservation board:
 - a. The structure is architecturally significant in terms of design, scale, or massing;

- b. The structure embodies a distinctive style that is unique to Miami Beach or the historic district in which it is located;
- c. The structure is associated with the life or events of significant persons in the city;
- d. The structure represents the outstanding work of a master designer, architect or builder who contributed to our historical, aesthetic or architectural heritage;
- e. The structure has yielded or is likely to yield information important in prehistory or history; or
- f. The structure is listed in the National Register of Historic Places.

Notwithstanding the above, for buildings over three stories in height, at least 75 percent of the front facade and 75 percent of any architecturally significant portions of the street side facades shall be retained and preserved, in order to retain any nonconforming floor area, height, setbacks or parking credits. If the historic preservation board does not waive the requirements of subsection 2.12.8(b)(4)(i) above for any reason, including the inability of a reconstructed building to meet the requirements of the applicable building code, any new structure shall be required to meet all current development regulations for the zoning district in which the property is located.

- (iii) The building shall comply substantially with the secretary of interior standards for rehabilitation and guidelines for rehabilitating historic structures, as amended, as well as the certificate of appropriateness criteria in section 2.13 of these land development regulations.
 - (iv) If the repair or rehabilitation of a contributing structure or historic site conflicts with any of the requirements (as amended) in the applicable Florida Building Code or the Life Safety Code, the property owner shall seek relief from such code.
 - (v) Regardless of its classification on the Miami Beach Historic Properties database, a building may be re-classified as contributing by the historic preservation board if it meets the relevant criteria set forth in the City Code.
 - (vi) Contributing structures shall be subject to all requirements in section 2.13.1(c) of these land development regulations.
 - (vii) Existing non-contributing structures in a designated historic district or site shall be subject to the sustainability and resiliency requirements for new construction in chapter 7, article I.
- (5) Development regulations for buildings not located within a locally designated historic district and not an historic site.
- (i) Buildings constructed prior to 1965 and determined to be architecturally significant by the planning director, or designee, may retain the existing floor area ratio, height, setbacks and parking credits, if the following portions of the building remain substantially intact and are retained, preserved and restored:

- a. At least 75 percent of the front and street side facades, exclusive of window openings;
 - b. At least 50 percent of all upper level floor plates; and
 - c. At least 50 percent of the interior side walls, exclusive of window openings.
- (ii) For buildings satisfying the above criteria, the parking impact fee program may be utilized, provided that all repairs and rehabilitations, and any new additions or new construction is approved by the design review board.
- (iii) Buildings constructed prior to 1965 and determined to be architecturally significant by the planning director, or designee, shall comply with the sustainability and resiliency requirements for new construction in chapter 7, article I; however, the sustainability fee for such buildings shall be valued at three percent of the total construction valuation of the building permit.
- (iv) Buildings construction in 1965 or thereafter, and buildings construction prior to 1965 and determined by the planning director, or designee not to be architecturally significant, shall be subject to the sustainability and resiliency requirements for new construction in chapter 7, article I.
- (v) For purposes of this subsection, the planning director shall make a determination as to whether a building is architecturally significant according to the following criteria:
 - a. The subject structure is characteristic of a specific architectural style constructed in the city prior to 1965, including, but not limited to, vernacular, Mediterranean revival, art deco, streamline modern, post-war modern, or variations thereof;
 - b. The exterior of the structure is recognizable as an example of its style or period, and its architectural design integrity has not been modified in an irreversible manner; and
 - c. Exterior architectural characteristics, features, or details of the subject structure remain intact.

A property owner may appeal any determination of the planning director relative to the architectural significance of a building constructed prior to 1965 to the board of adjustment, in accordance with the requirements and procedures of subsection 2.2.3.8.
- (vi) Buildings constructed in 1965 or thereafter, and buildings constructed prior to 1965 and determined by the planning director, or designee not to be architecturally significant, shall be subject to the regulations set forth in subsection 2.12.8(b) (1)-(3) herein.
- (6) Any new construction identified in subsections (4) and (5), above, shall comply with the existing development regulations in the zoning district in which the property is located, provided, however, that open private balconies, including projecting balconies and balconies supported by columns, not to exceed a depth of 30 feet from an existing building wall, may be permitted as a height exception. The addition of the highest habitable floor for a building

nonconforming in height, provided such balconies meet applicable floor area ratio and setback regulations. Any addition of a balcony in a nonconforming building shall be subject to the review and approval of the design review board or historic preservation board, as may be applicable.

(c) Exceptions

- (1) The regulations of this subsection 2.12.8 shall not apply to any building or structure located on city-owned property or rights-of-way, or property owned by the Miami Beach Redevelopment Agency.
- (2) Unless superseded by the provisions in section 7.2.2, single-family homes shall be treated the same as other buildings, in determining when an existing structures lot coverage, height and setbacks may remain.
- (3) *Single-family districts.* Notwithstanding the provisions of this subsection 2.12.7, the following provisions shall apply to existing single-family structures in single-family districts:
 - (i) Existing single-family structures that are nonconforming as to the provisions of sections 7.2.2.3.b may be repaired, renovated, or rehabilitated, regardless of the cost of such repair, renovation, or rehabilitation, notwithstanding the provisions of this article. Should such an existing structure constructed prior to October 1, 1971, be completely destroyed due to fire, casualty, or other catastrophic event, through no fault of the owner, such structure may be reconstructed regardless of the applicable requirements in section 7.2.2.3 that are in effect at the time of the destruction of the structure.
 - (ii) Existing garages, carports, pergolas, cabanas, gazebos, guest/servant quarters, decks, swimming pools, spas, tennis courts, sheds, and similar accessory structures may be rebuilt consistent with existing non-conforming setbacks, unit size, and lot coverage, at a higher elevation, in accordance with the following provisions:
 - a. The yard elevation of the property shall be raised to a minimum of adjusted grade;
 - b. The structure shall be re-built in the same location as originally constructed; provided that the re-built structure has no less than a four-foot setback from all property lines; and
 - c. The structure shall be rebuilt to be harmonious with the primary structure.
- (4) Notwithstanding the foregoing, in the event of a catastrophic event, including, but not limited to, fire, tornado, tropical storm, hurricane, or other act of God, which results in the complete demolition of a building or damage to a building that exceeds 50 percent of the value of the building as determined by the building official, such building may be reconstructed, repaired or rehabilitated, and the structure's floor area, height, setbacks and any existing parking credits may remain, if the conditions set forth in subsection 2.12.8 (a)(1)—(4) herein are met.
- (5) Gasoline service stations.

- (i) Notwithstanding the provisions of this subsection 2.12.8, a nonconforming gasoline service station that provides a generator or other suitable equipment that will keep the station operational, and which has been damaged, repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official pursuant to the standards set forth in the Florida Building Code may be repaired or rehabilitated, if the following conditions are met:
 - a. The entire building and any new addition shall meet all requirements of the city property maintenance standards, the applicable Florida Building Code and the Life Safety Code.
 - b. The entire building and any new addition shall comply with the current development regulations in the zoning district in which the property is located, including, but not limited to all landscape requirements. New monument-style signs shall be required. Pole signs shall be prohibited.
 - c. No new floor area may be added if the floor area ratio is presently at maximum or exceeded.
- (ii) Necessary repairs to add an emergency electrical generator and related facilities to a nonconforming gasoline service station shall be permitted.
- (iii) A nonconforming gasoline service station that provides a generator or other suitable equipment that will keep the station operational, may add new floor area (other than floor area strictly necessary to house an emergency electrical generator and related facilities), or convert existing floor area or land, to add new accessory uses, such as a convenience sales area or a car wash, subject to conditional use approval, notwithstanding the nonconforming status of the gasoline service station.

2.12.9 Building nonconforming in height, density, parking, floor area ratio or bulk.

Except as provided in this section 2.12, a nonconforming building shall not be altered or extended, unless such alteration or extension decreases the degree of nonconformity but in no instance shall the floor area requirements of any unit which is being altered or extended be less than the required floor area set forth in the applicable zoning district.

Article XIII. Historic Preservation

2.13.1 Generally

(a) Intent.

It is hereby declared by the city commission that the preservation and conservation of properties of historical, architectural and archeological merit in the city is a public policy of the city and is in the interest of the city's future prosperity.

(b) Purpose.

The general purpose of these regulations is to protect and encourage the revitalization of sites and districts within the city having special historic, architectural or archeological value to the public. This general purpose is reflected in the following specific goals:

- (1) The identification of historic sites and districts;
- (2) The protection of such historic sites and districts to combat urban blight, promote tourism, foster civic pride, and maintain physical evidence of the city's heritage;

- (3) The encouragement and promotion of restoration, preservation, rehabilitation and reuse of historic sites and districts by providing technical assistance, investment incentives, and facilitating the development review process;
 - (4) The promotion of excellence in urban design by assuring the compatibility of restored, rehabilitated or replaced structures within designated historic districts; and
 - (5) The protection of all existing buildings and structures in the city's designated historic districts or on designated historic sites from unlawful demolition, demolition by neglect and the failure of property owners to maintain and preserve the structures.
- (c) Scope, policies and exemptions.
- (1) *Scope.* Unless expressly exempted by paragraph (c)(2) of this subsection, no building permits shall be issued for new construction, demolition, alteration, rehabilitation, signage or any other physical modification of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district, nor shall any construction, demolition, alteration, rehabilitation, signage or any other exterior or public interior physical modification, whether temporary or permanent, without a permit, be undertaken, without the prior issuance of a certificate of appropriateness or certificate to dig by the historic preservation board, or the planning director or his designee, in accordance with the procedures specified in this section. For purposes of this article, "alteration" or "modification" shall be defined as any change affecting the external appearance and internal structural system including columns, beams, load bearing walls and floor plates and roof plates of a structure or other features of the site including, but not limited to, landscaping and relationship to other structures, by additions, reconstruction, remodeling, or maintenance involving a change in color, form, texture, signage or materials, or any such changes in the appearance of public interior spaces. The foregoing shall exclude the placement of objects in or on the exterior or public interior of a structure or site, not materially affecting its appearance or architectural integrity.
 - (2) *Policies.*
 - (i) *After-the-fact certificates of appropriateness for demolition.* In the event any demolition as described above or in paragraph (c)(2) of this subsection should take place prior to historic preservation board review, the demolition order shall be conditioned to require the property owner to file an "after-the-fact" application for a certificate of appropriateness for demolition to the historic preservation board, within 15 days of the issuance of the demolition order. No "after-the-fact" fee shall be assessed for such application. The board shall review the demolition and determine whether and how the demolished building, structure, landscape feature or the partially or fully demolished feature of the exterior or public interior space of a structure, shall be replaced. The property owner shall also be required, to the greatest extent possible, to retain, preserve and restore any demolished feature of a structure until such time as the board reviews and acts on the "after-the-fact" application. In the event the property owner fails to file an "after-the-fact" application for a certificate of appropriateness for demolition to the historic preservation board within 15 days of the issuance of an emergency demolition order, the city may initiate enforcement proceedings including proceedings to revoke the certificate of use, occupational license, any active building permit(s) or certificate of occupancy of the subject site, whichever is appropriate. Additionally, this article may be enforced, and violations may be punished as provided in chapter 1 of these land development regulations; or by enforcement procedures as set forth in the Charter and penalties as provided in section 1-14, General Ordinances.

- (ii) *Replacement of existing structures.* The policy of the City of Miami Beach shall be a presumption that a contributing building demolished without obtaining a certificate of appropriateness from the historic preservation board, shall only be replaced with a new structure that incorporates the same height, massing and square footage of the previous structure on site, not to exceed the floor area ratio (FAR) of the demolished structure. and not to exceed the maximum FAR and height permitted under the City Code, with no additional square footage added. This presumption shall be applicable in the event a building permit for new construction or for repair or rehabilitation is issued, and demolition occurs for any reason, including, but not limited to, an order of the building official or the county unsafe structures board. This presumption shall also be applicable to any request for an "after- the-fact" certificate of appropriateness. This presumption may be rebutted, and the historic preservation board may allow for the addition of more square footage, where appropriate, not to exceed the maximum permitted under the City Code, if it is established to the satisfaction of the historic preservation board that the following criteria have been satisfied:
 - a. The proposed new structure is consistent with the context and character of the immediate area; and
 - b. The property owner made a reasonable effort to regularly inspect and maintain the structure free of structural deficiencies and in compliance with the minimum maintenance standards of this Code.
 - (iii) *Replication of demolished contributing structures.* The historic preservation board shall determine, on a case-by-case basis, whether the replication of an original, contributing, structure is warranted. For purposes of this subsection, replication shall be defined as the physical reconstruction, including all original dimensions in the original location, of a structure in totality, inclusive of the reproduction of primary facade dimensions and public area dimensions with appropriate historic materials whenever possible, original walls, window and door openings, exterior features and finishes, floor slab, floor plates, roofs and public interior spaces. The historic preservation board shall have full discretion as to the exact level of demolition and reconstruction required. If a building to be reconstructed is nonconforming, any such reconstruction shall comply with all of the requirements of section 2.13 of these land development regulations.
- (c) *Exemptions.* The following permits are exempt from the regulations of this section:
 - (i) All permits for plumbing, heating, air conditioning, elevators, fire alarms and extinguishing equipment, and all other mechanical and electrical equipment not located on exteriors or within public interior spaces, and not visible from the public right-of-way.
 - (ii) Any permit necessary for compliance with a lawful order of the building official, county unsafe structures board, fire marshal, or public works director when issuance of such permit on an immediate basis is necessary for the public health or safety or to prevent injury to life, limb or property. In the event that compliance includes full or partial demolition of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district an emergency meeting of the historic preservation board shall be called prior to the demolition being authorized, unless the work is of an emergency nature and must be done before a meeting could be convened. The historic preservation board may offer alternative suggestions regarding the need for manner and scope of demolition; these suggestions shall be taken into consideration by the official issuing the final determination regarding demolition. However, the final determination regarding demolition shall be

made by the official issuing the order. In the event that the historic preservation board does not hold the meeting prior to the scheduled demolition, the demolition may take place as scheduled.

- (iii) Any permit issued for an existing structure in a designated historic district which has been specifically excluded from the district.

2.13.2 Historic Preservation Board Review of Projects

(a) Review requests for public improvements

The historic preservation board shall review public improvements upon public rights-of-way and easements located within a historic district and materially affecting any public right-of-way, public easement, building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9. For purposes hereof, public improvements shall include, but not be limited to, structures, streetscape projects, street improvements or redesign, modifications to street lighting or signage, landscaping projects, medians, and above ground utilities; however, public improvements shall exclude routine maintenance and utility repair work.

(b) Proceedings before the historic preservation board.

- (1) Oath. Any person appearing before the historic preservation board on an application for a certificate of appropriateness shall be administered the following oath by any person duly authorized under the laws of the state to administer oaths:

"I, _____, hereby swear under oath that any and all testimony to be given by me in this proceeding is the truth, the whole truth, and nothing but the truth, so help me God."

Any person giving false testimony before the historic preservation board shall be subject to the maximum penalty provided by law.

- (2) Issuance of order. After the board has heard all evidence regarding a request, it shall issue a written order setting forth its decision and the findings of fact upon which the decision is based. A copy of the board's order shall be promptly mailed to the applicant.
- (3) Withdrawal or final denial. Upon the withdrawal or final denial of an application for any certificate of appropriateness from the historic preservation board, a new application cannot be filed within six months of the date of the withdrawal or denial unless, however, the decision of the board taking any such final action is made without prejudice. An application may be withdrawn without prejudice by the applicant as a matter of right if such request is signed by the applicant and filed with the planning department prior to the matter being considered by the board; otherwise, all such requests for withdrawal shall be with prejudice. The historic preservation board may permit withdrawals without prejudice at the time the application for such certificate of appropriateness is considered by such board. No application may be withdrawn after final action has been taken.
- (4) Recording of certificate of appropriateness. After a certificate of appropriateness has been ordered by the board, the city shall record in the public records of the county the order of the board. No building permit, demolition permit, certificate of occupancy, certificate of completion or licensing permit shall be issued until proof of recordation has been submitted. Only the historic preservation board is empowered to release any conditions of its recorded order.
- (5) Deferrals and continuances.
 - (i) An applicant may defer an application before the public hearing only one time. The request to defer shall be in writing. When an application is deferred, it shall be re-noticed at the applicant's expense. In the event that the application is not

presented to the historic preservation board for approval at the meeting date to which the application was deferred, the application shall be deemed null and void.

- (ii) The board may continue an application to a date certain at either the request of the applicant or at its own discretion. In the event the application is so continued, not less than 15 days prior to the new public hearing date, a description of the request, and the time and place of such hearing shall be advertised in a newspaper of general circulation within the municipality at the expense of the city.
 - (iii) In the event the application is continued due to the excessive length of an agenda or in order for the applicant to address specific concerns expressed by the board or staff, the applicant shall present for approval to the board a revised application inclusive of all required exhibits which attempt to address the concerns of the board or staff for the date certain set by the board, which shall be no more than 120 days after the date on which the board continues the matter.
 - (iv) In the event that the applicant fails to timely present for distribution to the board, a revised application as described above within 120 days of the date the application was continued, the application shall be deemed null and void.
 - (v) Deferrals or continuances for a specific application shall not exceed one year cumulatively for all such deferrals, or continuances made by the board, or the application shall be deemed null and void.
- (6) Timeframes.
- (i) *Timeframes to obtain a building permit.* The applicant shall have up to 18 months, or such lesser time as may be specified by the board, from the date of the board meeting at which a certificate of appropriateness was issued to obtain a full building permit or a phased development permit. The foregoing 18-month time period, or such lesser time as may be specified by the board, includes the time period during which an appeal of the decision of the historic preservation board may be filed. If the applicant fails to obtain a full building permit or phased development permit within 18 months, or such lesser time as may be specified by the board, of the board meeting date at which a certificate of appropriateness was granted or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, the certificate of appropriateness shall be deemed null and void. Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the historic preservation board, at its sole discretion, provided the applicant submits a request in writing to the planning department no later than 90 calendar days after the expiration of the original approval, setting forth good cause for such an extension. At the discretion of the planning director, an applicant may have up to 30 days (not to extend beyond 30 months from the date of original approval) to complete the building permit review process and obtain a full building permit, provided that within the time provided by the board to obtain a full building permit a valid full building permit application and plans have been filed with the building department, a building permit process number has been issued and the planning department has reviewed the plans and provided initial comments.

Please refer to section 2.2.3.8 relating to appealed orders and tolling.

- ii. *Timeframes in development agreements.* The time period to obtain a full building permit or phased development permit set forth in subsection (6)(i) may be superseded and modified by a development agreement approved and fully executed pursuant to Article XI of these land development regulations, so long as the modified time period is expressly negotiated and set forth in the executed development agreement.

2.13.3 Maintenance of designated properties and demolition by neglect.

- (a) The owner of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district, whether vacant or inhabited, shall be required to properly maintain and preserve such building or structure in accordance with standards set forth in the applicable Florida Building Code, this article and this Code. For purposes of this article, demolition by neglect is defined as any failure to comply with the minimum required maintenance standards of this section, whether deliberate or inadvertent.
 - (1) *Required minimum maintenance standards.* It is the intent of this section to preserve from deliberate or inadvertent neglect, the interior, exterior, structural stability and historic and architectural integrity of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with subsection 2.13.9, or located within an historic district, whether vacant or inhabited. All such properties, buildings and structures shall be maintained according to minimum maintenance standards, preserved against decay, deterioration and demolition and shall be free from structural defects through prompt and corrective action to any physical defect which jeopardizes the building's historic, architectural and structural integrity; such defects shall include, but not be limited to, the following:
 - (i) Deteriorated or decayed facades or facade elements, including, but not limited to, facades which may structurally fail and collapse entirely or partially;
 - (ii) Deteriorated or inadequate foundations;
 - (iii) Defective or deteriorated flooring or floor supports or any structural members of insufficient size or strength to carry imposed loads with safety;
 - (iv) Deteriorated walls or other vertical structural supports, or members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective material or deterioration;
 - (v) Structural members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle due to defective material or deterioration;
 - (vi) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken or missing windows or doors;
 - (vii) Defective or insufficient weather protection which jeopardizes the integrity of exterior or interior walls, roofs or foundation, including lack of paint or weathering due to lack of paint or other protective covering;
 - (viii) Any structure which is not properly secured and is accessible to the general public; or
 - (ix) Any fault or defect in the property that renders it structurally unsafe or not properly watertight;
 - (x) The spalling of the concrete of any portion of the interior or exterior of the building.
 - (2) *Notice, administrative enforcement and remedial action.* If any building, structure, improvement, landscape feature, public interior or site individually designated in

accordance with section 2.13.9, or located within an historic district, in the opinion of the historic preservation board, planning director or designee, or the city's building official or designee, falls into a state of disrepair so as to potentially jeopardize its structural stability or architectural integrity, or the safety of the public and surrounding structures, or fails to satisfy any of the required minimum maintenance standards above, the planning director or designee, or the city's building official or designee shall have right of entry onto the subject property and may inspect the subject property after 48 hours' notice to the owner of intent to inspect. In the event the property owner refuses entry of any city official onto the subject property, the city may file an appropriate action compelling the property owner to allow such officials access to the subject property for an inspection. Upon completion of the inspection of the subject property, a report delineating the findings of such inspection, as well as any remedial action required to address any violation of the required minimum maintenance standards, shall be immediately transmitted to the property owner. The city may require that the property owner retain a professional structural engineer, registered in the state, to complete a structural evaluation report to be submitted to the city. Upon receipt of such report, the property owner shall immediately take steps to effect all necessary remedial and corrective actions to restore the structure's or building's compliance with the required minimum maintenance standards herein; remedial action in this regard shall include, but not be limited to, the structural shoring, stabilization or restoration of any or all exterior walls, including their original architectural details, interior loadbearing walls, columns and beams, roof trusses and framing, the blocking of openings and securing of existing windows and door openings, as well as sealing of the roof surface against leaks, including from holes, punctures, open stairwells, elevator shafts and mechanical systems roof penetrations as necessary to preserve the building or structure in good condition. The owner shall substantially complete such remedial and corrective action within 30 days of receipt of the report, or within such time as deemed appropriate by the building official, or designee, in consultation with the planning director or designee. Such time may be extended at the discretion of the city's building official, in consultation with the planning director.

- (3) *Injunction and remedial relief.* If the owner of the subject property, in the opinion of the city's building official, fails to undertake and substantially complete the required remedial and corrective action within the specified time frame, the city may, at the expense of the owner, file an action seeking an injunction ordering the property owner to take the remedial and corrective action to restore the structure's or building's compliance with the required minimum maintenance standards herein and seeking civil penalties as herein provided; Such civil action may only be initiated at the discretion of the city manager or designee. The court shall order an injunction providing such remedies if the city proves that the property owner has violated the required minimum maintenance standards or any portion of this article or this code.
- (4) *Civil penalties.* Violation of this article shall be punishable by a civil penalty of up to \$5,000.00 per day, for each day that the remedial and corrective action is not taken.
- (b) Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district which does not involve a change of design, appearance or material, and which does not require a building permit or certificate of appropriateness. Any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district that is the subject of an application for a certificate of appropriateness for demolition shall not have its architectural features removed, destroyed or modified until the certificate of appropriateness is granted. Owners of such property shall be required to maintain such

properties in accordance with all applicable codes up to the time the structure is demolished.

- (c) Vacant buildings and structures. The owner of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district which is proposed to be vacated and closed, or is vacated and closed for a period of four weeks or more, shall make application for certificate of appropriateness approval and a building permit to secure and seal such building or structure. The owner or the owner's designated representative, shall notify the city's building official and planning director, or their designees, in writing of the proposed date of vacating such building or structure.
 - (1) *Inspection of premises and sealing of property.* Upon receipt of written notification to vacate, a visual walk-through inspection of the subject premises may be required, at the discretion of the building official to ascertain the general condition of the building. Such inspection shall include, but not be limited to, a visual inspection of the structural system to the greatest extent possible, exterior and interior walls, roofs, windows, doors and special architectural features, as well as site features. Upon completion of such inspection, the building official, shall notify the owner in writing of the findings of the inspection. If the subject structure fails to comply with the required minimum maintenance standards herein, all remedial and corrective action necessary to restore the structure's or building's compliance with the required minimum maintenance standards herein shall be undertaken by the property owner, to the satisfaction of the building official and the planning director, or their respective designees, before any sealing or closing of the structure shall be permitted. The owner of such building or structure shall be required to obtain certificate of appropriateness approval and a building permit for any and all such remedial and corrective work; upon completion of the work, the building official and planning director, or their designees, may reinspect the subject building or structure to determine whether all work has been completed in compliance with the approved plans. Upon determination of completion, the owner of the subject structure shall file application for certificate of appropriateness approval and a building permit to seal and secure the building.
 - (2) *Reinspection of premises.* If at any time during the vacancy of the structure the building should fail to comply with the required minimum maintenance standards herein and fall into a state of disrepair constituting demolition by neglect, or is in violation of any portion of this subsection 2.13.3, such premises shall be subject to all maintenance and enforcement provisions of this subsection 2.13.3, as well as all of the city's building and property maintenance standards contained in the General Ordinances and the Florida Building Code enforceable by the city using all available means.
 - (3) *Enforcement and remedial action.* Failure to comply with remedial action required by the planning director or building official, or designee, may result in city action to ensure the protection of public safety and the stabilization and preservation of the architectural integrity of the building or structure. Such measures shall all be undertaken at the expense of the owner, including, but not limited to, the city filing an action to order the property owner to take all required corrective action and seeking to impose civil penalties.
- (d) Any and all liens referenced or imposed hereafter, based on the foregoing provisions, shall be treated as special assessment liens against the subject real property, and until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved; the maximum rate of interest allowable by law shall accrue to such delinquent accounts. Such liens shall be enforced by any of the methods provided in Chapter 86, Florida Statutes or, in the alternative,

foreclosure proceedings may be instituted and prosecuted under the provisions applicable to practice, pleading and procedure for the foreclosure of mortgages on real estate set forth in Florida Statutes, or may be foreclosed per Chapter 173, Florida Statutes, or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. The owner or operator shall pay all costs of collection, including reasonable attorney fees, incurred in the collection of fees, service charges, penalties and liens imposed by virtue of this section.

- (e) There shall be no variances, by either the board of adjustment or the historic preservation board, from any of the provisions contained in this subsection 2.13.3.

2.13.4 Unauthorized alterations.

When the historic preservation board or planning department determines that a building, structure, improvement, landscape feature, public interior or site located within a historic district or a building, structure, improvement, site or landscape feature which has been designated "historic" pursuant to this section has been altered in violation of this section, the board or planning department staff may notify the city's department of code compliance to initiate enforcement procedures. Any such property altered without obtaining a certificate of appropriateness must make application to the historic preservation board for an "after-the-fact" certificate of appropriateness prior to any further work taking place on site. The historic preservation board shall determine whether the property shall be returned to its condition during the period of historic significance prior to the alteration. Failure to comply with this subsection shall be punished by the imposition of fines and liens of up to \$250.00 per day and \$500.00 per day for repeat violations as provided in chapter 30, General Ordinances.

2.13.5. Historic properties database

- (a) Historic buildings, historic structures, historic improvements, historic landscape features, historic public interiors and contributing buildings within a historic district shall be listed as such in the city historic properties database maintained by the planning department. A building not listed or listed as "noncontributing" on the historic properties database shall not preclude its classification or review pursuant to the certificate of appropriateness process. Buildings and structures that are located in a locally designated historic district but have not been individually designated "historic" pursuant to division 4 of this article shall also be listed in the city historic properties database and classified as either contributing or noncontributing as defined in chapter 1 of these land development regulations.
- (b) Except as elsewhere provided in these land development regulations, the historic properties database may be revised from time to time by the historic preservation board according to the procedures set forth in this paragraph. Prior to making any revision to the city historic properties database, the board shall hold a public hearing to consider the revision. The owner of any property considered for listing or revision of classification in the database shall receive notice of such hearing at least 15 days prior to the hearing. The hearing shall also be advertised in a newspaper of general circulation in the city at least 15 days prior to the hearing. Notwithstanding any other provisions of this section, after May 14, 1994 properties shall not be added to the database as "historic" or reclassified as "historic" in the database unless they have been designated as "historic" pursuant to the procedures set forth in section 2.13.9. In determining whether a property classified in the database as historic should be reclassified, the board shall utilize the designation criteria in subsection 2.13.9(b).

2.13.6. Variances prohibited

No variances shall be granted by the zoning board of adjustment from any of the procedural or review requirements of the historic preservation board; provided, however, the foregoing prohibition shall not limit or restrict an applicant's right to a rehearing or to appeal decisions of the historic preservation board.

2.13.7 Issuance of Certificate of Appropriateness/Certificate to Dig/Certificate of Appropriateness for Demolition

(a) General requirements

- (1) A certificate of appropriateness issued under this chapter shall be required prior to the issuance of any permit for new construction, demolition, alteration, rehabilitation, renovation, restoration, signage or any other physical modification affecting any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district unless the permit applied for is exempted pursuant to subsection 2.13.1(c), or prior to any construction, demolition, alteration, rehabilitation, signage or any other exterior or public interior physical modification, whether temporary or permanent, without a permit, being undertaken. A certificate to dig shall be required prior to the initiation of any development involving the excavation or fill on a historic site or in a historic district designated as archaeologically significant pursuant to the provisions of this article. The procedure to obtain a certificate to dig, or to designate a historic site as archaeologically significant, shall be the same as for a certificate of appropriateness.
- (2) Certificate of appropriateness conditions and safeguards. In granting a certificate of appropriateness, the historic preservation board and the planning department may prescribe appropriate conditions and safeguards, either as part of a written order or on approved plans. Violation of such conditions and safeguards, when made a part of the terms under which the certificate of appropriateness is granted, shall be deemed a violation of these land development regulations.

(b) Application

- (1) An application for a certificate of appropriateness may be filed with the historic preservation board at the same time or in advance of the submission of an application for a building permit. Copies of all filed applications shall be made available for inspection by the general public.
- (2) All applications involving demolition, new building construction, alteration, rehabilitation, renovation, restoration or any other physical modification of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district shall be on a form provided by the planning department and shall include such information and attached exhibits as the board and the planning department determine are needed to allow for complete evaluation of the proposed demolition, construction and other physical improvements, alterations or modifications including, but not limited to, the following:
 - (i) Written description of proposed action.
 - (ii) Survey.
 - (iii) Complete site plan.

- (iv) Materials containing detailed data as to architectural elevations and plans showing proposed changes and existing conditions to be preserved.
- (v) Preliminary plans showing new construction in cases of demolition.
- (vi) An historic resources report, containing all available data and historic documentation regarding the building, site or feature.
- (vii) Any application which involves substantial structural alterations to or the substantial or full demolition of any building, structure, improvement, significant landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district, with the exception of non-substantial exterior structural repairs, alterations and improvements (as may be more specifically defined by the board in its by-laws and application procedures), shall be required to include a structural evaluation and corrective action report prepared by a professional (structural) engineer, licensed in the state as a part of the application at time of submission. A financial analysis or feasibility study addressing the demolition proposed shall not be required by the historic preservation board in their evaluation. For non-substantial exterior structural repairs, alterations and improvements (as may be more specifically defined by the board in its by-laws and application procedures), a signed and sealed engineering drawing shall be required. The structural evaluation and corrective action report shall include, but not be limited to, the following:
 - a. Review and analysis of structural conditions, based upon the engineer's direct on-site inspection and analysis of the structural condition of the subject property, as well as any and all earlier structural records and drawings, as may be available. This shall include documentation, in the form of photographs, plans, elevations, and written descriptions, of any and all areas, portions, or elements of the building or structure that shows existing or potential structural problems or concerns, in full accordance with the requirements of the building official.
 - b. Results of testing and analysis of structural materials and concrete core samples, taken at a sufficient number of locations in and about the building, inclusive of but not limited to foundations, columns, beams, walls, floors and roofs. The report shall professionally analyze and evaluate the compressive strength, chloride content, and overall structural condition of each and every core sample and assess the condition of all other structural elements or systems in the building or structure, regardless of material, that may be of structural concern.
 - c. Proposed corrective measures and monitoring of the work, including detailed plans, elevations, sections and specifications, as well as written descriptions of any and all structural corrective measures that will be undertaken for any and all areas, portions, or elements of the building or structure that may be of structural concern. These documents shall contain sufficient supporting evidence to establish that the corrective measures proposed will be adequate to restore and preserve the structural integrity of the identified areas, portions, or elements to be preserved, including a written and detailed description of the process by which the proposed corrective work will proceed, as well as the sequencing of the work. Finally, a written verification shall be included

stating that all structural conditions throughout the building or structure shall be closely monitored by a special inspector, approved by the building department and employed by the applicant, during the course of all demolition, new construction, and bracing and shoring work. This provision is required in order to immediately identify any and all adverse changes in the structural integrity or stability of the subject building or structure during the course of the work, inclusive of architectural features. The special inspector shall provide expeditious direction to the contractor specific to how the observed adverse changes shall be quickly and properly stabilized and permanently corrected. This information shall be immediately conveyed to the city's planning and building departments for their review and any necessary actions.

- d. Proposed methodology and process for demolition, including detailed plans, elevations, sections and specifications, as well as a written description of any and all temporary shoring and bracing measures and all measures required to protect the safety of the public and workers. These measures shall be fully implemented and in place prior to and during the course of any demolition and construction activity on the subject property. The documents shall contain sufficient supporting evidence to establish that the corrective measures proposed will be adequate to restore and preserve the structural integrity of the identified areas, portions, and elements, including a written and detailed description of the proposed process and sequencing of demolition, as well as a detailed description of the demolition methods to be utilized. Finally, a written verification shall be included stating that all work as described above shall be closely monitored during the course of work by a special inspector approved by the building department. This inspector shall be employed by the applicant.
 - e. A signed and sealed certification that the structural integrity and stability of the subject building(s)/structure(s), and its architectural features, shall not be compromised in any way during the course of any and all proposed work on the subject site.
- (viii) The historic preservation board, for applications involving the full demolition of any contributing building, structure or site individually designated in accordance with section 2.13.9, or located within an historic district, may request the city to retain a licensed independent structural engineer, with expertise in historic structures, to perform an independent evaluation of the structure proposed to be demolished. The city commission, in its sole discretion, may review the request and appropriate funds to cover the costs associated with the retention of such engineer. The planning department shall select the independent structural engineer from a qualified list it maintains. If it is determined by the independent structural engineer that the building, structure or site can be retained, preserved or restored, and a certificate of appropriateness is issued based upon such determination, then the property owner shall reimburse the city for all costs it paid to such engineer, and the property may be liened to assure payment. If it is determined by the independent structural engineer that the building, structure or site cannot be retained, preserved or restored, then the city shall bear the responsibility of all costs incurred by such independent structural engineer.

- (ix) Commercial and mixed-use developments over 5,000 gross square feet and multifamily projects with more than four units or 15,000 gross square feet shall submit a transportation analysis and mitigation plan, prepared by a professional traffic engineer, licensed and registered in the State of Florida. The analysis and plan shall at a minimum provide the following:
 - a. Details on the impact of projected traffic on the adjacent corridors, intersections, and areas to be determined by the city.
 - b. Strategies to mitigate the impact of the proposed development on the adjacent transportation network, to the maximum extent feasible, in a manner consistent with the adopted transportation master plan and adopted mode share goals.
 - c. Whenever possible, driveways shall be minimized and use common access points to reduce potential turn movements and conflict points with pedestrians.
 - d. Applicable treatments may include, without limitation, transportation demand management strategies included in the transportation element of the comprehensive plan.

(c) Review procedure.

Any applicant requesting a public hearing on any application pursuant to this section shall pay, upon submission, the applicable fees in subsection 2.2.2.5. No application shall be considered complete until all requested information has been submitted and all applicable fees paid.

- (1) All quasi-judicial public hearing applications involving demolition, new construction, alteration, rehabilitation, renovation, restoration or any other physical modification of any building, structure, improvement, significant landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district shall be placed on the next available agenda of the historic preservation board for its review and consideration after the date of receipt of a completed application.
- (2) The historic preservation board shall decide, based upon the criteria set forth in subsection 2.13.7(d)(6)(iv) whether or not to issue a certificate of appropriateness for demolition. A demolition permit shall not be issued until all of the following criteria are satisfied, except as permitted under subsection 2.13.7(d)(6)(vi):
 - i. The issuance of a building permit process number for the new construction;
 - ii. The building permit application and all required plans for the new construction shall be reviewed and approved by the Planning Department;
 - iii. All applicable fees for the new construction shall be paid, including, but not limited to, building permit and impact fees, as well as applicable concurrency and parking impact fees;
 - iv. A tree survey, if required, shall be submitted and a replacement plan, if required, shall be reviewed and approved by the Greenspace Management Division;
 - v. All debris associated with the demolition of the structure shall be recycled, in accordance with the applicable requirements of the Florida Building Code.
- (3) All applications for a certificate of appropriateness for the demolition or partial demolition of any building, structure, improvement, significant landscape feature, public interior or site individually designated in accordance with section 2.13.9, or

located within an historic district and all applications for a certificate of appropriateness for new building construction, alteration, rehabilitation, renovation, restoration or any other physical modification of any building, structure, improvement, significant landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district shall only be considered by the board following a public hearing and shall comply with the notice requirements in accordance with section 2.2.3.1.

- (4) Notwithstanding subsections 3.13.7(1) through (3) above, all applications for certificates of appropriateness involving minor repairs, demolition, alterations and improvements (as defined below and by additional design guidelines to be adopted by the board in consultation with the planning director) shall be reviewed by the staff of the board. The staff shall approve, approve with conditions, or deny a certificate of appropriateness or a certificate to dig after the date of receipt of a completed application. Such minor repairs, alterations and improvements include the following:
 - (i) Ground level additions to existing structures, not to exceed two stories in height, which are not substantially visible from the public right-of-way (excluding rear alleys), any waterfront or public parks, provided such ground level additions do not require the demolition or alteration of architecturally significant portions of a building or structure. For those lots under 5,000 square feet, the floor area of the proposed addition may not exceed 30 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 1,500 square feet. For those lots between 5,000 square feet and 10,000 square feet, the floor area of the proposed addition may not exceed 20 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 2,000 square feet. For those lots greater than 10,000 square feet, the floor area of the proposed addition may not exceed 10 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 5,000 square feet.
 - (ii) Replacement of windows, doors, storefront frames and windows, or the approval of awnings, canopies, exterior surface colors, storm shutters and signs.
 - (iii) Facade and building restorations, recommended by staff, which are consistent with historic documentation, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.
 - (iv) Minor demolition and alterations to address accessibility, life safety, mechanical and other applicable code requirements, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.
 - (v) Minor demolition and alterations to rear and secondary facades to accommodate utilities, refuse disposal and storage, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.
- (5) Any decision of the planning director regarding subsections 2.13.7(4)(i) and 2.13.7(4)(iii), may be appealed to the board of adjustment pursuant to the requirements of subsection 2.9.
- (6) The approval of a certificate of appropriateness, shall not excuse the applicant from responsibility to comply with all other zoning and building laws and regulations of the city, county and state, including the receipt of applicable zoning variances, site plan approvals and building permits except as provided for in subsection 2.13.1(c).
- (7) The historic preservation board may at its sole discretion, on an individual, case-by-case basis, allow a two-step process for approval of a certificate of appropriateness.

The two-step process shall consist of, first, a binding, preliminary concept approval on the issues of urbanism, massing and siting; and second, approval of the project's design details (style, fenestration, materials, etc.). This two-step process shall be subject to the following:

- (i) The historic preservation board shall have the sole discretion, on an individual, case-by-case basis, to decide which development projects may qualify for this two-step approval process for a certificate of appropriateness.
 - (ii) In the event the historic preservation board should authorize the two-step approval process, the applicant shall have a maximum of 120 days from the date of preliminary concept approval on the issues of urbanism, massing and sitting, to return to the board with fully developed design drawings and substantial details (style, fenestration, materials, etc.) for final approval, or the entire application shall become null and void. The applicant shall have six months from the date of preliminary concept approval on the issues of urbanism, massing and siting, to obtain final approval for the remainder of the project or the entire application shall become null and void. The board, at its sole discretion, may extend the time period to obtain final approval for the remainder of the project up to a maximum of one year from the date of the original submission of the application.
- (8) In the event the applicant seeks a preliminary evaluation of a project from the board for information and guidance purposes only, an application for preliminary evaluation shall be required. The planning director, or designee, shall determine the supplemental documents and exhibits necessary and appropriate to complete an application for a preliminary evaluation; the required supplemental documents and exhibits shall serve to describe and illustrate the project proposed in the application in a manner sufficient to enable the board to provide general comments, feedback, information and guidance with respect to the application. Preliminary evaluations by the board shall be for informational purposes only; a preliminary evaluation by the board shall not constitute a binding approval, nor shall any comments, feedback, information or guidance provided by the board be binding upon the board during subsequent review of the preliminary application or a related final application. The board may provide general comment, feedback, information and guidance during the initial hearing on the application for preliminary evaluations, and may continue discussion on a preliminary evaluation to subsequent meetings in order for the applicant to further address any specific concerns raised by the board or staff, or may elect to terminate the preliminary evaluation process after providing general comments. All preliminary evaluations shall be subject to the noticing requirements provided in subsection 2.13.7(c)(3). Preliminary evaluation applications shall not constitute a certificate of appropriateness approval, and therefore an applicant acquires no equitable estoppel rights or protections of any kind, type or nature based upon the filing of the preliminary evaluation application. The board will not issue an order either approving or denying a project or take any formal action on preliminary evaluation applications. Preliminary evaluations shall not entitle applicants to any of the benefits accorded to applicants who have received certificate of appropriateness approval, inclusive of appeals or rehearings. Except as used in this section, the use of the phrase "application" throughout this article refers to a completed application for approval and not to a preliminary evaluation application.
- (9) Notwithstanding any other provisions of this chapter, certificates of appropriateness for demolition for any building, structure, improvement, or landscape feature on a historic site or located within a historic district and located on city-owned property or rights-of-way, and property owned by the Miami Beach Redevelopment Agency, the actions of the historic preservation board shall be advisory with the right of approval or disapproval vested with the city commission.

- (d) Decisions on certificates of appropriateness.
- (1) Any applicant requesting a public hearing on any application pursuant to this section shall pay, upon submission, the applicable fees in subsection 2.2.2.5. No application shall be considered complete until all requested information has been submitted and all applicable fees paid.
 - (2) A decision on an application for a certificate of appropriateness shall be based upon the following:
 - (i) Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable compliance with the following:
 - a. The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time; and
 - b. Other guidelines/policies/plans adopted or approved by resolution or ordinance by the city commission.
 - (ii) In determining whether a particular application is compatible with surrounding properties the historic preservation board shall consider the following:
 - a. Exterior architectural features.
 - b. General design, scale, massing and arrangement.
 - c. Texture and material and color.
 - d. The relationship of subsections a., b., c., above, to other structures and features of the district.
 - e. The purpose for which the district was created.
 - f. The relationship of the size, design and siting of any new or reconstructed structure to the landscape of the district.
 - g. An historic resources report, containing all available data and historic documentation regarding the building, site or feature.
 - h. The original architectural design or any subsequent modifications that have acquired significance.
 - (iii) The examination of architectural drawings for consistency with the criteria stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure, public interior space and physical attributes of the project in relation to the site, adjacent structures and properties, and surrounding community. The historic preservation board and planning department shall review plans based upon the below stated criteria and recommendations of the planning department may include, but not be limited to, comments from the building department. The criteria referenced above are as follows:
 - a. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
 - b. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.
 - c. The color, design, surface finishes and selection of landscape materials and architectural elements of the exterior of all buildings and structures

and primary public interior areas for developments requiring a building permit in areas of the city identified in section 2.13.1(c).

- d. The proposed structure, or additions to an existing structure are appropriate to and compatible with the environment and adjacent structures, and enhance the appearance of the surrounding properties, or the purposes for which the district was created.
- e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.
- f. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with vehicular traffic flow on these roads and pedestrian movement onto and within the site, as well as permit both pedestrians and vehicles a safe ingress and egress to the site.
- g. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties and consistent with a city master plan, where applicable.
- h. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.
- i. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.
- j. Any proposed new structure shall have an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).
- k. All buildings shall have, to the greatest extent possible, space in that part of the ground floor fronting a sidewalk, street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a sidewalk street, or streets shall have residential or commercial spaces, or shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of a parking structure from the surrounding area and is integrated with the overall appearance of the project.
- l. All buildings shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.
- m. Any addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

- n. All portions of a project fronting a street or sidewalk shall incorporate an amount of transparency at the first level necessary to achieve pedestrian compatibility.
 - o. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.
 - p. In addition to the foregoing criteria, subsection 118-104-6(t) and the requirements of chapter 104, of the General Ordinances, shall apply to the historic preservation board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.
 - q. The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.
- (3) Where, by reason of particular site conditions and restraints or because of unusual circumstances applicable to a particular applicant's property, strict enforcement of the provisions of this article would result in an undue economic hardship to the applicant, the board shall have the power to vary or modify the provisions in this article, including adherence to the adopted evaluation guidelines. However, the board shall not have the power to vary or modify any required timeframes to obtain a building permit or the granting of extensions of time to obtain a building permit. Any applicant wishing to assert undue hardship must furnish to the board's staff no later than 15 days prior to the board's meeting, to consider the request, ten copies of a written statement presenting the factual data establishing such economic hardship. The written statement presenting factual data shall be in the form of a sworn affidavit containing all of the following information:
- (i) The amount paid for the property, the date of purchase and the party from whom purchased;
 - (ii) The assessed value of the land and improvements thereon according to the three most recent assessments;
 - (iii) Real estate taxes for the previous five years;
 - (iv) All appraisals obtained within the previous five years by the owner or applicant in connection with his purchase, financing or ownership of the property;
 - (v) Any listing of the property for sale or rent, price asked and offers received, if any;
 - (vi) Any consideration by the applicant as to profitable adaptive uses for the property;
 - (vii) With respect to income producing property only, annual gross income from the property for the previous five years, operating and maintenance expenses for the previous five years, and annual cash flow, if any, for the previous five years; and
 - (viii) Such additional information as may be relevant to a determination of undue economic hardship.

In the event that any of the required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with his affidavit a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained. The fact that compliance

would result in some increase in costs shall not be considered undue economic hardship if the use of the property is still economically viable.

- (4) An approved certificate of appropriateness, together with any conditions or limitations imposed by the board, shall be in written form and attached to the site plan or the schematics submitted as part of the applications. Copies of the certificate shall be kept on file with the board and shall be transmitted to the building official. The applicant shall receive a copy of the certificate of appropriateness.
- (5) After deciding to grant a request for a certificate of appropriateness for demolition the historic preservation board may stay for a fixed period of time, not to exceed six months, the issuance of the certificate of appropriateness for demolition. Should the board grant a stay for demolition, the length of such a stay shall be determined by the board based upon the relative significance of the structure and the probable time required to arrange a possible alternative to demolition. The effective date of the stay shall be from the date of the historic preservation board's public hearing. Alternatively, if an appeal to a special master is filed, upon request of the petitioner, the board may stay demolition pending the conclusion of that appeal and any subsequent court review of the matter.
- (6) Certificate of appropriateness for demolition.
 - (i) Demolition of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district may occur in emergency situations pursuant to an order of a government agency or a court of appropriate jurisdiction or, if granted, pursuant to an application by the owner for a certificate of appropriateness for the demolition of a designated historic building, structure, improvement, landscape feature or site.
 - (ii) Government agencies having the authority to demolish unsafe structures shall receive notice that a building or structure considered for demolition is a building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district. The historic preservation board shall be deemed an interested party and shall be entitled to receive notice of any public hearings conducted by such government agency regarding demolition of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district. The board may make recommendations and suggestions to the government agency and the owner relative to the feasibility of and the public interest in preserving it. Prior to requesting a hearing regarding an unsafe structure which is a building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district, the city's building official shall send notice of the request to the historic preservation board. The matter shall be placed on the agenda of the next board meeting, or on the agenda of an emergency meeting of the board. However, action or inaction by the board shall not delay action of the building official.
 - (iii) No permit for voluntary demolition of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district shall be issued to the owner thereof until an application for a certificate of appropriateness for demolition has been submitted and approved pursuant to the procedures in these land development regulations. In determining whether any building, structure, improvement, landscape feature, public interior or site individually

designated in accordance with section 2.13.9, or located within an historic district should be demolished the historic preservation board shall be guided by the criteria contained in subsection 2.13.7(6)(iv). After a demolition denial, or during a demolition delay period, the historic preservation board may take such steps as it deems necessary to preserve the structure concerned in accordance with the purposes and procedures of these land development regulations. Such steps may include, but shall not be limited to, consultation with civil groups, public agencies and interested citizens, recommendations for acquisition of property by public or private bodies or agencies, and exploration of the possibility of moving one or more structure or other feature.

- (iv) Evaluation criteria. The historic preservation board shall consider the following criteria in evaluating applications for a certificate of appropriateness for demolition of historic buildings, historic structures, historic improvements or historic sites, historic landscape features and all public interior spaces, structures and buildings located in a historic district or architecturally significant feature of a public area of the interior of a historic or contributing building.
 - a. The building, structure, improvement, or site is designated on either a national or state level, as part of a historic preservation district or as a historic architectural landmark or site, or is designated pursuant to section 2.13.9 as a historic building, historic structure or historic site, historic improvement, historic landscape feature, historic interior or the structure is of such historic/architectural interest or quality that it would reasonably meet national, state or local criteria for such designation.
 - b. The building, structure, improvement, or site is of such design, craftsmanship, or material that it could be reproduced only with great difficulty or expense.
 - c. The building, structure, improvement, or site is one of the last remaining examples of its kind in the neighborhood, the county, or the region, or is a distinctive example of an architectural or design style which contributes to the character of the district.
 - d. The building, structure, improvement, or site is a contributing building, structure, improvement, site or landscape feature rather than a noncontributing building, structure, improvement, site or landscape feature in a historic district as defined in chapter 1 of these land development regulations, or is an architecturally significant feature of a public area of the interior of a historic or contributing building.
 - e. Retention of the building, structure, improvement, landscape feature or site promotes the general welfare of the city by providing an opportunity for study of local history, architecture, and design, or by developing an understanding of the importance and value of a particular culture and heritage.
 - f. If the proposed demolition is for the purpose of constructing a parking garage, the board shall consider it if the parking garage is designed in a manner that is consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, U.S. Department of the Interior (1983), as amended, or the design review guidelines for that particular district. If the district in which the property is located lists retail uses as an allowable use, then the ground floor shall contain such uses. At-grade parking lots shall not be considered under this regulation. Parking lots or garages as main

permitted uses shall not be permitted on lots which have a lot line on Ocean Drive or Espanola Way.

- g. In the event an applicant or property owner proposes the total demolition of a contributing structure, historic structure or architecturally significant feature, there shall be definite plans presented to the board for the reuse of the property if the proposed demolition is approved and carried out.
- h. The county unsafe structures board has ordered the demolition of a structure without option.
- (v) If a certificate of appropriateness for demolition is issued, the historic preservation board may require a marker on the property which provides the historic background of the structure.
- (vi) A building permit shall not be issued for the demolition of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district until the new or replacement construction for the property has been approved and until all of the following criteria are satisfied:
 - a. The issuance of a building permit process number for the new construction;
 - b. The building permit application and all required plans for the new construction shall be reviewed and approved by the planning department;
 - c. All applicable fees for the new construction shall be paid, including, but not limited to, building permit and impact fees, as well as applicable concurrency and parking impact fees;
 - d. A tree survey, if required, shall be submitted and a replacement plan, if required, shall be reviewed and approved by the Greenspace Management Division;
 - e. All debris associated with the demolition of the structure shall be recycled, in accordance with the applicable requirements of the Florida Building Code.

For noncontributing structures located in one of the city's historic districts, this requirement may be waived or another permit substituted at the sole discretion of the historic preservation board.

- (vii) No building permit shall be issued by the building official which affects any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district without a certificate of appropriateness.
- (viii) All work performed pursuant to the issuance of any certificate of appropriateness shall conform to the requirements of the certificate. The building official is designated as the individual to assist the board by making necessary inspections in connection with enforcement of these land development regulations and shall be empowered to issue a stop work order if performance is not in accordance with the issued certificate or these land development regulations. No work shall proceed as long as a stop work order continues in effect. Copies of inspection reports shall be furnished to the historic preservation board and copies of any stop work orders both, to the historic preservation board and the applicant. The

building official shall be responsible for ensuring that any work not in accordance with an issued certificate of appropriateness shall be corrected to comply with the certificate of appropriateness prior to withdrawing the stop work order.

- (ix) For the purpose of remedying emergency conditions determined to be dangerous to life, health or property, nothing contained herein shall prevent the making of any temporary construction, reconstruction or other repairs to a building or site pursuant to an order of a government agency or a court of competent jurisdiction. Provided, however, that in the event of demolition of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with section 2.13.9, or located within an historic district, an emergency meeting of the historic preservation board shall first be convened as set forth in subsection 2.13.1(2)(ii). The owner of a building damaged by fire or natural calamity shall be permitted to stabilize the building immediately without historic preservation board approval, and to rehabilitate at a later date under the procedures as set forth in these land development regulations.
- (x) *Expiration of order of board.* The applicant shall have up to 18 months, or such lesser time as may be specified by the board, from the date of the board meeting at which a certificate of appropriateness for demolition was granted to obtain a full building permit or phased development permit. The foregoing 18-month time period or such lesser time as may be specified by the board, includes the time period during which an appeal of the decision of the historic preservation board may be filed. If the applicant fails to obtain a full building permit or phased development permit within 18 months, or such lesser time as may be specified by the board, of the board meeting date at which a certificate of appropriateness for demolition was granted or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, the certificate of appropriateness for demolition shall be deemed null and void. Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the historic preservation board, at its sole discretion, provided the applicant submits a request in writing to the planning department no later than 90 calendar days after the expiration of the original approval, setting forth good cause for such an extension. At the discretion of the planning director, an applicant may have up to 30 days (not to extend beyond 30 months from the date of original approval) to complete the building permit review process and obtain a full building permit, provided that within the time provided by the board to obtain a full building permit a valid full building permit application and plans have been filed with the building department, a building permit process number has been issued and the planning department has reviewed the plans and provided initial comments.

Please refer to subsection 2.2.3.8 of these land development regulations relating to appealed orders, and tolling.

2.13.8 Special review procedure.

For minor exterior structural repairs, alterations and improvements, associated with single- family homes located within designated historic districts, that are visible from a public way, or work that affects the exterior of the building associated with rehabilitations and additions to existing buildings, the planning director, or designee, shall have the authority to approve, approve with conditions or deny an application on behalf of the board. The director's decision shall be based upon the criteria listed in this article. Any appeal of

the decision of the planning director shall be filed pursuant to the requirements of subsection 2.9 of these land development regulations.

2.13.9 Historic Designation

(a) Historic designation procedure

- (1) Requests for designation of an individual historic site or district may be made to the historic preservation board by motion of the board, the city manager, by resolution of the planning board or city commission, by any property owner in respect to his own property, by a majority of property owners of record within a proposed district, by resolution of the county historic preservation board, or by resolution of any organization whose purpose is to promote the preservation of historic sites.
- (2) Proposals for designation shall include a completed application form available from the planning department.
- (3) Any applicant, other than the city commission, a city board or other city official, requesting a public hearing on any application pursuant to this section shall pay, upon submission, the applicable fees in section 118-7. No application shall be considered complete until all requested information has been submitted and all applicable fees paid.
- (4) *Preliminary review.* Upon receipt of a completed application and fees, if applicable, the planning department shall prepare an evaluation and recommendation for consideration by the board. After considering the department's recommendation, a majority vote of the board shall be necessary to direct the department to prepare a designation report. The city commission shall be notified of the board's decision and the initial boundaries proposed for designation. Within 60 days of the vote of the historic preservation board to direct the planning department to prepare a designation report, the city commission may, by a five-sevenths vote, deny or modify the proposed request for designation, as well as establish specific timeframes for the completion of the evaluation and recommendation or designation report.
- (5) *Requests for demolition permits.* Following a vote of the historic preservation board, after a public hearing noticed according to the requirements of subsection 2.2.3.1, to
 - (i) instruct the planning department to prepare a request for the designation of an individual historic site or district and an evaluation and recommendation in accordance with subsection 2.13.9(a)(4), or
 - (ii) to extend the interim procedures imposed under paragraph (7) below, no permit for demolition affecting the subject structure, or any property within the proposed designation site or district, shall be issued until one of the following occurs:
 - (i) The proposed historic preservation designation is approved by the city commission and a certificate of appropriateness is awarded by the board pursuant to subsection 2.13.7 of this section;
 - (ii) The proposed historic preservation designation is denied by the city commission; or
 - (iii) The applicant applies for an accelerated approval of a certificate of appropriateness prior to the final enactment of the historic preservation designation for the proposed site; and such certificate of appropriateness has been issued under the provisions of subsection 2.13.7 of this section. Such request for an accelerated certificate of appropriateness shall also include a request for the approval of any new construction. The planning department shall place an application for an accelerated approval of a certificate of appropriateness upon the next available agenda of the historic preservation board. Any application pending before the design review board that includes

any demolition of a contributing structure within a proposed historic district or site may not proceed until such time as an accelerated certificate of appropriateness is approved by the historic preservation board.

- (6) *Timeframes for preparing designation reports.* The applicant or the planning department shall have up to one year from the date the historic preservation board votes to instruct staff to prepare either an evaluation and recommendation, or a designation report, to prepare such evaluation and recommendation, or designation report and present it to the board for consideration, unless a different timeframe is set pursuant to subsection (4) above. If either the evaluation and recommendation, or designation report is not completed within such time periods, the applicant or the planning department may request approval from the city commission for additional periods of six months or less within which to complete the evaluation and recommendation, or designation report.
- (7) *Interim procedures for demolition permits.* The persons or entities listed in subsection (a)(1) above, may request the board to instruct the planning department to prepare a designation report and implement interim procedures for demolition permits. The planning director may prepare and submit to the historic preservation board an evaluation and recommendation for designation at a meeting noticed in a newspaper of general circulation at least five business days in advance of the hearing. The property owner shall be notified in writing, by regular mail sent to the address of the owner on the Miami-Dade County Property Appraiser's tax records, and postmarked at least five business days in advance of the hearing. The city commission shall also then be notified. If the historic preservation board finds that the evaluation and recommendation present a prima facie case that the property meets the criteria of the land development regulations for designation, it shall instruct the planning department to prepare a designation report, in which case the procedures for the issuance of a demolition permit set forth in subsection (5) above, shall be applicable for 60 days from the date of such vote. Within 60 days of the vote by the historic preservation board to instruct the planning department to prepare a designation report the city commission may, by a five-sevenths vote, deny or modify the proposed request for designation, as well as establish specific timeframes for the completion of the evaluation and recommendation or designation report. The interim procedures shall continue to apply after the 60 days expires only by a vote of the historic preservation board to proceed with the designation process at a public hearing with notice as provided in subsection (5) above, or by agreement in writing of the property owner. Application and fees, if applicable, shall be filed within ten days of the board's vote at the initial public hearing, but shall not delay commencement of the interim procedures. The interim procedures herein shall not be applicable to the individual designation of single-family homes located in single-family zoning districts.
- (8) *Historic preservation board public hearing and recommendation.* A quasi-judicial public hearing on a proposed site specific historic preservation designation shall be conducted by the historic preservation board after the date a designation report has been filed, and shall comply with the notice requirements in accordance with subsection 2.2.3.1. A designation of a local historic district shall be noticed in accordance with subsection 2.5.1.
 - (i) *Recommendation.* If the historic preservation board finds the proposed designation meets the intent and criteria set forth in this article, it shall transmit such recommendation to the planning board and the city commission, along with the designation report, and any additions or modifications deemed appropriate. If the historic preservation board finds that the proposed designation does not

meet the intent and criteria set out in this article, no further board action shall be required.

- (ii) *Affirmative recommendation.* Upon an affirmative recommendation by the historic preservation board, the proposed designation shall be transmitted to the planning board who shall process the proposed designation as an amendment to these land development regulations in accordance with the procedures specified in subsection 2.5.1 of these land development regulations.
- (9) *City commission.* No building, structure, improvement, landscape feature, interior, site or district shall be designated as an historic building, historic structure, historic improvement, historic interior, historic site, historic landscape feature or historic district except by a five-sevenths majority vote of the city commission, with the exception of single family homes designated as individual historic structures, in accordance with subsection 2.13.9(a)(10) below, which shall not require city commission approval. A listing of such single family homes shall be kept on file in the planning department. All sites and districts designated as historic sites and districts shall be delineated on the city's zoning map, pursuant to section 7.2.1.1, as an overlay district.
- (10) *Designation procedures initiated by owners of single-family homes in single-family districts.* Notwithstanding the above, the following shall apply to any request by property owners for the individual designation of their single-family homes as historic structures:
- (i) *Application.* An application for the designation of a single-family home as an historic structure shall be submitted by the property owner to the planning department for recommendation to the historic preservation board. The historic preservation board will make a determination as to whether the subject structure may be designated as an historic structure based upon the requirements and criteria of subsection 2.13.9(b). The following information must be submitted with the application:
 - a. A current survey (no less than six months old), which is signed and sealed by a professional engineer or a professional land surveyor, and a legal description of the property.
 - b. An historic resources report containing all relevant and available data including, but not limited to, the building card, historic microfilm and historic photos, which delineates the historic, cultural, aesthetic or architectural significance of the subject structure.
 - c. Existing conditions site plan, floor plans and elevation drawings of the subject structure.
 - d. A detailed photographic record of the exterior of the subject structure.
 - e. A completed application form.

Upon receipt of a completed application package, the planning department shall prepare a designation report that shall be presented to the board at a regularly scheduled meeting.
 - (ii) *Decision of the board.* If, after a public hearing, the historic preservation board finds that the proposed single-family designation application meets the criteria set forth in paragraph (b) below, it shall designate the single-family home as a local historic structure. Upon the designation of a single-family home as an historic structure, the structure shall be subject to the certificate of appropriateness requirements of subsection 2.13.7, with the exception of the interior areas of the structure, which shall not be subject to such regulations.

- (iii) Notwithstanding the requirements of section 2.13 of these land development regulations, the following improvements proposed for a single-family home individually designated as an historic structure may be approved by the staff of the planning department, provided such improvements are consistent with the certificate of appropriateness criteria in subsection 2.13.7 of these land development regulations:
 - a. Additions to single-family structures, whether attached or detached, which are not substantially visible from the public right-of-way or from the ocean front.
 - b. Modifications, additions, alterations and demolition to single-family structures, provided such modifications, additions, alterations and demolition are substantially in accordance with historic documentation, or consistent with the architectural scale, massing, character and style of the structure and do not result in the removal of significant architectural features, details or finishes.

(b) Criteria for designation

- (1) The historic preservation board shall have the authority to recommend that properties be designated as historic buildings, historic structures, historic improvements, historic landscape features, historic interiors (architecturally significant public portions only), historic sites, or historic districts if they are significant in the historical, architectural, cultural, aesthetic or archeological heritage of the city, the county, state or nation. Such properties shall possess an integrity of location, design, setting, materials, workmanship, feeling or association and meet at least one of the following criteria:
 - (i) Association with events that have made a significant contribution to the history of the city, the county, state or nation.
 - (ii) Association with the lives of persons significant in the city's past history.
 - (iii) Embody the distinctive characteristics of a historical period, architectural or design style or method of construction.
 - (iv) Possess high artistic values.
 - (v) Represent the work of a master, serve as an outstanding or representative work of a master designer, architect or builder who contributed to our historical, aesthetic or architectural heritage.
 - (vi) Have yielded, or are likely to yield information important in pre-history or history.
 - (vii) Be listed in the National Register of Historic Places.
 - (ix) Consist of a geographically definable area that possesses a significant concentration of sites, buildings or structures united by historically significant past events or aesthetically by plan or physical development, whose components may lack individual distinction.
- (2) A building, structure (including the public portions of the interior), improvement or landscape feature may be designated historic even if it has been altered if the alteration is reversible and the most significant architectural elements are intact and repairable.
- (3) The historic preservation board shall consider if the historic buildings, historic structures, historic improvements, historic landscape features, historic interiors (architecturally significant public portions only), historic sites, or historic districts comply with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

- (c) *Compliance with zoning regulations.* Compliance with all other zoning regulations is required when not specifically addressed in this section.
- (d) *Application of equitable estoppel to permits other than demolition.* Historic preservation designations shall be enforced against all applications or requests for project approval upon the earlier of the favorable recommendation by the historic preservation board or the applicable effective date of the proposed historic designation as more particularly provided herein. After submission of a completed application for a project approval, to the extent a proposed historic designation would, upon adoption, render the application or project nonconforming or subject the application or project to additional review procedures, then the procedures set forth in subsection 2.4.3 of these land development regulations shall apply with the following exceptions:
- (1) All references to recommendations by the planning board in subsection 2.4.3 shall be interpreted as meaning recommendations by the historic preservation board; and
 - (2) All references to adoption by the city commission within a 90-day period shall be interpreted to provide for adoption by the city commission within a 120-day period.
- (e) Historic preservation sites and districts include:
- (1) *Historic preservation sites (HPS).*
 - a. GU/HPS-1: Old City Hall, 1130 Washington Avenue Block 23, Ocean Beach Addition No. 3, as recorded in Plat Book 2 at Page 81 of the public records of the county.
 - b. CCC/HPS-2: 21st Street Recreation Center, 2100 Washington Avenue, beginning at intersection of west right-of-way of Washington Avenue and south boundary of Collins Canal in Section 27, Range 42 east, Township 53 South, for point of beginning, then south 510 feet; west 165 feet, north 45 degrees to west 115 feet, north 160 feet, west 140 feet, north 70 feet; northeast along south boundary of Collins Canal 435 feet to point of beginning.
 - c. RPS-3/HPS-3: Congregation Beth Jacob Complex, 301-317 Washington Avenue, Lots 9, 10 and 11, Block 7, Ocean Beach Subdivision, as recorded in Plat Book 7, Page 38 of the public records of the county.
 - d. HPS-4: Venetian Causeway Historic Preservation Site (HPS-4): The public right-of-way of the Venetian Causeway from the city limit west of San Marino Island to the east end of the bridge east of Belle Island.
 - e. RM-1/HPS-5: The Miami Beach Woman's Club Site, 2401 Pine Tree Drive, Flamingo Terrace Subdivision No. 1; as recorded in the Public Records of Dade County, Florida. The designated area consists of the exterior premises and those portions of the interior described as architecturally significant in the addendum to designation report dated February 8, 1995.
 - f. CD-2, GU, RS-2, RS-3/HPS-6: Sunset Island Bridges #1, 2 and 4, as described below: The boundaries of Sunset Island Bridge #1 commence at the intersection of the centerline of Sunset Drive and W. 21st Street as shown on PLAT ENTITLED SUNSET LAKE EXTENSION, recorded in Plat Book 40, page 23, Public Records of Dade County, Florida; thence run South 45° 00' 00" East (assumed bearing) along the extension of the centerline of said Sunset Drive for a distance of 44.90 feet; thence South 21° 47' 10" East for a distance of 113.22 feet to the POINT OF BEGINNING of the land herein described; thence South 65° 06' 00" West for a distance of 29.35 feet to a point located on the Easterly line of Lot 1, Block 5 of said PLAT ENTITLED SUNSET LAKE EXTENSION; thence South 28° 35' 00" East for a distance of 14.49 feet; thence

along the arc of a curve concave to the northwest, whose radius bears North 19° 38' 22" West feet, having a central angle of 1° 30' 50" and a radius of 310.00 feet for a distance of 8.19 feet; thence South 21° 47' 10" East for a distance of 59.23 feet; thence South 68° 12' 50" West for a distance of 2.25 feet; thence South 23° 12' 50" West for a distance of 1.50 feet; thence South 21° 47' 10" East for a distance of 3.88 feet; thence South 66° 47' 10" East for a distance of 1.50 feet; thence North 68° 12' 50" East for a distance of 2.25 feet; thence South 21° 47' 10" East, for a distance of 58.12 feet; thence along the arc of a curve, concave to the northwest whose radius bears North 21° 20' 00" West, having a central angle of 1° 03' 54" and a radius of 433.35 feet for a distance of 8.06 feet; thence South 9° 49' 50" East for a distance of 34.50 feet to a point located on the West line of Lot 21, Block 15-B, RESUBDIVISION OF LOTS 16 TO 21 INCLUSIVE BLOCK 15 OF THE AMENDED SUNSET LAKE SUBDIVISION OF MIAMI BEACH BAY SHORE COMPANY, recorded in Plat Book 9, at page 145, Public Records of Dade County, Florida; thence North 68° 12' 50" East for a distance of 66.80 feet to a point located on the East line of said Lot 21; thence North 21° 24' 02" West along the East line of said Lot 21 and its northerly extension for a distance of 36.31 feet; thence run along the arc of a curve concave to the northwest, whose radius bears North 28° 12' 06" West having a central angle of 1° 43' 58" and a radius of 433.35 feet for a distance of 13.11 feet; thence North 21° 47' 10" West, for a distance of 123.93 feet; thence along the arc of a curve concave to the northwest whose radius bears North 28° 18' 07" West, having a central angle of 2° 25' 37" and a radius of 310.00 feet for a distance of 13.10 feet; thence North 28° 35' 00" West for a distance of 14.18 feet to a point located on the southwesterly line of Lot 7, Block 4 of the above mentioned PLAT ENTITLED SUNSET LAKE EXTENSION; thence South 65° 06' 00" West for a distance of 30.78 feet to the POINT OF BEGINNING. Said land located lying and being in Section 34, Township 53 South, Range 42 East, City of Miami Beach, Dade County, Florida, and containing 7884 square feet more or less or 0.1810 acres more or less, and

Sunset Island Bridge #2 commences at the intersection of the centerlines of W. 21st Street and Sunset Drive as shown in 3rd REVISED PLAT OF SUNSET ISLANDS, recorded in Plat Book 40, at page 8, Public Records of Dade County, Florida; thence run north 45° 00' 00" west (assumed bearing), along the centerline of said Sunset Drive for a distance of 657.86 feet to the POINT OF BEGINNING of the land herein described; thence south 88° 05' 00" east, for a distance of 43.92 feet to a point located in the westerly line of Lot 1, Block 4F of the above mentioned 3rd REVISED PLAT OF SUNSET ISLANDS; thence north 45° 00' 00" west parallel to the centerline of said Sunset Drive for a distance of 12.75 feet; thence north 88° 05' 00" west for a distance of 19.09 feet; thence north 45° 00' 00" west parallel to the centerline of said Sunset Drive for a distance of 145.65 feet; thence south 89° 13' 20" east, for a distance of 18.69 feet; thence north 45° 00' 00" west for a distance of 11.85 feet to a point located on the westerly line of Lot 26, Block 3D of said 3rd REVISED PLAT OF SUNSET ISLANDS; thence north 89° 13' 20" west for a distance of 86.03 feet to a point located on the easterly line of Lot 1, Block 3H of said 3rd REVISED PLAT OF SUNSET ISLANDS; thence south 45° 00' 00" east for a distance of 11.85 feet; thence south 89° 13' 20" east for a distance of 12.44 feet; thence south 45° 00' 00" east for a distance of 144.05 feet; thence north 88° 05' 00" west, for a distance of 12.69 feet; thence south 45° 00' 00" east for a distance of 12.75 feet to a point located on the easterly line of Lot 31, Block 4A of the above mentioned 3rd REVISED PLAT OF SUNSET ISLANDS; thence south 88° 05' 00" east for a distance of 43.92 feet to the POINT OF BEGINNING. Said land located lying and being in Section 28, Township 53 south range 42 east, City of Miami Beach, Dade County, Florida, and containing 7023 square feet

more or less or 0.1612 acres more or less, and Sunset Island Bridge #4 commences at the intersection of the centerline of North Bay Road and W. 29th Street, as shown in AMENDED PLAT OF SUNSET LAKE SUBDIVISION OF THE MIAMI BEACH BAY SHORE COMPANY, recorded in Plat Book 8, at page 52, Public Records of Dade County Florida, thence due West (assumed bearing) along the centerline of said W. 29th Street for a distance of 375.50 feet to the POINT OF BEGINNING of the land herein described; thence due north for a distance of 35.00 feet to a point located on the south line of Lot 1, Block 10 of the above mentioned AMENDED PLAT OF SUNSET LAKE SUBDIVISION, thence due west parallel to the centerline of said W. 29th Street for a distance of 26.50 feet; thence due south for a distance of 13.70 feet; thence due west, parallel to the centerline of said W. 29th Street for a distance of 136.00 feet; thence, due north for a distance of 8.70 feet; thence, due west for a distance of 12.20 feet to a point located on the south line of Lot 2, Block 1A, PLAT ENTITLED SUNSET LAKE EXTENSION, recorded in Plat Book 40, at page 23, Public Records of Dade County, Florida; thence, due south for a distance of 60.00 feet to a point located on the north line of Lot 1, Block 1 of the above mentioned PLAT ENTITLED SUNSET LAKE EXTENSION; thence, due east for a distance of 12.20 feet; thence due north for a distance of 12.90 feet; thence due east parallel to the centerline of said W. 29th Street for a distance of 136.00 feet; thence due south for a distance of 17.90 feet; thence due east, parallel to the centerline of W. 29th Street for a distance of 26.50 feet to a point located on the north line of Lot 13, Block 12 of the above mentioned AMENDED PLAT OF SUNSET LAKE SUBDIVISION OF MIAMI BEACH BAY SHORE COMPANY; thence due north for a distance of 35.00 feet to the POINT OF BEGINNING. Said lands located, lying and being in Section 27, Township 53 South, Range 42 East, City of Miami Beach, Dade County, Florida, and containing 7,809.00 square feet more or less or 0.1793 acres more or less.

- g. RM-2/HPS-7: The Bath Club, 5937 Collins Avenue, as more particularly described as Tract 1, THE BATH CLUB PROPERTY, according to the Plat thereof, recorded in Plat Book 40, at Page 14, of the Public Records of Miami-Dade County, Florida. Said property bounded as follows: On the East by the Erosion Control Line; on the West by the Easterly line of Collins Avenue; and on the North and South by the Northerly and Southerly Lines of Tract 1. Said lands located, lying and being in the City of Miami Beach, Florida, and containing 230,124 square feet, more or less, or 5.28 acres, more or less.
- h. GU/HPS-8: Dade Boulevard Fire Station, 2300 Pinetree Drive, as more particularly described as follows: Commence at the point of intersection of the south Right-of-Way of 24th Street and the east Right-of-Way line of Pinetree Drive, as shown in DEDICATION OF PORTION OF LIBERTY AVENUE AND WEST 24TH STREET, recorded in Plat Book 26, at Page 13, Public Records of Miami-Dade County, Florida; thence South $11^{\circ} 33' 30''$ East, along the east Right-of-Way of Pinetree Drive for a distance of 100.00 feet; thence South $78^{\circ} 26' 30''$ West for a distance of 100.00 feet to the POINT OF BEGINNING of the tract of land herein described; thence continue South $78^{\circ} 26' 30''$ West for a distance of 256.02 feet; thence South $27^{\circ} 42' 00''$ West for a distance of 172.82 feet; thence South $41^{\circ} 20' 42''$ East for a distance of 253.53 feet to a point located on the north Right-of-Way line of Dade Boulevard; thence North $38^{\circ} 39' 55''$ East, along the north Right-of-Way line of Dade Boulevard for a distance of 157.02 feet to a point of tangency; thence run along the arc of a concave curve to the northwest, having a central angle of $50^{\circ} 13' 25''$ and a radius of 329.70 feet for a distance of 289.00 feet to the POINT OF BEGINNING. Said lands located, lying and being in the City of Miami Beach, Florida, and containing 80,949.47 square feet, more or less, or 1.8583 acres, more or less.

- i. Public Right-of-Way/HPS-9: Pinetree Drive Historic Roadway, more particularly described as follows: A portion of the public right-of-way of Pinetree Drive, bounded on the north by the easterly extension of the centerline of W. 40th Street, as shown in ORCHARD SUBDIVISION No. 2 AND 3, Plat Book 8, Page 116, Public Records of Miami-Dade County, Florida, and bounded on the south by the easterly extension of the centerline of W. 30th Street as shown in MIAMI BEACH IMPROVEMENT CO.'S PLAT OF ORCHARD SUBDIVISION No. 1, Plat Book 6, Page 111, Public Records of Miami-Dade County, Florida. And together with: Commence at the intersection of the centerline of 40th Street and the northerly extension of the east line of Block 50, ORCHARD SUBDIVISION No. 2 & 3, Plat Book 8, Page 116, Public Records of Miami-Dade County, Florida, said point being the POINT OF BEGINNING; thence northerly, along the northerly extension of the east line of said Block 50 to the point of intersection with the north right-of-way line of 40th Street; thence deflect 30° to the right for a distance of 120.00 feet; thence northerly, along a line parallel and 60.00 feet (measured at right angles) east of the east line of Block 53 of the above mentioned ORCHARD SUBDIVISION No. 2 & 3, to the point of intersection with the south right-of-way line of 41st Street (Arthur Godfrey Road); thence run northeasterly to the point of intersection of the easterly extension of the south line of Block 3, and the southerly extension of the east line of said Block 3, as shown in the ORCHARD SUBDIVISION No. 4, Plat Book 25, Page 30, Public Record of Miami-Dade County, Florida; thence easterly, along the easterly extension of the north right-of-way of W. 41st Street (Arthur Godfrey Road) to the point of intersection with the southerly extension of the west line of Lot 1, FLAMINGO BAY SUBDIVISION No. 1, recorded in Plat Book 6, Page 101, Public Records of Miami-Dade County, Florida; thence southerly across W. 41st Street (Arthur Godfrey Road) to the point of intersection of the north and west lines of Lot 29, Block 3, FLAMINGO TERRACE SUBDIVISION, recorded in Plat Book 10, Page 3, Public Records of Miami-Dade County, Florida; thence continue southerly, along the west line of Lots 29 and 28 of said Block 3 and the northerly extension of the west line of said Lot 29, to the most southerly point of tangency of the west line of said Lot 28; thence southerly, radial to the arc forming the north boundary of Lot 12, Block 4, of said FLAMINGO TERRACE SUBDIVISION to the point of intersection of said arc; thence run west-southwest, along the arc forming the north boundary of said Lot 12 to the point of intersection with the easterly extension of the centerline of W. 40th Street; thence westerly along the easterly extension of the centerline of 40th Street to the POINT OF BEGINNING. And together with: A portion of the public right-of-way of Pinetree Drive, bounded on the south by the easterly extension of the south line of Block 3 as shown in ORCHARD SUBDIVISION No. 4, Plat Book 25, Page 30, Public Records of Miami-Dade County, Florida, and bounded on the north by the easterly extension of the north line of Lot 4, Block D, as shown in SURPRISE LAKE SUBDIVISION, recorded in Plat Book 9, Page 114, Public Records of Miami-Dade County, Florida. Said lands located lying and being in the City of Miami Beach, County of Miami-Dade, Florida.
- j. ROS/HPS-10: The Flagler Memorial and Monument Island Historic Site, more particularly described as follows; A tract of land known as "MONUMENT ISLAND," located in Section 33, Township 53 South, Range 42 East, bounded by the High Water Mark, and more particularly described as follows: Commence at the point of intersection of the west line of West Avenue and the south line of 14th Street, as shown in the PLAT OF THE SUBDIVISION OF THE NORTH 230 FEET OF LOT 1 OF THE SUBDIVISION OF BLOCK 80 OF THE ALTON BEACH REALTY COMPANY recorded in Plat Book 34, at Page 25, Public Records of Miami-Dade County, Florida; thence run South 88° 26' 30" West, along the south line of said 14th Street for a distance of 637.12 feet; thence

North 1° 33' 30" West for a distance of 5.41 feet; thence North 86° 10' 02" West across Biscayne Bay for a distance of 2,552.29 feet; thence South 40° 12' 50" West for a distance of 260.10 feet; thence South 55° 56' 20" West for a distance of 211.18 feet to the POINT OF BEGINNING of the tract of land herein described; thence along the following courses; South 83° 50' 56" East for a distance of 71.15 feet, North 55° 48' 20" East for a distance of 99.61 feet; North 46° 34' 38" East for a distance of 79.90 feet; North 55° 10' 14" East for a distance of 73.47 feet; North 48° 21' 04" East for a distance of 58.45 feet; North 34° 35' 34" East for a distance of 84.93 feet; North 12° 09' 31" East for a distance of 74.10 feet; North 4° 53' 49" West for a distance of 32.15 feet; North 29° 25' 26" West for a distance of 26.28 feet; North 50° 58' 18" West for a distance of 152.34 feet; North 65° 58' 36" West for a distance of 29.55 feet; North 83° 03' 21" West for a distance of 38.13 feet; South 86° 17' 27" West for a distance of 40.84 feet; South 62° 55' 22" West for a distance of 42.88 feet; South 20° 02' 40" West for a distance of 71.04 feet; South 43° 06' 37" West for a distance of 37.11 feet; South 59° 17' 28" West for a distance of 147.67 feet; South 50° 08' 01" West for a distance of 62.59 feet; South 16° 24' 16" West for a distance of 43.27 feet; South 16° 45' 18" East for a distance of 93.91 feet; South 34° 52' 53" East for a distance of 65.54 feet; South 42° 40' 51" East for a distance of 105.03 feet to the POINT OF BEGINNING. Said lands located, lying, and being in the City of Miami Beach, Miami-Dade County, Florida, and containing 3.6723 acres (more or less), together with full riparian rights.

- k. PF and ROS/HPS-11: The Historic 69th Street Fire Station, more particularly described as follows: A portion of Lots 1 through 6, Block M. CORRECTED PLAT OF ATLANTIC HEIGHTS, recorded in Plat Book 9, at Page 14, Public Records of Miami-Dade County, Florida, together with the riparian rights appurtenant and adjacent thereto, and together with a portion of Atlantic Drive (now 69th Street). Said portion of land located in the south half of Government Lot One, Section 11, Township 53 South, Range 42 East, and more particularly described as follows: Commence at the southeast corner of Lot 6, Block M, of the above mentioned CORRECTED PLAT OF ATLANTIC HEIGHTS; thence North 89° 12' 34" West, along the south line of said Lot 6 for a distance of 38.36 feet to the POINT OF BEGINNING of the tract of land herein described; then North 26° 00' 53" West along the new right-of-way line of Indian Creek Drive for a distance of 427.95 feet to the point of intersection with the southerly line of Lot 6, Block N, of said CORRECTED PLAT OF ATLANTIC HEIGHTS; thence run along the arc of a curve concave to the northwest whose radius bears North 62° 11' 32" West, having a central angle of 63° 01' 09" and a radius of 20.00 feet for a distance of 22.00 feet to a point of tangency; thence North 89° 10' 23" West, along the north right-of-way line of Atlantic Drive (now 69th Street) for a distance of 152.47 feet; thence South 16° 52' 06" East for a distance of 74.53 feet; thence South 19° 41' 17" East for a distance of 37.33 feet to a point of tangency; thence along the arc of a curve concave to the northeast, having a central angle of 19° 13' 49" and a radius of 703.27 feet for a distance of 236.04 feet to a point of tangency; thence South 38° 55' 06" East for a distance of 53.57 feet; thence South 53° 17' 11" West for a distance of 33.97 feet; thence South 89° 12' 34" East, along the south line of the above mentioned Lot 6, Block M and its westerly extension, for a distance of 202.55 feet to the POINT OF BEGINNING. Said lands located, lying, and being in the City of Miami Beach, Miami-Dade County, Florida, and containing 1,6066 acres (more or less).
- l. GU/HPS-12: The 28th Street Obelisk and Pumping Station Historic Structure, 300 West 28th Street, more particularly described as follows: A portion of land that is located in Section 27, Township 53 South, Range 42 East, and bounded by the perimeter of a circumference having a radius of 33.50 feet and an arc length of 210.49 feet. The location of the radius point of said circumference is

described as follows: Commence at the point of intersection of the eastern right-of-way line of Sheridan Avenue and the northern right-of-way line of West 28th Street, as shown in SALIDOR COURT, recorded in Plat Book 35, at Page 20, Public Records of Miami-Dade County, Florida; thence South 8° 25' 08" West, along the extension of the eastern right-of-way line of Sheridan Avenue for a distance of 32.89 feet to the point of intersection with the centerline of said West 28th Street; thence North 74° 13' 22" East, along the centerline of said West 28th Street for a distance of 73.05 feet; thence South 15° 46' 38" East, at a right angle with the centerline of said West 28th Street for a distance of 102.64 feet to the radius point (center of obelisk) of the above mentioned circumference. Said lands located, lying and being in the City of Miami Beach, Miami-Dade County, Florida, and containing 3,526 square feet (more or less).

- m. RM-1/HPS-13: 1600 Lenox Avenue, as more particularly described as Lot 1, in Block 46, COMMERCIAL SUBDIVISION, according to the Plat thereof, recorded in Plat Book 6, at Page 5, of the Public Records of Miami-Dade County, Florida.
- n. CPS-1/HPS-14: 36 Ocean Drive, as more particularly described as Lot 4, Block 1 of Ocean Beach Fla. Subdivision, according to the plat thereof, as recorded in Plat Book 2, Page 38, of the Public Records of Miami-Dade County, Florida.
- o. CD-2/HPS-15: 1700 Alton Road, as more particularly described as Lots 1 and 2, Block 17, of Commercial Subdivision 1st Addition, according to the Plat thereof, as recorded in Plat Book 6, Page 30, of the Public Records of Miami-Dade County, Florida.

(2) *Historic preservation districts (HPD).*

- a. CD-2, RM-1/HPD-1: All properties fronting or abutting Espanola Way, including all of Blocks 2-A and 2-B Espanola Villas, Blocks 3-A, 3-B, 4-A, 4-B, 5-A, 5-B, 6-A, 6-B, 7-A and 7-B, First Addition to Espanola Villas, and Lots 1—4, a re-subdivision of that unnumbered tract lying west of Blocks 7-A and 7-B and Espanola Way in First Addition to Espanola Villas.
- b. MXE/HPD-2: The Ocean Drive/Collins Avenue Historic District is generally bounded by the centerline of Fifth Street from the Erosion Control Line to Ocean Court; centerline of Ocean Court to Sixth Street; and the centerline of Sixth Street from Ocean Court to Collins Court on the south; Collins Court (as extended) from Sixth Street to the northern edge of Lot 7, Block 57 of Fisher's First Subdivision of Alton Beach east to the centerline of Collins Avenue; and the centerline of Collins Avenue to 22nd Street on the west; the centerline of 22nd Street on the north; and the Erosion Control Line on the east. A complete legal description is included in the designation report.
- c. GU, RS-3, RS-4/HPD-3: The east side of Collins Avenue to the Erosion Control Line from 77th Street to 79th Street. (All of Blocks 5, 6, 11 and 12 of Altos Del Mar No. 1 Subdivision). Those properties which are owned by the state or the city shall retain their GU government use district zoning designation. Those properties which are privately owned shall retain their single-family zoning district classification of RS-3 or RS-4, respectively.
- d. RM-3, GU/HPD-12: The boundaries of the Morris Lapidus/Mid-20th Century Historic District commence at the northwest corner of Lot 1, Block 39, AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, Plat Book 5, Page 8, Public Records of Miami-Dade County, Florida; thence run northerly, along the east right-of-way line of Collins Avenue for a distance of 75.00 feet to the POINT OF BEGINNING of the portion of land herein described; thence run easterly, parallel to the north line of the above mentioned Lot 1 and its easterly extension to the point of

intersection with the Erosion Control Line of the Atlantic Ocean. Said Erosion Control Line of the Atlantic Ocean as recorded in Plat Book 105 at Page 62, Public Records of Miami-Dade County, Florida; thence run northerly, along said Erosion Control Line of the Atlantic Ocean for an approximate distance of 5,197 feet to the point of intersection with the easterly extension of the north line of Lot 24, as said Lot 24 is shown in AMENDED PLAT OF FIRST OCEAN FRONT SUBDIVISION OF THE MIAMI BEACH BAY SHORE COMPANY, Plat Book 9, at Page 78, Public Records of Miami-Dade County, Florida; thence run westerly, along the north line of said Lot 24 and its easterly and westerly extension to the bulkhead line of Indian Creek; thence run southerly, along the bulkhead line of Indian Creek to the point of intersection with the westerly extension of a line which is 75.00 feet north and parallel to the north line of the above mentioned Lot 1, Block 39; thence easterly along the last described course to the POINT OF BEGINNING. Said lands located, lying and being in Section 23, Township 53 South, Range 42 East, City of Miami Beach, Florida.

- e. MXE, CD-3, GU/HPD-5: Museum Historic Preservation District, generally bounded on the south by Lincoln Lane North, the centerline of Washington Avenue on west; and Collins Canal on north; the centerline of 23rd Street, including all properties fronting on or having a property line on 23rd Street, on the north; and, the centerline of Collins Avenue on the east. (Complete legal description available on file with the designation report).
- f. CSP-1, CPS-2, RPS-1, RPS-2, RPS-3, RPS-4, GU/HPD-6: The boundaries of the Ocean Beach Historic District commence at the intersection of the centerline of Fifth Street and the centerline of Ocean Court; thence run easterly, along the extension of the centerline of Fifth Street to the Erosion Control Line of the Atlantic Ocean; thence run southerly, along the Erosion Control Line to the centerline of First Street; thence run westerly, along First Street to the centerline of Collins Court; thence run southerly, along Collins Court, to the south line of Lot 18 on Block 10; thence run westerly along the extension of the south line of Lot 18 on Block 10 to the centerline of Washington Avenue; thence run northerly, along Washington Avenue to the centerline of Second Street; thence run westerly, along Second Street to the centerline of Meridian Court; then run northerly, along Meridian Court to the centerline of Third Street; thence run westerly, along Third Street to the centerline of Jefferson Court; thence run northerly, along Jefferson Court to the south line of Lot 4 on Block 82; thence run easterly along the extension of the south line of Lot 4 on Block 82 to the centerline of Jefferson Avenue; thence run northerly, along Jefferson Avenue to the centerline of Forth Street; thence run westerly, along Forth Street to the centerline of Michigan Avenue; thence run northerly, along Michigan Avenue to the centerline of Fifth Street; thence run westerly, along Fifth Street to the centerline of Michigan Court; thence run southerly along Michigan Court to the south line of Lot 8 on Block 99; thence run westerly along the extension of the south line of Lot 8 on Block 99 to the centerline of Lenox Avenue; thence run northerly, along Lenox Avenue to the centerline of Fifth Street; thence run westerly, along Fifth Street to the centerline of Lenox Court; thence run northerly, along Lenox Court to the centerline of Sixth Street; thence run easterly along Sixth Street to the centerline of Washington Avenue; thence run southerly, along Washington Avenue to the centerline of Sixth Street, thence run easterly, along Sixth Street to the centerline of Ocean Court, thence run southerly, along Ocean Court, to the point of commencement, at the intersection of the centerlines of Fifth Street and Ocean Court.
- g. CD-2, GU, GU/RS-3, GU/RS-4, MXE, RM-1/HPD-7: The boundaries of the Harding Townsite/South Altos Del Mar Historic District commence at the intersection of the centerline of Collins Court and the centerline of 76th Street;

thence run easterly along the centerline of 76th Street to the intersection with the centerline of Collins Avenue; thence run northerly along the centerline of Collins Avenue to the intersection with the centerline of 77th Street; thence run easterly along the theoretical extension of the centerline of 77th Street to the intersection with the Erosion Control Line of the Atlantic Ocean; thence run southerly along the Erosion Control Line of the Atlantic Ocean to the intersection with the theoretical extension of the centerline of 73rd Street; thence run westerly along the centerline of 73rd Street to the intersection with the centerline of the theoretical extension of Collins Court; thence run northerly along the centerline of Collins Court to the point of commencement, at the intersection of the centerlines of Collins Court and 76th Street.

- h. RS-4, RM-1, RM-2/HPD-8: The boundaries of the Palm View Historic District commence at the intersection of the centerline of 17th Street and Meridian Avenue, as shown in the amended plat of Golf Course Subdivision of the Alton Beach Realty Company, recorded in Plat Book 6, at page 26, public records of Miami-Dade County, Florida. Said point being the point of beginning of the tract of land herein described; thence run westerly, along the centerline of 17th Street for a distance of 1,325 feet (more or less) to the centerline of Lenox Court, as shown in Palm View Subdivision of the Alton Beach Realty Company, recorded in Plat Book 6, at page 29, public records of Miami-Dade County, Florida; thence northerly, along the centerline of Lenox Court to the point of intersection with the centerline of Dade Boulevard; thence northeasterly, along the centerline of Dade Boulevard to a point. Said point located 131 feet (more or less and calculated along the centerline of Dade Boulevard) southwesterly of the point of intersection with the centerline of Meridian Avenue; thence run southeasterly, at right angle with the centerline of Dade Boulevard for a distance of 83.50 feet to the point of intersection with the south right-of-way of Collins Canal; thence northeasterly along the south right-of-way of Collins Canal to the point of intersection with the west right-of-way of Meridian Avenue; thence southerly, along the west right-of-way of Meridian Avenue for a distance of 202 feet (more or less) to a point of tangency; thence run along the arc of a curve, concave to the northwest, having a central angle of 90°00'00" and a radius of 15.00 feet for a distance of 23.56 feet to a point. Said point located in the north right-of-way of 19th Street, as shown in the above mentioned amended plat of Golf Course Subdivision of the Alton Beach Realty Company; thence run southerly, in a 90°00'00" angle with the north right-of-way of 19th Street for a distance of 20.00 feet to a point located in the centerline of said 19th Street; thence easterly, along the centerline of 19th Street for a distance of 50.00 feet to the point of intersection with the centerline of Meridian Avenue; thence southerly along the centerline of Meridian Avenue for a distance of 995 feet (more or less) to the point of beginning. Said lands located, lying, and being in section 34, township 53 south, range 42 east, City of Miami Beach, Miami-Dade County, Florida.
- i. RM-1, CD-2/HPD-13: The boundaries of the North Shore Historic District commence at the point of intersection of the centerline of Collins Court and the centerline of 73rd Street, as shown in the HARDING TOWNSITE, recorded in Plat Book 34, at Page 4, of the Public Records of Miami-Dade County, Florida. Said point being the POINT OF BEGINNING of a tract of land herein described; thence run Northerly, along the centerline of Collins Court to a point of intersection with the Centerline of 75th Street; thence continue Northerly to a point of intersection of the Centerline of Collins Court and the Northern right-of-way line of 75th Street; thence continue Northerly along the centerline of Collins Court to a point of intersection with the centerline of 87th Street; thence run Westerly along the centerline of 87th Street to a point of intersection with the centerline of Harding Avenue; thence run Southerly along the centerline of

Harding Avenue to a point of intersection with the Easterly extension of the North line of Lot 10, Block 3, as shown in BEACH BAY SUBDIVISION, as recorded in Plat Book 44, Page 25, of the Public Records of Miami-Dade County, Florida; thence run Westerly along the North line of said Lot 10 to a point. Said point being the Northwest corner of said Lot 10; thence Southerly along the West line of Lots 10, 11, and 12 of Block 3 of the aforementioned BEACH BAY SUBDIVISION to a point of intersection on the Northern right-of-way line of 86th Street; thence Southerly to a point of intersection of the Southern right-of-way line of 86th Street and the West line of Lot 10, Block 4 of the aforementioned BEACH BAY SUBDIVISION; thence continue Southerly along the West line of Lots 10, 11, 12, 13, and 14 of said Block 4 to a point of intersection on the Northern right-of-way line of 85th Street; thence continue Southerly to a point of intersection of the Southern right-of-way line of 85th Street and the West line of Lot 10, Block 5 of the aforementioned BEACH BAY SUBDIVISION; thence continue Southerly along the West line of Lots 10, 11, 12, 13, and 14 of said Block 5 to a point of intersection on the Northern right-of-way line of 84th Street; thence continue Southerly to a point of intersection of the Southern right-of-way line of 84th Street and the West line of Lot 10, Block 6 of the aforementioned BEACH BAY SUBDIVISION; thence continue Southerly along the West line of Lots 10, 11, 12, 13, and 14 of said Block 6 to a point of intersection on the Northern right-of-way line of 83rd Street; thence continue Southerly to a point of intersection of the Southern right-of-way line of 83rd Street and the West line of Lot 14, Block 3, HAYNSWORTH BEACH SUBDIVISION, as recorded in Plat Book 41, Page 2, of the Public Records of Miami-Dade County, Florida. Thence continue Southerly along the West lines of Lots 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 of said Block 3 to a point of intersection on the Northern right-of-way line of 81st Street; thence continue Southerly to a point of intersection of the Southern right-of-way line of 81st Street and West line of Lot 12, Block 7 of ALTOS DEL MAR NO. 3, as recorded in Plat Book 8, Page 41, of the Public Records of Miami-Dade County, Florida. Thence continue Southerly along the West line of Lots 7, 8, 9, 10, 11, and 12 of said Block 7 to a point of intersection on the Northern right-of-way line 80th Street; thence continue Southerly to a point of intersection of the Southern right-of-way line of 80th Street and the West line of Lot 12, Block 8 of the aforementioned ALTOS DEL MAR NO. 3; thence continue Southerly along the West line of Lots 7, 8, 9, 10, 11, and 12 of said Block 8 to a point of intersection on the Northern right-of-way line 79th Street; thence continue Southerly to a point of intersection of the Southern right-of-way line of 79th Street and the West line of Lot 12, Block 9 of the aforementioned ALTOS DEL MAR NO. 3; thence continue Southerly along the West line of Lots 7, 8, 9, 10, 11, and 12 of said Block 9 to a point of intersection on the Northern right-of-way line 78th Street; thence continue Southerly to a point of intersection of the Southern right-of-way line of 78th Street and the West line of Lot 12, Block 10 of the aforementioned ALTOS DEL MAR NO. 3; thence continue Southerly along the West line of Lots 7, 8, 9, 10, 11, and 12 of said Block 10 to a point of intersection on the Northern right-of-way line 77th Street; thence continue Southerly to a point of intersection of the Southern right-of-way line of 77th Street and the West line of Lot 12, Block 11 of the aforementioned ALTOS DEL MAR NO. 3; thence continue Southerly along the West line of Lots 7, 8, 9, 10, 11, and 12 of said Block 11 to a point of intersection on the Northern right-of-way line 76th Street; thence continue Southerly to a point of intersection of the Southern right-of-way line of 76th Street and the West line of Lot 6, Block 12 of the aforementioned ALTOS DEL MAR NO. 3; thence continue Southerly along the West line of Lots 4, 5, and 6 and its Southerly extension of said Block 12 to a point of intersection on the centerline of 75th Street; thence run Westerly along the centerline of 75th Street to a point of intersection on the centerline of

Dickens Avenue; thence run Southerly along the centerline of Dickens Avenue to a point of intersection on the centerline of 73rd Street; thence run Easterly along the centerline of 73rd Street to a point of intersection with the centerline of Collins Court, Said point also being the POINT OF BEGINNING. Said lands located, lying and being in Section 2, Township 53 South, Range 42 East, City of Miami Beach, Florida. The boundaries of the North Shore Historic District Tatum Waterway Expansion commence at the Point of Intersection of the Centerline of Hawthorne Avenue and the Centerline of 77th Street, as shown in the plat of BISCAYNE BEACH SUBDIVISION, as recorded in Plat Book 48, at Page 53 of the Public Records of Miami-Dade County. Said point being the POINT OF BEGINNING of a tract of land herein described; Thence run Northerly along the Centerline of Hawthorne Avenue to a Point of Intersection of the Centerline of Hawthorne Avenue and the Centerline of Crespi Boulevard; Thence Northeasterly and Northerly along the Centerline of Crespi Boulevard to a Point of Intersection with the Westerly extension of the North line of Lot 4, Block 13, of BISCAYNE BEACH SECOND ADDITION as recorded in Plat Book 46, at Page 39, of the Public Records of Miami-Dade County, Florida; Thence Easterly along said extension of the North line of Lot 4 and along the North line of Lot 4 and its extension over the Tatum Waterway to a Point of Intersection with the Eastern bulkhead line of Tatum Waterway, the same line being the Western line of Block 1, of BEACH BAY SUBDIVISION, as recorded in Plat Book 44, at Page 25, of the Public Records of Miami-Dade County, Florida; Thence Northerly along said Western Line of Block 1 to a point being the Northwest corner of the Plat of BEACH BAY SUBDIVISION, the same point being the Northwest corner of Lot 1, Block 1 of said BEACH BAY SUBDIVISION, as recorded in Plat Book 44, at Page 25, of the Public Records of Miami-Dade County, Florida; Thence Easterly along the North line of Lot 1, Block 1 and its Easterly extension to a Point of Intersection with the Centerline of Byron Avenue; Thence Southerly along the Centerline of Byron Avenue to a Point of Intersection of Byron Avenue and 81st Street; Thence Westerly along the Centerline of 81st Street to a Point of Intersection with the Centerline of Tatum Waterway Drive; Thence southwesterly along the Centerline of Tatum Waterway Drive to a Point of Intersection with the Centerline of 77th Street; Thence westerly along the Centerline of 77th Street to a Point of Intersection of Centerline 77th Street with the Centerline of Hawthorne Avenue; said point being the POINT OF BEGINNING. Said lands located, lying and being in Section 10, Township 53 South, Range 42 East, and in Section 11, Township 53 South, Range 42 East, City of Miami Beach, Florida.

- j. RM-2, RM-3, GU/HPD-10: The boundaries of the North Beach Resort Historic District commence at the point of intersection of the centerlines of Collins Avenue and 71st Street, as shown in NORMANDY BEACH SOUTH, recorded in Plat Book 21, at Page 54, Public Records of Miami-Dade County, Florida. Said point being the POINT OF BEGINNING of the tract of land herein described; thence run easterly to the point of intersection with the Erosion Control Line of the Atlantic Ocean, as recorded in Plat Book 105, at Page 62, Public Records of Miami-Dade County, Florida; thence run southerly, along the Erosion Control Line of the Atlantic Ocean to the point of intersection with the south line of Lot 44, Block 1, AMENDED PLAT OF SECOND OCEAN FRONT SUBDIVISION, recorded in Plat Book 28, at Page 28, Public Records of Miami-Dade County, Florida; thence run westerly, along the south line of said Lot 44 to the point of intersection with the easterly Right-of-Way line of Collins Avenue; thence run southerly, along the easterly Right-of-Way line of Collins Avenue to the point of intersection with the north line of Lot 42 of the above mentioned Block 1; thence run easterly, along the north line of said Lot 42 to the point of intersection with the Erosion Control Line of the Atlantic Ocean; thence run

southerly, along the Erosion Control Line of the Atlantic Ocean to the point of intersection with the south line of Lot 21 K of said Block 1; thence run westerly, along the south line of said Lot 21 K and its westerly extension to the point of intersection with the centerline of Collins Avenue; thence run northerly, along the centerline of Collins Avenue to the point of intersection with the easterly extension of Lot 1 of LYLE G. HALL SUBDIVISION, recorded in Plat Book 40, at Page 5, Public Records of Miami-Dade County, Florida; thence run westerly, along the south line of said Lot 1 and its easterly extension, to the point of intersection with the easterly line of Lot 25 of the above mentioned LYLE G. HALL SUBDIVISION; thence run southerly, along the easterly line of lots 25 and 24 of said LYLE G. SUBDIVISION to the southeast corner of said Lot 24; thence run westerly, along the south line of said Lot 24 and its westerly extension to the point of intersection with the centerline of Harding Drive (now Indian Creek Drive); thence run northerly, along the centerline of Harding Drive (now Indian Creek Drive) to the point of intersection with the centerline of 63rd Street; thence run easterly, along the centerline of 63rd Street to the point of intersection with the southerly extension of the westerly line of said Lot 1, Block 7, AMENDED PLAT OF SECOND OCEAN FRONT SUBDIVISION, recorded in Plat Book 28, at Page 28, Public Records of Miami-Dade County, Florida; thence run northerly, along the westerly line of said Lot 1, Block 7 and its southerly extension to a point located 50.00 feet south (measured at right angles) of the westerly extension of the northerly line of said Lot 1; thence run easterly along a line parallel and 50.00 feet south of the northerly line of said Lot 1 to the point of intersection with the centerline of Collins Avenue; thence run northerly, along the centerline of Collins Avenue to the POINT OF BEGINNING. Said lands located, lying and being in the City of Miami Beach, Miami-Dade County, Florida.

- k. RM-1, CD-1, GU/HPD-11: The boundaries of the Flamingo Waterway Historic District commence at the point of intersection of the centerline of West 47th Street and the eastern right-of-way line of Pinetree Drive, as shown in the LAKE VIEW SUBDIVISION, recorded in Plat Book 14, at Page 42, Public Records of Miami-Dade County, Florida. Said point being the POINT OF BEGINNING of the tract of land herein described; thence run northerly, along the eastern right-of-way line of said Pinetree Drive to the point of intersection with the easterly extension of the north line of Lot 20, Block 32, of the above mentioned LAKE VIEW SUBDIVISION; thence run westerly, along the north line of said Lot 20 to the point of intersection with the eastern bulkhead line of the Flamingo Waterway; thence run southwesterly, along the eastern bulkhead lines of the Flamingo Waterway and Lake Surprise to a point. Said point being located 35.07 feet west (measured at a right angle) of the east line of Lot 11, Block 32, of the above mentioned LAKE VIEW SUBDIVISION; thence run southerly, along a line parallel and 35.07 feet west (measured at a right angle) of the east line of said Lot 11, and its southerly extension to the point of intersection with the centerline of West 47th Street; thence run easterly, along the centerline of said West 47th Street to the POINT OF BEGINNING. Said lands located, lying and being in the City of Miami Beach, Miami-Dade County, Florida.

2.13.10 Single-Family Ad Valorem Tax Exemption

- (a) Scope of tax exemptions.

A procedure is hereby created for the city commission to allow tax exemptions for the restoration, renovation or rehabilitation of single family properties designated individually or as part of an historic district. The exemption shall apply to 100 percent of the assessed

value of all improvements to the single family property, which result from restoration, renovation or rehabilitation made on or after the effective date of this division. The exemption applies only to taxes levied by the city. The exemption does not apply to taxes levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to the City Code or the Florida Constitution. The exemption does not apply to personal property or to properties located within a community redevelopment area.

(b) Duration of tax exemptions.

Any exemption granted under this section to a particular property shall remain in effect for ten years. The duration of ten years shall continue regardless of any change in the authority of the city to grant such exemptions or any changes in ownership of the property. In order to retain an exemption, however, the historic and architectural character of the property, its designation status, and improvements which qualified the property for an exemption, must be maintained over the period for which the exemption is granted.

(c) Eligible properties and improvements.

- (1) A single-family property is qualified for an exemption under this division if:
 - (i) At the time the exemption is considered by the historic preservation board, the property is:
 - a. Individually listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended;
 - b. A contributing property within a National Register Historic District or locally designated historic district; or
 - c. Locally designated as an individual historic structure or an historic site.
 - (ii) The historic preservation board has certified to the city commission that the property for which an exemption is requested satisfies subsection (c)(i).
- (2) In order for an improvement to an historic property to qualify for an exemption, the improvement must be determined by the historic preservation board to be:
 - (i) Consistent with the United States Secretary of the Interior's standards for rehabilitation; and
 - (ii) Consistent with the certificate of appropriateness criteria in section 118-564 of the City Code.
- (c) Preapplication requirements. A preapplication meeting with the planning director, or designee, shall be required before a project is initiated in order to determine whether the proposed project satisfies the minimum criteria for ad valorem tax exemption.
- (d) Applications.

Any person, firm or corporation that desires ad valorem tax exemption from the improvement of an eligible single-family property must, prior to any construction or demolition, file with the planning department a written application on a form approved by the department. The application shall include the following documents and information:

- (1) The name of the property owner and the location of the single-family property.
- (2) A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements.
- (3) Proof that the property to be rehabilitated or renovated is an eligible historic property under this division.
- (4) Drawings and other pertinent exhibits that clearly delineate the scope of work to be performed; the proposed improvements to the property shall be consistent with the

Secretary of the Interior's standards for rehabilitation and the certificate of appropriateness criteria in section 2.13.7 of these land development regulations.

- (5) Other information identified in the filing instructions provided by the planning department.
- (f) Review by the historic preservation board. The historic preservation board, or its successor, is designated to review all applications for exemptions. The historic preservation board shall recommend that the city commission grant or deny the proposed exemption. The recommendation, and the reasons therefore, shall be provided to the applicant and to the city commission before consideration of the application at an official meeting.
- (g) Approval by the city commission.

A majority vote of the city commission shall be required to approve an application for exemption. Such exemption shall take effect on the January 1 following substantial completion of the improvement. The city commission shall include the following in the resolution or ordinance approving the application for exemption:

- (1) The name of the owner and the address of the single-family property for which the exemption is granted.
- (2) The period of time for which the exemption will remain in effect and the expiration date of the exemption.
- (3) A finding that the single-family property meets the requirements of this division.
- (4) References to drawings and exhibits delineating the work to be performed.

(4) Required covenant

To qualify for an exemption, the property owner shall enter into a covenant or agreement with the city for the term for which the exemption is granted. The covenant or agreement shall be form approved by the city attorney and shall require that the character of the property, and the qualifying improvements to the property, be maintained during the period that the exemption is granted. Before the effective date of the exemption, the owner of the property shall have the covenant recorded in the official records of Miami-Dade County, Florida. The covenant or agreement shall be binding on the current property owner, transferees, and their heirs, successors, or assigns. Violation of the covenant or agreement shall result in the property owner being subject to the payment of the differences between the total amount of taxes which would have been due in March in each of the previous years in which the covenant or agreement was in effect had the property not received the exemption and the total amount of taxes actually paid in those years, plus interest on the difference calculated as provided in § 212.12(3), Florida Statutes.

(5) Amendments.

All amendments to the approved application and permit plans must be reviewed and approved prior to the completion of the project. Minor amendments to permit plans may be approved by the planning director, or designees, provided such amendments are consistent with the certificate of appropriateness criteria in subsection 2.13.7 of these land development regulations. Major amendments to the approved plans must be reviewed and approved by the historic preservation board.

(6) Completion of work.

- (i) An application must complete all work within 30 months following the date of approval by the city commission. An approval for ad valorem tax exemption shall expire if the

building permit for the approved work is not issued within the timeframes specified under the corresponding certificate of appropriateness, or if a full building permit issued for the approved work should expire or become null and void, for any reason. The approval for ad valorem tax exemption shall be suspended if such permit is issued but the property owner has not submitted a final request for review of completed work within 30 months following the date of approval by the city commission.

- (ii) The historic preservation board, for good cause shown, may extend the time for completion of a substantial improvement for a period not to exceed two years from the completion date in the original approval by the city commission, or such lesser time as may be prescribed by the board. Such extension shall only be considered by the board if the corresponding certificate of appropriateness for the improvements approved by the city commission is active and the applicant submits a request in writing to the planning department no later than 90 calendar days after the expiration of the completion deadline. If the board grants the extension of time request, any suspension of the approval for ad valorem tax exemption shall be lifted and all work shall be completed by the date mandated in the board order. A second extension, not to exceed two additional years, may be considered by the board if a valid full building permit for the improvements approved by the city commission is active and the applicant submits a request in writing to the planning department no later than 90 calendar days after the expiration of the completion deadline specified in the first extension. The failure to complete all required work within the timeframes mandated under an approved extension of time shall result in a permanent revocation of the approval for the ad valorem tax exemption. If the board denies a request for an extension of time, any suspension shall become a permanent revocation of the approval for ad valorem tax exemption. As a condition of any extension of time, the historic preservation board may require that the building site be properly maintained, screened and secured.
 - (iii) A request for review of completed work shall be submitted to the planning department. The planning director shall conduct a review to determine whether or not the completed improvements are in compliance with the work approved by the city commission, including approved amendments, if any.
 - (iv) If the planning director determines that the work is in compliance with the plans approved pursuant to city commission approval of the tax exemption, the final request for review of completed work shall be approved and issued in writing to the applicant. The city reserves the right to inspect the completed work to verify such compliance.
 - (v) If the planning director determines that the work as complete is not in compliance with the plans approved pursuant to city commission approval of the tax exemption, the applicant shall be advised that the final request for review of completed work has been denied. Such denial shall be in writing and provide a written summary of the reasons for the determination, including recommendations to the applicant concerning the changes to the proposed work necessary to bring it into compliance with the approved plans. The applicant may file an appeal of the decision of the planning director, or designee, pursuant to the requirements of Subsection 2.9.
- (7) Notice of approval to the property appraiser.
- Upon the receipt of a certified copy of the recorded restrictive covenant, the planning director, or designee, shall transmit a copy of the approved request for review of completed work, the exemption covenant and the ordinance or resolution of the city commission approving the final application and authorizing the tax exemption to the county property appraiser.
- (8) Revocation proceedings.

- (i) The planning director, or designee, or historic preservation board may initiate proceedings to revoke the ad valorem tax exemption provided in this article, in the event the applicant, or subsequent owner or successors in interest to the property, fails to maintain the property according to the terms, conditions and standards of the historic preservation tax exemption covenant. Such proceedings shall be held before the historic preservation board.
 - (ii) The planning director, or designee, shall provide notice by mail to the current owner of record of the property at least 15 days in advance of the revocation hearing. In order to maintain the tax exemption, the property owner shall complete the restoration or reconstruction work necessary to return the property to the condition existing at the time of project completion on a time schedule agreed upon by the property owner and the historic preservation board. In the event the property owner does not complete the restoration work to the property within the agreed upon time schedule, the historic preservation board shall make a recommendation to the city commission as to whether the tax exemption shall be revoked.
 - (iii) The city commission shall review the recommendation of the historic preservation board and make a determination as to whether the tax exemption shall be revoked. Should the city commission determine that the tax exemption shall be revoked, a written resolution revoking the exemption and notice of penalties as provided in this division shall be provided to the owner, the county property appraiser and filed in the official records of the county.
 - (iv) Upon receipt of the resolution revoking the tax exemption, the county property appraiser shall discontinue the tax exemption on the property as of January 1 of the year following receipt of the notice of revocation.
 - (v) If the single-family property is damaged by accidental or natural causes during the covenant period of the tax exemption, the property owner shall inform the planning director, or designee, in writing within 60 days of the nature and extent of damage to the property. In order to maintain the tax exemption, the property owner shall complete the restoration or reconstruction work necessary to return the property to the condition existing at the time of project completion on a time schedule agreed upon by the property owner and the planning director or designee.
 - (vi) If the single-family property has been destroyed or severely damaged by accidental or natural causes during the covenant period of the tax exemption whereby restoration is not feasible, the property owner shall notify the planning director, or designee, in writing within 60 days of the loss. The planning director, or designee, shall initiate proceedings to revoke the ad valorem tax exemption provided in this article. In such cases, no penalty or interest shall be assessed against the property owner.
- (9) Notice of penalties
- The resolution revoking the tax exemption shall include a statement that a penalty equal to the total amount of taxes that would have been due in March of each of the previous years in which the tax exemption and covenant were in effect had the property not received the exemption, less the amount of taxes actually paid in those years, plus interest on the difference calculated as provided in § 212.12, Florida Statutes shall be imposed by the county tax collector for violation of the terms, conditions and standards of the historic preservation exemption covenant.

Article XIV. Transfer of Development Rights. *Reserved*