

DIVISION 2. - RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS

Sec. 142-101. - Purpose.

The RS-1, RS-2, RS-3, RS-4 single-family residential districts are designed to protect, and preserve the identity, image, environmental quality, privacy, attractive pedestrian streetscapes, and human scale and character of the single-family neighborhoods and to encourage and promote new construction that is compatible with the established neighborhood context. In order to safeguard the purpose and goals of the single-family districts mandatory review criteria are hereby created to carry out the provisions of these land development regulations.

(Ord. No. 89-2665, § 6-1(A)(1), eff. 10-1-89; Ord. No. 91-2767, eff. 11-2-91; Ord. No. 94-2966, eff. 12-31-94; Ord. No. 2006-3529, § 1, 9-6-06)

Sec. 142-102. - Main permitted uses.

The main permitted uses in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are single-family detached dwellings.

(Ord. No. 89-2665, § 6-1(A)(2), eff. 10-1-89; Ord. No. 91-2767, eff. 11-2-91; Ord. No. 94-2966, eff. 12-31-94)

Sec. 142-103. - Conditional uses.

(a) Conditional uses in the RS-1, RS-2, RS-3, RS-4 single-family residential districts include the following:

- (1) An at-grade parking lot in the RS-4 district when located immediately adjacent, without a gap due to alley, road, waterway or any other cause, to a CD-3 district. See subsection 142-105(c).
- (2) Religious institutions for those properties located in the 40th Street Overlay. See chapter 142, zoning districts and regulations, article III, overlay districts, division 8, 40th Street Overlay.

(Ord. No. 89-2665, § 6-1(A)(3), eff. 10-1-89; Ord. No. 91-2767, eff. 11-2-91; Ord. No. 94-2966, eff. 12-31-94; Ord. No. 97-3069, § 1, 1-22-97; Ord. No. 2011-3714, § 3, 1-19-11)

Sec. 142-104. - Accessory uses.

The accessory uses in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are those uses customarily associated with single-family homes. (See article IV, division 2 of this chapter.)

(Ord. No. 89-2665, § 6-1(A)(4), eff. 10-1-89; Ord. No. 91-2767, eff. 11-2-91; Ord. No. 94-2966, eff. 12-31-94)

Sec. 142-105. - Development regulations and area requirements.

(a) The review criteria and application requirements for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

- (1) *Compliance with regulations and review criteria.*
 - a. Permits for new construction, alterations or additions to existing structures shall be subject to administrative (staff level) review by the planning director or designee the design review board (DRB), or historic preservation board (HPB) as applicable, in order to determine consistency with the review criteria listed in this section.

- b. In complying with the review criteria located in this section, the applicant may choose either to adhere to the criteria identified in sections 142-105 and 142-106 administratively through staff level review or seek enhancements to development regulations as specified therein, where permitted, through approval from the historic preservation review board, in accordance with the applicable design review or appropriateness criteria.
- c. Notwithstanding the foregoing, for those structures located within a locally designated historic district, or individually designated as an historic structure or site, the review and approval of the historic preservation board (HPB) may be required.
- d. Notwithstanding the foregoing, for those structures constructed prior to 1942 and determined to be architecturally significant, in accordance with section 142-108 herein, the review and approval of the design review board (DRB) shall be required.

(2) *Review criteria.* Staff level review shall encompass the examination of architectural drawings for consistency with the review criteria below:

- a. The existing conditions of the lot, including, but not limited to, topography, vegetation, trees, drainage, and waterways shall be considered in evaluating the proposed site improvements.
- b. The design and layout of the proposed site plan inclusive of the location of all existing and proposed buildings shall be reviewed with particular attention to the relationship to the surrounding neighborhood, impact on contiguous and adjacent buildings and lands, and view corridors. In this regard, additional photographic, and contextual studies that delineate the location of adjacent buildings and structures shall be required in evaluating compliance with this criterion.
- c. The selection of landscape materials, landscaping structures and paving materials shall be reviewed to ensure a compatible relationship with and enhancement of the overall site plan design and the surrounding neighborhood.
- d. The dimensions of all buildings, structures, setbacks, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district.
- e. The design and construction of the proposed structure, and/or additions or modifications to an existing structure, indicates sensitivity to and compatibility with the environment and adjacent structures and enhances the appearance of the surrounding neighborhood.
- f. The proposed structure is located in a manner that is responsive to adjacent structures and the established pattern of volumetric massing along the street with regard to siting, setbacks and the placement of the upper floor and shall take into account the established single family home context within the neighborhood.
- g. The construction of an addition to main existing structure shall be architecturally appropriate to the original design and scale of the main existing structure; the proposed addition may utilize a different architectural language or style than the main existing structure, but in a manner that is compatible with the scale and massing of the main existing structure.
- h. The construction shall be in conformance with the requirements of article IV, division 7 of this chapter with respect to exterior facade paint and material colors.

(3) *Application requirements for DRB or HPB review.*

- a. DRB or HPB applications shall follow the application procedures and review criteria, specified in chapter 118, article VI, design review procedures or article X, historic preservation, of these land development regulations (as applicable), board by-laws, or as determined by the planning director, or designee. However,

the fee for applications to the DRB for non-architecturally significant homes constructed prior to 1942 and all home constructed after 1942 shall be \$150.00.

(b) The development regulations for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

(1) *Lot area, lot width, lot coverage, unit size, and building height requirements.* The lot area, lot width, lot coverage, and building height requirements for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Width (feet)*	Maximum Lot Coverage for a 2-story Home (% of lot area)**	Maximum Unit Size (% of Lot Area)	Maximum Building Height, which shall not exceed two stories above the base flood elevation, plus freeboard in all districts***
RS-1	30,000	100	30%	50%	28 feet - flat roofs. 31 feet - sloped roofs.
RS-2	18,000	75	30%	50%	
RS-3	10,000	50 - Oceanfront lots. 60 - All others	30%	50%	24 feet - flat roofs. 27 feet - sloped roofs. May be increased up to 28 feet for flat roofs and 31 feet for sloped roofs when approved by the DRB or HPB, in accordance with the applicable design review or appropriateness criteria.
RS-4	6,000	50	30%	50%	24 feet - flat roofs. 27 feet- sloped roofs.
		*Except those lots fronting on a cul-de-sac or circular street as defined in lot width	**Single story homes shall follow the requirements of <u>section 142-105(b)(4)b.</u>		*** Height shall be measured from the required base flood elevation for the lot, plus freeboard, measured to the top of the structural slab for a flat roof and to the mid-point of the slope for a sloped roof. Single story homes shall follow the requirements of <u>section 142-105(b)(4)b</u>

(2) *Maximum number of stories.* The maximum number of stories shall not exceed two above the base flood

elevation, plus freeboard.

- (3) *[Limitation on contiguous lots.]* No more than two contiguous lots may be aggregated, with the exception of the following:

- a. Lot aggregation for the purpose of expanded yards, or for the construction of accessory pools, cabanas, tennis courts, and similar accessory structures, when detached from the main home with a minimum separation of 15 feet, which may be aggregated to no more than three contiguous lots; or
- b. Lot aggregation for the construction of a new home located in the middle of a site consisting of three lots, provided the sum of the side yard setbacks of the main structure are equivalent to the width of the smallest of the three aggregated lots, and the overall unit size and lot coverage of the main home shall be based upon the combined size of the largest two lots.

- (4) *Unit size requirements.*

- a. Minimum unit size: 1,800 square feet.
- b. For purposes of this subsection, unit size means the sum of the gross horizontal areas of the floors of a single-family home, measured from the exterior faces of exterior walls. However, the unit size of a single-family home shall not include the following, unless otherwise provided for in these land development regulations:
 1. Uncovered steps.
 2. Attic space, providing structural headroom of less than seven feet six inches.
 3. Those portions of covered terraces, breezeways, or open porches, that do not project more than ten feet from the main home building(s).
 4. Single-story covered terraces and porches, which, with the exception of supporting structures, are open on at least three sides, and are part of a detached single story accessory structure located within a rear yard, provided such terrace or porch does not exceed two percent of the lot area.
 5. Enclosed floor space used for required off-street parking spaces (maximum 500 square feet).
 6. Those portions of covered exterior unenclosed private balconies, that do not project more than six feet from the building.
- c. For two story homes with an overall lot coverage of 25 percent or greater, the physical volume of the second floor shall not exceed 70 percent of the first floor of the main home, inclusive of any enclosed parking structure. The DRB or HPB may forego this requirement, in accordance with the applicable design review or appropriateness criteria.
- d. Non-air conditioned space located below minimum flood elevation, plus freeboard. Notwithstanding the above, for those properties located in the RS-1, RS-2, RS-3, RS-4 single-family residential districts, where the first habitable floor is located six feet or more above existing grade in order to meet minimum flood elevation requirements, including freeboard, the following shall apply:
 1. The height of the area under the main structure may have a maximum floor to ceiling clearance of seven feet six inches from the lowest level slab provided.
 2. Up to, but not exceeding, 600 square feet of segregated parking garage area may be permitted under the main structure.
 3. The area under the first habitable floor of the main structure shall consist of non-air conditioned space. Such area shall not be subdivided into different rooms, with the exception of the parking garage area, and required stairs and/or elevators.

4. The parking garage area and the non-air-conditioned floor space located directly below the first habitable unit size calculations.

(5) *Lot coverage (building footprint).*

- a. *General.* For lots aggregated after September 24, 2013, when a third lot is aggregated, as limited by subsection 142-105(b)(3), the calculation of lot coverage shall be determined by the two lots on which the house is located.
- b. *One-story structures.* One-story structures may exceed the maximum lot coverage noted in subsection 142-105(b)(1) above, through staff level review and shall be subject to the setback regulations outlined in section 142-106, but in no instance shall the building footprint exceed 50 percent of the lot area. For purposes of this section, a one-story structure shall not exceed 18 feet in height for flat roof structures and 21 feet for sloped roof structures (measured to the mid-point of the slope) as measured from the minimum flood elevation. However, for five percent of the lot coverage, the height may be increased up to 24 feet for a single flat roof structure or 27 feet for a single sloped roof structure (measured to the mid-point of the slope). The length of any wall associated with this higher height shall not exceed 25 feet.
- c. *Calculating lot coverage.* For purposes of calculating lot coverage, the footprint shall be calculated from the exterior face of exterior walls and the exterior face of exterior columns on the ground floor of all principal and accessory buildings, or portions thereof. Internal courtyards, which are open to the sky, but which are substantially enclosed by the structure on three or more sides, shall be included in the lot coverage calculation. However, outdoor covered areas, such as, but not limited to, loggias, covered patios, pergolas, etc., that are open on at least two sides, and not covered by an enclosed floor above, shall not be included in the lot coverage calculation in accordance with the following:
 1. When attached to the main home building(s) with a projection of 10 feet or less, such outdoor covered area shall not be included in the lot coverage calculation.
 2. When detached from the main home building(s), or part of an attached structure projecting more than 10 feet from the main home building(s), such outdoor covered areas shall not be included in the lot coverage calculation, provided that such outdoor covered area(s) do not exceed two percent (2%) of the lot area.

For purposes of this section, a pergola shall be defined as a garden walk or terrace formed by two rows of columns or posts with an open framework or beams and cross rafters over which plants may be trained.
- d. *Garages.* A maximum of 500 square feet of garage space shall not be counted in lot coverage if the area is limited to garage, storage and other non-habitable uses and the garage conforms to the following criteria:
 1. The garage is one story in height and not covered by any portion of enclosed floor area above. Enclosed floor area shall be as defined in section 114-1.
 2. The vehicular entrance(s) of the garage is not part of the principal facade of the main house.
 3. The garage is constructed with a vehicular entrance(s) perpendicular to and not visible from the right-of-way, or the entrance(s) is set back a minimum of five feet from the principal facade of the main house when facing a right-of-way.
- e. *Nonconforming structures.* Existing single-family structures nonconforming with respect to sections 142-105 and 142-106, may be repaired, renovated, rehabilitated regardless of the cost of such repair, renovation or rehabilitation, notwithstanding the provisions of chapter 118, article IX, "nonconformance."

Should such an existing structure constructed prior to October 1, 1971, be completely destroyed due to fire or other catastrophic event, through no fault of the owner, such structure may be replaced regardless of the above-noted regulations existing at the time of destruction.

- f. *Demolition of architecturally significant single-family homes.* Proposed new construction that exceeds the original building footprint of a demolished architecturally significant single-family home shall follow the provisions of section 142-108.
- (6) *Roof decks.* Roof decks shall not exceed six inches above the main roofline and shall not exceed a combined deck area of 25 percent of the enclosed floor area immediately one floor below, regardless of deck height. Roof decks shall be setback a minimum of ten feet from each side of the exterior outer walls, when located along a front or side elevation, and from the rear elevation for non-waterfront lots. The DRB or HPB may forego the required rear deck setback, in accordance with the applicable design review or appropriateness criteria.
- (7) *Height exceptions.* The height regulation exceptions contained in section 142-1161 shall not apply to the RS-1, RS-2, RS-3 and RS-4 zoning districts. The following exceptions shall apply, and unless otherwise specified in terms of height and location, shall not exceed ten feet above the roofline of the structure. In general, height exceptions that have not been developed integral to the design intent of a structure shall be located in a manner to have a minimal visual impact on predominant neighborhood view corridors as viewed from public rights-of-way and waterways.
- a. Chimneys and air vents, not to exceed five feet in height.
 - b. Decorative structures used only for ornamental or aesthetic purposes such as spires, domes, belfries, and covered structures, which are open on all sides, and are not intended for habitation or to extend interior habitable space. Such structures shall not exceed a combined area of 20 percent of the enclosed floor area immediately one floor below, and shall be setback a minimum of ten feet from the perimeter of the enclosed floor below.
 - c. Radio and television antennas.
 - d. Parapet walls, only when associated with a habitable roof deck, not to exceed three and one-half feet above the finished roof deck height, and set back a minimum of ten feet from the perimeter of the enclosed floor below.
 - e. Rooftop curbs, not to exceed one foot in height.
 - f. Elevator bulkheads shall be located as close to the center of the roof as possible and be visually recessive such that they do not become vertical extensions of exterior building elevations.
 - g. Skylights, not to exceed five feet above the main roofline, and provided that the area of skylight(s) does not exceed 10% of the total roof area of the roof in which it is placed.
 - h. Air conditioning and mechanical equipment not to exceed five feet above the main roofline and shall be required to be screened in order to ensure minimal visual impact as identified in the general section description above.
 - i. Rooftop wind turbines, not to exceed ten feet above the main roofline.
- (8) *Exterior building and lot standards.* The following shall apply to all buildings and properties in the RS-1, RS-2, RS-3, RS-4 single-family residential districts:
- a. *[Exterior bars.]* Exterior bars on entryways, doors and windows shall be prohibited on front and side elevations, which face a street or right-of-way.
 - b. *Minimum yard elevation requirements.*
 - 1. The minimum elevation of a required yard shall be no less than five (5) feet NAVD (6.56 feet NGVD),

with the exception of driveways, walkways, transition areas, green infrastructure (e.g., vegetated swales, permeable pavement, rain gardens, and rainwater/stormwater capture and infiltration devices), and areas where existing landscaping is to be preserved, which may have a lower elevation. When in conflict with the maximum elevation requirements as outlined in paragraph c., below, the minimum elevation requirements shall still apply.

2. Exemptions. The minimum yard elevation requirements shall not apply to properties containing single-family homes individually designated as historic structures, or to properties with single-family homes designated as "contributing" within a local historic district.
- c. *Maximum yard elevation requirements.* The maximum elevation of a required yard shall be in accordance with the following, however in no instance shall the elevation of a required yard, exceed the minimum flood elevation, plus freeboard:
 1. *Front Yard.* The maximum elevation within a required front yard shall not exceed adjusted grade, 30 inches above grade, or future adjusted grade, whichever is greater. In this instance, the maximum height of any fence(s) or wall(s) in the required front yard, constructed in compliance with Section 142-1132(h), "Allowable encroachments within required yards", shall be measured from existing grade.
 2. *Interior Side Yards* (located between the front setback line and rear property line). The maximum elevation shall not exceed adjusted grade, or 30 inches above grade, whichever is greater, except:
 - (A) When the average grade of an adjacent lot along the abutting side yard is equal or greater than adjusted grade, the maximum elevation within the required side yard shall not exceed 30 inches above adjusted grade.
 - (B) When abutting a vacant property, the maximum elevation within the required side yard shall not exceed 30 inches above adjusted grade.
 - (C) Notwithstanding the above, when abutting property owners have jointly agreed to a higher elevation, both side yards may be elevated to the same higher elevation through the submission of concurrent building permits, not to exceed the minimum required flood elevation. In this instance the maximum height of any fences or walls along the adjoining property lines, constructed in accordance with Section 142-1132(h). Allowable encroachments within required yards shall be measured from the new average grade of the required side yards.
 3. *Side Yard Facing a Street.* The maximum elevation within a required side yard facing a street shall not exceed adjusted grade, 30 inches above grade, or future adjusted grade, whichever is greater. In this instance, the maximum height of any fence(s) or wall(s) in the required side yard facing a street, constructed in compliance with Section 142-1132(h), "Allowable encroachments within required yards", shall be measured from existing grade.
 4. *Rear Yard.* The maximum elevation for a required rear yard, (not including portions located within a required side yard or side yard facing the street), shall be calculated according to the following:
 - (A) *Waterfront.* The maximum elevation shall not exceed the base flood elevation, plus freeboard.
 - (B) *Non-waterfront.* The maximum elevation shall not exceed adjusted grade, or 30 inches above grade, whichever is greater, except:
 - i. When the average grade of an adjacent lot along the abutting rear yard is equal or greater than adjusted grade, the maximum elevation within the required rear yard shall not exceed 30 inches above adjusted grade.
 - ii. When abutting a vacant property, the maximum elevation within the required rear yard

shall not exceed 30 inches above adjusted grade.

- iii. Notwithstanding the above, when abutting property owners have jointly agreed to a higher elevation, both rear yards may be elevated to the same higher elevation through the submission of concurrent building permits, not to exceed the minimum required flood elevation. In this instance the maximum height of any fences or walls along the adjoining property lines, constructed in accordance with Section 142-1132(h). Allowable encroachments within required yards shall be measured from the new average grade of the required rear yards.

- 5. *Stormwater retention.* In all instances where the existing elevation of a site is modified, a site shall be designed with adequate infrastructure to retain all stormwater on site in accordance with all applicable state and local regulations.
- 6. *Retaining wall and yard slope requirements.* Within the required front yard and within the required side yard facing a street the following shall apply:
 - (A) Within the first four feet of the property line, the maximum height of retaining walls shall not exceed 30 inches above existing sidewalk elevation, or existing adjacent grade if no sidewalk is present.
 - (B) When setback a minimum of four feet from property line, the maximum height of retaining walls shall not exceed 30 inches above adjacent grade.
 - (C) Retaining walls shall be finished with stucco, stone, or other high quality materials, in accordance with the applicable design review or appropriateness criteria of section 142-105.
 - (D) The maximum slope of the required front and side yard facing a street shall not exceed 11 percent (5:1 horizontal:vertical).

- (9) *Lot split.* All new construction for homes on lots resulting from a lot split application approved by the planning board shall be subject to the review and approval of the design review board (DRB) or historic preservation board (HPB), as applicable. The following shall apply to all newly created lots, when the new lots created do not follow the lines of the original platted lots and/or the lots being divided contain an architecturally significant, pre-1942 home that is proposed to be demolished.

- a. The maximum lot coverage for a new one-story home shall not exceed 40 percent of the lot area, and the maximum lot coverage for a new two-story home shall not exceed 25 percent of the lot area, or such lesser number, as determined by the planning board.
- b. The maximum unit size shall not exceed 40 percent of the lot area for both one story, and two-story structures, or such less numbers, as determined by the planning board.

(Ord. No. 89-2665, § 6-1(B), eff. 10-1-89; Ord. No. 91-2767, eff. 11-2-91; Ord. No. 91-2768, eff. 11-2-91; Ord. No. 94-2966, eff. 12-31-94; Ord. No. 96-3049, § 2, 7-17-96; Ord. No. 97-3069, § 1, 1-22-97; Ord. No. 97-3097, § 2, 10-8-97; Ord. No. 2000-3228-A, § 1, 1-26-00; Ord. No. 2002-3361, § 1, 4-10-02; Ord. No. 2002-3375, § 1, 7-10-02; Ord. No. 2002-3379, § 1, 7-31-02; Ord. No. 2004-3468, § 1, 12-8-04; Ord. No. 2006-3529, § 2, 9-6-06; Ord. No. 2012-3766, § 1, 5-9-12; Ord. No. 2014-3835, § 1, 2-12-14; Ord. No. 2014-3907, § 2, 11-19-14; Ord. No. 2015-3936, § 1, 5-6-15; Ord. No. 2015-3944, § 2, 6-10-15; Ord. No. 2015-3959, § 1, 9-2-15; Ord. No. 2016-4010, § 2, 5-11-16)

Editor's note— Sec. 3 of Ord. No. 2014-3835 states: "This ordinance shall not apply to: 1. Anyone who filed an application for Land Use Board Approval with the Planning Department on or before September 24, 2013; or 2. Anyone who obtained an Building Permit Process Number from the Building Department on or before September 24, 2013; or 3. Anyone who establishes equitable estoppel as proved in City Code Section 118-168, by obtaining a building permit or Design Review Board approval prior to zoning in progress or City Commission adoption of this Ordinance."

Sec. 142-106. - Setback requirements for a single-family detached dwelling.

The setback requirements. for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

- (1) *Front yards:* The minimum front yard setback requirement for these districts shall be 20 feet.
 - a. One-story structures may be located at the minimum front yard setback line.
 - b. Two-story structures shall be set back a minimum of ten additional feet from the required front yard setback line.
 - c. [Reserved.]
 - d. At least 50 percent of the required front yard area shall be sodded or landscaped pervious open space. With the exception of driveways and paths leading to the building, paving may not extend any closer than five feet to the front of the building.
- (2) *Side yards:*
 - a. The sum of the required side yards shall be at least 25 percent of the lot width.
 - b. Side, facing a street. Each required side yard facing a street shall be no less than ten percent of the lot width or 15 feet, whichever is greater. Also, at least 50 percent of the required side yard area facing a street shall be sodded or landscaped pervious open space. With the exception of driveways and paths leading to the building, paving may not extend any closer than five feet to the front of the building.
 - c. Interior sides. For lots greater than 60 feet in width any one interior side yard shall have a minimum of ten percent of the lot width or ten feet, whichever is greater. For lots 60 feet in width or less, any one interior side yard shall have a minimum of seven and one-half feet.
 - d. Two-story side elevations located parallel to a side property line shall not exceed 50 percent of the lot depth, or 60 feet, whichever is less, without incorporating additional open space, in excess of the minimum required side yard, directly adjacent to the required side yard. The additional open space shall be regular in shape, open to the sky from grade, and at least eight feet in depth, measured perpendicular from the minimum required side setback line. The square footage of the additional open space shall not be less than one percent of the lot area. The open space provided along a side elevation in accordance with this subsection, whether required or not, shall not be included in the lot coverage calculation provided that the combined depth of the open space, as measured from the required side setback line(s), is less than 30 percent of the maximum developable building width of the property, as measured from the interior setback lines, and the total open space provided does not exceed five percent of the lot area. Any portions of the interior side yard open space in excess of five percent of the lot area shall be included in the total lot coverage calculation. The elevation (height) of the open space provided shall not exceed the maximum permitted elevation height of the required side yard, and at least 75 percent of the required interior open space area shall be sodded or landscaped previous open space. The intent of this regulation shall be to break up long expanses of uninterrupted two-story volume at or near the required side yard setback line and exception from the minimum requirements of this provision may be granted only through historic preservation board, or design review board approval, as may be applicable, in accordance with the applicable design review or appropriateness criteria.
 - e. Nonconforming yards.
 1. If a single-family structure is renovated in excess of 50 percent of the value determination, as

determined by the building official pursuant to the standards set forth in the Florida Building Code, any new construction in connection with the renovation shall meet all setback regulations existing at the time, unless otherwise exempted under chapter 118, article IX of these land development regulations.

2. When an existing single-family structure is being renovated less than 50 percent of the value determination, as prescribed by the building official pursuant to the standards set forth in the Florida Building Code, and the sum of the side yards is less than 25 percent of the lot width, any new construction, whether attached or detached, including additions, may retain the existing sum of the side yards, provided that the sum of the side yards is not decreased.
3. When an existing single-family structure is being renovated less than 50 percent of the value determination, as prescribed by the building official pursuant to the standards set forth in the Florida Building Code, and has a nonconforming interior side yard setback of at least five feet, the interior side yard setback of new construction in connection with the existing building may be allowed to follow the existing building lines. The maintenance of this nonconforming interior side yard setback shall apply to the construction of a second floor addition to single-family homes constructed prior to September 6, 2006, and to the linear extension of a single story building, as long as the addition does not exceed 18 feet in height for a flat roof structure and 21 feet for a sloped roof structure (measured to the mid-point of the slope), as measured from the minimum flood elevation. If the linear extension is two-stories, the second floor shall meet the minimum required yards and the recessed area created by this setback shall not be accessible or habitable. Notwithstanding the foregoing, if an existing interior side yard is less than five feet, the minimum side yard for any new construction or addition on that side shall be ten percent of the lot width or seven and one-half feet, whichever is greater.

- (3) *Rear:* The rear setback requirement shall be 15 percent of the lot depth, 20 feet minimum, 50 feet maximum. At least 70 percent of the required rear yard shall be sodded or landscaped pervious open space; when located at or below adjusted grade, the water portion of a swimming pool may count toward this requirement, when located above adjusted grade, the water portion of a swimming pool may count towards 50% of this requirement, provided adequate infrastructure is incorporated into the design of the pool to fully accommodate on-site stormwater retention.

(Ord. No. 89-2665, § 6-1(C), eff. 10-1-89; Ord. No. 96-3049, § 2, 7-17-96; Ord. No. 97-3069, § 1, 1-22-97; Ord. No. 2002-3379, § 2, 7-31-02; Ord. No. 2006-3529, § 3, 9-6-06; Ord. No. 2014-3835, § 2, 2-12-14; Ord. No. 2014-3907, § 3, 11-19-14; Ord. No. 2015-3944, § 3, 6-10-15; Ord. No. 2016-3987, § 1, 1-13-16)

Editor's note— See editor's note following § 142-105.

Sec. 142-107. - Development regulations for the Altos Del Mar Historic District.

Notwithstanding the development regulations contained in sections 142-101—142-106 above, the following development regulations shall apply to those portions of the RS-3 and RS-4 zoning districts located within the Altos Del Mar Historic District:

(a) <i>Minimum lot width</i>	50 feet
(b) <i>Maximum lot width</i> (No variance from this provision shall be granted.)	100 feet (2 adjoining lots)

(c) Maximum unit size:

RS-3	4,700 square feet for habitable major structures.
	1,700 square feet for the understructure and nonhabitable major structures. An additional 600 square feet shall be allowed for the garage.
RS-4	3,250 square feet. No variances shall be granted with regard to the maximum square footage of structures. An additional 400 square feet shall be allowed for the garage.

(d) Maximum unit size for two adjoining 50 foot lots:

RS-3	7,000 square feet for habitable major structures.
	3,400 square feet for the understructure and nonhabitable major structures. An additional 600 square feet shall be allowed for the garage.
RS-4	3,750 square feet. An additional 400 square feet shall be allowed for the garage.

(e) Maximum building height

RS-3	37 feet above grade provided that:
	1. Only 1/3 of the floor area of habitable major structures may be located above 25 feet in height.
	2. For every one square foot of floor area above 25 feet in height, there shall be one square foot of courtyard or garden space, open to the sky, at ground level within the buildable area of the lot.
	3. The understructure of habitable major structures shall be designed to be contiguous with perimeter walls above and shall enhance the experience of courtyard and exterior spaces directly adjacent.

The height regulation exceptions contained in Section 142-1162 shall not apply, except chimneys and air vents are permitted.	
RS-4	25 feet above grade.
(f) <i>Maximum number of stories</i>	
RS-3	Three stories
RS-4	Two stories
(g) <i>Setback Atlantic Way</i>	
RS-3	Up to 25' in building height: 12 feet
	Greater than 25' in height: 75 feet
RS-4	Five feet
(h) <i>Setback Ocean</i>	
RS-3	Up to 25' in building height: 130 feet from Miami Beach Bulkhead Line for principal and accessory buildings;
	Greater than 25' in height: 140 feet from the Miami Beach Bulkhead Line;
	80 feet from Miami Beach Bulkhead Line for pools, decks, and any other structures: 30 inches or less above grade.
(i) <i>Setback Collins Avenue</i>	
RS-4	20 feet for principal and accessory buildings.
(j) <i>Setback side, interior</i>	Five feet or ten percent of lot width, whichever is greater.
(k) <i>Setback side, facing a street</i>	Five feet.

- (l) *Supplementary yard regulations.* Notwithstanding the regulations contained in division 4, Supplementary Yard Regulations, sections 142-1131—142-1135, the following supplementary yard regulations shall apply:

- (1) Accessory buildings are not permitted in required yards.
 - (2) Fences, walls and gates shall not be permitted eastward of the Miami Beach Bulkhead Line and shall not exceed 42 inches in height within 130 feet west of the Miami Beach Bulkhead Line.
 - (3) Hot tubs, showers, saunas, whirlpools, toilet facilities, swimming pool equipment, and decks shall not be permitted more than 30 inches above grade within required yard areas. An exception may be made for swimming pool equipment with approval by the historic preservation board.
 - (4) Satellite dish antennas shall not be permitted in required yard areas.
 - (5) Swimming pools may only occupy a required yard if open and unobstructed to the sky, and elevated no more than 30 inches above grade. Swimming pool decks shall be set back a minimum of five feet from side yards, five feet from side yards facing a street, five feet from Collins Avenue, and 80 feet from the Miami Beach Bulkhead Line on oceanfront lots.
- (m) The terms habitable major structures, non-habitable major structures and understructure shall be as defined in section 161.053, Florida Statutes and Chapter 62B-33, Florida Administrative Code.

(Ord. No. 2001-3297, 3-14-01; Ord. No. 2003-3430, § 1, 11-25-03; Ord. No. 2006-3529, § 4, 9-6-06)

Sec. 142-108. - Provisions for the demolition of single-family homes located outside of historic districts.

- (a) *Criteria for the demolition of an architecturally significant home.* Pursuant to a request for a permit for partial or total demolition of a home constructed prior to 1942, the planning director, or designee, shall; or independently may, make a determination whether the home is architecturally significant according to the following criteria:
- (1) The subject structure is characteristic of a specific architectural style constructed in the city prior to 1942, including, but not limited to, Vernacular, Mediterranean Revival, Art Deco, Streamline Moderne, or variations thereof.
 - (2) The exterior of the structure is recognizable as an example of its style and/or period, and its architectural design integrity has not been modified in a manner that cannot be reversed without unreasonable expense.
 - (3) Significant exterior architectural characteristics, features, or details of the subject structure remain intact.
 - (4) The subject structure embodies the scale, character and massing of the built context of its immediate area.

The date of construction shall be the date on which the original building permit for the existing structure was issued, according to the City of Miami Beach Building Permit Records. If no city building permit record exists, the date of construction shall be as determined by the Miami-Dade County Property Appraiser.

Any applicant requesting a determination as to the architectural significance of any single-family home constructed prior to 1942 shall pay upon submission [of] all applicable fees in section 118-7. No application shall be considered complete until all requested information has been submitted and all applicable fees paid. Public notice shall be required in accordance with section 118-8, subsections (b) Mail notice, and (c) Posting. Within ten days of posting any required notice, interested persons may submit information to the planning director to take into consideration in evaluating the application. The director shall file the determination with the city clerk no later than five (5) days after the decision is made.

- (b) *Appeals.* The decision of the planning director, or designee, which shall bear the presumption of correctness, pertaining to the architectural significance of a single-family home, may be appealed to the board of adjustment, pursuant to the requirements of section 118-9. No demolition permit may be issued within any appeal period, and if an appeal is filed, while the appeal is pending.
- (c) *[Pre-application conference.]* An applicant may have a pre-application conference with the planning director, or designee,

prior to the submission of a request or an application to discuss any aspect of this section. Such pre-application conference and any statements by the planning director, or designee, shall not create any waiver of, or estoppel on, the requirements of, or any determination to be made, under this section.

(d) *Total demolition procedures for a pre-1942 home.*

- (1) A building permit for the total demolition of any single-family home constructed prior to 1942 shall only be issued following the final determination (after the expiration of time or exhaustion of all appeals) by the planning director, or designee, or the DRB, that the subject structure is not an architecturally significant home. A property owner may proceed directly to the DRB, pursuant to subsection 142-108(g); in this instance, a demolition permit shall only be issued in accordance with subsection 142-108(f).
- (2) A request for such determination by the planning director, or designee, shall be processed by the planning department within ten business days of its submission.
- (3) In the event the planning director, or designee, determines that a single-family home constructed prior to 1942 is architecturally significant, a demolition permit shall require the review of the DRB. The DRB shall explore with the property owner reasonable alternatives to demolition such as, but not limited to, reducing the cost of renovations, minimizing the impact of meeting flood elevation requirements, and designating the property as an historic structure or site. The DRB shall not have the authority to deny a request for demolition.

(e) *Partial demolition procedures for an architecturally significant home.*

- (1) A building permit for partial demolition to accommodate additions or modifications to the exterior of any architecturally significant single-family home constructed prior to 1942 shall be issued only upon the prior final approval by the planning director, or designee, unless appealed as provided in subsection (3) below. In the event an architecturally significant single-family home is proposed to be substantially retained, the mail notice requirements in subsection 142-108(a) shall not be required and a property owner may proceed directly to the design review board, pursuant to subsection 142-108(g), or agree to have the partial demolition reviewed and approved by staff, pursuant to subsection 142-108(e)(4); in either instance, a demolition permit shall only be issued in accordance with subsection 142-108(f).
- (2) An application for such approval shall be processed by the planning department, as part of the building permit process.
- (3) An appeal of any decision of the planning department on such applications shall be limited to the applicant, shall be in writing, shall set forth the factual and legal bases for the appeal, and shall be to the DRB.
- (4) Review of applications for partial demolition shall be limited to the actual portion of the structure that is proposed to be modified, demolished or altered. Repairs, demolition, alterations and improvements defined below shall be subject to the review and approval of the staff of the design review board. Such repairs, alterations and improvements include the following:
 - a. Ground level additions to existing structures, not to exceed two stories in height, which do not substantially impact the architectural scale, character and design of the existing structure, when viewed from the public right-of-way, any waterfront or public parks, and provided such ground level additions
 1. Do not require the demolition or alteration of architecturally significant portions of a building or structure;
 2. Are designed, sited and massed in a manner that is sensitive to and compatible with the existing structure; and
 3. Are compatible with the as-built scale and character of the surrounding single-family residential neighborhood.

- b. Roof-top additions to existing structures, as applicable under the maximum height requirements specified in development regulations, which do not substantially impact the architectural scale, character and design of the structure when viewed from the public right-of-way, any waterfront or public parks, and provided such roof-top additions:
 - 1. Do not require the demolition or alteration of architecturally significant portions of a building or structure;
 - 2. Are designed, sited and massed in a manner that is sensitive to and compatible with the existing structure; and
 - 3. Are compatible with the as-built scale and character of the surrounding single-family residential neighborhood.
- c. Replacement of windows, doors, roof tiles, and similar exterior features or the approval of awnings, canopies, exterior surface colors, storm shutters and exterior surface finishes, provided the general design, scale, massing, arrangement, texture, material and color of such alterations and/or improvements are compatible with the as-built scale and character of the subject home and the surrounding single-family residential neighborhood. Demolition associated with facade and building restorations shall be permitted, consistent with historic documentation.
- d. Facade and building restorations, 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.
- e. 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.
- f. The demolition and alteration of rear and secondary facades to accommodate utilities, refuse disposal and storage, provided the degree of demolition proposed does not require the demolition or alteration of architecturally significant portions of a building or structure.
- g. The demolition of non-architecturally significant accessory buildings.

(f) *Issuance of demolition permits for architecturally significant single-family homes.*

- (1) Emergency demolition orders. This section shall not supersede the requirements of the applicable building code with regard to unsafe structures and the issuance of emergency demolition orders, as determined by the building official.
- (2) A demolition permit for the total demolition of an architecturally significant single-family home constructed prior to 1942, shall not be issued unless all of the following criteria are satisfied:
 - a. The issuance of a building permit process number for 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 urban forestry in the environment and sustainability department.
- (3) The demolition permit shall require that all debris associated with the demolition of the structure shall be recycled, in accordance with the applicable requirements of the Florida Building Code.

(g) *New construction requirements for properties containing a single-family home constructed prior to 1942.*

- (1) In addition to the development regulations and area requirements of section 142-105, as well as section 118-252, of the development regulations of the City Code, the following regulations shall apply in the event the owner proposes to demolish an architecturally significant single-family home constructed prior to 1942, inclusive of those portions of a street or waterway. In the event of a conflict between the provisions of section 142-105 and section 118-252, and below, the provisions herein shall control:
- a. The design review board (DRB) shall review and approve all new construction on the subject site, in accordance with the applicable criteria and requirements of chapter 118, article VI, section 118-251(a)1—12 of the land development regulations of the City Code.
 - b. The DRB review of any new structure, in accordance with the requirements of chapter 118, article VI, shall include consideration of the scale, massing, building orientation and siting of the existing structure on the subject site, as well as the established building context within the immediate area.
 - c. The overall lot coverage of proposed new buildings or structures shall not exceed the maximum limits set forth in section 142-105.
 - d. Lot coverage requirements for a single story home. In the event a new home does not exceed one-story in height, the lot coverage shall not exceed 35 percent of the lot area; at the discretion of the DRB, the lot coverage may be increased to a maximum of 50 percent of the lot area, if the DRB concludes that the one-story structure proposed results in a more contextually compatible new home. For purposes of this section, a one-story structure shall not exceed 18 feet in height as measured from minimum flood elevation. A restrictive covenant, in a form acceptable to the city attorney, shall be required, ensuring, for the life of the structure, that a second story is not added.
 - e. Lot coverage requirements for lot splits and lot aggregations. The above regulations shall also be a limitation on development in all lots within a single site that may be split into multiple lots or multiple lots that are aggregated into a single site, at a future date. When lots are aggregated, the greater of the footprint permitted by the lot coverage regulations, or the footprint of the larger home, shall apply.
- (2) *Regulations for additions to architecturally significant homes which are substantially retained and preserved.* In addition to the development regulations and area requirements of section 142-105, of the land development regulations of the City Code, the following shall apply in the event an architecturally significant single-family home constructed prior to 1942 is substantially retained and preserved. In the event of a conflict between the provisions of section 142-105, 142-106 and section 118-252, and the regulations below, the provisions herein shall control:
- a. *Review criteria.* The proposed addition and modifications to the existing structure may be reviewed at the administrative level, provided that the review criteria in section 142-105 have been satisfied, as determined by the planning director or designee. The design of any addition to the existing structure shall take into consideration the scale, massing, building orientation and siting of the original structure on the subject site.
 - b. *Lot coverage.* The total lot coverage may be increased to, but shall not exceed 40 percent, and may be approved at the administrative level, provided that the review criteria in section 142-105 have been satisfied, as determined by the planning director or designee. In the event the lot coverage of the existing structure exceeds 40 percent, no variance shall be required to retain and preserve the existing lot coverage and a second level addition shall be permitted, provided it does not exceed 60 percent of the footprint of the existing structure; no lot coverage variance shall be required for such addition.
 - c. *Unit size.* The total unit size may be increased to, but shall not exceed 60 percent, and may be approved at the administrative level, provided that the review criteria in section 142-105 have been satisfied, as

determined by the planning director or designee.

- d. *Heights for RS-3 and RS-4.* For lots zoned RS-4 with a minimum lot width of 60 feet, or lots zoned RS-3, the height for ground level additions not to exceed 50 percent of the lot coverage proposed, may be increased up to 26 feet for a flat roofed structure and 29 feet for a sloped roof structure (as measured to the mid-point of the slope) above the minimum required flood elevation, and may be approved at the administrative level, provided that the review criteria in section 142-105 have been satisfied, as determined by the planning director or designee.
 - e. *Heights for RS-1 and RS-2.* For lots zoned RS-1 or RS-2, the height for ground level additions not to exceed 50 percent of the lot coverage proposed may be increased up to 30 feet for a flat roofed structure and 33 feet for a sloped roof structure (as measured to the mid-point of the slope) above the minimum required flood elevation, and may be approved at the administrative level, provided that the review criteria in section 142-105 have been satisfied, as determined by the planning director or designee.
 - f. *Courtyards.* The minimum courtyard requirements specified in subsection 142-106(2)d. may be waived at the administrative level, provided that the review criteria in section 142-105 have been satisfied, as determined by the planning director or designee.
 - g. *Front setback.* Two-story structures or the second floor may encroach forward to the 20-foot front setback line, and may be approved at the administrative level, provided that the review criteria in section 142-105 have been satisfied, as determined by the planning director or designee.
 - h. *Second floor requirements.* The maximum second floor area of 70 percent specified in subsection 142-105(b)(3)c may be waived at the administrative level, provided that the review criteria in section 142-105 have been satisfied, as determined by the planning director or designee.
 - i. *Two-story ground level additions.* The construction of a ground floor addition of more than one story shall be allowed to follow the existing interior building lines, provided a minimum side setback of five feet is met, and may be approved at the administrative level, provided that the review criteria in section 142-105 have been satisfied, as determined by the planning director or designee.
 - j. *Projections.* Habitable additions to, as well as the relocation of, architecturally significant structures, may project into a required rear or side yard for a distance not to exceed 25 percent of the required yard, up to the following maximum projections:
 - 1. Interior side yard: Five feet.
 - 2. Street side yard: Seven feet six inches.
 - 3. Rear yard: Fifteen feet.
 - k. *Fees.* The property owner shall not be required to pay any city planning or public works department fees associated with the renovation and restoration of the existing single-family home; except that any and all non-city impact fees and other fees shall still be required.
 - l. *[Applicability.]* The above regulations shall also be applicable to:
 - 1. Any single-family home designated as an historic structure by the historic preservation board, and not located within a locally designated historic district.
 - 2. Any single-family home constructed prior to 1966, if the owner voluntarily seeks a determination of architectural significance and if such home has been determined to be architecturally significant in accordance with section 142-108(a).
- (3) *Appeals.* An appeal of any decision of the DRB shall be to a special master appointed by the city commission, in accordance with the procedures set forth in subsection 118-537(b) of these land development regulations.

Thereafter review shall be by certiorari to the circuit court.

- (h) *Exceptions.* The following areas of work shall not require determinations of the planning director, or designee, under this section: interior demolitions including plumbing, electrical and mechanical systems, and renovations to the exterior of nonarchitecturally significant structures.
- (i) *New construction procedures for single-family homes demolished without required approvals or permits.* For those properties where a single-family home constructed before 1942 was demolished without prior approval of the planning department, the design review board or the single-family residential review panel, and without the required permits from the building official, in addition to any other applicable law in this Code or other codes, the following shall apply prior to the issuance of any building permit for any new construction on the subject site:
- (1) Purpose. The purpose of this subsection is to ensure that any new construction on the site where a single-family home constructed prior to 1942 was demolished without required approvals or permits is consistent with the scale, massing, density, location and height of that structure which previously existed on site prior to the unpermitted demolition. Where used in this section, the words "without all required permits," "without prior approval," "without required permits or approval" shall not be defined to include demolition as a result of forces beyond the control of the landowner such as, for example, windstorm, flood, or other natural disaster.
 - (2) The design review board shall have jurisdiction to review and approve all new construction on the subject site, in accordance with the criteria listed in section 118-251 and this section.
 - (3) Upon the finding that the demolition of any single-family home constructed prior to 1942 was without following the procedures of this section or without all required permits, any new construction on the same site shall be limited to the overall square footage, building footprint, height and location of that which previously existed on site prior to the unpermitted demolition, to the greatest extent possible in accordance with the applicable building and zoning codes.
 - (4) In the event the design review board determines that the single-family home demolished without required approval or permits was architecturally significant, based upon the criteria in subsections 142-108(a)(1)–(3) herein, the board shall require that the new structure be designed and constructed to match the exterior design and architectural details of the original structure demolished to the greatest extent possible in the same location, in accordance with all available documentation and in accordance with the applicable building and zoning codes.
 - (5) In the event the applicant endeavors to construct a new home on multiple, combined lots, and one of the lots contained the subject building demolished without required permits and approval, construction of the new home to match the exterior design and architectural details of the original home shall only occur on the lot on which the demolished home was situated. Separate new homes, which are not attached in any way to the lot on which the demolished home was situated, may be constructed on the remaining lots without approval from the design review board.
 - (6) In the event the owner of a single-family home constructed prior to 1942, which has been demolished without required permits or approvals, can establish good cause, the design review board may relieve the property owner of some or all of the limitations on new construction herein. The requirement of good cause shall be satisfied where the unauthorized demolition was solely the result of intentional or negligent acts of a duly licensed contractor or other third parties, and the owner had no role in and knowledge of the unauthorized demolition.
 - (7) In the event a single-family home constructed prior to 1942 is demolished without prior approval of the planning department, the design review board or the single-family residential review panel, and without the required

permits from the building official, in addition to any other applicable law in this code or other codes, the city shall document such demolition, and the applicable requirements and procedures for any new construction delineated herein, for recording in the public records of Miami-Dade County, to give notice to subsequent purchasers of the property.

- (8) No variances shall be granted by the board of adjustment from the requirements of section 142-108 except those variances which may be required to reconstruct the original structure demolished without required approvals or permits.

(j) *Issuance of demolition permits for single-family homes that are not architecturally significant.*

- (1) Emergency demolition orders. This section shall not supersede the requirements of the applicable building code with regard to unsafe structures and the issuance of emergency demolition orders, as determined by the building official.
- (2) A demolition permit for the total demolition of any single-family home that is not architecturally significant, regardless of year of construction, shall not be issued unless all of the following criteria are satisfied:
 - a. Obtain a building permit process number, which shall require:
 - (i) A building permit process number for new construction;
 - (ii) The building permit application and all required plans for the new construction, or proposed improvements to a lot that is abutting an aggregated lot with an existing single-family home, shall be reviewed and approved by the planning department;
 - (iii) All applicable fees for the new construction, or proposed improvements to a lot that is abutting an aggregated lot with an existing single-family home, 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 urban forestry in the environment and sustainability department.
 - b. Or, alternatively, be required to comply with the following:
 - (i) A tree survey, if required, shall be submitted and a replacement plan, if required, shall be reviewed and approved by the urban forestry in the environment and sustainability department.
 - (ii) The demolition permit shall indicate that the entire property shall be raised to sidewalk grade, or the crown of the road, upon the completion of demolition, with approved base material.
 - (iii) The demolition permit shall indicate that drought and salt tolerant sod, such as bahia sod or seashore paspalum sod shall be installed on the entire site and hedge material shall be installed along the entire perimeter of the property.
 - (iv) Fencing for the property, if any, shall only consist of aluminum picket along the entire perimeter of the property.
 - (v) The raising of the site to sidewalk grade and the installation of all required landscaping must be completed within ten days of the completion of demolition.
 - (vi) All landscaping required herein shall be installed and maintained as required by the demolition permit and the city's landscaping code, until such time as new construction is authorized and commences.
- (3) Penalties and enforcement. The code compliance department is empowered and authorized to require compliance with this section within 30 days of written notice to violators.
- (4) The following civil fines shall be imposed for a violation of subsection 142-108(j)(2)b:
 - a. First violation within a 12-month period: \$2,500.00;

- b. Second violation within a 12-month period: \$5,000.00;
 - c. Third violation within a 12-month period: \$7,500.00;
 - d. Fourth or subsequent violation within a 12-month period: \$10,000.00.
- (5) Enforcement of subsection 142-108(j)(2)b. The code compliance department shall enforce subsection 142-108(j)(2)b. The notice of violation shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten days after service of the notice of violation, and that the failure to appeal the violation within ten days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- (6) Rights of violators of subsection 142-108(j)(2)b; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
- a. A violator who has been served with a notice of violation must elect to either:
 - (i) Pay the civil fine in the manner indicated on the notice of violation; or
 - (ii) Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation.
 - b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
 - c. The failure to pay the civil fine, or to timely request an administrative hearing before a special master, shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
 - d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. Three months after the recording of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien, for the amount of the lien plus accrued interest.
 - e. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation.
 - f. The special master shall not have discretion to alter the penalties prescribed in this section.
 - g. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

(Ord. No. 2004-3468, § 1, 12-8-04; Ord. No. 2006-3529, §§ 5, 6, 9-6-06; Ord. No. 2007-3569, § 1, 9-5-07; Ord. No. 2014-3836, § 1, 2-12-14; Ord. No. 2014-3907, § 4, 11-19-14; Ord. No. 2015-3957, § 1, 9-2-15; Ord. No. 2015-3958, § 1, 9-2-15; Ord. No. 2015-3977, § 25, eff. 12-19-15; Ord. No. 2015-3978, § 12, 12-9-15, eff. 4-1-16; Ord. No. 2016-3999, § 1, 3-9-16; Ord. No. 2016-4044, § 1, 10-19-16; Ord. No. 2017-4083, § 5, 4-26-17)

Sec. 142-109. - Commercial use of single-family homes prohibited.

- (a) *Intent and purpose.* The land development regulations restrict residential properties to residential and compatible accessory uses. Commercial uses on residential properties are prohibited, with limited exceptions. While residents are entitled to enjoy

the use of their property consistent with the applicable regulations, in order to ensure and protect the enjoyment, character and value of residential neighborhoods and buildings, the provisions herein are established.

(b) *Definitions.*

- (1) *Use of residential property or use of the property* in this section shall mean occupancy of residential property for the purpose of holding commercial parties, events, assemblies or gatherings on the premises.
- (2) *Advertising or advertisement* shall mean any form of communication for marketing or used to encourage, persuade, or manipulate viewers, readers or listeners for the purpose of promoting occupancy of a residential property for the purpose of holding commercial parties, events, assemblies, gatherings, or the occupancy of a residence for less than six months and one day, as provided herein, upon the premises, as may be viewed through various traditional media, including, but not limited to, newspaper, magazines, flyers, handbills, television commercial, radio advertisement, outdoor advertising, direct mail, blogs, websites or text messages.

(c) *Regulations: Determination of commercial use.*

- (1) Accessory use of residential property shall be deemed commercial and not permitted, except as otherwise provided for in the Code, if:
 - a. *Compensation to owner.* The owner, lessee or resident receives payment or other consideration, e.g., goods, property or services, in excess of \$100.00 per party or event for the commercial use of the property, including payment by any means, direct or indirect, including security deposits; or
 - b. *Goods, property or services offered or sold.* Goods, property or services are offered for sale or sold on or at the property, during use of the property; however, this subsection shall not apply, if:
 1. All of the goods, property or services offered are donated to or for charitable, religious or political organizations or candidates for public office, that have received 501(c)(3) or other tax exempt status under the U.S. Internal Revenue Code, as amended, or in accordance with applicable election laws; or
 2. All of the proceeds from sales are directly payable and paid to charitable, religious or political organizations or candidates for public office, that have received 501(c)(3) or other tax exempt status under the U.S. Internal Revenue Code, as amended, or in accordance with applicable election laws. An organization or candidate may reimburse donors for goods or property donated; or
 3. The sale is of the property itself or personal property of the owner or resident (excluding property owned by a business), and if publicly advertised, comply with subsection (3) below;
 4. Notwithstanding the restrictions in subsections (1)b.1—3., limited commercial use of the property by the owner or resident for the sale of goods, property or services shall be allowed under the following criteria. The event:
 - i. Is by private invitation only, not publicly advertised;
 - ii. Creates no adverse impacts to the neighborhood;
 - iii. The activity and its impacts are contained on the property;
 - iv. Parking is limited to that available on-site, plus 11 vehicles legally self-parked near the property, with no busing or valet service; and
 - v. Frequency is no greater than one event per month;
 5. The owner or resident must provide the city manager an affidavit that identifies the limited commercial use of the residential property at least 72 hours before the applicable limited commercial use is scheduled to commence pursuant to subsection 142-109(c)(1)b., and the affidavit must include the applicable information set forth within subsections (c)b.1. through (c)b.4., setting forth detailed

information supporting the exempted limited commercial use provided there. The submission of a false affidavit is a misdemeanor of the second degree, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes; or

- c. *Admittance fees.* Use of the property by attendees requires an admittance or membership fee or a donation, excluding donations directly payable and paid by attendees to charitable, religious or political organizations or candidates for public office, that have received 501(c)(3) or other tax exempt status under the U.S. Internal Revenue Code, as amended, or in accordance with applicable election laws; or
 - d. Any advertising that promotes the occupancy or use of the residential property for the purpose of holding commercial parties, events, assemblies, gatherings, or advertisement that promotes the occupancy of a residence for less than six months and one day, as provided herein, or use of the residential premises in violation of this section.
- (2) *Signs or advertising.* Signs or other forms of advertising in connection with goods, property or services offered in connection with commercial use of the property, including the actual goods, property (except real property and structures thereon) or services, shall not be visible from the public right-of-way. This section shall not be construed to prohibit the display of real estate for sale or lease signs for the property.
- (3) *Real estate open houses.* The following events are permitted: Open houses (open to the public) organized for the purpose of promoting the sale or lease of the residence where the open house is located, to potential buyers or renters, or events organized by the listing agent limited to licensed real estate brokers and/or agents, subject to the following:
- a. No sale or display of goods, property or services by sponsoring businesses unrelated to the property; and
 - b. No charging admittance fees.
 - c. Events described in this subsection must end by 8:00 p.m.

(d) *Enforcement.*

- (1) Violations of this section shall be subject to the following fines. The special master shall not waive or reduce fines set by this section.
- a. If the violation is the first violation \$25,000.00
 - b. If the violation is the second violation within the preceding 18 months \$50,000.00
 - c. If the violation is the third violation within the preceding 18 months \$75,000.00
 - d. If the violation is the fourth or greater violation within the preceding 18 months \$100,000.00
- Fines for repeat violations shall increase regardless of location. The Director of the Code Compliance Department must remit a letter to the Miami-Dade Property Appraiser and Miami-Dade Tax Collector, with a copy of the Special Master Order adjudicating the violation, that notifies these governmental agencies that the single-family residential property was used for the purpose of holding a commercial party, event, assembly or gathering at the premises.
- (2) The advertising or advertisement for the commercial use of a residential property for the purpose of holding commercial parties, event, assemblies or gatherings on the residential premises is direct evidence that there is a violation of Subsection 142-109(c), which is admissible in any proceeding to enforce Section 142-109. The advertising or advertisement evidence raises a rebuttable presumption that the residential property named in the Notice of Violation or any other report or as identified in the advertising or advertisement is direct evidence that the residential property was used in violation of Section 142-109.
- (3) In addition to or in lieu of the foregoing, the city must close down the commercial use of the property pursuant

to subsection 142-109(f), or may seek an injunction against activities or uses prohibited under this section.

- (4) Any city police officer or code compliance officer may issue notices for violations of this section, with alternative enforcement as provided in section 1-14 of this Code. Violations shall be issued to the homeowner, and/or to any realtor, real estate agent, real estate broker, event planner, promoter, caterer, or any other individual or entity that facilitates or organizes the prohibited activities. In the event the record owner of the property is not present when the violation occurred, a copy of the violation shall be provided to such owner.
- (5) Charitable, religious or political organizations or candidates for public office shall receive one courtesy notice in lieu of the first notice of violation only, after which fines will accrue starting with the first violation as prescribed. No courtesy notice in lieu of first notice of violation shall be available if a courtesy notice in lieu of first notice of violation has already been granted in the preceding 18-month period, regardless of location.
- (6) The city recognizes peoples' rights of assembly, free expression, religious freedom, and other rights provided by the state and federal constitutions. It is the intent of the city commission that no decision under this section shall constitute an illegal violation of such rights, and this section shall not be construed as such a violation.
- (7) The city manager or designee may adopt administrative rules and procedures to assist in the uniform enforcement of this section.
- (e) *No variances shall be granted from this section.* This section does not authorize commercial activities in residential neighborhoods that are otherwise prohibited or regulated by applicable law, unless expressly provided for herein.
- (f) *Enhanced penalties.* The following enhanced penalties must be imposed, in addition to any mandatory fines set forth in Subsection 142-109(d) above, for violations of Section 142-109:
 - (1) Enhanced Penalties for this Section:
 - a. The commercial use must be immediately terminated, upon confirming a violation has occurred, by the Miami Beach Police Department and the Code Compliance Department.
 - b. If the offense is a second offense within the preceding eighteen (18) month period of time, and the total square footage of all building(s), accessory building(s), dwelling(s), or structure(s) exceed 5,000 total square feet, then the Special Master must impose an additional fine of \$50,000.00.
 - c. A certified copy of an order imposing the civil fines and penalties must be recorded in the public records, and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. The certified copy of an order must be immediately recorded in the public records, and the City may foreclose or otherwise execute upon the lien.

(Ord. No. 2008-3598, § 1, 2-13-08; Ord. No. 2014-3854, § 1, 4-23-14; Ord. No. 2016-4002, § 1, 3-9-16)

Secs. 142-110—142-130. - Reserved.