

## DEVELOPMENT AGREEMENT TIMETABLES ORDINANCE

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

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," CHAPTER 118, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE 1, ENTITLED "IN GENERAL," SECTION 118-4, ENTITLED "AUTHORITY TO ENTER INTO DEVELOPMENT AGREEMENT; HEARINGS," IN ORDER TO PROVIDE THAT A DEVELOPMENT AGREEMENT MAY EXTEND THE EXPIRATION DATE OF CITY LAND USE BOARD ORDERS FOR PROJECTS CONTEMPLATED IN THE DEVELOPMENT AGREEMENT; AMENDING ARTICLE IV, ENTITLED "CONDITIONAL USE PROCEDURE," SECTION 118-193, ENTITLED "APPLICATIONS FOR CONDITIONAL USES"; AMENDING ARTICLE VIII, ENTITLED "PROCEDURE FOR VARIANCES AND ADMINISTRATIVE APPEALS," SECTION 118-355, ENTITLED "VARIANCE TIME LIMITS; DECISIONS"; AMENDING ARTICLE X, ENTITLED "HISTORIC PRESERVATION," DIVISION 2, ENTITLED "HISTORIC PRESERVATION BOARD REVIEW OF PROJECTS," SECTION 118-532, ENTITLED "PROCEEDINGS BEFORE THE HISTORIC PRESERVATION BOARD"; AND AMENDING ARTICLE VII, ENTITLED "DESIGN REVIEW PROCEDURES," SECTION 118-258, ENTITLED "BUILDING PERMIT APPLICATION" TO PROVIDE THAT A LAND USE BOARD ORDER MAY BE AUTOMATICALLY EXTENDED PURSUANT TO A DEVELOPMENT AGREEMENT THAT PROVIDES FOR A LATER EXPIRATION DATE THAN THE EXPIRATION DATE OTHERWISE APPLICABLE TO SUCH LAND USE BOARD ORDER; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**WHEREAS**, Section 163.3220, Florida Statutes, entitled the "Florida Local Government Development Act," provides, as part of the Legislative intent, that development agreements are utilized to limit the uncertainty in the approval of development; and

**WHEREAS**, the lack of certainty in development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning; and

**WHEREAS**, a development agreement can provide assurances to a developer that, upon approval and execution of a development agreement, the local government's laws and policies governing the development of the land that is the subject of the agreement, at the time of the execution of the agreement, shall govern the development of such land for the duration of the development agreement (See Section 163.3233(1), Florida Statutes); and

**WHEREAS**, by providing the aforementioned assurances, a development agreement can serve to strengthen the public planning process, encourage sound capital improvement planning and financing, assist in assuring there are adequate capital facilities for the development, encourage private participation in comprehensive planning, and reduce the economic costs of development; and

**WHEREAS**, the duration of a development agreement may vary in length and often exceeds the time period authorized under a Board of Adjustment, Design Review Board, Historic Preservation Board, or Planning Board order (hereinafter "City land use board orders") approved for a project that is the subject of a development agreement; and

**WHEREAS**, City land use board orders typically expire in 18 months, if no full building permit, or certificate of occupancy, use or completion is pulled within such 18 month period; and

**WHEREAS**, the City's Land Development Regulations only provide for a one year extension, after public hearing, for a land use board order, which, if granted, extends the 18 month period to a maximum of 30 months; and

**WHEREAS**, the foregoing time periods for City land use board orders may conflict with time periods negotiated and included in the terms of a development agreement; and

**WHEREAS**, to reconcile this conflict, the developer would have to apply for additional, unnecessary hearings, in order to re-establish the City's land use board orders, even though the development agreement may have vested the developer with the zoning code requirements from the time period when the agreement was executed; and

**WHEREAS**, as State law recognizes a development agreement may have include an initial duration of up to 30 years (See Section 163.3229, Florida Statutes), and such agreement may include timeframes tailored to the needs of each project, the City desires to conform its Code to be consistent with the provisions of Florida Statutes 163.3220-163.3243 (relating to the requirements of a development agreement), to clarify that the timeframes set forth in a development agreement shall control over and supersede any shorter timeframes provided in development orders of the City's Land Use Boards; and

**WHEREAS**, the amendments set forth below are necessary to accomplish all of the above objectives.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.**

**SECTION 1.** Chapter 118 of the City Code, entitled "Administration And Review Procedures," Article 1, entitled "In General," is hereby amended as follows:

**CHAPTER 118  
ADMINISTRATION AND REVIEW PROCEDURES**

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**ARTICLE 1. IN GENERAL**

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**Sec. 118-4. - Authority to enter into development agreement; hearings.**

The city commission shall have authority to enter into a development agreement with any person within the city's jurisdiction if:

(1) The development agreement meets all of the requirements of the Florida Local Government Development Agreement Act, F.S. § 163.3220 et seq.;

(2) 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 at the second such hearing of thereafter; and

(3) Notice of such public hearings shall have been given in accordance with the Florida Local Government Development Agreement Act.

(4) Commencing on January 1, 2019, a development agreement entered into pursuant to this section may extend the expiration date for a City land use board order beyond the time periods contemplated in section 118-193 for conditional use permits issued by the planning board; section 118-258 for design review and variance approvals issued by the design review board; section 118-355 for variance approvals issued by the board of adjustment; and section 118-532 for certificates of appropriateness and variance approvals issued by the historic preservation board (collectively, the foregoing orders are referred to as the "City land use board orders"). In such cases, the timetables set forth in the approved and executed development agreement shall control over and supersede any earlier expiration dates provided in the City land use board orders.

**SECTION 2.** Chapter 118 of the City Code, entitled "Administration and Review Procedures," Article 4, entitled "Conditional use procedures," is hereby amended as follows:

**CHAPTER 118  
ADMINISTRATION AND REVIEW PROCEDURES**

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**ARTICLE IV. CONDITIONAL USE PROCEDURES**

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**Sec. 118-193. - Applications for conditional uses.**

Quasi-judicial, public hearing applications for approval of a conditional use shall be submitted to the planning department, which shall prepare a report and recommendation for consideration by the planning board, and when required, by the city commission and shall comply with the notice requirements in accordance with section 118-8. Any applicant 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.

- (1) *Site plan required.* Each application for a conditional use permit shall be accompanied by a site plan meeting the requirements of section 118-1, 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) *Expiration of Orders of Planning Board.*
  - a. ~~At~~ 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 conditional use was granted to obtain a full 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 lesser time period, includes the time of the decision of the planning board may be filed. If the applicant fails to obtain a full building permit within 18 months, or such lesser time period as is specified, of the board meeting date at which a conditional use was granted and/or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, the conditional use 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 planning board, provided the applicant submits a request in writing to the planning and zoning director no later than 90 calendar days after the expiration of the original approval, showing 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 118-9 relating to appealed orders, and tolling.

b. Timeframes in Development Agreements.

Where a development agreement has been approved and entered into pursuant to Section 118-4, the timeframe(s) for obtaining obtain a full building permit, a certificate of occupancy, a certificate of use or a certificate of completion, as expressly negotiated and set forth in the executed development agreement, shall control, supersede, and take precedence over the time periods set forth in subsection (a), above.

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**SECTION 3.** Chapter 118, entitled “Administration And Review Procedures,” Article 6, entitled “Design Review procedures”, at Section 118-258, entitled “Building permit application,” of the Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 118  
ADMINISTRATION AND REVIEW PROCEDURES**

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## ARTICLE VII . DESIGN REVIEW PROCEDURES

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### **Sec. 118-258. - Building permit application.**

(a) The applicant or his authorized agent shall make application for a building permit. The application shall include, at a minimum, the two sets of plans which were approved by the design review board and stamped and signed by the planning director or his authorized representative.

(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 to plans that have been approved by the board shall be permitted when approved by the planning director.

(c) *Expiration of orders of the Design Review Board.* No building permit, full building permit or phased development permit shall be issued for any plan subject to design review except in conformity with the approved plans. 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 design review approval was granted to obtain a full building permit or a phased development permit. The foregoing 18-month time period includes the time period during which an appeal of the decision of the design review board may be filed, pursuant to the requirements of Section 118-9. If the applicant fails to obtain a full building permit or a phased development permit within 18 months, or such lesser time as may be specified by the board, of the board meeting date at which design review approval was granted, and/or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, all staff and board approvals 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 board, 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, showing 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 118-9 relating to appealed orders, and tolling.

(d) An applicant may submit an application for a building permit simultaneously with a design plan review in order to expedite processing, however, no building permit shall be issued until the final design plan has been stamped and signed by the planning director or designee in accordance with these land development regulations.

(e) No construction may commence in the event a design review approval expires.

(f) Timeframes in Development Agreements.

Where a development agreement has been approved and entered into pursuant to Section 118-4, the timeframe(s) for obtaining obtain a full building permit or a phased development permit, as expressly negotiated and set forth in the executed development agreement shall control, supersede, and take precedence over the time periods set forth in subsection (c), above.

**SECTION 4.** Chapter 118, entitled “Administration And Review Procedures,” Article VIII, entitled “Procedures for variances and administrative appeals”, at Section 118-355, entitled “Variance time limits;” of the Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 118  
ADMINISTRATION AND REVIEW PROCEDURES**

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**ARTICLE VIII . PROCEDURES FOR VARIANCES AND ADMINISTRATIVE APPEALS**

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**Sec. 118-355. - Variance time limits; decisions.**

- (a) The applicable board may prescribe a reasonable time limit within which the action for which the variance is required shall begin or be completed or both. 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 variance was granted to obtain a full building 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 board may be filed. If the applicant fails to obtain a full building permit within 18 months, or such lesser time as is specified, of the board meeting date at which a variance was granted and/or construction does not commence and proceed in accordance with such permit and the requirements of the applicable Florida Building Code, the variance 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 applicable board, provided the applicant submits a request in writing to the planning and zoning director no later than 90 calendar days after the expiration of the original variance(s) showing 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. Notwithstanding the foregoing, 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 and/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) Under no circumstances shall the board grant a variance to permit a use not generally 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.
- (c) The board shall fix a reasonable time for the hearing of the variance request after a complete application as determined by the planning director, give public notice thereof as well as due notice to the parties in interest, and decide same within a reasonable time. The decision of the board shall be in writing and shall be mailed promptly to the applicant.
- (d) A building permit shall not be issued until the applicant records the final order against the property in the public records of the county.
- (e) Timeframes in Development Agreements. Where a development agreement has been approved and entered into pursuant to Section 118-4, the timeframe(s) for obtaining obtain a full building permit as expressly negotiated and set forth in the executed development agreement shall control, supersede, and take precedence over the time periods set forth in subsection (a), above.

**SECTION 5.** Chapter 118, entitled "Administration And Review Procedures," Article X, entitled "Historic Preservation", at Section 118-532, entitled "Proceedings before the historic preservation board;" of the Code of the City of Miami Beach is hereby amended as follows:

## CHAPTER 118 ADMINISTRATION AND REVIEW PROCEDURES

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### ARTICLE X . HISTORIC PRESERVATION

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#### **Sec. 118-532. - Proceedings before the historic preservation board.**

(a) *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.

(b) *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.

(c) *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.

(d) *Recording of certificate of appropriateness.* After a certificate of appropriateness has been ordered by the board, the applicant 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, assuming the condition is no longer applicable.

(e) *Deferrals and continuances.*

(1) 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 as provided in subsection 118-563(d). 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.

(2) 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.

(3) 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 and/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 and/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.

(4) 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.

(5) 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.

(f) *Timetables.*

(1) *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 a 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 and/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 118-9 relating to appealed orders and tolling.

(2) Timeframes in Development Agreements. Where a development agreement has been approved and entered into pursuant to Section 118-4, the timeframe(s) for obtaining obtain a full building permit or a phased development permit as expressly negotiated and set forth in the executed development agreement shall control, supersede, and take precedence over the time periods set forth in subsection (f)(1), above.

*(g) Maintenance of designated properties and demolition by neglect.*

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#### **SECTION 6. REPEALER.**

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

#### **SECTION 7. CODIFICATION.**

It is the intention of the City Commission, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, as amended; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

#### **SECTION 8. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 9. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED and ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

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Rafael E. Granado, City Clerk

First Reading: March 13, 2019

Second Reading: April 10, 2019

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

[Sponsor: Commissioner Ricky Arriola]

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