

**VILLAGE OF EL PORTAL, FLORIDA**

**ORDINANCE NO. 2021-05**

AN ORDINANCE OF THE VILLAGE OF EL PORTAL CREATING A DESIGN REVIEW BOARD; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICTS, REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**WHEREAS**, the Village of El Portal desires to create a Design Review Board.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF EL PORTAL, FLORIDA:

**SECTION 1.** The foregoing "**WHEREAS**" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

**SECTION 2.** The following ordinance creating a Design Review Board is as follows:

**Section 1. MEMBERS**

The Board membership shall consist of five (5) members whose residence, term of office, place of business, and appointment are consistent with the requirements as listed in the Village Code. All members shall serve without compensation and shall hold no other Village of El Portal municipal office. The Planning Director, or designee, and one person appointed by the Village Manager, or their designees, are ex-officio members without the right to vote.

**Section 2. OFFICERS**

At the regular meeting in January of each year or as soon after as is practical, the Board shall elect a Chairperson and Vice-Chairperson.

**Section 3. CHAIRPERSON: POWERS AND DUTIES**

The Chairperson shall vote and be recorded on all matters coming before the Board. Subject to these rules, the Chairperson shall decide all points of order unless overruled by a majority of the Board in session at the time. The Chairperson shall appoint such committees as may be found necessary or desirable. The Chairperson or Vice-Chairperson in his/her absence shall preside over meetings and shall administer oaths.

#### **Section 4. VICE-CHAIRPERSON**

The Vice-Chairperson shall act as Chairperson in case the Chairperson is absent, disabled, or otherwise unable to perform his duties.

#### **Section 5. CLERK**

The Planning Director or his designated representative shall act as Clerk or Secretary for the Board. The Clerk shall prepare all of the clerical work of the Board including: all correspondence of the Board, sending all notices required by law and rules of order of the Board, keep dockets and minutes of the Boards proceedings, compile all required records, maintain necessary files and indexes, and prepare and file an order in each case. The clerk shall keep the minutes of the Board's proceedings showing vote of each member upon each question, or if absent, or failing to vote, indicating such fact.

#### **Section 6. QUORUM AND VOTING REUIREMENTS**

Four (4) members must be present at any meeting of the Board to constitute a quorum. If a quorum is not present, all applications and matters will be continued until the next meeting or as otherwise provided by the present members of the Board. An affirmative vote of four (4) members shall be required to approve an application for Design Review and to take any action with respect to a Design Review application, including, without limitation, continuance, deferral, extension and modification. Except as provided in the foregoing sentence, the affirmative vote of a majority of the quorum shall be required for Board action.

#### **Section 7. CONFLICT OF INTEREST**

Members of the Board shall abide by the applicable provisions of Florida Statutes, Ch. 112 (1995), Miami Dade County Code, and the Village of EL Portal code.

#### **Section 8. REGULAR MEETINGS**

Regular meetings of the Board are open to the public and shall be held from time to time in City Hall. Change of meeting date/time may be at the call of the Chairperson and as the Board may determine with a minimum of fifteen (15) days notice.

#### **Section 9. SPECIAL MEETINGS**

Special meetings may be called by the Chairperson, or at the written request of three (3) members. Written notice of such special meeting as to time, place and subject matter shall be given by mail or telecopier to each member of the Board, Vilaage Manager at least 48 hours before the time set. Notice of a special meeting shall be transmitted in the most expeditious manner available under the circumstances to such news media as is usually notified of Board meetings. Except that the announcement of a special session at any meeting at which a quorum is present shall be sufficient notice of such meeting.

### **Section 10. WITHDRAWAL AND CONTINUANCES**

An application may be withdrawn without prejudice by written request to the Clerk at any time prior to the giving of any required notice. Except in the instance of an application which would relieve an existing violation, if notice has not been mailed, the applicant may withdraw an application by written request to the Clerk. In the instance where there is an existing violation or notice has been mailed, any request to withdraw an application granted by the Board, in its discretion, shall be with prejudice (i.e. the application cannot be refiled within six months), except in the event the Board permits the withdrawal without prejudice at the time the request is considered; provided, however, no application may be withdrawn after final action has been taken.

For projects placed and noticed on a regular agenda and not heard by the Board because of a lack of a quorum, or cancellation of a meeting, such projects shall be automatically continued to the next regularly scheduled meeting. The noticing requirements for the following meeting shall be consistent with the normal notice requirements for a regularly continued item (newspaper notice and not a mailed notice).

In the instance where there is an existing violation or notice has been mailed, a request for continuance must be submitted in writing by the applicant prior to the meeting, and the applicant or his representative shall be present to hear any protest and to present his case if the Board decides against a continuance and to hear the case.

Deferrals or continuances for an application shall not exceed one (1) year cumulatively for all such continuances or deferrals made by the Board, or the application shall be deemed null and void.

### **Section 11. AMENDMENT**

These rules may be amended by an affirmative vote of not less than four (4) members of the Board.

### **Section 12. RULES OF ORDER**

Robert's Rules of Order, as amended, shall govern the Design Review Board in all cases to which they are applicable and are not inconsistent with the By-laws or special rules of order of the Board.

## **ARTICLE II**

### **APPLICATIONS TO THE BOARD**

#### **Section 1. APPLICATIONS**

Every application for action by the Board shall be made on the appropriate official form. These forms shall be furnished by the Clerk upon request. The Planning Department shall be responsible for determining the requirements for a complete application, which shall include, among other requirements, and exhibits as listed in the application instructions, as amended by the Planning Director, as well as the completion and submission of a financial affidavit (in approved form) attesting to the officers and the stockholders, partners, beneficiaries or other interested parties, as applicable, so that the identity of the individuals having the ultimate ownership interest in the entity is disclosed. Any communication, purporting to be an application, shall be treated as mere notice of intention to complete and submit an application, until such time as it is made on the official application form. All information called for by the form shall be furnished by the applicant in the manner therein prescribed before the deadline date, as determined by the Planning Department. If the application, required exhibits, and information is not complete and correct before the deadline date, consideration of the application or request shall not be placed on the agenda for that meeting and shall not be placed on an agenda until the application is complete and correct.

#### **Section 2. DEADLINE FOR APPLICATIONS**

All applications and requests (including supplementary materials) must be completed and on file with the Clerk of this Board no later than 12:00 p.m. of the deadline date. The Planning Director shall determine the final date for acceptance of applications for each meeting.

#### **Section 3. BOARD TO HEAR ONLY BONAFIDE CASES**

The Board may hear only those applications for design review brought by the legal title owner of record of the subject property, by a prospective purchaser holding an option to purchase the property in question, pursuant to a binding contract entered into with the legal title owner of record, or a

tenant pursuant to a written lease agreement provided that the fee simple owner authorizes and joins in the application.

**ARTICLE III**  
**THE HEARING/MEETING**

**Section 1. NOTICE**

- A. Not less than fifteen (15) days prior to the public hearing date on an application for Design Review approval, a description of the request and the time and place of such hearing shall be advertised in a paper of general paid circulation in the City; notice shall also be given by mail to owners of record of land lying within 375 feet of the subject property.
  
- B. The Board shall request the appearance at the meeting of such representatives of any municipal department, any municipal board, agency, trust, commission, building inspector, zoning inspector, or other officer having supervision of the construction of buildings or the power of enforcing municipal building and zoning laws as are deemed necessary or helpful in making its decisions upon the application.

**Section 2. ORDER OF BUSINESS OF THE HEARING**

The Board shall conduct its public hearing in accordance with the quasi judicial procedures otherwise utilized by the Village of El Portal.

The order of business at all regular meetings of the Board shall be as follows, except to the extent modified by the Chairperson at his/her discretion:

- I. Attendance
  
- II. Approval of Minutes
  
- III. Request for Deferrals/Continuances
  
- IV. Old/New Business
  
- V. Requests for Extensions of Time
  
- VI. Applications for Design Review Approval
  - A. Returning applicants
  - B. Revisions to previously approved plans
  - C. New applicants
  
- VII. Future Meeting Date Reminder

## VIII. Adjournment.

### **Section 3. TESTIMONY AND DOCUMENTS**

- A. At the hearing of an application or request before the Board, the applicant shall appear in his/her own behalf or be represented by counsel or agent. Presentations by applicants shall not exceed ten (10) minutes, unless otherwise authorized by the Chairperson of the Board, in his/her discretion.
- B. Any person interested in any application or request before the Board is entitled to be heard when the application or request is called and may appear in person, or be represented by an attorney or agent.
- C. Any person testifying shall clearly identify himself, his interest in the proceedings, any special credentials that he may have pertaining to the subject matter of his testimony. All testimony shall be limited to the issues surrounding the pertinent agenda items only and testimony from those parties not affiliated with a particular applicant shall be limited to two (2) minutes or as determined by the Board Chairperson.
- D. The Board may listen to any testimony and inspect any data, or any sites as it may deem necessary to enable it to render a fair and informed decision.
- E. Any person before the rostrum shall abide by the order and direction of the Chairperson. Discourtesy or disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Board and shall be dealt with as the Chairperson deems proper.
- F. Any documents provided shall be clearly identified by name, or some other designation, and the persons so providing them shall also be identified.
- G. A record shall be made of all the proceedings by either a tape recorder or some other appropriate means.
- H. Written protests or petitions shall be filed with the Clerk and submitted to the Board at any time before the hearing.
- I. The Chairperson shall have the discretion to establish time limitations for all presentations before the Board.

### **Section 4. DECISIONS OF THE BOARD**

After making a decision on the application, the Design Review Board shall issue a written decision stating its finding of facts, its conclusions, and the reasons therefore.

**ARTICLE IV**  
**DISPOSITION BY THE BOARD**

**Section 1. PETITIONS FOR REHEARING**

Cases heard and decided by this Board will not be again set down for hearing by this Board within six (6) months of the date of such decision unless the Board makes its decision without prejudice to refile within such time limitation.

The Design Review Board may hear a Petition for Rehearing by an applicant, by the City Manager on behalf of the Administration, or by an affected person, as more particularly provided in the City Code. The Board may rehear a case, take additional testimony, reaffirm their previous decision or issue a new decision. The petition must demonstrate to the Board that (1) there is newly discovered evidence which will probably change the result if a rehearing is granted, or (2) the Board has overlooked or failed to consider something which renders the decision issued erroneous. A Petition for Rehearing must be filed within fifteen (15) days of the date of the Board's written order issued with respect to the application.

**Section 2. APPEAL OF DESIGN REVIEW DECISIONS**

Appeals of Design Review Board decisions shall be made in compliance with Article VI of the Land Development Regulations of the City Code, and any other applicable provisions, of the City Code.

**Section 3. APPEAL PERIOD AFTER FILING OF BOARD DECISION**

A period of twenty (20) days after the filing of the Board's decision must elapse before permits can be issued by the Building Official upon presentation of a copy of the final decision of this Board. Where appeals are taken to the City Commission, or a court of competent jurisdiction, no permits will be issued until the final resolution of all administrative and/or court proceedings, including the expiration of any applicable appeal periods.

**SECTION 3.** All ordinances or parts of ordinances in conflict herewith or inconsistent herewith, are hereby repealed; but only insofar as such ordinances may be inconsistent or in conflict with this Ordinance.

**SECTION 4.** If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall

not be affected.

**SECTION 5.** It is the intention of the Village Council that the provisions of this Ordinance shall become and be made a part of and known as the "Code of Ordinances" of the Village of El Portal, Florida, which provisions may be renumbered or re-lettered and the word ordinance be changed to "section", "article", or other appropriate word to accomplish such intention, and same shall be codified whenever the Code is re-codified.

**SECTION 6.** If the Official Code of Ordinances of the Village of El Portal Tables of Contents or other reference portions is affected by these provisions, then changes are approved as a part of this Ordinance.

**SECTION 7.** This ordinance shall become effective immediately upon approval on second reading.

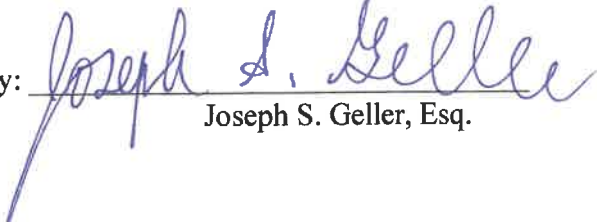
**PASSED AND ADOPTED** by the Village Council of the Village of El Portal Florida, this 22 day of June, 2021.



Omarr C. Nickerson, Mayor  
Village Of El Portal

ATTEST:   
Yenise Jacobi CMC, Village Clerk

Approved as to form and legal sufficiency:  
Interim Village Attorney, Greenspoon Marder, LLP

By:   
Joseph S. Geller, Esq.

Vote: not: Pitrela  
Mayor Nickerson:  
Vice Mayor Urbom:  
Councilperson Lightfoot-Ward:

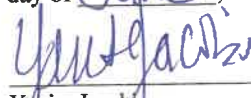
2nd: Lightfoot ward  
 (Yes) \_\_\_ (No)  
 (Yes) \_\_\_ (No)  
 (Yes) \_\_\_ (No)



Councilperson Martin:  
Councilperson Pirela:

(Yes) \_\_\_ (No)  
 (Yes) \_\_\_ (No)

I, Yenise Jacobi, CMC, Village Clerk of the Village of El Portal, Miami-Dade County, Florida, do hereby certify that this is a true and correct copy of Ordinance No.: 2021-05 adopted on this 22 day of June, 2021, as shown in the Official Records of the Village of El Portal, Miami-Dade County, Florida. Given under my hand and seal, this 22 day of June, 2021.

  
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Yenise Jacobi  
Village Clerk