PSL

Miami Dade County

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Office of the Commission Auditor

LEGISLATIVE ANALYSIS

Tuesday November 9, 2004
9:30 AM
Commission Chambers

Board of County Commissioners

Public Safety Committee

PSC ITEM 3(D)
November 9, 2004

LEGISLATIVE ANALYSIS AND ECONOMIC IMPACT STATEMENT

RESOLUTION DIRECTING THE MANAGER TO CREATE AND IMPLEMENT A PROACTIVE EDUCATION AND ENFORCEMENT CAMPAIGN TO PREVENT THE THEFT OF SHOPPING CARTS; AND DIRECTING THE MANAGER TO ENFORCE COUNTY CODE SECTIONS 8A-76 AND 8A-76.1 REQUIRING BUSINESS ESTABLISHMENTS TO POST SIGNS WARNING SHOPPERS ABOUT THE ILLEGALITY OF REMOVING SHOPPING CARTS FROM PLACES OF BUSINESS

Commissioner Javier D. Souto

I. SUMMARY

This proposed ordinance would direct the County Manager to implement a proactive education and enforcement campaign to prevent the ongoing theft of shopping carts. In addition, the proposed ordinance would direct the County Manager to enforce Sec. 8A-76 and 8A-76.1 relating to required signage to reduce the theft and removal of shopping carts from business premises. Copies of Sec. 8A-76 and Sec. 8A-76.1 are appended as Attachment #1.

II. PRESENT SITUATION

Sec. 8A-76(a) provided for businesses to put a warning notice in English and Spanish on all shopping carts unless the firm meets certain requirements and obtains an exemption from the Director of Consumer Services Department (CSD).

- Sec. 8A-76, which was established by Ordinance 96-3, included a sunset provision that may have repealed this section in January 2001. Extension beyond the sunset date is unclear; see Section V of this analysis for additional information on the sunset provision.

Sec. 8A-76.1 (which was separately enacted in Ordinance 97-213 and did not include a sunset provision) provides for:

(1) A "*shopping cart identification sign*" with the name, address and phone number of the retail establishment and civil penalties for failure to comply;
(2) <u>Delegation of enforcement authority and responsibility to the Department Solid Waste Management</u>;
(3) Designation of all "*employees and officers of Miami-Dade County*" as agents of the County and directs that "*any identifiable shopping carts found on public property during the course of their official duties shall be reported to the Department of Solid Waste Management....[that] shall collect the shopping carts and place them in storage.*"
(4) Notice to shopping cart owners, retrieval responsibility, penalties and fees.

III. POLICY CHANGE AND IMPLICATION

This ordinance would serve as the vehicle for addressing the Sunset issues listed above with regards to this program.

Aggressive enforcement may improve the appearance of our communities and would support the efforts of the Community Image Advisory Board.

IV. ECONOMIC IMPACT

Aggressive enforcement may increase costs for the Department of Solid Waste Management.

V. COMMENTS AND QUESTIONS

Store owners may be eligible for a waiver of the posting requirements listed within this ordinance if they meet one or all of the following criteria listed in Sec. 8A-76 subsection (c):

(1) Constructs barriers to prevent the removal of shopping carts; or

(2) Attaches alarm mechanisms to shopping carts to prevent their removal; or

(3) Implements a policy of not allowing the customer to exit the store with shopping carts, provides an employee to carry or wheel the customer's merchandise to the customers' vehicle, and agrees to implement a program to collect their own carts that are illegally removed.

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LEGISLATIVE ANALYSIS AND ECONOMIC IMPACT STATEMENT

ORDINANCE AMENDING SECTIONS 2-98.4 THROUGH 2-98.11 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA CONCERNING NUISANCE ABATEMENT; REVISING PURPOSE, DEFINITIONS, OPERATING PROCEDURES, THE PUBLIC NUISANCE ABATEMENT BOARD, HEARING PROCESS AND FEES AND COSTS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

Miami-Dade Police Department

I. SUMMARY

This proposed ordinance would amend Chapter 2 of the Code to:

- Increases authorities and broadens the range of included offenses under the Nuisance Abatement Ordinance (NAO) and of the Nuisance Abatement Board (NAB), including authority for the NAB to impose fines and issue subpoenas;
- Expands the NAB membership from 9 members to 13 members (one per commission district);
- Liberalizes NAB membership to permit non-residents of Miami-Dade County; and
- Expand NAO coverage to municipalities with which interlocal agreements have been executed.
- Authorizes retroactive application of the changes to the original date of adoption of the ordinance, or the dates of amendments to Florida Statutes, 893.138 that authorize the changes.

The Public Safety Committee (PSC) on July 20, 2004 expressed concern about clarifying each municipality's option to execute an interlocal agreement for Miami-Dade Police Department (MDPD) assistance with nuisance properties within the municipality, regardless of whether or not they contract for MDPD police services. The text of the proposed item does not appear to address the PSC's concerns even though the County Manager's memorandum recommending the item indicates it was addressed.

II. PRESENT SITUATION

After a premise is considered a public nuisance, the NAB can order the property owner to pay costs, but the NAB cannot impose fines.

NAB membership is now defined as 9 members

III. POLICY CHANGE AND IMPLICATION

<u>To activities that can trigger a premise being determined to be a public nuisance:</u>

- Adds "*possession*" of controlled substances, illegal "*possession*" of alcoholic beverages, and "*other criminal activity as defined in federal laws and/or Florida Statutes, or violations of the Code of Miami-Dade County;*"

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- Reduces to one (1), the number of incidents of use "*by a youth and criminal street gang for the purpose of conducting a pattern of your and criminal street gang activity*" [previously required more than two (2) such uses];

- With premise use on more than two (2) occasions within 12 months:
  - Adds "*Manufacture, cultivation, or possession*" of controlled substances "*including, but not limited to substances and pharmaceuticals...any substance sold in lieu of a controlled substance...or any imitation controlled substance;*"
  - Clarifies prostitution includes "*any violation of Florida Statutes Chapter 796, as it may be renumbered or amended from time to time;*"
  - Adds illegal "*possession*" of "*containers, or open containers*" of alcoholic beverages;
  - Adds "*as site of...dealing in stone property;*"
  - Adds "*as site of juveniles in violation the Miami-Dade County Juvenile Curfew Ordinance;*"
  - Adds "*as site in which Owner(s) and/or property is in violation of:*"
    - *Public Nuisances on Leased Property* per the Code;
    - *Minimum Vacant Housing Standards, Demolition of Uninhabited Structures Ordinances, Unsafe Buildings* per the Code;
    - *Unsanitary Health Nuisance Statutes* per Florida Statutes and the Code;
    - *Illegal dumping or illegal use of Property* per Florida Statutes and the Code;
    - *Environmental Protection Ordinance* per the Code and violations of Florida Statutes and Federal Environmental (Nuisance) Laws;
    - *False Alarm Ordinance* violations with *on a repeated basis six false alarm signals during two or more registration periods* per the Code;
    - *Place of habitation or feeding of Miami-Dade County Pit Bull Ordinance* per the Code;
    - *Illegal or Unlicensed Practice of Medicine, Dentistry, Funeral Services, or Health Care Services in Violation of Federal law and Florida Statutes...that may endanger the Public Health, Safety, and Welfare.*

<u>Add definitions for:</u>

- *Complaint* to include any complaint or incident documented on a local, state, or federal law enforcement report, citation, warning notice, notarized affidavit, oral or written sworn statement, or *reasonable belief (as substantiated by local, state, or federal law enforcement, judicial, or government officials);*
- *Owner* to include *property manager and business manager;*
- *Places/Premises* to include, but not limited to, *any residential, business, land, vacant lot, parking area, vessel, vehicle, area controlled by a homeowner or condominium or other similar association, or other property that comes within the control of business, or business enterprise, or other activity associated with a business;* and
- *Occasion* to include *each instance and/or day of activity.*

<u>Updates notification processes</u> and adds that notification to a business owner may constitute notification to the property owner.

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Adds subpoena power for the NAB and/or County Attorney.

Increases NAB membership to 13 (one per Commission District) in recognition that there are now 13 Commission Districts.

Authorizes non-residents of Miami-Dade County to be NAB members upon 2/3 vote of the BCC.

Authorizes alternate NAB members to be appointed by the Mayor, the County Manager, and the Director of MDPD or his designee subject to ratification by the BCC.

Ties NAB members' terms to the term of the appointing commissioner and sets 8 consecutive years as the term limit with ability to be reappointed after a 2-year hiatus.

Expands upon NAB hearing processes.

Provides authority for the NAB to consider *the general reputation of the Owner(s) or their associates, employees, or tenants, and evidence concerning other properties that may be owned, managed, or controlled by the Owner(s).*

Establishes a Prehearing Settlement process.

Authorizes the NAB to order fines in *increments of $250 or...higher or lesser amount as it deems appropriate and necessary, per incident and/or day of noncompliance.... not exceed*[ing] *$15,000 (or a total amount as allowed by Florida Statute 893.138, as amended) each time a premises is declared a public nuisance.* [See Attachment #1 for a copy of Florida Statute 893.138.]

Enforcement provisions specify:

- A $250 fine for *each day the Owner does not comply with the Board's Order or the property continues to be a public nuisance; and*
- A $500 fine and/or imprisonment in the county jail for not more than 60 days for *any person who hinders, or obstructs, any County or State Official, in the discharge of duties...in carrying out the Orders of the Board.*

Authorizes the NAB to recover costs for monitoring of the premises and/or investigation of all incidents and/or conditions....Costs include those of other departments and may include other Municipal, State, Federal Law Enforcement or Government Agency.

Removes the one year requirement before the County may foreclose on an unpaid lien.

Sets 18% per annum as the interest rate to accrue on unpaid costs and/or fines.

IV. ECONOMIC IMPACT

The County Manager's "Fiscal Impact Report" attached to the item states that "*the revenue* [from the proposed changes] *cannot be accurately estimated in advance*" except that a new Administrative Officer 1 position at MDPD to administer the program "*will result in cost savings associated with reduced calls, less crime and disturbances on these properties*" in excess of the anticipated $85,000 direct cost for salary and equipment for the new position.

Impact on municipalities: The proposed ordinance does not indicate whether or municipalities will be charged fees for MDPD assistance with nuisance properties as is authorized in this item.

V. COMMENTS AND QUESTIONS

The broadness of some of the proposed provisions, and the absence of any exemptions, may have unintended consequences such as if someone were to use the broadened definitions to file NAO complaints about covered activities that take place at public facilities, like parks.

The extent of the expansion of NAO infractions and NAB authorities may give rise to concern from a civil liberties perspective.

Questions:

- *Will municipalities that choose to execute interlocal agreements with MDPD for assistance with nuisance properties be charged fees for these services?*
- *If fees will be charged, will older municipalities be charged the same fees as newer communities that are now required to pay for specialized police services?*

The Substitute Memorandum for this item contains a matrix of the changes made to the original item addressing the concerns of the commission.