



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

**Legislative Analysis**

**Government Operations**  
**Committee**

February 09, 2010  
9:30 A.M.  
Commission Chamber

Charles Anderson, CPA  
Commission Auditor  
111 NW First Street, Suite 1030  
Miami, Florida 33128  
305-375-4354

**Miami-Dade County Board of County Commissioners  
Office of the Commission Auditor**

**Legislative Notes  
Government Operations Committee  
Meeting Agenda**

**February 09, 2010**

Written analyses and notes for the below listed items are attached for your consideration:

**Item Number(s)**

1(E)1
2(A)
2(D)

If you require further analysis of these or any other agenda items, please contact Guillermo Cuadra, Chief Legislative Analyst, at (305) 375-5469.

Acknowledgements--Analyses prepared by:  
Michael Amador-Gil, Senior Legislative Analyst

MIAMI-DADE COUNTY  
BOARD OF COUNTY COMMISSIONERS  
OFFICE OF THE COMMISSION AUDITOR



Legislative Notes

**Agenda Item:** 1(E)1

**File Number:** 092509 (Withdrawal Requested)

**Committee(s) of Reference:** Government Operations Committee

**Date of Analysis:** February 3, 2010

**Type of Item:** Ordinance

**District:** Countywide

**Prime Sponsor:** Commissioner Bruno A. Barreiro

**Co-Sponsor:** Commissioner Rebecca Sosa

**Summary**

This ordinance amends Section 8-10 of the Code of Miami-Dade County directed towards townhouses or individual units by (1) requiring proof of notice has been sent to the homeowners association for certain permits; and (2) amends Section 33-8.1 requiring proof of notice to homeowners association for zoning improvement permits.

**The proposed ordinance was deferred twice by the Government Operations Committee.**

If the ordinance is approved, the Building Department would enforce the legislation by submitting an affidavit to the permittee consisting of the following two (2) parts:

- One to attest whether there is a homeowners association; and
- If so, whether the association has been notified.

**According to Building staff, to process the affidavit, the department would charge a non-refundable \$50.00 processing fee.**

- Question: Is this fee commensurate with the cost of receiving and filing the affidavit?

**Background and Relevant Information**

The proposed ordinance requires the applicant for a building or zoning improvement permit performing work on the exterior of his/her living unit in developments controlled by a Homeowners' Association (HOA) to submit proof to the Building Official that he/she has notified the HOA of the filing of the permit application and the nature of the work to be performed. **However, the ordinance does not require the unit owner provide proof of approval from their HOA.**

Certain buildings, structures, improvements and installations are exempted by the Florida Building Code from building permit issuance, but must otherwise comply with the minimum requirements under the Zoning Improvement Permit (ZIP) requirements. The ZIP was adopted by the Board of County Commissioners on June 3, 2003. The provisions of the code can be found under Section 33-8.1 of the Code of Miami-Dade County.

- These provisions were established to ensure that certain land uses now exempt from the Florida Building Code remain in compliance with the zoning code, Chapter 33. All ZIP applications are reviewed by Zoning Plans Processing Section.

**According to Building staff:**

1. This requirement should be moved into the Zoning Code instead of Section 8-10 for the following reasons:
  - Staff in the Department of Planning and Zoning (DP&Z) already enforces the ZIP requirement for townhouses and cluster developments.
  - Clerical support staff at the permit counter and technical plan processors in the Building Department has no experience with property tax records or real estate records which may need to be reviewed to make such determinations.
2. If the requirement remains in Section 8-10 as proposed, the required screening of the permit applications may be performed by DP&Z as is currently done in other instances.

**Prepared by:** Michael Amador-Gil

**MIAMI-DADE COUNTY  
BOARD OF COUNTY COMMISSIONERS  
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Legislative Notes

**Agenda Item:** 2(A)  
**File Number:** 093306  
**Committee(s) of Reference:** Government Operations Committee  
**Date of Analysis:** February 4, 2010  
**Type of Item:** Ordinance  
**Prime Sponsor:** Vice-Chairman Jose "Pepe" Diaz

**Summary**

This ordinance amends Chapter 20 Article IV and Chapter 33 Article XXXVI of the Code of Miami-Dade County as follows:

- Modifying the number of community council members from seven (7) to nine (9);
- Community Council members will be elected at large, and the Board of County Commissioners (BCC) will appoint members;
- The composition of elected and appointed members of the expanded nine-member board is left for determination by the BCC;<sup>1</sup>
- Modify the number of community council boards to no more than four (4) versus the current configuration of ten (10);
- Each Community Council area will contain no more than six (6) subareas;
- The BCC will provide by resolution the initial boundaries of the subareas for each Community Council, may be amended from time to time, and will conform to the boundaries of the districts of the BCC;
- In the initial election of Community Council members pursuant to the revised community Council boundaries as set forth in the proposed ordinance, those members representing even-numbered subareas will serve a two-year term and those members representing odd-numbered subareas will serve a four-year term to create staggered terms; and
- If there is an insufficient number of appointed positions on a Community Council to afford to the BCC an equal number of nominees, responsibility for nominations will be determined by lottery.

According to Planning and Zoning staff, the reconfiguration of the boundaries was completed with the GIS Contiguous Commission District data.

**On May 4, 2009, the County Manager, provided Vice-Chairman Diaz a report of active County Advisory Boards, Community Councils and Task Forces. The report included the number of meetings within the**

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<sup>1</sup> The original ordinance provided that all Council Members be appointed. The Government Operations Committee amended the proposed ordinance on November 9, 2009, retaining the election of Community Council members.

calendar year, percentage of quorum, funding sources, and annual cost to maintain the boards.<sup>2</sup> Since then, there has been an interest by Vice-Chairman Diaz in curbing the cost of Community Councils.

### Highlights

Each member of BCC whose commission district comes within the boundaries of a Community Council (CC) area will nominate an equal number of CC members. The proposed ordinance mentions that in the event that an additional position remains on the CC after all BCC members have submitted their nominations to the BCC, the BCC member who has the responsibility for the remaining nomination will be determined by a lottery.

- The lottery scenario would apply only to Northeast CC 1, 2,3,4,5 and CC Central 10, 11.

### Background and Relevant Information

Community Councils are generally understood to be groups of people that work with their local government and other public bodies to determine, coordinate, express and represent the views of the community it represents. Furthermore, CCs may consider several of the following factors when deciding on council-related matters: (1) constraints on the local economy and government budgets; (2) demands for greater government transparency and accountability; and (3) desires to involve communities (stakeholders and beneficiaries) in decisions, among many others factors.

CCs in Miami-Dade currently:

(1) make zoning and land use decisions;

(2) serve as advisory liaisons from their communities to the Board of County Commissioners (BCC) and County staff, relaying relevant information and recommendations on selected concerns of the council area; and

(3) make recommendations to the BCC on capital, programming and operational priorities for municipal services such as police, parks, fire and roadway maintenance in their area as well as relaying other concerns and needs of local residents.

CCs are comprised of six members elected by the community and one appointed by the BCC. All members must be registered voters and reside in the area that they represent.

CCs usually meet once a month to discuss zoning matters and every other month to address non-zoning issues. All meetings are advertised in the "Neighbors" section of the Miami Herald at least 7 days in advance. In addition, meeting notices are posted in the Miami-Dade County Calendar.

### Legislative History

The BCC created sixteen community councils in September 1996, to serve as local Zoning Appeals Boards in the unincorporated areas of Miami-Dade County. Before the CCs began their zoning activity in February 1997, CC-1 was dissolved due to the pending incorporation of Sunny Isles Beach. Since then, five more CCs dissolved or are no longer functioning because of annexation or incorporation. There are ten functioning CCs remaining. **The BCC, on May 11, 2004, approved Ordinance 04-101, which modified the configuration and boundaries of these remaining CCs.**

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<sup>2</sup> Direct=\$7,686 and Indirect \$88,756 (average for each community council)

Chapter 33 of the Code of Miami-Dade County (Code) establishes the zoning laws of the unincorporated sections of Miami-Dade County. Additionally, CCs may, at their option, take on a number of advisory (non zoning) responsibilities with respect to the unincorporated areas.<sup>3</sup>

According to Section 33-311 of the County Code of Miami-Dade County, the purpose of zoning regulations is to provide:

*Comprehensive plan and design to lessen highway congestion; to secure safety from fire, panic and other dangers; to promote health, safety, morals, convenience and the general welfare; to provide light and air; to prevent the overcrowding of land and water; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements with the view of giving reasonable consideration, among other things, to the character of the district or area and its peculiar suitability for particular uses and with a view toward conserving the value of buildings and property and encouraging the most appropriate use of land and water throughout the County.*

The Home Rule Amendment of the Florida Constitution (Article VIII, Section 6) provides for Miami-Dade County's home rule authority. Further, Section 4.08 of the Miami-Dade County Home Rule Charter provides the BCC the authority to "provide a board to hear, consider and review appeals from the zoning regulations or decisions of an administrative official, and to take appropriate action." [Section 33-306(b) of the Miami-Dade County Code]

**Growth Management Act**

The Florida Legislature enacted the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. 163.3161 (commonly known as the Growth Management Act) to regulate some local rules in zoning decisions. The purpose of the act was "to utilize and strengthen the existing role, processes, and powers of local governments in the establishment of comprehensive planning programs to guide and control future development." [F.S. 163.3 161(2)]

**Under the Growth Management Act, each municipality is required to prepare and adopt a comprehensive plan to manage future growth and development and implement land development regulations to fulfill the goals and objectives stated in that municipality's adopted plan. Miami-Dade County adopted Ordinance No. 75-22, "Comprehensive Development Master Plan", on March 31, 1975. Updates to the Master Plan were adopted in 1988 and 1995. Local zoning action must be in conformity with the Comprehensive Development Master Plan. [F.S. 163.3 161(6)]<sup>4</sup>**

The Office of the Commissioner Auditor conducted the following statewide survey to determine if other jurisdictions established a similar CC structure. The survey provides general information on the CCs membership duties and whether members are appointed or elected.

Jurisdiction	Duties	Appointed or Elected
Alachua County (Local Planning)	Alachua considers their LPA a CC as this body prepares the	Appointed by the Board of County Commissioners and one (1)

<sup>3</sup>OIG Review of Miami-Dade Community Councils Report, February 7, 2005

<sup>4</sup> OIG Review of Miami-Dade Community Councils Report, February 7, 2005

Jurisdiction	Duties	Appointed or Elected
Agency)	Comprehensive Plan; reviews and make recommendations on Land Development Regulations, rezoning, zoning ordinance amendments, special use permits, temporary use permits and special exceptions for the County.	appointed by the School Board.
Broward County (3 Neighborhood Councils)	The Neighborhood Council reviews and makes recommendation to the Broward County Commission on all proposed amendments to land use issues within their boundaries.	Elected by the Neighborhood Association members within the district boundaries.
Duval County (Citizens Planning Advisory Committee)	Jacksonville's more than 500 neighborhoods are divided into six (6) planning districts each with a Citizens Planning Advisory Committee or "CPAC". The primary purpose of the CPAC is to maintain open and effective communication between Jacksonville residents, businesses, neighborhoods, community organizations, educational institutions and city government. (Broad-based public involvement in planning, land use, zoning, transportation, community services, economic development, recreation, schools, police and public safety)	CPAC members are appointed by the Mayor. Members are nominated through a variety of community, civic, or government organizations located in their district. Eligibility for appointment is determined by the Director of the Housing and Neighborhoods Department. The Mayor appoints members for a two-year term.
Pinellas County (Local Planning Agency)	Pinellas considers the LPA their CC as their responsible for making <i>recommendations</i> to the Board of County Commissioners regarding development of, or changes to, the Comprehensive Plan. The LPA also reviews amendments to the Land Development Code (including zoning changes), and a variety of other items, to ensure that they are consistent with, and serve to implement, the Comprehensive Plan.	The LPA consists of <u>appointed</u> members selected from the community by the Board of County Commissioners.
Hillsborough County	Does not have a CC structure	
Palm Beach County	<p>Below is a list of all of the unincorporated community groups that may provide feedback to the BCC regarding land use amendments. The groups may attend public hearings if and when an amendment is proposed in their specific area. <b>However, these groups do not serve in an official capacity and are not a recognized group in the Palm Beach County's Comprehensive Plan.</b></p> <ul style="list-style-type: none"> <li>• Coalition of Boynton West Residential Associations (COBWRA is the most</li> </ul>	

Jurisdiction	Duties	Appointed or Elected
	active group with the largest unincorporated area), Deer Run Land Owners Association, Acreage Landowners Association, Fox Trail Property Owners Association, Santa Rosa Groves Land Owners Association, Jupiter Farms Neighborhood Association, West Gun Club Road Property Owners Association, and a number of other home owners' associations.	

**Prepared by:** Michael Amador-Gil

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Legislative Notes

**Agenda Item:** 2(D)  
**File Number:** 100230  
**Committee(s) of Reference:** Government Operations Committee  
**Date of Analysis:** February 4, 2010  
**District:** Unincorporated Municipal Service Area  
**Type of Item:** Resolution  
**Prime Sponsor:** Commissioner Bruno A. Barreiro

**Summary**

This resolution directs the Mayor to include on all applications for building permits and/or zoning improvement permits a statement that informs the unit owner and/or permit applicant that the work being requested may need approval from a Homeowners' Association (HOA), and that it is the obligation of the unit owner and/or permit applicant to obtain the required approval from the association prior to beginning any work on the unit.

The issuance of a building permit and/or zoning improvement permit in no way authorizes work that is in violation of any association rule or regulation. It must be also noted that HOAs are not government entities.

**Background and Relevant Information**

On December 8, 2009, several members of the Government Operations Committee expressed concerns that the proposed ordinance (GO Item 1(E) 1) did not require unit owners submit proof of approval from their HOAs to the Building Department. The ordinance requires that an applicant seeking a building or zoning improvement permit for work on the exterior of his/her living unit, and is controlled by a HOA, must submit proof to the Building Department through an affidavit that he/she has notified the HOA.

**Questions**

- In addition to HOA fines, can unit owners face additional fines from the Building Department if they proceed without notifying the HOA?
- Will the statement on all permit and/or zoning improvement permit applications be in English, Spanish, and Creole?
- What is the cost to include the statement on all the applications?

**Prepared by:** Michael Amador-Gil