

MEMORANDUM

Agenda Item No. 5(E)

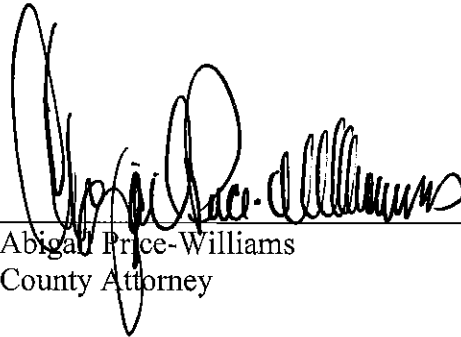
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: (Public Hearing 5-17-16)
April 19, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance amending section
26A-2.1 of the Code relating to
Mosquito Control; amending the
department name; amending to
add public health emergency
procedure

The accompanying ordinance was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava.



Abigail Price-Williams
County Attorney

APW/cp

Memorandum



Date: May 17, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the printed name.

Subject: Ordinance Amending Section 26A-2.1 of the Code of Miami-Dade County, Florida, Relating to Mosquito Control; Amending the Department Name; Amending to add Public Health Emergency Procedure

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached ordinance amending Section 26A-2.1 of the Miami-Dade County Code (Code) regarding Mosquito Control. The proposed amendment provides Miami-Dade County (County) with the ability to take timely corrective action in the event of a mosquito-related medical alert or a public health emergency.

Scope

The scope of this ordinance extends countywide.

Fiscal Impact/Funding Source

The proposed ordinance amendments will not result in a fiscal impact to the County.

Social Equity Statement

The proposed ordinance amendment will have a social equity impact on County residents and visitors in that it is necessary to protect the public health during a mosquito-related medical alert or a public health emergency.

Track Record/Monitor

The Department of Solid Waste Management (DSWM) will be responsible for the implementation of this ordinance, and the person responsible for monitoring is Lee S. Casey, Senior Division Director for Technical Services and Environmental Affairs.

Background

On February 3, 2016, Florida Governor Rick Scott declared a public health emergency in four (4) counties where there were confirmed imported cases of the Zika virus, which included Miami-Dade County. The emergency order authorized the counties to take action to ensure that the Zika virus remains controlled and that residents of Florida remain safe and healthy.

Since then, the DSWM has been reaching out to the residents of the County through an aggressive public awareness effort to educate and inform its residents. Drain and Cover door hangers and handouts are being distributed and will continue to be provided to the residents of the County. The department is also utilizing radio, print media and cable TV advertisements, as well as educational videos on YouTube and other social media platforms to increase public awareness of mosquito breeding prevention.

The DSWM Mosquito Control Division has also been working diligently performing inspections and conducting mosquito abatement activities in residential areas countywide. The purpose of the inspections is to abate the habitat for container breeding mosquito species such as the Aedes Aegypti, which is known to transmit the Zika virus.


Additionally, Miami-Dade County Mosquito Control (MC) works in close collaboration with the Miami-Dade County Health Department (DOH) regarding all mosquito-borne diseases, including Zika, dengue, chikungunya, West Nile Virus, and Saint Louis encephalitis, which may be travel-related or locally transmitted. MC has recently conducted domestic mosquito inspection training for 22 DOH staff members and there is daily communication between the groups. Upon notification from DOH of a suspected case of a mosquito-borne disease, MC implements its Standard Operating Procedures and control measures for travel-related or locally transmitted mosquito-borne diseases around the residence of the patient and neighboring area. When the DOH receives the report from the Bureau of Public Health Laboratories regarding the case, the DOH communicates the results to MC. Depending on the laboratory results, MC will continue or cease implementing control measures for the case.

Section 26A-2.1 of the Code regulates artificially induced mosquito breeding areas. The ordinance requires property owners to eliminate mosquito breeding areas on their property by removing water carrying containers. Common breeding grounds for the domestic mosquito include containers that can hold water, such as cans, buckets, tires, bird baths, stagnant swimming pools, and decorative pools. The majority of complaints received during the winter months are associated with domestic container breeding mosquitoes. Although mosquito season is from May through October, the unusually rainy conditions this winter may be contributing to an increase in mosquito complaints.

Currently, inspections that identify mosquito breeding areas may lead to issuance of a notice of violation, which allows five (5) days for abatement without penalty. Should the violation not be abated, a citation may be issued. Section 26A-2.1 of the Code allows the County to abate all mosquito breeding conditions, including the removal of waste tire piles if necessary. All abatement costs are the responsibility of the property owner. A lien may be filed on the property if the property owner does not pay invoices associated with abatement of the violation.

The proposed amendment to Section 26A-2.1 (1) defines "Public Health Emergency" and (2) gives the County the authority, during a Public Health Emergency, to take the necessary corrective action to abate mosquito breeding conditions in the event that the property owner does not do so within two (2) days.

This emergency authority is necessary to protect the public health. Property access during Public Health Emergencies under reasonable means necessary to abate mosquito breeding is not permitted under the current ordinance. The proposed ordinance also includes updates to the County's name, department name, and various other improvements and clarifications.



Alina T. Hudak
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: May 17, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 5(E)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 5(E)
5-17-16

ORDINANCE NO. _____

ORDINANCE AMENDING SECTION 26A-2.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO MOSQUITO CONTROL; AMENDING THE DEPARTMENT NAME; AMENDING TO ADD PUBLIC HEALTH EMERGENCY PROCEDURE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 26A-2.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 26A-2.1. Mosquito Control

- (a) Definitions. For the purposes of this section, the following terms shall have the following meanings:
- (1) Artificially induced mosquito breeding area is any site at which five (5) or more immature mosquitoes are present in >>water carrying<< artificial containers, >>water carrying<< vegetative plants or wastewater facilities at any one (1) time.
 - (2) Immature mosquito means a mosquito larva or pupa.
 - (3) Artificial containers means any man-made containers >>capable of holding water<<, including, but not limited to, tires, swimming pools, cans, vases, buckets, boats, bird baths, jars, canals, ditches or flower >>pots<< ~~[[cutting containers]]~~.
 - (4) Vegetative plant means any growing plant.

¹ Words stricken through and/or ~~[[double bracketed]]~~ shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

- (5) Mosquito sampling dipper means a water dipper with a circular mouth, between four (4) and five (5) inches in diameter, and having a depth of not less than one and one-half (1½) inches.
- (6) Wastewater means effluent from a sewage treatment plant.
- (7) Process water means water that has been used in the production of a product.
- (8) Person means an individual, corporation, organization, partnership, municipality, or other legal entity.
- (9) Enforcement Officer means the Chief of the >>Miami-<<Dade County Mosquito Control Division, other designated representatives of the >>Miami-<<Dade County Mosquito Control Division, or Code Inspector as defined in Chapter 8CC-3.
- (10) Structure means a solid roofed and walled building constructed for permanent use.
- (11) Abate means to take measures to control mosquito breeding.
- (12) Responsible party means the owner of the property that is the site of the artificially induced mosquito breeding.
- (13) Tire means a continuous covering for the wheel of a vehicle usually made of rubber reinforced with cords of nylon, fiberglass>>, metal<< or other material and filled with compressed air.
- (14) Canal means a long, wide hollow whose primary purpose is drainage or flood control.
- (15) Ditch means a long, narrow hollow used for the purpose of drainage or irrigation.
- >>(16) Public health emergency means a medical alert related to mosquitos issued by the Miami-Dade

County Health Department or allied state or federal government agency or a public health emergency declaration related to mosquitos issued by the Mayor of Miami-Dade County or the Governor of the State of Florida or the President of the United States of America.<<

- (b) Prohibition of nuisance. It shall be a violation of this section for any person to allow the existence of, create, keep, or maintain an artificially induced mosquito breeding area.
- (c) Investigation and abatement procedures. The >>Miami-<<Dade County Mosquito Control Division of the ~~[[Public Works Department]]~~ >>Department of Solid Waste Management<< is authorized and empowered to investigate and abate conditions capable of breeding mosquitoes throughout >>Miami-<<Dade County.
 - (1) ~~[[The]]~~ >>An<< Enforcement Officer of the >>Miami-<<Dade County Mosquito Control Division is hereby authorized to inspect, for mosquito breeding, any lot, tract, or parcel of land, improved or unimproved. Occupied or secured structures may be entered only by consent of the property owner, occupant, or at the direction of a court of competent jurisdiction.
 - (2) ~~[[The]]~~ >>An<< Enforcement Officer of the >>Miami-<<Dade County Mosquito Control Division, in order to abate an artificially induced mosquito breeding area, is authorized to apply pesticides, in accordance with label directions, on any lot, tract, or parcel of land, improved or unimproved.
 - (3) Any person who obstructs, or resists ~~[[the]]~~ >>an<< Enforcement Officer in the discharge of ~~[[his]]~~ >>the Officer's<< duty as provided in this section shall be guilty of a misdemeanor of the second degree.

(d) Enforcement procedures.

- (1) Whenever an Enforcement Officer determines that a site is an artificially induced mosquito breeding area, the Enforcement Officer is authorized to give, or cause to be given, to the responsible party notice, by personal service, posting or certified mail, to take corrective action to abate the mosquito breeding.
- (2) The responsible party shall take corrective action to abate the artificially induced mosquito breeding within five (5) days of receipt or posting of the notice listed in subsection (d)(1).
- (3) If the responsible party fails to take corrective action to abate the artificially induced mosquito breeding, said party shall be cited pursuant to Chapter 8CC of the Code.
 - (I) The responsible party has seven (7) calendar days from receipt or posting of the citation to file for an appeal hearing before an 8CC Hearing Officer.
 - (II) If the responsible party does not appeal the citation, said party shall pay the fine in accordance with Section 8CC-10 of the Code. Thereafter, each day the responsible party fails to take corrective action to abate the artificially induced mosquito breeding constitutes a continuing violation as defined in Section 8CC-4 of the Code.
 - (III) The >>Miami-<<Dade County Mosquito Control Division shall take corrective action to abate the artificially induced mosquito breeding, at the responsible party's expense, five (5) calendar days from the date of the citation issuance. ~~[[the]]~~>>The<< responsible party shall pay the >>Miami-<<Dade County Mosquito Control Division for the cost of performing such abatement, which includes all expenses, fines, penalties, interest and actual administrative costs. The responsible party

shall make payment to the Mosquito Control Division within fourteen (14) days of receipt of the payment invoice from the Mosquito Control Division.

- (IV) If the responsible party fails to pay >>Miami-
<<Dade County Mosquito Control Division as described under Section 26A-2.1(d)(3)(III) and/or Section 26A-2.1(d)(5), the Department shall file a lien in the amount of all expenses incurred in correcting the condition, including all fines, penalties, interest and actual administrative costs.
- (V) Such liens shall be enforceable in the same manner as a tax lien and may be satisfied at any time by payment thereof, including accrued interest. Upon such payment, the Clerk of the Circuit Court shall, by appropriate means, evidence the satisfaction and cancellation of such lien upon the record thereof. Notice of such lien may be filed in the Office of the Clerk of the Circuit Court and recorded among the public records of >>Miami-<<Dade County, Florida.
- (4) The hearing provided for in Section 26A-2.1(d)(3)(I) shall be conducted not sooner than five (5) calendar days, but not later than twenty (20) calendar days, after receipt of the appeal.
- (5) If the responsible party is found guilty by the Hearing Officer, the responsible party shall pay a fine in accordance with Section 8CC-10 of the Code and will be required to pay the >>Miami-<<Dade County Mosquito Control Division the cost of abating the artificially induced mosquito breeding as performed and defined under Section 26A-2.1(d)(3)(III).

>>(e) Emergency powers and procedures. During a public health emergency, in addition to all other powers and authority provided by Section 26A-2.1, the Miami-Dade County Mosquito Control Division is authorized to take corrective action to abate a nuisance if corrective action is not taken by the responsible party within two (2) days of receipt of notice of the existence of a nuisance. Notice provided under this section shall advise the responsible party of a public health emergency, notifying the responsible party that corrective action must be taken within 2 days. <<

[[~~(e)~~]]>>(f)<< Tire storage. All persons who engage in the manufacture, distribution, sale or storage of new, used or waste tires, including, but not limited to, automobile, truck, tractor, trailer, motorcycle or airplane tires, shall store or treat all tires in a manner which will prevent an artificially induced mosquito breeding area.

[[~~(f)~~]]>>(g)<< Records. The County shall keep complete records relating to the amount payable for liens as described in Section 26A-2.1(d)(3)(IV).

[[~~(g)~~]]>>(h)<< Violation; penalty. If any person shall fail or refuse to obey or comply with, or violate any of the provisions of this section, or any lawful order of [[the]] >>an<< Enforcement Officer, issued or rendered under [or] pursuant to the provisions of this section, such person shall be in violation of this section, and upon conviction of such offense, shall be subject to a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed sixty (60) days in the County Jail, or both, in the discretion of the court.

[[~~(h)~~]]>>(i)<< Provisions herein are supplemental. Any enforcement procedures outlined in this section shall be considered cumulative and supplemental to all other penalties or remedies which may be provided for elsewhere by this Code or by statute.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Daniel Frastai

APW
D.F.