

MEMORANDUM

Agenda Item No. 7(A)

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

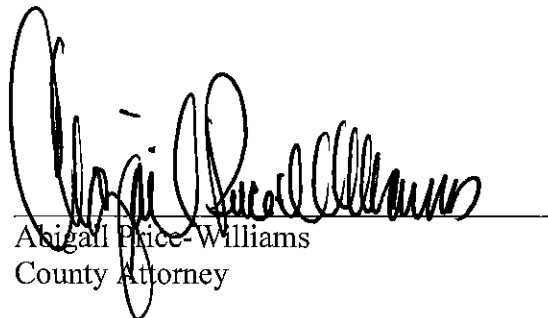
DATE: July 19, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance providing for removal of diseased trees and for enforcement of notice to property owners to remove diseased trees; amending Chapter 11D of the Code; declaring laurel wilt disease and lethal yellowing disease to be public nuisances; providing for enforcement by civil penalty

This item was amended at the 6-15-16 Metropolitan Services Committee to remove language that no longer reflects Florida law regarding the collection of liens in Section 1, Sec. 11D-7 on page 10.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava and Co-Sponsors Commissioner Jose "Pepe" Diaz, Commissioner Sally A. Heyman and Commissioner Barbara J. Jordan.



Abigail Price-Williams
County Attorney


APW/lmp

Memorandum



Date: July 19, 2016

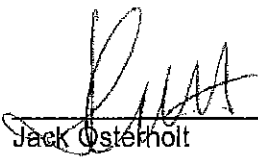
To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez 
Mayor

Subject: Fiscal Impact Statement for Ordinance Amending Chapter 11D of the Code Related to Removal of Diseased Trees and Enforcement of Notice to Property Owners to Remove Diseased Trees

The proposed ordinance amends Chapter 11D of the Code of Miami-Dade County to broaden the applicability to all species of diseased trees upon the declaration of a specified named disease as a public nuisance by an ordinance of the Board of County Commissioners (Board); replaces the Director of the Parks, Recreation and Open Spaces Department with the County Mayor or County Mayor's designee as the individual responsible for notifying the record owner of an offending property; sets the notice requirements, procedures, and authorizes the County Mayor or the County Mayor's designee to seek injunctive or other judicial relief to enforce removal; authorizes the judicial imposition of a civil penalty of no more than \$10,000.00 per tree to be paid by the owner, in addition to any expenses incurred by the County that may be subject to a special assessment lien with interest if not paid within 30 days; and permits any civil penalties imposed by judicial proceedings for violations of this ordinance to be utilized as financial assistance to remove trees on properties complying with the ordinance, or to replace tree canopy or similar purposes on complying properties. Lastly, the Board is declaring Laurel Wilt, in addition to lethal yellowing, as a public nuisance through this proposed ordinance.

By declaring laurel wilt a public nuisance, the County will implement administrative as well as legal and enforcement follow-up activities outlined in the ordinance. More specifically, the activities required under this proposed ordinance include: 1) establishing and implementing administrative processes and procedures, 2) issuing notifications, 3) determining or verifying the existence of diseased trees, 4) removing or verifying the removal of trees, 5) implementing injunctive or other judicial relief, and 6) placing special assessment liens. Furthermore, the County will have to develop standards delineating the criteria by which revenues from civil penalties imposed can be used to provide financial assistance to remove trees or replace tree canopies. It is anticipated that the County will be able to administer these activities as a result of declaring Laurel Wilt a public nuisance through current staffing levels. Costs to administer these activities are not expected to go beyond available funding streams for program implementation, notification, or legal and enforcement activities.



Jack Osterholt
Deputy Mayor

FIS05716 160571

Memorandum



Date: July 19, 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 a horizontal line.

Subject: Social Equity Statement for Ordinance Amending Chapter 11D of the Code Related to Removal of Diseased Trees and Enforcement of Notice to Property Owners to Remove Diseased Trees

The proposed ordinance modifies Chapter 11D of the County Code to, among other things:

- Broaden the applicability to all species of diseased trees as opposed to just palm trees upon declaring a specified named disease a public nuisance by the Board of County Commissioners (Board) through ordinance;
- Redefine the declaration of public nuisance to include trees that are dead, those beyond treatment and continue to be infectious, or act as hosts for disease vectors;
- Replace the Director of the Parks, Recreation and Open Spaces Department with the County Mayor or County Mayor's designee as the individual responsible for notifying the record owner of an offending property;
- Clarify that the notice shall be served to an owner based on the property records of the Property Appraiser, not the Tax Collector;
- Set the notice requirements, procedures, and authorize the County Mayor the County Mayor's designee to seek injunctive or other judicial relief to enforce removal;
- Authorize the judicial imposition of a civil penalty of no more than \$10,000.00 per tree to be paid by the owner, in addition to any expenses incurred by the County that may be subject to a special assessment lien with interest if not paid within 30 days; and
- Allow the revenues from civil penalties imposed by judicial proceedings to be used to assist in the removal of diseased trees on properties complying with these regulations.

Furthermore, through this proposed ordinance, the Board is declaring laurel wilt and lethal yellowing as public nuisances.

This proposed ordinance will require a property owner with a diseased tree - that has been declared a public nuisance - to incur the costs of removing such tree. Pursuant to the proposed changes to the Code, the property owner will also bare any additional costs associated with not removing the diseased tree as a result of the imposition of penalties or the County's enforcement activities.

While this proposed ordinance will have a direct financial impact on a property owner with a diseased tree, it will have a direct benefit to the entire County, particularly the agricultural community. Laurel Wilt disease is fatal to trees in the *persea* family, including avocados. Miami-Dade County is largest producer of avocados in the State of Florida, and the local avocado industry employs more than 2,000 people and covers close to 8,000 acres. Most property owners follow correct property maintenance; however, a few property owners, many times unknowingly, are allowing the disease to spread. As a result, other property owners are being negatively impacted. In summary, the proposed ordinance is intended to protect specific classifications of trees from disease, which will in return protect compliant property owners as well as the agricultural community and its associated jobs:

A handwritten signature in black ink, appearing to read "Jack Osterholt", written over a horizontal line.

Jack Osterholt
Deputy Mayor



MEMORANDUM

(Revised)

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

DATE: July 19, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(A)

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. 7(A)
7-19-16

ORDINANCE NO. _____

ORDINANCE PROVIDING FOR REMOVAL OF DISEASED TREES AND FOR ENFORCEMENT OF NOTICE TO PROPERTY OWNERS TO REMOVE DISEASED TREES; AMENDING CHAPTER 11D OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; DECLARING LAUREL WILT DISEASE AND LETHAL YELLOWING DISEASE TO BE PUBLIC NUISANCES; PROVIDING FOR ENFORCEMENT BY CIVIL PENALTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE; PROVIDING FOR SUNSET OF DISEASE DESIGNATIONS

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

Section 1. Chapter 11D of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

**Chapter 11D - DISEASED ~~[[PALM]]~~ TREE~~[[S]]~~
>>REMOVAL ORDINANCE<<**

Sec. 11D-1. - Title; applicability; to constitute minimum standard.

This chapter shall be known as the "Diseased ~~[[Palm]]~~ Tree Removal Ordinance" and shall be applicable in the unincorporated areas of >>Miami<< Dade County and shall also constitute a minimum standard for all municipalities in >>Miami<< Dade County, Florida. All references to County personnel shall therefore be applicable to municipal personnel who serve in comparable capacities to the County personnel referred to either by specific assignment by their municipality or by virtue of their general area of responsibility as assigned. Nothing herein shall prevent the municipality from enacting standards which are more stringent than those contained herein.

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.

Sec. 11D-2. - Declaration of legislative intent.

The Board finds that ~~[[the palm blight]]~~ >> certain tree << disease >> ~~s~~ << ~~[[known as lethal yellowing]]~~ >> have << ~~[[has]]~~ reached epidemic proportions within >> Miami << Dade County, that the disease >> s are << ~~[[is a]]~~ highly infectious ~~[[one]]~~ >> << and that those trees which are infected ~~[[with lethal yellowing]]~~ to the point that they are >> dead or << beyond treatment should be quickly removed so as to reduce spreading of ~~[[the]]~~ disease >> s, which can cause significant harm to the county's agricultural industry <<.

Sec. 11D-3. - >> Declaration of << Public nuisance ~~[[declared]]~~ >>; violation <<.

>> (a) << The existence of ~~[[palm]]~~ tree ~~[[s]]~~ >> species << infected with ~~[[lethal yellowing]]~~ >> certain diseases << to the point that they are >> dead or << beyond treatment >> and continue to be infectious or to act as hosts for disease vectors << are declared a public nuisance as those trees ~~[[continue to be infectious and are]]~~ >> constitute << a threat to healthy ~~[[palm]]~~ trees in the area >> and the agricultural industry. The County Commission shall, by ordinance, designate those diseases that constitute such public nuisances <<.

>> (b) It shall be a violation of this code to maintain, permit, let, allow, suffer, or fail to remove a tree that is a public nuisance. Each such tree shall constitute a separate offense.

(c) Enforcement under this chapter may only be brought when an ordinance declaring a specifically named disease a public nuisance is in effect. <<

Sec. 11D-4. - Notice to remedy condition.

If the ~~[[Director of the Park and Recreation Department]]~~ >> Mayor or Mayor's designee << finds and determines that a public nuisance as described and declared in Section 11D-3 hereof exists, ~~[[he]]~~ >> the Mayor or Mayor's designee << shall so notify the record owner of the offending property in writing and demand that such owner cause the condition to be remedied. The notice shall be >> served << ~~[[given]]~~ by registered or certified mail, addressed to the owner or owners of the property described, as their names and addresses are shown upon the record of the County ~~[[Fax~~

~~Assessor]]~~ >>Property Appraiser<<, and shall be deemed complete and sufficient when so addressed and deposited in the United States mail with proper postage prepaid. In the event that such notice is returned >>undelivered<< by postal authorities the ~~[[Director]]~~ >>Mayor or Mayor's designee<< shall cause a copy of the notice to be served by a law enforcement officer >>or process server<< upon the occupant of the property or upon any agent of the owner thereof. In the event that personal service upon the occupant of the property or upon any agent of the owner thereof cannot be performed after reasonable search by a law enforcement officer >>or process server<< the notice shall be accomplished by physical posting on the said property. >>A copy of the notice shall also be mailed to any current mortgage holders of the property identified in the public records, provided, however that failure to provide such notice shall not prohibit enforcement against the property owner.<<

Sec. 11D-5. - Form of notice.

The notice shall be in substantially the following form:

NOTICE OF PUBLIC NUISANCE

Name of owner _____

Address of owner _____

Our records indicate that you are the owner(s) of the following property in <Miami-<< Dade County, Florida:

(described property)

An inspection of this property discloses, and ~~[[I have]]~~ >>it has been<< found and determined, that a public nuisance exists thereon so as to constitute a violation of the >>Miami-<< Dade County Diseased ~~[[Palm]]~~ Tree Removal Ordinance in that there exists on the above-described property one (1) or more ~~[[palm]]~~ trees which are infected with ~~[[“Lethal” Yellowing”]]~~ >> _____ << and are beyond treatment ~~[[, and which trees are designated by a red circle painted around said tree]].~~ >>Each infected tree constitutes a separate violation of the Ordinance. Additional information will be provided to identify the affected tree or trees and the proper methods for disposing of the trees.<<

You are hereby notified that unless the above-described trees are removed within twenty (20) days from the date hereof, >>Miami-<< Dade County will >>seek an injunction compelling you to remove the infected tree(s). Alternatively, Miami-Dade County may seek a court order allowing the County<< [[proceed]] to remove said trees >>from your property. Your failure to comply with the twenty (20) day removal deadline may also result in the judicial imposition of penalties against you, which may be up to \$10,000 per tree, as well as recovery of damages, costs, and expenses, including contracting costs and related advertising costs for removal of all diseased trees, and the County's attorney's fees, for enforcement of the Miami-Dade County Diseased Tree Removal Ordinance, all of which<< [[and the cost of the work, including advertising costs and other expenses,]] will be imposed as a lien on your property if not otherwise paid within thirty (30) days after receipt of billing.

>>MIAMI-<<DADE COUNTY, FLORIDA
By: _____
[[Park and Recreation Department Director]] >>Mayor or Mayor's Designee<<

~~[[Sec. 11D-6.--Hearing.~~

~~Within twenty (20) days after the mailing of notice to the property owner, the property owner may make written request to the County Manager for a hearing before him or one (1) of his assistants to show that the palm trees referred to in the notice are not infected with lethal yellowing or that their infection has not progressed to the point that said trees are beyond treatment. At the hearing the County or the property owner may introduce such evidence as is deemed necessary. The County Manager or an assistant designated by him shall hold hearings at appropriate times and places, and the County Manager shall establish rules and regulations for the review procedure. Following the review by the County Manager or the assistant designated by him, the owner will be deemed to have exhausted his administrative remedies.]]~~

Sec. 11D-~~[[7]]~~>>6<<. - Trees may be removed by County; lien for expenses.

>>(a)<< If >>the trees identified in the notice provided under Section 11D-5 have not been removed<< within twenty (20) days after >>service<< ~~[[mailing]]~~ of the notice ~~[[no hearing has been requested and the trees described in the notice have not been removed, the Director of the Park and Recreation Department shall have the trees removed by Dade County at the expense of the property owner. If a hearing has been held and has concluded adversely to the property owner, the Director of the Park and Recreation Department shall have the trees removed by Dade County at the expense of the property owner.]]~~ >>, the Mayor or the Mayor's designee is hereby authorized to seek injunctive or other appropriate judicial relief against the record owner of the property and any other relevant party to enforce compliance with the requirements of this chapter.

(b) As set forth in Section 1-5 of this code, the property owner and any other relevant parties shall be subject to the judicial imposition of a civil penalty in an amount not to exceed ten thousand dollars (\$10,000.00) per tree, and shall be liable for damages, costs, and expenses, including but not limited to attorney's fees.

(c)<< After removal of the trees ~~[[the Director of the Park and Recreation Department or]]~~ the County ~~[[Manager]]~~ >>Mayor or Mayor's designee<< shall certify to the Director of Finance the expense incurred >>, as well as any damages, costs, including attorney's fees, and any penalties assessed,<< and shall include a copy of the notice above-described and a copy of the decision ~~[[of the County Manager, or his designated assistant]]~~, if a hearing was held, whereupon such expense shall become payable within thirty (30) days, after which a special assessment lien and charge will be made upon the property, which shall be payable with interest at the rate of ~~[[six (6)]]~~ >>twelve (12)<< percent per annum from the date of such certification until paid.

>>(d)<< Such lien shall be enforceable ~~[[in the same manner as a tax lien]]~~ in favor of >>Miami-<<Dade County 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 and notify the Tax Collector of such satisfaction. Notice of such lien shall be filed in the Office of the Clerk of the Circuit Court and recorded among the public records of >>Miami-<< Dade County, Florida.

>>(e) Civil penalties imposed by judicial proceedings for violations of the diseased tree removal regulations in this chapter may be used to assist in the removal of diseased trees on properties complying with such regulations, to aid in tree canopy replacement, or other related purposes.<<

Sec. 11D-[[8]] >>7<<. - Duty of Director of Finance to keep records of liens.

The Director of Finance shall keep complete records relating to the amount payable for liens above-described ~~[[and the amounts of such liens shall be included in tax statements for ad valorem taxes thereafter submitted to the owners of lands subject to such liens]]~~.²

~~[[Sec. 11D-9. - Review by certiorari.~~

~~Any party aggrieved by the administrative decision may have such decision reviewed by the filing of a petition for writ of certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, for a review of the record upon which the decision is based, in accordance with the procedure and within the time provided by the Florida Appellate Rules for the review of the rulings of any commission or Board, which rules of practice and procedure are hereby adopted. For such purposes, the County Manager shall make available for public inspection and copying the record of each such decision to be reviewed; provided, the Manager may make a reasonable charge commensurate with the cost, in the event he is able to and does furnish copies of all or any portion of the record at the hearing. Prior to certifying a copy of any record or portion thereof, the Manager or his designee shall make all necessary corrections in order that the copy is a true and~~

² Committee amendments are indicated as follows: Words double stricken through and/or [[double bracketed]] are deleted, words double underlined and/or >>double arrowed<< are added.

~~correct copy of the record, or those portions thereof requested, and shall make a charge of not more than twenty-five cents (\$0.25) per page, instrument or exhibit; provided the charges here authorized are not intended to repeal or amend any fee or schedule of fees otherwise established.]]~~

Section 2. This Board hereby designates the following tree diseases to be public nuisances: (1) lethal yellowing disease and (2) laurel wilt disease.

Section 3. 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 4. 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 5. Section 2 of this ordinance shall sunset five years after the effective date of this ordinance, unless reenacted by this Board. Six months prior to the sunset date, the Agricultural Practices Advisory Board may issue a recommendation to this Board regarding the extension of the ordinance.

Section 6. 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:

APW

Prepared by:

JEM

Lauren E. Morse

Prime Sponsor: Commissioner Daniella Levine Cava
Co-Sponsors: Commissioner Jose "Pepe" Diaz
Commissioner Sally A. Heyman
Commissioner Barbara J. Jordan