MEMORANDUM

Agenda Item No. 4(B)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: March 7, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to boundary changes and incorporations; amending sections 20-3.1, 20-7, and 20-23 of the Code of Miami-Dade County; modifying the definition of an enclave to provide that any unincorporated area that has been designated by the County Commission as an area of countywide significance or a terminal is not an enclave; requiring the County Commission, in evaluating the appropriateness of a boundary change or incorporation proposal, to consider additional guidelines relating to irregular boundaries and adjacent unincorporated areas; requiring approval by a supermajority of the County Commission to make certain annexation or incorporation decisions when certain proposed annexations or incorporations do not include adjacent revenue-neutral areas

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.

Abigail Price-Williams
County Attorney

APW/smm

MEMORANDUM
(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: March 7, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 4(B)

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. 4(B)
3-7-17

ORDINANCE NO. _____

ORDINANCE RELATING TO BOUNDARY CHANGES AND INCORPORATIONS; AMENDING SECTIONS 20-3.1, 20-7, AND 20-23 OF THE CODE OF MIAMI-DADE COUNTY; MODIFYING THE DEFINITION OF AN ENCLAVE TO PROVIDE THAT ANY UNINCORPORATED AREA THAT HAS BEEN DESIGNATED BY THE COUNTY COMMISSION AS AN AREA OF COUNTYWIDE SIGNIFICANCE OR A TERMINAL IS NOT AN ENCLAVE; REQUIRING THE COUNTY COMMISSION, IN EVALUATING THE APPROPRIATENESS OF A BOUNDARY CHANGE OR INCORPORATION PROPOSAL, TO CONSIDER ADDITIONAL GUIDELINES RELATING TO IRREGULAR BOUNDARIES AND ADJACENT UNINCORPORATED AREAS; REQUIRING APPROVAL BY A SUPERMAJORITY OF THE COUNTY COMMISSION TO MAKE CERTAIN ANNEXATION OR INCORPORATION DECISIONS WHEN CERTAIN PROPOSED ANNEXATIONS OR INCORPORATIONS DO NOT INCLUDE ADJACENT REVENUE-NEUTRAL AREAS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, on December 3, 2013, this Board adopted Resolution No. R-1006-13 directing the Mayor or designee to identify one or more universities or a professional consultant to contract with the County to analyze and make recommendations concerning future incorporations and annexations within the unincorporated area; and

WHEREAS, on November 5, 2015, the Board adopted Resolution No. R-972-14 authorizing the Mayor or designee to enter into an agreement with PMG Associates, Inc. to perform an analysis and carry out the recommendations pursuant to Resolution No. R-1006-13; and

WHEREAS, PMG Associates, Inc. submitted a report to the Board dated October 2015 entitled "Analysis of Incorporation and Annexation Within the Unincorporated Areas;" and

WHEREAS, among other things, the report recommended that annexing municipalities should be required to "offset the annexation of a high-income area with the annexation of a low-income area, if possible," and that incorporations "cannot exclude any low-income area that is adjacent to its boundaries," and "no enclaves can be permitted with incorporation or annexation, particularly where the area is a low-income community;" and

WHEREAS, additionally, the report defined irregular boundaries and proposed that annexations should be prohibited where it "creates an enclave or forms irregular boundaries"; and

WHEREAS, the report further recommended that the Code of Miami-Dade County should be modified to clarify that Areas of Countywide Significance or terminals designated by the Comprehensive Development Master Plan, which would include railways and surrounding properties within one-half mile of a terminal, are excluded from the definition of an enclave; and

WHEREAS, Section 20-3(F)(6) of the Code of Miami-Dade County states that "terminals" refers to areas designated as terminals in the County's Adopted Land Use Plan Map; and

WHEREAS, this Board now wishes to implement these recommendations as set forth herein,

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

Section 1. The foregoing recitals are incorporated in this ordinance.

Section 2. Section 20-3.1 of the Code of Miami-Dade County is hereby amended to read as follows:[1]

> **Sec. 20-3.1. Exception to filing and consideration of requests for annexation.**
>
> No proposed boundary change request shall be filed, nor shall any filed request be heard, considered, or approved, pursuant to Section 20-7 or Section 20-8 by the Board of County Commissioners when the governing body requesting the change has omitted as part of the boundary change application information on an existing enclave, as defined in Section 20-7(A)(1)(c), adjacent to the municipality's boundaries or when the boundary change application >>would<< create[[s]] a new enclave >>if approved<<.

Section 3. Section 20-7 of the Code of Miami-Dade County is hereby amended to read as follows:

> **Sec. 20-7. Public hearing.**
>
> The Clerk of the County Commission, upon receipt of the recommendations of the Planning Advisory Board, shall set the matter of such proposed boundary changes for public hearing at a regular meeting of the County Commission and cause notice of such public hearing to be published in a daily newspaper of general circulation in Miami-Dade County at least once not less than one [[~~(1)~~]] week prior to the date of such public hearing. Notice of such public hearing shall be furnished to a representative of the petitioner or the municipality initiating the proposed boundary change, to all property owners within the area and within [[~~six hundred (~~]] 600 [[~~)~~]] feet thereof and any adjacent municipality. The cost of such notice shall be paid by the individual, group or municipality initiating the proposed change. At such public hearing, the County Commission shall review and consider the recommendations of the Planning Advisory Board, and shall afford to all interested persons an opportunity to be heard upon the merits and propriety of the proposed boundary changes.

---

[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.

(A) At the conclusion of the public hearing the Board of County Commissioners, in evaluating the appropriateness of a petition for boundary change shall consider the following guidelines:

(1) The suitability of the proposed boundaries, in conjunction with the existing municipality, provide for a municipal community of interest that is both cohesive and inclusive. The proposed annexation area should:

(a) Not divide a U.S. Census Designated Place, to the extent feasible.

(b) Include adjacent areas of ethnic minority and lower income residents in which a majority of those residents have so petitioned.

(c) Have contiguity and not create any unincorporated enclave area(s). An unincorporated enclave area is defined as an area that would be 1) surrounded on more than [[~~eighty (~~]] 80 [[~~)~~]] percent of its boundary by one [[~~(1)~~]] or more municipalities and 2) of a size that could not be serviced efficiently or effectively>>, but does not include any area that is designated by the Board of County Commissioners as an area of countywide significance or a terminal<<.

(d) Have natural or built barriers as boundaries, to the extent feasible >>.

(e) Not have irregular boundaries that specifically include or exclude certain parcels, lands, properties, or areas resulting in a municipal boundary, if the annexation were to be approved, that either juts into or out of a straight line, or boundaries that are drawn arbitrarily and capriciously to generate bizarrely shaped municipalities. Notwithstanding the foregoing, unincorporated areas that have been designated by the Board of County

Commissioners as areas of countywide significance or terminals may be excluded from the proposed municipal boundaries<<, and

* * *

(6) Any other factor that arises by virtue of recommendations of the >>Planning Advisory Board<< [[~~Boundaries Commission~~]], pursuant to Section 20->>7<< [[~~30~~]] of the Code.

* * *

(7) Any other factor that arises by virtue of any special or unique circumstances of a given area.

(8) Whether the proposed annexation excludes areas designated terminals on the County's Adopted Land Use Plan Map; alternatively, if included, the County retains applicable master plan and regulatory authority over any area designated terminals and areas, excluding existing incorporated municipalities, located within one-half [[~~(½)~~]] mile surrounding any area designated terminals ("surrounding areas") so as to protect the operations, land uses authorized within such area, and future development of areas designated terminals and surrounding areas located therein.

(9) Whether the proposed annexation provides that the County retains master plan and regulatory authority over areas designated terminals and surrounding areas to encourage the use of public transportation and urban infill development.

>>(10) If the proposed annexation area is revenue-positive, whether there is unincorporated area that is suitable for annexation by the municipality that consists of:

(a) All revenue-neutral areas that are adjacent to the annexation area; and

(b) All revenue-neutral areas that are adjacent to the boundaries of the municipality requesting the annexation; and

(c) All revenue-neutral areas that are enclaves as defined in this chapter, that are located wholly or partially within the boundaries of the municipality requesting the annexation.

For purposes of this subsection a proposed annexation area is "revenue-positive" if, at the time of the annexation request, the revenues generated by that area exceed the County's cost for providing services to the area. An unincorporated area is "revenue-neutral" if at the time of the annexation request, the revenues generated by that area are equal to or less than the County's cost of serving that area.

For purposes of this subsection, as determined in the discretion of the Board, areas are adjacent to each other, if a substantial part of the boundaries of the area are coterminous with the boundaries of the other area, even if the areas are separated by a publicly-owned county park; a right-of-way for a highway, road, railroad, canal, or utility; or a body of water, watercourse, or other minor geographical division of a similar nature, running parallel with and between the two areas, as long as such division does not prevent any inhabitants of the areas from fully associating and trading with each other, socially and economically, and does not impede the efficient and effective delivery of municipal services to both areas.<<

(B) At the conclusion of such public hearing, the County Commission, in the exercise of its discretion, may >>(1)<< deny the requested boundary change, by motion, or >>(2)<< direct the County Attorney to prepare an appropriate ordinance accomplishing the proposed boundary change[[~~, which~~]]>>. Notwithstanding any other provision of this chapter, however, the County Commission may not direct the County Attorney to prepare an ordinance accomplishing a proposed boundary change, if adjacent

revenue-neutral areas that are suitable to be included within a revenue-positive proposed annexation area are excluded from the annexation area, unless approved by a two-thirds vote of the total membership of the County Commission. Any<< ordinance >>prepared in accordance with this subsection<< shall be placed on the official agenda of a subsequent regular meeting of the County Commission for consideration and adoption on first reading, or the County Commission may defer such requested boundary change for further consideration at a subsequent meeting, at which no public hearing or discussion by others than members of the County Commission shall be required.

Section 4. Section 20-23 of the Code of Miami-Dade County is hereby amended to read as follows:

Sec. 20-23. Board of County Commissioners consideration of proposed incorporation petition.

(A) The Board of County Commissioners shall only hold a public hearing on the petitions for incorporation during the period between September 1 and September 30 inclusive and during the period between March 1 and March 31 inclusive in each year, which shall be conducted as follows:

(1) Persons requesting incorporation shall make a presentation outlining the merits of their petition,

(2) The County Commission shall consider and review the recommendations of the Planning Advisory Board and the County >>Mayor<< [[~~Manager~~]], and

(3) The County Commission shall hear from any other interested persons.

(B) At the conclusion of the public hearing the Board of County Commissioners, in evaluating the appropriateness of a petition for incorporation, shall consider the following guidelines:

(1) The suitability of the proposed boundaries to provide for a municipal community of interest that

is both cohesive and inclusive. Specifically, the area should:

(a) Not divide a U.S. Census Designated Place, to the extent feasible.

(b) Include adjacent areas of ethnic minority and lower income residents in which a majority of those residents have so petitioned.

(c) Have contiguity and not create any unincorporated enclave area(s). An unincorporated enclave area is defined as an area that would be 1) surrounded on more than eighty (80) percent of its boundary by one (1) or more municipalities and of a size that could not be serviced efficiently or effectively>>, but does not include any area that is designated an Area or Facility of Countywide Significance or is a terminal, as defined in this chapter<<.

(d) Have natural or built barriers as boundaries, to the extent feasible, and

(e) Include a mixture of residential and non-residential land uses.

>>(f) Not have irregular boundaries that specifically include or exclude certain parcels, lands, properties, or areas resulting in a municipal boundary, if the incorporation is approved, that either jut into or out of a straight line or boundaries that are drawn arbitrarily and capriciously to generate bizarrely shaped municipalities. Notwithstanding the foregoing, areas that are areas of countywide significance or terminals may be excluded from the proposed municipal boundaries.<<

* * *

>>(11) If the proposed municipality is revenue-positive, whether there is unincorporated area that is suitable

to be included within the boundaries of the proposed municipality that consists of:

(a) All revenue-neutral areas that are adjacent to the proposed municipality which have petitioned to be included in the proposed municipality; and

(b) All revenue-neutral areas which are enclaves, as defined in this chapter, that are located wholly or partially within the boundaries of the proposed municipality.

For purposes of this subsection a proposed municipality is "revenue-positive" if, at the time that a municipal advisory committee is created to study the incorporation of an area, the revenues generated by that proposed municipality exceed the County's cost for providing services to the area. The applicable portion of the unincorporated area is "revenue-neutral" if, at the time that a municipal advisory committee is created to study the incorporated of an area, the revenues generated by such unincorporated area are equal to or less than cost of serving that area.

For purposes of this subsection, as determined in the discretion of the Board, areas are adjacent to each other, if a substantial part of the boundaries of the area are coterminous with the boundaries of the other area, even if the areas are separated by a publicly owned county park; a right-of-way for a highway, road, railroad, canal, or utility; or a body of water, watercourse, or other minor geographical division of a similar nature, running parallel with and between the two areas, as long as such division does not prevent any inhabitants of the areas from fully associating and trading with each other, socially and economically and does not impede the efficient and effective delivery of municipal services to both areas.<<

(C) The Board of County Commissioners shall at the conclusion of the public hearing take one (1) of the following actions:

\\

(1) Call for the election of the area electors on the incorporation petition as presented by the applicant(s)>>.<<[[;]] >>Notwithstanding any other provision of this chapter, however, no such election shall be called if there are revenue-neutral areas that are suitable to be included within the boundaries of the proposed revenue-positive municipality that are not included, unless approved by a two-thirds vote of the total membership of the Board of County Commissioners.<<

(2) Call for the election of the area electors on the incorporation petition as modified with respect to boundaries or other aspects,

(3) Deny the proposed incorporation petition, or

(4) Defer such petition for further consideration by the applicant(s), Board of County Commissioners, the County >>Mayor<< [[~~Manager~~]] or the Planning Advisory Board.

Section 5. 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 6. 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 7. 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:

Cynthia Johnson-Stacks
James Eddie Kirtley, Jr.
Abbie Schwaderer Raurell

Prime Sponsor: Commissioner Barbara J. Jordan