

# MEMORANDUM

Agenda Item No. 7(C)

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

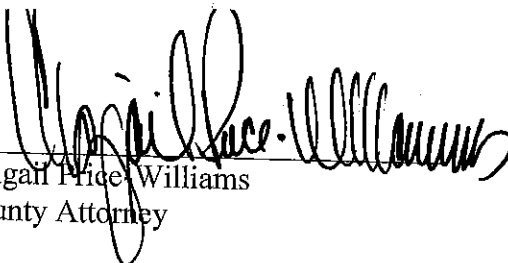
**DATE:** (Second Reading 2-6-18)  
November 7, 2017

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Ordinance relating to environmental permitting of work in tidal waters, bay bottom lands, and wetlands and marine facilities operating permits; amending sections 24-5, 24-48 and 24-48.3 of the Code; creating section 24-48.221 of the Code; adding definition; prohibiting the use of unencapsulated polystyrene in connection with Miami-Dade County Class I Permits and permit exemptions; requiring marine facilities to repair or replace unencapsulated polystyrene that has evidence of degradation, shredding, or other damage

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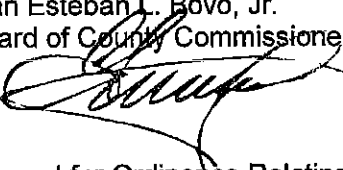
The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava and Co-Sponsors Commissioner Jean Monestime and Commissioner Dennis C. Moss.

  
Abigail Price-Williams  
County Attorney

APW/cp

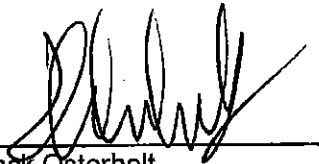
# Memorandum



**Date:** February 6, 2018  
**To:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners  
**From:** Carlos A. Gimenez   
Mayor  
**Subject:** Fiscal Impact Statement for Ordinance Relating to Polystyrene, also known as  
Styrofoam

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The implementation of this ordinance will not have a fiscal impact to Miami-Dade County. Enforcement of this ordinance will be performed by existing staff during the review of Class I permit applications and during the periodic inspections of facilities holding County marina operating permits.

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

Jack Osterholt  
Deputy Mayor

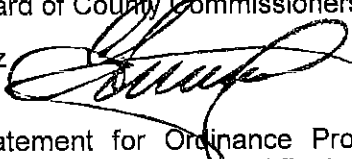
FIS02518 172438

# Memorandum

MIAMI-DADE  
COUNTY

**Date:** February 6, 2018

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


**From:** Carlos A. Gimenez   
Mayor

**Subject:** Social Equity Statement for Ordinance Prohibiting the Use of Unencapsulated Polystyrene in Connection with Miami-Dade County Class I Permits and Permit Exemptions; Requiring Marine Facilities to Repair or Replace Unencapsulated Polystyrene that Has Evidence of Degradation, Shredding, or Other Damage

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The proposed ordinance primarily prohibits the use of unencapsulated polystyrene (commonly called Styrofoam) for any coastal construction approved by a Class I permit and requires all facilities which are subject to a County marine facilities operating permit to repair any unencapsulated polystyrene that is degraded or damaged.

This ordinance intends to benefit the marine environment and therefore benefit the public by reducing a common source of marine pollution. Although unencapsulated polystyrene is not commonly used for permanent structures that are subject to Class I permits such as docks, floating platforms and over-water platforms, this ordinance could potentially increase the cost of construction or repairs conducted under a Class I permit by disallowing the use of unencapsulated polystyrene structures and instead requiring encapsulated polystyrene structures. However, the cost is not expected to dramatically increase costs of construction or repairs. The cost of compliance will be borne by the party(s) responsible for such construction or repairs.

  
\_\_\_\_\_  
Jack Osterholt  
Deputy Mayor

172438



# MEMORANDUM

(Revised)

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

**DATE:** February 6, 2018

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 7(C)

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(C)  
2-6-18

ORDINANCE NO. \_\_\_\_\_

ORDINANCE RELATING TO ENVIRONMENTAL PERMITTING OF WORK IN TIDAL WATERS, BAY BOTTOM LANDS, AND WETLANDS AND MARINE FACILITIES OPERATING PERMITS; AMENDING SECTIONS 24-5, 24-48 AND 24-48.3 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; CREATING SECTION 24-48.221 OF THE CODE; ADDING DEFINITION; PROHIBITING THE USE OF UNENCAPSULATED POLYSTYRENE IN CONNECTION WITH MIAMI-DADE COUNTY CLASS I PERMITS AND PERMIT EXEMPTIONS; REQUIRING MARINE FACILITIES TO REPAIR OR REPLACE UNENCAPSULATED POLYSTYRENE THAT HAS EVIDENCE OF DEGRADATION, SHREDDING, OR OTHER DAMAGE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, polystyrene, known commonly by the brand name Styrofoam, is used in marine construction and in marinas; and

**WHEREAS**, when such polystyrene degrades, it can break apart into innumerable small pieces, which can then be impossible to contain; and

**WHEREAS**, these innumerable pieces of small polystyrene can cause damage to the marine environment, harm marine organisms, and also create unsightly nuisances in Biscayne Bay and other waters of Miami-Dade County; and

**WHEREAS**, encapsulated polystyrene is polystyrene that is fully enclosed in material that reduces the chance that it can be released into tidal waters if the polystyrene is degraded or damaged; and

WHEREAS, this Board wishes to prohibit the use of unencapsulated polystyrene in connection with County Class I permits and permit exemptions, and also require marine facilities to repair or replace unencapsulated polystyrene which shows evidence of degradation, disintegration, shredding or other damage,

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

**Section 1.** Section 24-5 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:<sup>1</sup>

**Sec. 24-5. Definitions.**

\* \* \*

*Understory* shall mean the complex of woody, fibrous, herbaceous, and graminoid plant species that are typically associated with a natural forest community.

>>Unencapsulated polystyrene shall mean polystyrene that is not fully enclosed in material that reduces the chance that it can be released into tidal waters if the polystyrene is degraded or damaged.<<

*Unmaintained underground storage facility* shall mean an underground storage facility which was not or is not properly closed or placed out of service in accordance with the rules and regulations of the State of Florida and Section 24-45(6) of this Code and for which there is neither a valid operating permit issued pursuant to Section 24-18(2) of this Code nor, a valid registration placard issued by the State of Florida Department of Environmental Protection.

\* \* \*

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<sup>1</sup> 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.

**Section 2.** Section 24-48 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 24-48. Permit required; expedited administrative authorizations; exceptions; work standards; compliance with work standards, suspension of permit.**

- (1) It shall be unlawful for any person to perform work or authorize, allow, suffer or permit work to be performed in County canal rights-of-way, reservations or easements anywhere in Miami-Dade County, or to trim, cut or alter a mangrove tree anywhere in Miami-Dade County, or to authorize, allow, suffer or permit the trimming, cutting or alteration of a mangrove tree anywhere in Miami-Dade County, or to fill, dredge or authorize, allow, suffer or permit any type of work in, on, over, or upon tidal waters, submerged bay bottom lands, or wetlands anywhere in Miami-Dade County, or to perform or authorize, allow, suffer or permit any work which results in harmful obstruction or alteration of the natural flow of surface waters or substantial reduction in recharge of water to the Biscayne Aquifer, or authorize, cause, permit, allow, let or suffer the dewatering of groundwater into any groundwater, surface waterer drainage structure anywhere in Miami-Dade County, or the construction of a drainage system for any project anywhere in Miami-Dade County, without first having obtained a permit for approval from the Department. All said work shall conform to minimum standards set forth in the Code of Miami-Dade County, Florida, and the "Permit Information Manual IV" of the South Florida Water Management District, dated September 11, 2008, as same may be amended from time to time. This section shall not apply to >>(i)<<work in treatment facilities or their ancillary facilities such as, but not limited to, cooling canals or polishing ponds or [[tø]] >>(ii)<<the following projects>> provided that unencapsulated polystyrene shall not be used or installed<<:
- (a) Repair and/or replacement of the decking or handrails, on an existing dock or pier, limited to their original dimensions.
  - (b) Sealing of cracks and spall repair on a bridge, seawall or bulkhead cap or face.

- (c) Repair or sealing of the pilasters of an existing seawall or bulkhead.
- (d) Backfilling landward of existing seawalls or bulkheads.
- (e) Placement of riprap, gunite-filled tube, or other approved material beneath an undercut seawall or bulkhead provided that material does not extend more than two (2) feet waterward of the seawall or bulkhead.
- (f) Placement of sand-cement riprap bags at the tows of a seawall or bulkhead provided the bags do not extent more than two (2) feet or the width of two (2) standard sand-cement bags waterward of the seawall or bulkhead.
- (g) The removal of old or unused or rotting piles or the removal of dilapidated docks, boatlifts, davits, or piers.
- (h) The trimming of a mangrove tree(s) performed in accordance with the permit exemption provisions of Section 403.9326, Florida Statutes, provided that notification is given to the Department as required pursuant to Section 24-48.17(1) of the Code of Miami-Dade County.
- (i) Roadway maintenance activities which are performed or authorized by the Miami-Dade County Public Works Department to correct safety deficiencies or are undertaken to maintain the continuity of existing use for an established road or road right-of-way. This provision shall not apply to any work involving expansion in the width or length of roads or work involving the filling of roads to higher elevations when said roads occur at elevations which are less than the elevations set forth by Miami-Dade County flood criteria.
- (j) Maintenance of private roads approved by the Department or maintenance of roads and fill pads approved by the Department located upon a public or private utility right-of-way. This provision shall not apply to any work involving expansion in the width or length of roads or work involving the filling of roads to higher elevations when said roads occur at



elevations which are less than the elevations set forth by Miami-Dade County flood criteria.

- (k) Installation, repair, or replacement of marine hardware on docks and piers necessary to secure vessels including, but not limited to, cleats, mooring whips, chocks and mooring bits.
- (l) Construction, installation, repair, or replacement of permanent uncovered benches and/or tables on docks and piers.
- (m) Construction, installation, repair, or replacement of fenders, except fender piles, on docks and piers necessary for the protection of vessels.
- (n) Construction, installation, repair, or replacement of storage boxes, not exceeding thirty-six (36) inches in height, on docks and piers.
- (o) Construction, installation, repair, replacement of ladders on docks and piers to provide access to and from vessels and/or the water.
- (p) The placement of concrete jackets or other forms of protection on existing dock, pier or mooring piles.
- (q) The replacement of fender piles or mooring piles at the same exact location as they presently exist and provided that the following criteria are adhered to:
  - i. The fender piles or mooring piles to be replaced do not protrude into the water more than twenty-five (25) percent of the width of the waterway.
  - ii. The work will be done by a contractor holding an applicable certificate of competency.
  - iii. The contractor shall contact the Director or the Director's designee a minimum of twenty-four (24) hours prior to performing the fender pile or mooring pile replacement work with information on the location and the number of fender or mooring piles to be replaced.
- (r) The installation of a drainage system for any project which does not use, generate, handle, dispose of, discharge or store hazardous materials and not otherwise requiring a class II permit. This

exemption, however, shall not apply to an airport facility, a resource recovery and management facility, a sewage treatment facility, or any property that has known soil or groundwater contamination.

- (s) Repair or replacement of uniform waterway markers or uniform waterway regulatory markers, which markers conform with Sections 327.40 and 327.41, Florida Statutes, respectively, as may be amended from time to time.
  - (t) Work in wetlands associated with the resumption of a lawfully permitted agricultural operation, during an agricultural fallowing period as defined in Section 24-5, as the site generally existed immediately prior to the agricultural fallowing period.
- (2) The following activities shall not require a permit and shall be eligible to receive a written expedited administrative authorization, provided >>(i)<< the Department determines that the work meets one of the criteria set forth herein below in subsections (a)-(g) and will not result in adverse environmental impacts>>, and (ii) unencapsulated polystyrene shall not be used or installed in connection with the work<<. The following items shall be required for departmental review: Site location and sketch of proposed work, full description of the work to be performed, all relevant information necessary to determine potential environmental impacts, as well as an administrative review fee. The Department will respond to the request with an approval, approval with conditions or denial within ten (10) business days from receipt of the required information. If the project is found to be ineligible for the expedited administrative authorization, the applicant may revise the request based on comments from the Department or the applicant may apply for a permit pursuant to Section 24-48.1. Expedited administrative authorizations are valid for a period of two (2) years unless otherwise noted.
- (a) Scientific, water quality, or geotechnical sampling or testing in tidal waters or wetlands.
  - (b) Work in tidal waters and wetlands, not to exceed thirty (30) days, associated with motion picture, television, photographic or other media production.
  - (c) Treatment or removal of vegetation which is listed as a prohibited species as set forth in Section 24-49.9 of

the Code of Miami-Dade County, Florida, for restoration and enhancement activities.

- (d) Work in wetlands performed to restrict access to property for the purpose of maintaining the property in its natural state and protecting the property from trespass, illegal dumping, or damage to wetlands.
- (e) The placement of natural limerock boulder riprap waterward of an existing seawall, bulkhead or unconsolidated shoreline provided that the riprap is placed on a two (2) horizontal to one (1) vertical slope and the riprap does not extent more than ten (10) feet waterward of the mean high water line; provided, however, the Department conducts an inspection prior to the placement of the riprap and determines that said placement will not result in an adverse environmental impact to benthic communities.
- (f) Repair and/or replacement of the tieback systems on an existing seawall or bulkhead, provided that the contractor submits structurally approved building plans from the applicable building authority.
- (g) Repair and/or replacement of the cap of an existing seawall or bulkhead, provided that the contractor submits structurally approved plans from the applicable building authority.

\* \* \*

**Section 3.** Section 24-48.3 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 24-48.3. Factors for evaluation of permit applications; incomplete permit applications.**

- (1) The Department shall base its recommendation for approval, denial or approval subject to conditions, limitations, or restrictions, and the Board of County Commissioners shall make its decision for approval, denial, or approval subject to conditions, limitations or restrictions, for any of the permits provided for under this article, upon the following evaluation factors, when applicable:

\* \* \*

(9) >>In addition to the applicable evaluation factors contained in subsection (1)(a) through (i) above, the use or installation of unencapsulated polystyrene shall be prohibited in connection with any work requiring a class I permit.

(10)<< An incomplete permit application shall become deactivated thirty-six (36) months from the date the permit application was filed. Permit applications are deemed filed with the Department on the date the application is stamped received by the Department.

(a) A new application shall be required for obtaining a permit for all work previously proposed under a permit application which has been deactivated.

(b) The Department shall not process any permit application which has been deactivated.

**Section 4.** Section 24-48.221 of the Code of Miami-Dade County, Florida, is hereby

created to read as follows:

>>**Sec. 24-48.221. Degraded polystyrene.**

For all facilities which are subject to a County marine facilities operating permit pursuant to this chapter, such permit shall require the removal, replacement or repair of any unencapsulated polystyrene where such polystyrene shows evidence of degradation, disintegration, shredding, or other damage, as determined in the discretion of the Director.<<

**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:

Abbie Schwaderer-Raurell

The image shows two handwritten signatures. The top signature is in black ink and appears to be 'AW'. The bottom signature is in black ink and appears to be 'ASR', enclosed within a circular stamp or seal.

Prime Sponsor: Commissioner Daniella Levine Cava  
Co-Sponsors: Commissioner Jean Monestime  
Commissioner Dennis C. Moss