

MEMORANDUM

Agenda Item No. 11(A)(30)

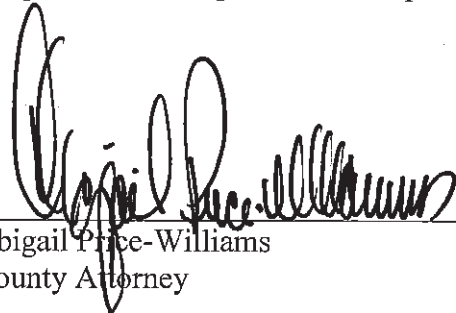
TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: November 7, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution urging the Florida
Legislature to repeal the
preemption in current law and
allow local governments to
regulate crane safety in matters
not preempted to the federal
government such as hurricane
preparedness and public safety
standards

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Audrey M. Edmonson.



Abigail Price-Williams
County Attorney

APW/cp

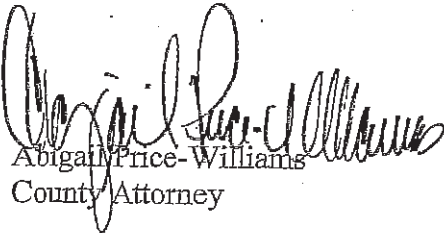


MEMORANDUM

(Revised)

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and Members, Board of County Commissioners

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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

Agenda Item No. 11(A)(30)

Veto _____

11-7-17

Override _____

RESOLUTION NO. _____

RESOLUTION URGING THE FLORIDA
LEGISLATURE TO REPEAL THE PREEMPTION IN
CURRENT LAW AND ALLOW LOCAL
GOVERNMENTS TO REGULATE CRANE SAFETY
IN MATTERS NOT PREEMPTED TO THE FEDERAL
GOVERNMENT SUCH AS HURRICANE
PREPAREDNESS AND PUBLIC SAFETY
STANDARDS

WHEREAS, Miami-Dade County is a densely populated urban area which has experienced significant construction booms; and

WHEREAS, as evidenced in numerous crane accidents throughout the United States and in this community, given their large size and use in populated urban areas, adjacent to the public right of way and inhabited structures, tower cranes used in construction pose a risk to the surrounding structures and public right of way; and

WHEREAS, Miami-Dade County's location exposes it to the onslaught of hurricanes, making the presence of unmanned tower cranes in high wind events a danger to the surrounding structures and community; and

WHEREAS, during the past five years tower cranes have indeed collapsed when exposed to hurricane force winds; and

WHEREAS, in October 2012, Hurricane Sandy winds caused a crane to collapse on the construction site of what was slated at the time to be Manhattan's tallest condominium skyscraper, leaving the massive arm of the crane dangling dangerously over Midtown Manhattan streets; and

collapsed onto a high-rise building under construction posing a threat to the Metromover and requiring it to be closed for several days, and on Northeast 30th Terrace another tower crane collapsed and was left dangling from an unfinished high-rise construction project; and

WHEREAS, this Board anticipated the obvious dangers posed by cranes during hurricanes and high wind events, and in March 2008, enacted Ordinance No. 8-34, which created a new chapter of the Code of Miami-Dade County to provide for the safety of cranes and other hoisting equipment (the “Crane Safety Ordinance”); and

WHEREAS, the Crane Safety Ordinance, included a “Hurricane Preparedness” section which obligated compliance with specific hurricane precautions including the requirement of having a hurricane preparedness plan in place in case of a coming storm; and

WHEREAS, separate and apart from the section mandating hurricane preparedness precautions, the Crane Safety Ordinance also contained a wind load standard that required tower cranes to withstand hurricane force winds of approximately 140 miles per hour; and

WHEREAS, after the Board’s enactment of the Crane Safety Ordinance, in May 2008 construction and crane industry associations filed an emergency federal court action in the United States District Court for the Southern District of Florida to prevent enforcement of the Crane Safety Ordinance; and

WHEREAS, on May 22, 2008 the federal court enjoined the County’s enforcement of various of the provisions of the Crane Safety Ordinance, including its hurricane wind load standard, as preempted by the federal Occupational Health and Safety Act of 1970 (the OSH Act), and the health and safety standards promulgated by the United States Secretary of Labor pursuant to the OSH Act, which injunction was upheld by the United States Eleventh Circuit

Court of Appeals in the case styled Associated Builders and Contractors Florida East Coast Chapter v. Miami-Dade County, 594 F.3d 1321 (11th Cir. 2008); and

WHEREAS, although the federal court enjoined enforcement of various provisions of the Crane Safety Ordinance as preempted under federal law, the federal court did conclude that some provisions of the Crane Safety Ordinance were not preempted and thus could be enforced by the County, including the section mandating hurricane preparedness precautions; and

WHEREAS, after the federal court entered its order enjoining the enforcement of portions of the Crane Safety Ordinance, the Occupational Safety and Health Administration (“OSHA”), pursuant to the OSH Act, promulgated final and updated rules relating to construction cranes; and

WHEREAS the updated rules were the result of a negotiated rule-making process that commenced in July 2002 with the purpose of updating and supplementing the regulations that had been in effect since 1971 and addressing many of the safety issues that are attendant to crane erection and use; and

WHEREAS, in the commentary which accompany the final regulations, OSHA found expressly that the updated regulations were not intended to preempt any non-conflicting local enactment designed to protect the public from the hazards of cranes; and

WHEREAS, with the survival of the Crane Safety Ordinance’s hurricane preparedness provision and OSHA’s enactment of updated crane regulations, the County was left with the ability to: (1) ensure that the construction industry take certain precautionary measures in preparation for a coming hurricane and; (2) attempt to enact further crane safety legislation not otherwise preempted under federal law guided by OSHA’s declaration in the updated rules that

preparation for a coming hurricane and; (2) attempt to enact further crane safety legislation not otherwise preempted under federal law guided by OSHA's declaration in the updated rules that it did not intend to preempt any non-conflicting local enactment designed to protect the public from the hazards of cranes; and

WHEREAS, during the 2012 regular session, however, the Florida Legislature passed Chapter No. 2012-62, Laws of Florida (HB 521), relating to state preemption of the regulation of hoisting equipment; and

WHEREAS, Chapter No. 2012-62 created subsection (11) of Section 489.113, Florida Statutes, and prohibited the County from enforcing the surviving hurricane preparedness sections of the Crane Safety Ordinance or enacting any other crane safety legislation even if permissible under federal law as it expressly provided that "*[a]ny local act, law, ordinance, or regulation, including, but not limited to, a local building code or building permit requirement, of a county, municipality, or other political subdivision that pertains to hoisting equipment including power-operated cranes, derricks, hoists, elevators, and conveyors used in construction, demolition, or excavation work, that is not already preempted by the Occupational Safety and Health Administration under 29 C.F.R. parts 1910 and 1926, including, but not limited to, local worksite regulation regarding hurricane preparedness or public safety, is prohibited and is preempted to the state.*" (emphasis added); and

WHEREAS, because of this provision, the County is left with no means to enact public safety measures to protect its citizens and its citizens' property from the dangers of falling tower cranes during hurricanes and high wind events; and

WHEREAS, this Board wishes to urge the Florida Legislature to remove its express preemption and prohibition so that the Board can provide for the protection of the general public from the hazards of cranes, especially during hurricanes and high wind events,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges the Florida Legislature to repeal the preemption in current law and allow local governments to regulate and enforce crane safety in matters not preempted to the federal government such as hurricane preparedness and public safety standards.

Section 2. Directs the Clerk of the Board to transmit certified copies of this resolution to the Governor, the Senate President, the House Speaker, and the Chair and Members of the Miami-Dade State Legislative Delegation.

Section 3. Directs the County's state lobbyists to advocate for legislation as described in Section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2018 State Legislature Package to include this item.

The Prime Sponsor of the foregoing resolution is Vice Chairwoman Audrey M. Edmonson. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

- | | |
|-------------------------------------|----------------------|
| Esteban L. Bovo, Jr., Chairman | |
| Audrey M. Edmonson, Vice Chairwoman | |
| Bruno A. Barreiro | Daniella Levine Cava |
| Jose "Pepe" Diaz | Sally A. Heyman |
| Barbara J. Jordan | Joe A. Martinez |
| Jean Monestime | Dennis C. Moss |
| Rebeca Sosa | Sen. Javier D. Souto |
| Xavier L. Suarez | |

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of November, 2017. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Eduardo W. Gonzalez

