

MEMORANDUM

Agenda Item No. 7(F)

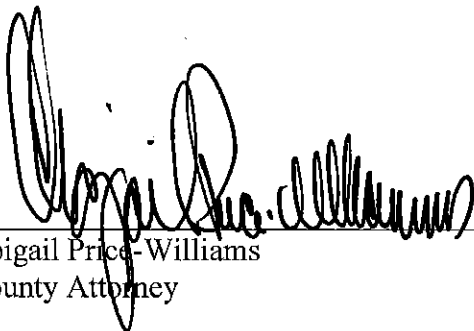
TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: (Second Reading 3-6-18)
December 5, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to Biscayne
Bay Environmental Enhancement
Trust Fund; amending section
24-40 of the Code; allowing for
funds from Biscayne Bay
Environmental Enhancement
Trust Fund to be used for
artificial reefs and mooring
buoys in the coastal waters of
Miami-Dade County beyond
Biscayne Bay

The accompanying ordinance was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Co-Prime Sponsors Commissioner Bruno A. Barreiro, Commissioner Sally A. Heyman, Commissioner Dennis C. Moss, Commissioner Xavier L. Suarez, Commissioner Daniella Levine Cava and Co-Sponsor Rebeca Sosa.



Abigail Price-Williams
County Attorney

APW/lmp

Memorandum



Date: March 6, 2018

To: Honorable Chairman Esteban L. Bovo, Jr.
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 24-40 of the Code of Miami-Dade County allowing monies disbursed from the Biscayne Bay Environmental Enhancement Trust Fund to be used for artificial reefs and mooring buoys in the coastal waters of Miami-Dade County beyond Biscayne Bay

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached ordinance amending Section 24-40 of the Code of Miami-Dade County (Code), allowing funds disbursed from the Biscayne Bay Environmental Enhancement Trust Fund to be used for artificial reefs and mooring buoys in the coastal waters of Miami-Dade County (County) beyond Biscayne Bay.

Scope

The proposed ordinance would occur offshore of the coasts of Commission Districts 4, 5, 7 and 9, represented by Commissioner Sally A. Heyman, Commissioner Bruno A. Barreiro, Commissioner Xavier L. Suarez and Commissioner Dennis C. Moss, respectively.

Fiscal Impact/Funding Source

This ordinance will not have a fiscal impact on Miami-Dade County. Under Section 24-40 of the Code, the Biscayne Bay Environmental Enhancement Trust Fund shall only be disbursed for the environmental enhancement of Biscayne Bay and its foreshore. The ordinance proposes to allow the use of funds limited to artificial reefs and mooring buoys in the coastal waters of Miami-Dade County.

Track Record / Monitor

The Chief of the Restoration and Enhancement Section of the Department of Regulatory and Economic Resources, Division of Environmental Resources Management (DERM), Jamie Monty, will implement the provisions of the proposed ordinance.

Social Equity

The proposed ordinance amends the existing Section 24-40 of the Code to allow for use of these funds for environmental enhancement in additional marine habitat areas of Miami-Dade County and is not anticipated to have a specific social equity benefit or burden as described under Ordinance No. 15-83.

Background

The Biscayne Bay Environmental Enhancement Trust Fund (Trust Fund) was created by ordinance in 1979 to provide funds for the environmental enhancement of Biscayne Bay and its foreshore. The Trust Fund receives monies from various sources including mitigation payments associated with environmental permits issued for work in tidal waters throughout Miami-Dade County, grants, settlement payments associated with resolving violations related to work in tidal waters, as well as monies from annual boat registration fees collected in Miami-Dade County. Section 24-40 of the Code governs the use of the Trust Fund and defines environmental enhancement as the restoration or improvement of natural and indigenous habitats through the establishment,

restoration or improvement of biological communities within Biscayne Bay. A narrow view of this language leads to a conclusion that these funds are not available for environmental enhancement projects in other marine waters of Miami-Dade County such as our coastal water habitats that exist beyond Biscayne Bay. Although the marine habitats in these coastal water areas may not be located within the geographic boundaries of Biscayne Bay, they are nonetheless ecologically connected to and support the health of biological communities within Biscayne Bay.

Miami-Dade County's Artificial Reef Program has coordinated the placement of over 200 artificial reefs since 1981. The diverse materials used for artificial reefs restore and/or enhance marine habitats, protect existing natural resources, and increase recreational fishing and diving opportunities for both residents and tourists.

The Miami-Dade County Mooring Buoy Program was established in 2009 to provide enhanced boating, fishing, and diving access to our natural and artificial reef resources while protecting those valuable resources from anchor damage caused by recreational boater use. Since 2012, 42 mooring buoys have been placed at nine popular snorkeling/diving sites from Sunny Isles Beach south to the northern border of Biscayne National Park.

The proposed ordinance would allow funds received by the County and placed in the Biscayne Bay Environmental Enhancement Trust Fund to be available for marine habitat enhancement and protection, through the County's artificial reef and mooring buoy activities, in the coastal waters of the County beyond Biscayne Bay.



Jack Osterholt
Deputy Mayor

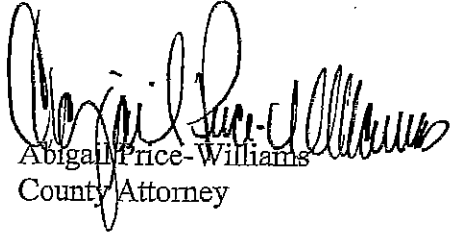


MEMORANDUM

(Revised)

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

DATE: March 6, 2018

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(F)

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(F)
3-6-18

ORDINANCE NO. _____

ORDINANCE RELATING TO BISCAYNE BAY ENVIRONMENTAL ENHANCEMENT TRUST FUND; AMENDING SECTION 24-40 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; ALLOWING FOR FUNDS FROM BISCAYNE BAY ENVIRONMENTAL ENHANCEMENT TRUST FUND TO BE USED FOR ARTIFICIAL REEFS AND MOORING BUOYS IN THE COASTAL WATERS OF MIAMI-DADE COUNTY BEYOND BISCAYNE BAY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, pursuant to Section 24-40 of the Code of Miami-Dade County, monies from the Biscayne Bay Environmental Enhancement Trust Fund may only be used for environmental enhancement of Biscayne Bay and its foreshore; and

WHEREAS, installation, maintenance, and management of artificial reefs and mooring buoys in the coastal waters beyond Biscayne Bay cannot currently be funded with monies from the Biscayne Bay Environmental Enhancement Trust Fund, even though such activities would create environmental benefits to Biscayne Bay through the preservation of reef habitat which supports numerous organisms within Biscayne Bay and the coastal waters of Miami-Dade County; and

WHEREAS, this ordinance would allow Biscayne Bay Environmental Enhancement Trust Fund monies to be used for the installation, maintenance, or management of artificial reefs and mooring buoys in the coastal waters of Miami-Dade County beyond Biscayne Bay,

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

Section 1. Section 24-40 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 24-40. - Biscayne Bay Environmental Enhancement Trust Fund.

There is hereby created a Biscayne Bay Environmental Enhancement Trust Fund, the monies of which shall be disbursed only for the environmental enhancement of Biscayne Bay and its foreshore, consistent with the objectives adopted by this Board by Resolution R-1610-79, as may be amended from time to time; the prioritized list of projects adopted by this Board by Resolution R-1609-79, as may be amended from time to time; and with the forthcoming comprehensive Biscayne Bay management plan. >>Recognizing that certain environmental enhancement activities in the coastal waters of the County beyond Biscayne Bay have positive environmental benefits to Biscayne Bay, monies from the Biscayne Bay Environmental Enhancement Trust Fund may also be used for the following limited environmental enhancement activities in the coastal waters of the County beyond Biscayne Bay: installation, maintenance, or management of artificial reefs and mooring buoys.<<

(1) Definitions:

(a) Excess monies shall be defined as those monies which are necessary to enhance the particular area(s) of Biscayne Bay >>or<<[[and]] the foreshore>> or coastal waters of the County beyond Biscayne Bay, which are<< environmentally damaged or degraded, and which remain in the trust fund after all monies from a particular action, claim, assessment, grant, appropriation, allocation, permit condition or donation have been disbursed.

(b) Environmental enhancement shall be defined as restoration or improvement of natural and indigenous habitats within Biscayne Bay or its foreshore >>or the coastal waters of the County beyond Biscayne Bay<< through the establishment, restoration or improvement of biological communities in order to increase the net

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.

habitat value of the bay. Environmental enhancement may also be defined as those alterations in hydrodynamics, water and sedimentary chemistry that may be necessary to establish or reestablish natural and indigenous biotic communities within Biscayne Bay or its foreshore>> or the coastal waters of the County beyond Biscayne Bay<<. Further, it is presumed that those enhancement activities contemplated by the forthcoming comprehensive Biscayne Bay management plan, the prioritized list of projects (except studies) as adopted by Resolution R-1609-79, as may be amended from time to time; and those projects consistent with the objectives adopted by Resolution R-1610-79, as may be amended from time to time; are for the environmental enhancement of Biscayne Bay and its foreshore and qualify for funding from this trust fund.>> The activities in the coastal waters of the County beyond Biscayne Bay which qualify for funding from this trust fund shall be limited only to the installation, maintenance, or management of either artificial reefs or mooring buoys.<<

(c) Mitigation includes any of the following:

- (i) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (ii) Minimizing impacts by limiting the degree or magnitude of the action or its implementation;
- (iii) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (iv) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (v) Compensating for the impact by replacing or providing substitute resources or environments.

(2) Said trust fund shall be kept and maintained in trust by the Board of County Commissioners for the purposes set forth in this section in a separate and segregated fund of the County which shall not be commingled with other County funds until disbursed for an authorized purpose pursuant to this section.

(3) Said trust fund shall consist of the following monies and shall be disbursed >>in accordance with all provisions of this section and <<in accordance with the following requirements:

(a) All monies available to or recovered by the County from enforcement and damage actions and claims against persons who have environmentally damaged or degraded Biscayne Bay >>or<<[[and]] its foreshore>> or coastal waters of the County beyond Biscayne Bay<<:

(i) Such monies shall be first disbursed for the environmental enhancement of the particular area(s) of Biscayne Bay >>or<<[[and]] its foreshore damaged or degraded unless enhancement in the particular area(s) is clearly shown to be not possible. In the event of the latter, such monies shall be disbursed for environmental enhancement of other area(s) of Biscayne Bay >>or<<[[and]] its foreshore>> or coastal waters of the County beyond Biscayne Bay<<.

(ii) Any excess monies derived from such enforcement and damage actions and claims may be disbursed for environmental enhancement of other areas of Biscayne Bay >>or<<[[and]] its foreshore >>or coastal waters of the County beyond Biscayne Bay <<as authorized and approved by resolution of the Board of County Commissioners.

(b) All monies available to and received by Miami-Dade County from environmental mitigation assessments from all private persons and all governmental bodies, units, agencies, authorities and departments, including, but not limited to, Miami-Dade County, for environmental damage or degradation to Biscayne Bay >>or<<[[and]] its foreshore>> or coastal waters of the County beyond Biscayne Bay<<:

(i) Such monies shall be disbursed for environmental enhancement of Biscayne Bay >>or<<[[and]] its foreshore >>or coastal waters of the County beyond Biscayne Bay <<as authorized and approved by resolution of the Board of County Commissioners. However, if mitigation activities are specified as conditions of any permit, then said mitigation funds shall be used as required by the permit conditions, without the necessity of the Board of County Commissioners' approval, appropriation, or action of any kind.

(c) All monies offered to and accepted by Miami-Dade County for the environmental enhancement of Biscayne Bay >>or<<[[and]] its foreshore >>, or for the installation, maintenance, or management

of artificial reefs and mooring buoys in the coastal waters of the County beyond Biscayne Bay, << in the form of federal, State, and other governmental grants, allocations, and appropriations as well as foundation and private grants and donations:

(i) Such monies shall be disbursed for the environmental enhancement of Biscayne Bay >>or<<[[and]] its foreshore >>or coastal waters of the County beyond Biscayne Bay << strictly in accordance with terms and conditions of the grant, allocation, appropriation, or donation and shall be earmarked accordingly.

(ii) Any excess monies derived from such grant, allocation, appropriation, or donation shall be disbursed or allocated in accordance with the terms and conditions, if any, of such grant, allocation, appropriation, or donation. If no such terms or conditions attach to such excess, then such excess, if any, shall be disbursed for the environmental enhancement of Biscayne Bay >>or<<[[and]] its foreshore >>or coastal waters of the County beyond Biscayne Bay <<as authorized and approved by resolution of the Board of County Commissioners.

(4) Unless otherwise specified herein, no disbursements whatsoever shall be made from the Biscayne Bay Environmental Enhancement Trust Fund until and unless authorized and approved by resolution of the Board of County Commissioners. Prior to authorizing and approving said disbursements, the Board of County Commissioners shall receive and consider the recommendations of the County >>Mayor<<[[Manager]]. The County >>Mayor<<[[Manager]], prior to making any such recommendations, shall receive and consider the recommendations of the Department pertaining to the proposed particular disbursement for environmental enhancement of Biscayne Bay >>or<<[[and]] its foreshore>> or coastal waters of the County beyond Biscayne Bay<<. The Finance Director is hereby authorized to establish the Biscayne Bay Environmental Enhancement Trust Fund and to receive monies therefor in accordance with provisions of this section and shall disburse monies from said trust fund only upon authorization pursuant to resolution of the Board of County Commissioners.

(5) Unless otherwise restricted by the terms and conditions of a particular grant, gift, appropriation, allocation, or permit condition, all interest earned by the investment of all monies in the trust fund shall be disbursed by resolution of the Board of County Commissioners for any project authorized by the Board which will environmentally enhance Biscayne Bay >>or<<[[and]] its foreshore>> or coastal waters of the County beyond

Biscayne Bay, in accordance with this section<<. Trust fund moneys shall be invested only in accordance with the laws pertaining to the investment of County funds.

(6) No moneys or interest accrued in such trust fund shall be disbursed for environmental studies of Biscayne Bay or its foreshore >>or coastal waters of the County beyond Biscayne Bay <<unless required by the terms and conditions of a particular grant, donation, appropriation, allocation, or permit condition.

(7) Decisions to grant or deny permits for any activities within Biscayne Bay or its foreshore >>or coastal waters of the County beyond Biscayne Bay <<shall be made without consideration of the existence of this trust fund. Each application for any permit must be evaluated independently of the existence of this fund or offers of donation of moneys thereto.

* * *

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:

Abbie Schwaderer-Raurell

Handwritten signatures of ADW and ASR. The signature ADW is written above a horizontal line, and the signature ASR is written below it, also above a horizontal line.