

# MEMORANDUM

Agenda Item No. 5(A)

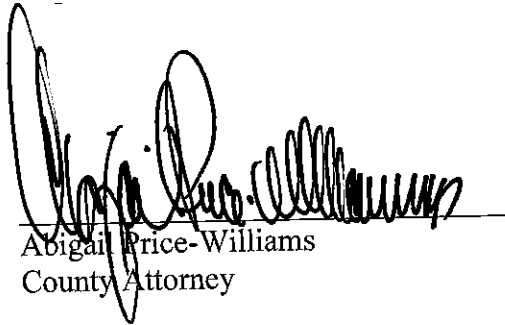
**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** (Public Hearing 5-1-18)  
April 10, 2018

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

**SUBJECT:** Ordinance relating to zoning;  
amending section 33-349 of the  
Code; revising Miami  
International Airport (Wilcox  
Field) zoning regulations to  
provide an exception to the  
prohibition on applications for  
variances from height limitations  
where the proposed structure or  
use meets federal standards and  
has been approved by the Federal  
Aviation Administration

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.




Abigail Price-Williams  
County Attorney

APW/smm


# Memorandum



**Date:** May 1, 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 Zoning; Revising Miami  
International Airport Zoning Regulations

---

The implementation of this ordinance will not have a fiscal impact to Miami-Dade County as it will not result in additional staffing needs or future operational costs.

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

FIS05118 180909

# Memorandum



**Date:** May 1, 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 name in the "From" field.

**Subject:** Social Equity Statement for Ordinance Amending Section 33-349 of the Code of Miami-Dade County, Florida to provide an exception on applications for variances from height limitations approved by the Federal Aviation Administration

---

The proposed ordinance amends Section 33-349 of the Code of Miami-Dade County, which is related to the County's Zoning regulations. This ordinance will update Miami International Airport's zoning regulations to permit applications for variances from the height limitations, in limited circumstances, where a proposed structure or use complies with federal height and airspace standards and regulations approved by the Federal Aviation Administration.

In order to comply with Federal Aviation Regulations, the Director of the Miami-Dade Aviation Department has the authority to order structures or tree heights to be lower than the height limitations for the sake of aviation safety and airport viability. Therefore, limited variances or exceptions to the height zoning ordinance of the code will be considered in areas identified on the "Height Zoning Surfaces-Variance Eligible Areas Map," along with approvals of all applicable federal standards and regulations.

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

Jack Osterholm  
Deputy Mayor

180909

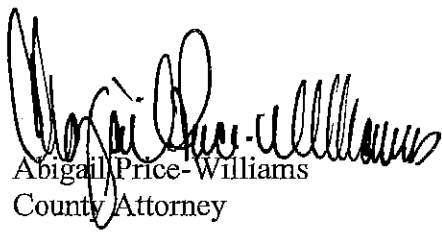


# MEMORANDUM

(Revised)

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

**DATE:** May 1, 2018

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

**SUBJECT:** Agenda Item No. 5(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. 5(A)

5-1-18

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

ORDINANCE RELATING TO ZONING; AMENDING SECTION 33-349 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REVISING MIAMI INTERNATIONAL AIRPORT (WILCOX FIELD) ZONING REGULATIONS TO PROVIDE AN EXCEPTION TO THE PROHIBITION ON APPLICATIONS FOR VARIANCES FROM HEIGHT LIMITATIONS WHERE THE PROPOSED STRUCTURE OR USE MEETS FEDERAL STANDARDS AND HAS BEEN APPROVED BY THE FEDERAL AVIATION ADMINISTRATION; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, the Miami International Airport (Wilcox Field) ("MIA") is a major economic engine for Miami-Dade County; and

**WHEREAS**, the zoning regulations applicable to MIA include a variance procedure set forth in Section 33-342 of the Code; and

**WHEREAS**, although the variance procedure generally applies to the MIA zoning regulations, the Code expressly provides that variances from certain airport zoning regulations may not be obtained; and

**WHEREAS**, in the interest of aviation safety and airport viability, Section 33-349 of the Code prohibits variances from airport zoning height limitations; and

**WHEREAS**, in some instances, the height regulations in the Code are more restrictive than applicable federal standards and regulations; and

**WHEREAS**, the amount of revenue-generating payload (passengers and cargo) on any given flight can be directly impacted by tall structures; and

**WHEREAS**, the FAA review process does not consider economic impacts when evaluating proposed structure heights; and

**WHEREAS**, nevertheless, there may be limited circumstances in which height variances could be appropriate; and

**WHEREAS**, this Board wishes to update the MIA zoning regulations, to permit applications for variances from the height limitations in certain areas depicted on the map entitled "Height Zoning Surfaces – Variance Eligible Areas," a copy of which is attached hereto as Exhibit A, in limited circumstances where a proposed structure or use complies with federal height and airspace standards and regulations and has been approved by the Federal Aviation Administration; and

**WHEREAS**, in such circumstances, the applicant will still be required to demonstrate that the requested variance is otherwise consistent with all other requirements of the Code and that it does not comprise aviation safety or airport viability; and

**WHEREAS**, to obtain such a variance under the standard set forth in Section 33-342, the applicant must show that "a literal application or enforcement of the regulations would result in unnecessary hardship and the relief granted would not be contrary to the public interest but granting thereof would do substantial justice"; and

**WHEREAS**, in determining whether such standard has been met, the following criteria pertaining to the "public interest" must also be considered: (a) the nature of the terrain and height of existing structures; (b) public and private interest and investments; (c) the character of flying operations and planned future development of Miami International Airport; (d) federal airways as designated by the Federal Aviation Administration; (e) whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at Miami

International Airport; (f) technological advances; (g) the safety of persons on the ground and in the air; (h) land use density; (i) safe and efficient use of navigable airspace; and (j) the cumulative effects on navigable airspace of all existing structures, proposed structures identified in the Comprehensive Development Master Plan, and all other known proposed structures and uses in the area; and

**WHEREAS**, accordingly, this Board wishes to amend Section 33-349 to permit applications for variances from height limitations in limited circumstances, subject to the variance procedures and standards as currently set forth in the Code,

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

**Section 1.** Section 33-349 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:<sup>1</sup>

**Sec. 33-349.                      Airspace Approvals.**

No permanent structure may be erected, constructed, located or otherwise established within the MIA Airport Zoning Area unless it has been issued an appropriate development permit(s) by Miami-Dade County or the municipality in which it is located. Except as provided for hereunder, no development permit for any structure or tree (whether permanent or temporary, natural or man made) to be erected, planted, located or otherwise established, within the MIA Airport Zoning Area shall be issued by the county or any municipality unless such development permit has been approved in writing by MDAD and meets the review criteria created pursuant to this article.

For permanent structures or trees, such approval is required for (1) all structures or trees on property located within or bifurcated by the all objects review boundary; (2) for all structures or trees greater than or equal to 35 feet AMSL on property located within or

---

<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.

bifurcated by the 35 foot AMSL review boundary; and for all structures or trees greater than or equal to 200 feet AMSL on property located within or partially within the MIA airport zoning area but outside the 35 foot AMSL review boundary. For temporary cranes or other temporary structures, such approval is required if such structures meet either the crane review criteria or the events review criteria set forth in this section.

In all instances, whether in the incorporated or unincorporated areas of Miami-Dade County, a copy of any application for a development permit that requires approval by MDAD pursuant to this Section 33-349 must be submitted to MDAD for review prior to the issuance of any development permit based on such application. Each such application for a development permit shall indicate the height (AMSL) of all applied-for structures. Any development permit subject to the review and approval process of this Section 33-349 that is issued without the written approval of MDAD shall be voidable through an original action by a court of competent jurisdiction regardless of the expiration of any otherwise applicable appeal period for the challenge of such development permit.

Temporary cranes or other temporary structures, which meet the crane review criteria of this article, but which do not require a development permit for their erection, installation, siting, operation, or use, shall receive written approval from MDAD prior to their erection, installation, siting, operation or use if so erected, installed, sited, operated or used anywhere within the MIA airport zoning area. Temporary events, which meet the temporary events review criteria of this article, but which do not require a development permit for their installation, siting, operation or use, shall receive written approval from MDAD prior to their installation, siting, operation or use if so installed, sited, operated or used anywhere within the MIA airport zoning area.

In addition, neither Miami-Dade County nor any municipality or other entity shall issue any development permit, or allow the use of a crane, or otherwise allow any other structure to be erected, located or otherwise established within the airport zoning area unless such structure has been reviewed and approved by the FAA if the structure meets FAA notification criteria set forth in Title 14 of the Code of Federal Regulations, Part 77, as amended.



Notwithstanding any provisions of this chapter, in approving any permit under this article, the Director of the Miami-Dade Aviation Department shall require the owner of the structure for which a permit is being sought, to install, operate and maintain thereon at the owner's sole expense, such marking and lighting as may be necessary to indicate to aircraft pilots the presence of a structure, such marking and lighting to conform to the specific standard established by rule of the Department of Transportation and Federal Aviation Administration Advisory Circular 70/7460-1k change 1, or most recent update.

In order to comply with Federal Aviation Regulations, the Director of the Miami-Dade Aviation Department shall have the right to order structure or tree heights to be lower than the height limitations established in this article. For the sake of aviation safety and airport viability, there shall be no variances from or exceptions to the height zoning limitations of this article>>, except that a variance may be applied for pursuant to section 33-342 in the areas identified on the map entitled "Height Zoning Surfaces – Variance Eligible Areas," a full scale copy of which is on file with the Miami-Dade Aviation Department, provided the proposed structure or use meets applicable federal standards and regulations and has been approved by the Federal Aviation Administration<<.

The Director of the Miami-Dade Aviation Department or designee is authorized to appeal or otherwise legally contest decisions of a municipality granting development permits that are subject to compliance with this article, for failure to comply with the airport height zoning standards of this article.

Applicant shall pay any applicable review fees to MDAD for its reviews performed in accordance with this article. Review shall not commence until the appropriate fees are paid to MDAD.

\* \* \*

**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:

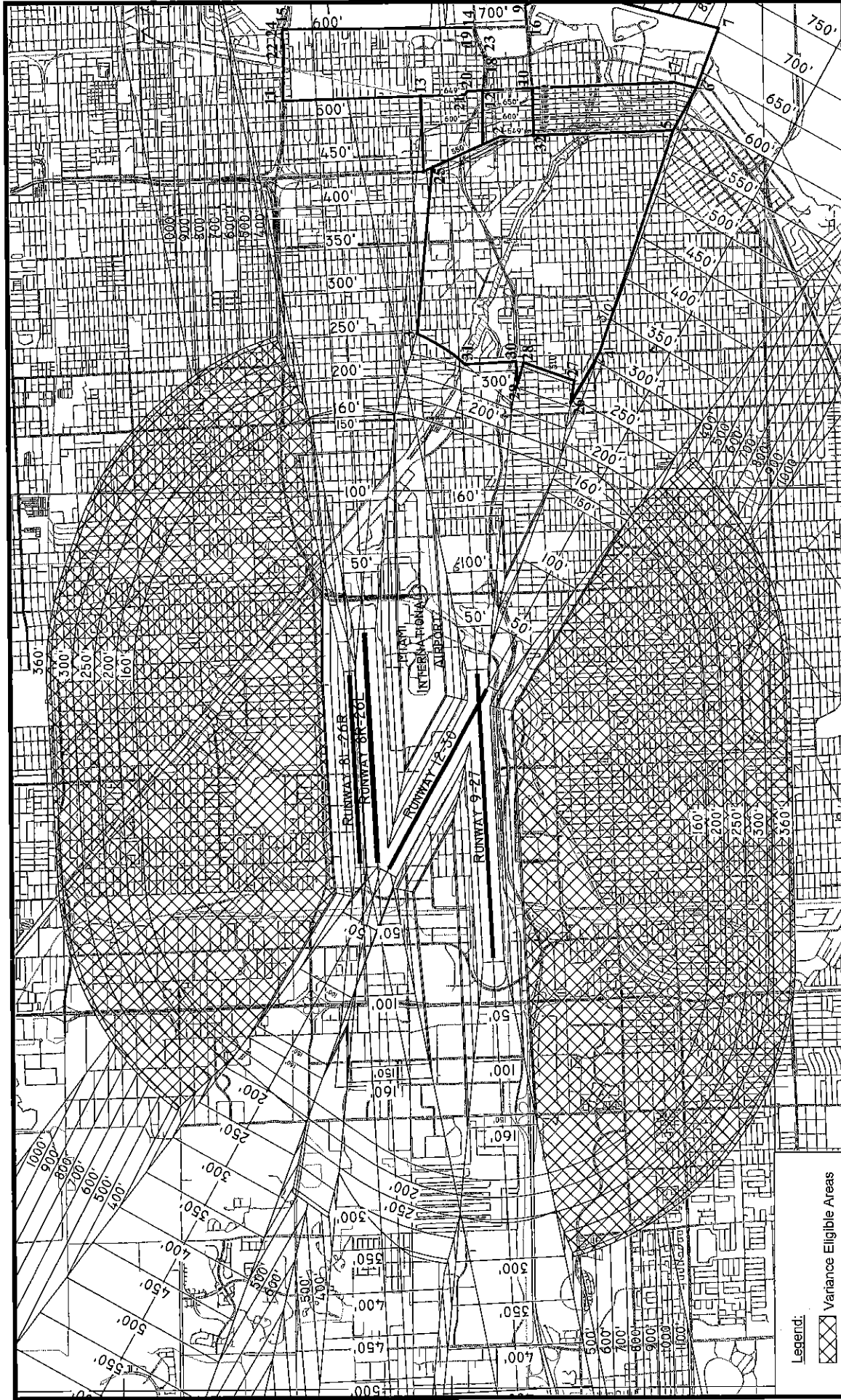
Approved by County Attorney as  
to form and legal sufficiency:

Prepared by:

James Eddie Kirtley  
Dennis A. Kerbel

Prime Sponsor: Commissioner Rebeca Sosa

The block contains two handwritten signatures. The top signature is in blue ink and appears to be 'ADW'. The bottom signature is in black ink and appears to be 'D.K.' or similar initials.



Miami International Airport

Scale: 1" = 300' April 6, 2018

# Height Zoning Surfaces - Variance Eligible Areas

**MIA**  
 MIAMI  
 Aviation Planning Division

Planning Department Planning Division & Engineering Division, Miami International Airport, 1985, 1987, and 1988. Miami International Airport, 1985, 1987, and 1988. Miami International Airport, 1985, 1987, and 1988.