

MEMORANDUM

Agenda Item No. 7(A)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: February 19, 2020

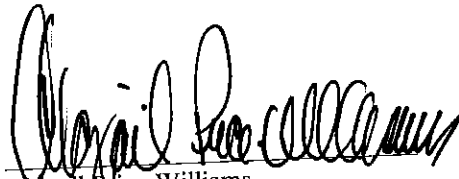
FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to Community Councils and Zoning Procedures in the unincorporated area; amending Article IV of Chapter 20 and section 33-314 of the Code; providing for removal from office when a community council member votes on, or participates in, a matter on which the member has a conflict of interest; providing jurisdiction for the Board of County Commissioners to directly hear zoning applications where there are insufficient seated members on a Community Zoning Appeals Board to constitute a quorum under certain circumstances; providing for such jurisdiction where a Community Zoning Appeals Board member has a conflict of interest and votes on or participates in any matter; revising purpose of community councils to include efficient and timely consideration of applications

This item was amended at the 1-13-20 Infrastructure and Capital Improvements Committee to provide in section 20-42 that zoning applications shall be heard by the Board of County Commissioners when a Community Council otherwise having jurisdiction does not have any elected or appointed members in office at the time such application is ready to be noticed for hearing, rather than when such Community Council does not have a sufficient number of members seated to constitute a quorum. In addition, a conforming amendment was made to section 33-314 to provide that the Board of County Commissioners shall have jurisdiction to hear items where the Community Council has no members in office at the time an application is ready to be noticed for hearing.

Rule 5.06(h) of the Board's Rules of Procedure provides that differences between an original item and an amended item should be uniquely identified in the amendment by double underlining and double strike-through, or where such approach would not clearly show the difference or is not practical, by providing footnotes or comments on the item. Based on Rule 5.06(h), the preceding comprehensive description of the differences between the original item and the amended item is provided in lieu of double underlining and double strike-through.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Esteban L. Bovo, Jr., and Co-Sponsors Commissioner Jose "Pepe" Diaz, Chairwoman Audrey M. Edmonson, Vice Chairwoman Rebeca Sosa and Senator Javier D. Souto.


Abigail Price-Williams
County Attorney

APW/uw

Memorandum



Date: February 19, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez". The signature is written in a cursive style with a large, sweeping flourish at the end.

Subject: Fiscal Impact Statement for Ordinance Relating to Community Councils and Zoning Procedures in the Unincorporated Area; Conflict of Interest

The implementation of this ordinance will not have a fiscal impact to Miami-Dade County as the proposed changes would not require additional staffing resources or operational costs.

A handwritten signature in black ink, appearing to read "Jack Osterholt". The signature is written in a cursive style with a large, sweeping flourish at the end.

for Jack Osterholt
Deputy Mayor

FIS01920 192749

Memorandum



Date: February 19, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez". The signature is written in a cursive, flowing style.

Subject: Social Equity Statement for Ordinance Relating to Community Councils and Zoning Procedures

The proposed ordinance relating to Community Councils and Zoning procedures amends Article IV of Chapter 20 and Section 33-314 of the Code of Miami-Dade County (Code) providing for removal from office when a Community Council member votes on or participates in a matter on which the member has a conflict of interest.

On July 7, 2005, the BCC adopted Ordinance No. 05-139 prohibiting members from appearing before other boards on planning and zoning matters, however the ordinance was then amended to adopt only the zoning applications versus planning applications.

The proposed ordinance seeks to protect the fairness and integrity of the zoning process by assuring that council members that decide to vote, when in conflict, are removed from office.

A handwritten signature in black ink, appearing to read "Jack Osterholt". The signature is written in a cursive, flowing style.

Jack Osterholt
Deputy Mayor

192749



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: February 19, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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(A)
2-19-20

ORDINANCE NO. _____

ORDINANCE RELATING TO COMMUNITY COUNCILS AND ZONING PROCEDURES IN THE UNINCORPORATED AREA; AMENDING ARTICLE IV OF CHAPTER 20 AND SECTION 33-314 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING FOR REMOVAL FROM OFFICE WHEN A COMMUNITY COUNCIL MEMBER VOTES ON, OR PARTICIPATES IN, A MATTER ON WHICH THE MEMBER HAS A CONFLICT OF INTEREST; PROVIDING JURISDICTION FOR THE BOARD OF COUNTY COMMISSIONERS TO DIRECTLY HEAR ZONING APPLICATIONS WHERE THERE ARE INSUFFICIENT SEATED MEMBERS ON A COMMUNITY ZONING APPEALS BOARD TO CONSTITUTE A QUORUM UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR SUCH JURISDICTION WHERE A COMMUNITY ZONING APPEALS BOARD MEMBER HAS A CONFLICT OF INTEREST AND VOTES ON OR PARTICIPATES IN ANY MATTER; REVISING PURPOSE OF COMMUNITY COUNCILS TO INCLUDE EFFICIENT AND TIMELY CONSIDERATION OF APPLICATIONS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Miami-Dade County strives to be as efficient as possible, including in the disposition of land use applications; and

WHEREAS, it is in the public interest to foster the efficient and timely consideration and disposition of land use applications, while respecting the rights of property owners; and

WHEREAS, when a Community Council does not have adequate members to hear such applications, it undermines this important aim; and

WHEREAS, accordingly, the County Code should be amended to ensure that applications will be promptly heard directly by this Board when the Community Council otherwise having jurisdiction does not have enough seated members to constitute a quorum at the time the application is ready to be noticed and scheduled for public hearing; and

WHEREAS, it is also essential to maintain transparency and public confidence in the County's disposition of land use applications; and

WHEREAS, accordingly, the County Code should be amended to address unique conflicts of interest that may arise in the land use context and to provide additional regulations and penalties governing Community Council members who vote on, or participate in, a matter on which they have a conflict of interest,

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

Section 1. Article IV of chapter 20 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Chapter 20 – MUNICIPALITIES

* * *

ARTICLE IV. - COMMUNITY COUNCILS

Sec. 20-40. Community Councils; creation and purposes.

There are hereby established and created Community Councils to serve the unincorporated Miami-Dade County. Community Councils are established for the following purposes:

- (1) Providing the residents of unincorporated Miami-Dade County with increased governmental accountability, and responsiveness in decision-making processes for the delivery of municipal-type services;
- (2) Improving the effectiveness of services by making them more responsive to community desires and needs;

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.

- (3) Retaining efficiencies of services by maintaining economies of scale;
- (4) Maintaining the ability to match unincorporated area needs with available resources; and
- (5) Fostering a sense of community identity, inclusiveness and empowerment.
- >>(6) Providing a system that fosters efficient and timely consideration of land use and zoning applications while respecting the rights of property owners.<<

* * *

Sec. 20-42. Community Councils; configuration.

* * *

- >>(E) If a Community Council has no elected or appointed members in office at the time an application for zoning action is ready to be noticed for public hearing before that Community Council, such application shall be noticed and scheduled for public hearing directly before the Board of County Commissioners on the next available zoning agenda.<<

* * *

Sec. 20-43.2. Community Councils; removal.

- >>(A)<< Any elected or appointed member of a Community Council may be removed from office for cause by resolution of the Board of County Commissioners. The following events shall be deemed sufficient cause for removal: malfeasance, including failure to file financial disclosure required by law>>_2<<[[5]] misfeasance>>_1<<[[5]] neglect of duty>>_1<<[[5]] drunkenness>>_2<<[[5]] incompetence>>_2<<[[5]] permanent inability to perform official duties[[5]]>>; voting or participating in a matter where the Community Council member has a conflict of interest of any kind, as determined by formal or informal opinion of the Miami-Dade County Commission on Ethics and Public Trust or the Florida Commission on Ethics, whichever has jurisdiction,<< or indictment for crime.

>>(B)<< Any vacancy created by removal in a Community Council shall be filled for the remaining term by appointment in the manner prescribed for filling vacant positions.

>>(C)<< Nothing herein prohibits any appropriate authority from taking other lawful action, including the imposition of fines or criminal sanctions.

* * *

Sec. 20-45. Community Councils; conflict of interest.

>>(A)<< In addition to the provisions of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, each Community Council member is prohibited from voting on or participating in any way in any matter presented to the Community Council on which the member serves if the member has>>:

- (1)<< any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Community Council on which the member serves: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the Community Council member in a manner distinct from the manner in which it would affect the public generally>>; or
- (2) any interest in any declaration of restrictions or other legal instrument that applies to a property that is the subject of an application being heard by the Community Council, including an interest as a property owner, beneficiary, or person whose consent is required for release or modification of such instrument<<.

>>(B)<< Any Community Council member who has any of the above relationships >>or interests,<< or who would or might, directly or indirectly, profit or be enhanced by the action of the Community Council on which the member serves shall absent himself or herself from the Community Council meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.

>>(C) If a Community Council member votes on, or participates in, any hearing on a zoning application about which the member has a conflict of interest and the application is denied, the applicant shall be entitled to a de novo hearing on the zoning application before the Board of County Commissioners without having to refile the application.

(1) Whether such conflict of interest exists shall be determined solely by formal or informal opinion of the Miami-Dade County Commission on Ethics and Public Trust or the Florida Commission on Ethics, whichever has jurisdiction.

(2) Upon such determination, and at the applicant's election, the Community Council's action shall be deemed to be vacated, and the application shall be promptly noticed and scheduled for the next available zoning agenda, in accordance with section 33-314.<<

Section 2. Section 33-314 of the Code of Miami-Dade County is hereby amended to

read as follows:

Sec. 33-314. Direct applications and appeals to the County Commission.

(A) The County Commission shall have jurisdiction to directly hear the following applications:

* * *

(5) Applications which would normally be heard by a Community Zoning Appeals Board, but which have been postponed due to lack of quorum of the applicable Community Zoning Appeals Board on at least two consecutive occasions. Such jurisdiction by the County Commission shall be at the option of the applicant, and under these circumstances the cost of providing notice of an application before the County Commission shall be borne by the County.

>>(6) Applications that would normally be heard by a Community Zoning Appeals Board, when

that particular Community Zoning Appeals Board has no elected or appointed members in office at the time the Director determines that the application is ready to be noticed for public hearing, pursuant to section 20-42(E).

- (7) Applications that were heard by a Community Zoning Appeals Board, when a member of that Community Zoning Appeals Board voted on, or participated in, any matter about which the member has a conflict of interest, in accordance with section 20-45. Such jurisdiction by the County Commission shall be at the option of the applicant, and under these circumstances the cost of providing all required notices for the hearing before the County Commission shall be borne by the County.
- (8)<< [[(6)]] Any application for district boundary change to, or modification of: an Employment Center Planned Area Development District (ECPAD), subject to the requirements of article XXXIIID.1; or a Retail Entertainment District Planned Area Development District (REDPAD), subject to the requirements of article XXXIIID.2.
- >>(9)<< [[(7)]] Any application for a zoning action that is accompanied by a development agreement, as provided in section 33-310.3.
- >>(10)<< [[(8)]] Any application for a development agreement, or modification thereto or revocation thereof, as provided in section 33-310.3.
- >>(11)<< [[(9)]] Any application relating to a Corridor District (CD), subject to the requirements of section 33-470.

>>(12)<< [[(10)]] Applications requesting variances from regulations pertaining to kiosk signs, as set forth in section 33-96, 33-107, or 33-284.87.

* * *

Section 3. 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 4. 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 5. 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

Prime Sponsor: Commissioner Esteban L. Bovo, Jr.
Co-Sponsors: Commissioner Jose "Pepe" Diaz
Chairwoman Audrey M. Edmonson
Vice Chairwoman Rebeca Sosa
Senator Javier D. Souto