

MEMORANDUM

Agenda Item No. 7(E)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: (Second Reading 1-20-21)

January 20, 2021

FROM: Geri Bonzon-Keenan
Successor County Attorney

SUBJECT: Ordinance relating to zoning; amending section 33-310 of the Code; reducing notice and hearing requirements before zoning action; requiring additional information to be provided in notices; deleting requirement to provide a layman's notice; providing that posted notice is a courtesy rather than a required notice; reducing times for publication, mailing, and posting of notices; reducing radius distances for mailed notice; providing criteria for Director determinations relating to notices; revising requirements for Department staff to show compliance with notice requirements; deleting obsolete provision regarding the scope of judicial review based on notices; making clarifying and technical changes

A substitute was presented and forwarded to the BCC with a favorable recommendation at the 12-8-20 Infrastructure and Capital Improvements Committee.

This substitute differs from the original version in that it:

- Adds a new preamble clause addressing the statutory "shot clock" that sets time limits for local governments to take final action on quasi-judicial applications.
- Revises subsection 33-310(a) to: require the courtesy notice of filing to include information about where information about the application can be obtained electronically; require the Department, by April 30, 2021, to provide a method for the public to subscribe to receive electronic updates as to the status of each application and to include the instructions for doing so in the courtesy notice of filing; and renumber the balance of the subsection accordingly.
- Revises subsection 33-310(d) to: retain all existing radius requirements, except that rezonings involving less than 10 residential units would only require a 500-foot radius rather than one-half mile; make technical and organizational changes; and make conforming changes to the preamble.
- Revises subsection 33-310(e) to require that the courtesy notices of hearing be provided no later than 14 days prior to the public hearing.

Rule 5.06(i) of the Board's Rules of Procedure provides that differences between an original item and a substitute item should be uniquely identified in the substitute by double underlining and double strike-through, or where such approach would not clearly show the difference or are not practical, by providing footnotes or comments on the item. Based on Rule 5.06(i), the preceding comprehensive description of the differences between the original item and the substitute 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 Rebeca Sosa and Co-Sponsor Chairman Jose "Pepe" Diaz.



Geri Bonzon-Keenan
Successor County Attorney

Memorandum



Date: October 6, 2020

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

From: Carlos A. Gimenez
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez". The signature is fluid and cursive, with a prominent loop at the end.

Subject: Fiscal Impact Statement for Ordinance Relating to Zoning; Layman's Notice

The implementation of this ordinance will not have a fiscal impact to Miami-Dade County as the proposed changes will not require additional staffing resources nor generate additional operational expenses.

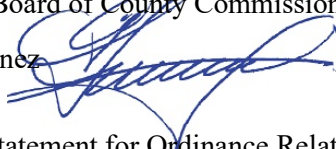
A handwritten signature in blue ink, appearing to read "Jack Osterholt". The signature is fluid and cursive, with a prominent loop at the end.

Jack Osterholt
Deputy Mayor

Fis00621 201909

Date: October 6, 2020

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

From: Carlos A. Gimenez
Mayor 

Subject: Social Equity Statement for Ordinance Relating to Zoning- Amending Section 33-310
Pertaining to Notice and Hearing Requirements Before Zoning Action

The proposed ordinance relating to zoning amends Section 33-310 of the Code of Miami-Dade County (Code) to streamline and reduce the expense of the zoning hearing process by eliminating redundant notice procedures. Additionally, the proposed ordinance provides for technical amendments.

Approval of the proposed ordinance would benefit residents and businesses by streamlining and reducing the expense of the zoning hearing process by eliminating redundant notice procedures; potentially shortening the amount of time that applicants must wait to get a hearing, given the current required deadline timeframes for publishing, mailing, or posting notices; and on certain instances reducing the radius distances for mailed notices.



Jack Osterholt
Deputy Mayor


201909



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: January 20, 2021

FROM: 
Gen Bonzon-Keenan
Successor County Attorney

SUBJECT: Agenda Item No. 7(E)

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(E)
1-20-21

ORDINANCE NO. _____

ORDINANCE RELATING TO ZONING; AMENDING SECTION 33-310 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REDUCING NOTICE AND HEARING REQUIREMENTS BEFORE ZONING ACTION; REQUIRING ADDITIONAL INFORMATION TO BE PROVIDED IN NOTICES; DELETING REQUIREMENT TO PROVIDE A LAYMAN'S NOTICE; PROVIDING THAT POSTED NOTICE IS A COURTESY RATHER THAN A REQUIRED NOTICE; REDUCING TIMES FOR PUBLICATION, MAILING, AND POSTING OF NOTICES; REDUCING RADIUS DISTANCES FOR MAILED NOTICE; PROVIDING CRITERIA FOR DIRECTOR DETERMINATIONS RELATING TO NOTICES; REVISING REQUIREMENTS FOR DEPARTMENT STAFF TO SHOW COMPLIANCE WITH NOTICE REQUIREMENTS; DELETING OBSOLETE PROVISION REGARDING THE SCOPE OF JUDICIAL REVIEW BASED ON NOTICES; MAKING CLARIFYING AND TECHNICAL CHANGES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the County's zoning hearing process can become expensive for homeowners and other property owners, because of the numerous types of notice required and the lengthy amount of time that notices must currently be provided prior to hearing; and

WHEREAS, the County currently requires substantially more types of notice, and longer notice times prior to hearing, than most municipalities require; and

WHEREAS, in light of the widespread economic harm caused by the COVID-19 pandemic, residents and businesses would benefit from streamlining and reducing the expense of the zoning hearing process by eliminating redundant notice procedures; revising the amount of time that applicants must wait to get to hearing because of the current required time prior to hearing for notices to be published, mailed, or posted; and reducing the radius distances for mailed notices for residential developments with less than 10 dwelling units; and

WHEREAS, streamlining the hearing process is also important to ensure that the County complies with section 125.022 of the Florida Statutes, which imposes a “shot clock” within which local governments must take action on a quasi-judicial application, while also ensuring that the applicable zoning board has adequate time to consider an application and, when appropriate, to defer it to obtain additional information, give participants additional time to address issues that may arise during hearings, or for other substantive or procedural reason; and

WHEREAS, this Board also wishes to clarify what information must be provided in each of the required notices, provide criteria for the Director to make determinations to expand required notices in particular cases, and provide Department staff with additional options to demonstrate compliance with notice requirements; and

WHEREAS, this Board also would like to make technical changes reorganizing section 33-310 and deleting an obsolete provision purporting to limit the scope of judicial review,

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

Section 1. Section 33-310 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 33-310. - Notice and hearing prerequisite to action by the Community Zoning Appeals Boards or Board of County Commissioners>>; Director’s recommendation<<.

- (a) >>Courtesy notice of filing<< When an application as prescribed by >>sections<< [[Sections]] 33-304 and 33-309 has been filed hereunder>>,<< the Director shall, no later than >>30<< [[thirty (30)]] days after filing, at the cost of the applicant, provide mailed courtesy notice of such filing

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.

~~[[as provided in Section 33-310(d); provided, however, that the]]~~ >>to property owners of record within the radius specified in subsection (d).

(1) ~~The~~<< failure to mail or receive this courtesy notice shall not affect any action or proceeding taken hereunder.

>>(2)<< The courtesy notice shall include the applicant's name, the processing number, the property size, the location (and street address, if available) of the property, a general description of the action requested in the application, >>a statement explaining where information about the application can be obtained electronically,<< and a statement that the application was filed and is being reviewed by the Department and that a future notice will be provided prior to the public hearing thereon.

>>(3) No later than April 30, 2021, the Department shall provide a method for the public to subscribe to receive electronic updates as to the status of each application and shall include the subscription instructions in the courtesy notice of filing.

(4)<< The notice shall additionally state and make clear that any interested person is entitled to discuss the application with the County employees processing and reviewing the application to the same extent as the applicant is so entitled and that the application may change during the hearing process. ~~[[The person or persons mailing the courtesy notice provided, herein shall attach an affidavit or affidavits thereof to the application's file setting forth the compliance with this subsection.]]~~

>>(5)<< The courtesy notice provided in this paragraph shall not be required for appeals filed in ~~[[conjunction with Section]]~~ >>accordance with sections<< 33-313 or 33-314 ~~[[of the Code]].~~

(b) >>Director's recommendation.<< Applications filed hereunder shall be promptly transmitted to the appropriate board, together with the written recommendation of the Director.

>>(1)<< Where applicable >>₂<< the Developmental Impact Committee shall issue its recommendation, which shall include a statement of the Director as to the application's relationship to the Comprehensive Development Master Plan.

>>(2)<< All such recommendations shall state all facts relevant to the application, including an accurate depiction of known living, working, traffic >>₂<< and transportation conditions in the vicinity of the property that is the subject of the application, and also a description of all projected effects of the proposed zoning action on those conditions. Before reaching a conclusion, each recommendation shall list all known factors both in favor of and against each application.

>>(3)<< All such recommendations shall be signed and considered final no earlier than >>30<< ~~[[thirty (30)]]~~ days prior to the public hearing to give the public an opportunity to provide information to the staff prior to the recommendations becoming final. This shall not preclude earlier, preliminary recommendations.

>>(4)<< All documents of the County departments evaluating the application, which documents pertain to the application, are open for public inspection to applicants or other interested persons.

(c) >>Required notices of hearing.<< No action on any application shall be taken by the Community Zoning Appeals Boards or the Board of County Commissioners ~~[[on any appeal]]~~, until a public hearing has been held upon notice of the time, place >>₂<< and purpose of such hearing, the cost of said notice to be borne by the applicant. >>Except as expressly provided herein, the following notices<< ~~[[Notice]]~~ shall be provided ~~[[as follows]]~~ >>no later than 14 days prior to the public hearing<<:

(1) >>Newspaper advertisement. Notice<< ~~[[Said notice]]~~ shall be published ~~[[twice]]~~ in a newspaper of general circulation in Miami-Dade County ~~[[, as follows: (A) a full legal notice, to be published no later than twenty (20) days and no earlier than thirty (30) days prior to the public hearing, to]]~~ >>, and said newspaper advertisement shall<< contain the date, time >>₂<< and place of the hearing, >>the applicant's name, the processing number, the property size,<< the property's location (and street address, if available), and nature of the application, including all specific variances and other requests~~[[; and (B) a layman's notice, to be published in the newspaper of largest circulation in Miami-Dade~~

~~County, no later than twenty five (25) days and no earlier than thirty five (35) days prior to the public hearing, to contain the same information as the above described full legal notice except that the property's legal description may be omitted and the nature of the application and requests contained therein may be summarized in a more concise, abbreviated fashion. The layman's notice may be published in a section or a supplement of the newspaper distributed only in the locality where the property subject to the application lies. In the event that any time periods specified in this subsection shall conflict with any applicable provision of the Florida Statutes, the provision of the Florida Statutes shall govern]].~~

(2) ~~>>Mailed notice<< Mailed notice [[containing general information, including, but not limited to, the date, time and place of the hearing, the property's location (and street address, if available), and nature of the application]] shall be sent >>to property owners of record within the radius specified in subsection (d), and said mailed notice shall contain the same information as the newspaper advertisement, except that variances and other requests may be summarized in a concise, abbreviated fashion<< [[as provided in Section 33-310(d) no sooner than thirty (30) days and no later than twenty (20) days prior to the hearing]].~~

>>(3) ~~Requirements for multiple-frontage properties<< For properties with more than one frontage, >>each required notice<< [[the advertisement]] shall include both the mailing address and identification of the street or intersection of any additional frontage.~~

[[~~(3) The property shall be posted no later than twenty (20) days prior to the hearing in a manner conspicuous to the public, by a sign or signs containing information including, but not limited to, the applied for zoning action, application number, and the time and place of the public hearing. The property owner shall be responsible for ensuring that the sign is maintained on the site until completion of the public hearing and for removal of the sign within two (2) weeks following completion of the public hearing.~~]]

>>(4) ~~Notices for application initiated by the Director. Notwithstanding any other provision in this section to the contrary, where a zoning application is~~

initiated by the Director as provided in section 33-309, the time for publishing, mailing, and posting the notices required by this subsection shall be no later than 30 days prior to the hearing.<<

- (d) >>Mailed notice radius.<< Mailed notice shall be accomplished by placing in the United States mail >>the notice required by subsection (c)(2)<< ~~[[a written notice]]~~ to all property owners of record, as reflected on the Miami-Dade County Property Appraiser's tax roll as updated, within the following radius of the property described in the application ~~[[, or such greater distance as the Director may prescribe]]~~:
- (1) >>One mile for: approvals<< ~~[[Approvals]]~~ of or modifications to Developments of Regional Impact ("DRI") ~~[[, including substantial deviation determinations or modifications thereof, one (1) mile]]~~.
 - (2) >>One-half mile for:<< ~~[[For]]~~ applications, other than >>DRIs<< ~~[[for Developments of Regional Impact]]~~, required to be reviewed by the Development Impact Committee; >>or<< for district boundary changes, use variances, special exceptions, or unusual uses>>, except for those that<< ~~[[unless the foregoing]]~~ are specifically itemized in subsection ~~[[(d)(3) or]]~~ (d)(4) ~~[[; for any modification of a covenant accepted or condition imposed in connection with a prior district boundary change or use variance; but this subsection shall not apply to residential uses of less than five (5) units, one-half (1/2) mile]]~~.
 - (3) For modification or elimination of conditions or restrictive covenants, or parts thereof, after public hearing, ~~[[mailed notice shall be accomplished by placing in the United States mail a written notice to all property owners of record, as reflected on the Miami-Dade County Property Appraiser's tax roll as updated, within]]~~ the same radius of the property as required to be noticed for zoning action imposing or accepting the condition or restrictive covenant sought to be modified or eliminated ~~[[, or such greater distance as the Director may prescribe]]~~.
 - (4) >>500 feet for:<< ~~[[For]]~~ district boundary change involving >>residential uses of less than 10 units, or<< a change of prefix within BU (Business) or IU

(Industrial) >>, or<< ~~[[and]]~~ use variance involving such a use prefix change; ~~[[for]]~~ unusual use for outdoor patio dining, outdoor display, adult congregate living facility, day nursery, convalescent home, day camp, home for the aged, institution for the handicapped, kindergarten, nursing home, retirement village, entrance feature, mobile home as watchman's quarters, bathing beach; ~~[[for]]~~ special exception for resubdividing/refacing of platted lots, servant's quarters in RU-1 district, convalescent home, eleemosynary and philanthropic institution in RU-4 districts, dude ranch in AU district, >>or<< temporary farm labor housing in AU district; >>or<< ~~[[and-for]]~~ all other applications for zoning action not specified in >>paragraphs<< ~~[[Subsections]]~~ (d)(1), (2), (3) >>, or<< ~~[[and]]~~ (4)~~[[, five hundred (500) feet]]~~.

>>(5) The Director may prescribe a greater radius distance for mailed notice than is prescribed by this subsection if the Director determines that the projected impact of the application warrants such greater notice.

(e) Courtesy notices of hearing. The following courtesy notices shall be provided no later than 14 days prior to the public hearing:

(1) Courtesy posting of subject property. A sign or signs shall be posted on the property that is the subject of the application in a manner conspicuous to the public, which posted signs shall contain the same information as the newspaper advertisement.

(i) The failure to provide this courtesy posting shall not affect any action or proceeding taken hereunder.

(ii) The property owner shall be responsible for ensuring that each sign is maintained on the site until completion of the public hearing and for removal of each sign within two weeks following completion of the public hearing.

(iii) To determine the number of posted signs required under this subsection, the Director shall consider the size and configuration of the property.

(2) Courtesy notice to homeowners' association.<< A

courtesy notice ~~>>of hearing<<~~ shall also be mailed to the president ~~>>or other presiding officer<<~~ of any homeowners' association having any member who resides within the area of mailed notice described ~~>>in subsection (d),<<~~ ~~[[above]]~~ when such residency is shown upon a current updated notice filed with the Director ~~[[; provided, however, that the]]~~ ~~>>~~.

(i) ~~The<<~~ failure to mail or receive this courtesy notice shall not affect any action or proceeding taken hereunder.

~~>>(ii)<<~~ The Director shall establish and maintain a process by which homeowners' associations may provide notice of the areas in which their members reside.

~~>>(iii)<<~~ Homeowners' associations shall keep these notices current by updating them in accordance with procedures to be prescribed by the Director.

~~[[e]]~~ ~~>>(f)~~ Evidence of compliance with notice requirements.~~<<~~ The person or persons responsible for providing the notices ~~>>addressed in subsections (a), (c), and (e)<<~~ ~~[[provided in Subsection (e) above]]~~ shall attach to the application file a ~~>>declaration or other evidence<<~~ ~~[[sworn affidavit or affidavits]]~~ setting forth that they have complied with said subsection.

~~>>(g)~~ Consequence for failure to provide required notice.~~<<~~ Failure to provide the ~~>>notices required by subsection (c)<<~~ ~~[[newspaper notices as provided, or failure to mail the required written notices as provided, or failure to post the property as provided]]~~ renders voidable any hearing held on the application. The failure to ~~>>provide<<~~ ~~[[send out]]~~ courtesy notices shall not render a hearing voidable.

~~[[f]]~~ ~~>>(h)~~ Director's discretion to expand information in notices.~~<<~~ The Director shall have the discretion to expand any of the notice provisions contained in this section to provide more information ~~>>if the Director determines that the complexity, projected impact, or other unusual circumstance of the application warrants requiring such additional information in one or more of the required notices<<~~ ~~[[if deemed appropriate]].~~

~~[[g) If the notices described in Subsection (e)(1) above are published, and the affidavits required by Subsection (e) are of record, no judicial proceeding to void a hearing shall be commenced after the time for appeal from a resolution of an administrative or quasijudicial tribunal as provided in the Florida Rules of Appellate Procedures.]]~~

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:

Dennis A. Kerbel
Christopher J. Wahl

Prime Sponsor: Commissioner Rebeca Sosa
Co-Sponsor: Chairman Jose "Pepe" Diaz