

MEMORANDUM

Agenda Item No. 11(A)(3)

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

DATE: February 17, 2021

FROM: Geri Bonzon-Keenan
Successor County Attorney

SUBJECT: Resolution opposing Senate Bill
266 or similar legislation that
would preempt local
governments from regulating
home-based businesses

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Joe A. Martinez.



Geri Bonzon-Keenan
Successor County Attorney

GBK/uw




MEMORANDUM

(Revised)

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

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Successor County Attorney

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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 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. 11(A)(3)
2-17-21

RESOLUTION NO. _____

RESOLUTION OPPOSING SENATE BILL 266 OR SIMILAR
LEGISLATION THAT WOULD PREEMPT LOCAL
GOVERNMENTS FROM REGULATING HOME-BASED
BUSINESSES

WHEREAS, to protect the residential character of neighborhoods and preserve residents' quality of life, the County's Comprehensive Development Master Plan ("CDMP") contains specific policies addressing home occupations to ensure that they are "incidental and secondary to the primary use as a residence"; and

WHEREAS, the Code of Miami-Dade County ("Code") implements these policies through zoning regulations governing home-based businesses; and

WHEREAS, specifically, section 33-25.1 of the Code provides that "[a] home occupation shall be permitted as an ancillary use to all lawful residential uses," subject to various zoning criteria; and

WHEREAS, among others, the zoning criteria include: a limitation on the size of the home's living area that may be used for the home occupation; a requirement that only occupants of the home may engage in the occupation, subject only to Americans with Disabilities Act requirements for personal assistants; a prohibition on outdoor uses and displays related to the home occupation; a prohibition on signage that advertises the occupation; a restriction on the "use of machinery, tools, or equipment that creates excessive noise or odors inconsistent with the residential character of the neighborhood"; and quantitative limitations on noise and traffic; and

WHEREAS, Senate Bill (SB) 266 has been filed for consideration during the Florida Legislature's 2021 session by Senator Keith Perry (R – Gainesville); and

WHEREAS, SB 266 would preempt to the State of Florida the licensure and regulation of home-based businesses and prohibit local governments from enacting or enforcing any ordinance, regulation, or policy or taking any action to license or otherwise regulate a home-based business; and

WHEREAS, although SB 266 imposes some limitations on home-based businesses, those limitations are more open-ended compared to the County's regulations, which may result in home occupations disturbing the residential character of their surrounding areas and becoming more challenging to enforce; and

WHEREAS, for example, in contrast to the County's zoning regulations, SB 266 would: allow the entire home structure to be used for commercial purposes; allow non-occupant employees; allow outdoor displays, uses, and signage related to the home occupation; and, in contrast to the County's quantitative noise and traffic limitations, provide only a qualitative limitation that noise and traffic not "substantial[ly] increase"; and

WHEREAS, although SB 266 provides that parking related to the business activities of a home-based business must comply with local zoning requirements, SB 266 prohibits the County from enforcing those requirements; and

WHEREAS, similarly, SB 266 would prohibit the County from enforcing requirements related to noise and traffic or otherwise taking any action to protect residential neighborhoods from intrusion of incompatible commercial uses brought by the home occupation allowance; and

WHEREAS, local government is the level of government closest to the people, and local governments are therefore best positioned to regulate zoning in their communities; and

WHEREAS, stripping local governments of their home rule authority to regulate home-based businesses and preempting those powers to the state may result in a proliferation of home-

based businesses that generate excessive noise and traffic and do not conform to residential neighborhood aesthetics, thereby degrading the character of residential neighborhoods and reducing residents' quality of life; and

WHEREAS, to protect the health, safety, and welfare of Miami-Dade County residents and to preserve the County's home rule powers, this Board wishes to oppose SB 266 or similar legislation that would preempt local governments from regulating home-based businesses,

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

Section 1. Opposes SB 266 or similar legislation that would preempt local governments from regulating home-based businesses.

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

Section 3. Directs the County's state lobbyists to oppose the legislation described in section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2021 State Legislative Package to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Joe A. Martinez. 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:

Jose "Pepe" Diaz, Chairman

Oliver G. Gilbert, III, Vice-Chairman

Sen. René García

Sally A. Heyman

Eileen Higgins

Kionne L. McGhee

Raquel A. Regalado

Sen. Javier D. Souto

Keon Hardemon

Danielle Cohen Higgins

Joe A. Martinez

Jean Monestime

Rebeca Sosa

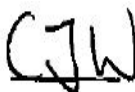
The Chairperson thereupon declared this resolution duly passed and adopted this 17th day of February, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override 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.



Christopher J. Wahl