

# MEMORANDUM

Agenda Item No. 7(H)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

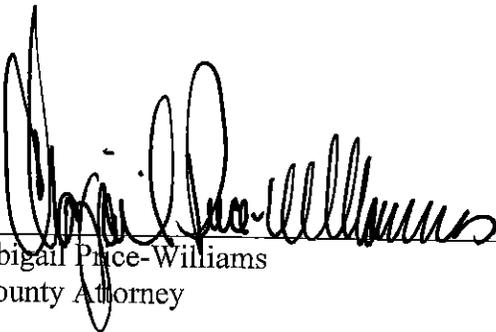
**DATE:** (Second Reading 10-5-16)  
June 21, 2016

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

**SUBJECT:** Ordinance relating to Biscayne  
Bay Management and  
Development Review; expanding  
municipalities that may submit  
recommendations for  
membership on the Shoreline  
Development Review  
Committee; establishing the  
Biscayne Bay Public Access  
Trust Fund; removing authority  
for the Shoreline Development  
Review Committee to file  
judicial proceedings; amending  
sections 33D-33, 33D-38, and  
33D-39 of the Code

Ordinance No. 16-113

The accompanying ordinance was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman and Co-Sponsor Commissioner Audrey M. Edmonson.



Abigail Price-Williams  
County Attorney

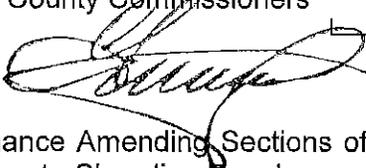
APW/cp

# Memorandum



**Date:** October 5, 2016

**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor 

**Subject:** Proposed Zoning Ordinance Amending Sections of the County Code Relating to Biscayne Bay Management - Shoreline Development Review Regulations

---

## **Recommendation**

It is recommended that the Board of County Commissioners (Board) enact the attached ordinance relating to Biscayne Bay Management – Shoreline Development Review regulations, to specifically amend Sections 33D-33, 33D-38 and 33D-39 of the County Code of Ordinances (Code).

The main purpose of this ordinance is to establish the Biscayne Bay Public Access Trust Fund to further implement the scope of the Shoreline Development Review regulations.

## **Scope**

This ordinance will have an impact on all areas within Miami-Dade County, both incorporated and unincorporated, that are located within the Shoreline Development Review Boundary as described in Sec. 33D-32 of the Code.

The areas impacted are generally comprised of properties along Biscayne Bay and the northern embayments of Dumfoundling Bay, Maule Lake and Little Maule Lake and the Intracostal Waterway from NE 163 Street to the Broward County line.

## **Fiscal Impact/Funding Source**

The proposed ordinance would result in no fiscal impact to Miami-Dade County. Implementation of this ordinance does not result in additional staffing needs or operational costs for the County's administration.

## **Social Equity Impact**

The proposed ordinance is anticipated to benefit the general public by creating the Biscayne Bay Public Access Trust Fund to fund public infrastructure to better access Biscayne Bay as currently intended in the Code. A specific social burden cannot be identified at this time.

## **Track Record/Monitor**

The Department of Regulatory and Economic Resources' Development Services Division, headed by Assistant Director Nathan Kogon, will administer and monitor the implementation of this ordinance.

## **Background**

In 1985, the Board enacted Ordinance No. 85-14, which created Article III of Chapter 33D - Biscayne Bay Management to establish the Biscayne Bay Shoreline Development Review process. More specifically, Article III specifically seeks to "enhance physical and visual access to Biscayne Bay and the northern embayments" and established the Shoreline Development Review

Committee and its responsibilities, and the Shoreline Development Action Review Criteria. The Shoreline Development Action Review Criteria includes required shoreline setbacks, visual corridors and side/side streets setbacks for all development within the boundaries except for single-family homes. If any development is unable to meet said criteria, Article III describes mitigation options that could be used upon approval of the Shoreline Development Review Committee. One mitigation option is to build a public access promenade along Biscayne Bay or the eastern portion of the Miami River, depending on the location of the property. The other option, in the event that said promenade is not feasible, is the contribution of monetary funds to the Biscayne Bay Environmental Enhancement Trust Fund.

Article III further indicates that when mitigating the inability to meet said criteria with monies, such monies are to be used for the purpose of providing public access to the Biscayne shoreline, preferably within one-half mile of the proposed development site and within the same shoreline basin area. However, the existing Code defining the Biscayne Bay Environmental Enhancement Trust Fund does not provide a mechanism to implement the provision regarding funding Biscayne Bay access improvements. Therefore, establishment of the Biscayne Bay Public Access Trust Fund will enable the use of the mitigating funds in accordance with the purpose of the Article, as reflected by the Shoreline Development Review Committee's resolutions, in both unincorporated and incorporated areas of Miami-Dade County.

This ordinance also amends the Code to reflect additional municipalities with jurisdiction over portions of the Biscayne Bay shoreline that have incorporated since the enactment of Ordinance No. 85-14 as well as update the names of County departments. This item also removes the Shoreline Development Review Committee's authority to independently file judicial proceedings against municipalities or the County given that their role is advisory in nature.



Jack Osterholt  
Deputy Mayor



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** October 5, 2016

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

**SUBJECT:** Agenda Item No. 7(H)

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(H)  
10-5-16

ORDINANCE NO. 16-113

ORDINANCE RELATING TO BISCAYNE BAY MANAGEMENT AND DEVELOPMENT REVIEW; EXPANDING MUNICIPALITIES THAT MAY SUBMIT RECOMMENDATIONS FOR MEMBERSHIP ON THE SHORELINE DEVELOPMENT REVIEW COMMITTEE; ESTABLISHING THE BISCAYNE BAY PUBLIC ACCESS TRUST FUND; REMOVING AUTHORITY FOR THE SHORELINE DEVELOPMENT REVIEW COMMITTEE TO FILE JUDICIAL PROCEEDINGS; AMENDING SECTIONS 33D-33, 33D-38, AND 33D-39 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

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

**Sec. 33D-33. Shoreline Development Review Committee established; organization.**

- (a) There is hereby established a Biscayne Bay Shoreline Development Review Committee composed of thirteen (13) members, nine (9) of whom shall be recognized professionals in one or more of the following fields: architecture, landscape architecture and urban design, and four (4) of whom shall be laypersons with a demonstrated interest in the preservation of the shoreline environment and its natural, aesthetic and recreational values, and in the design, construction and protection of facilities and amenities in the vicinity of the shoreline. The Board of County Commissioners shall invite the

<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.

~~[[cities]]~~ >> municipalities << of >> Aventura, << Bay Harbor Islands, Miami, Miami Beach, Coral Gables, >> Golden Beach, Indian Creek Village, << Miami Shores, Bal Harbour, North Miami, North Miami Beach, North Bay Village, Key Biscayne, >> Palmetto Bay, Sunny Isles Beach, << ~~[[and]]~~ Surfside>>, and any other municipalities with zoning jurisdiction over a part of the shoreline << to submit one (1) recommended candidate for membership on this Committee. The Biscayne Bay Shoreline Development Review Committee may be expanded to fifteen (15) members solely for purposes of considering development actions and plans which involve real property lying within the boundaries of any individual shoreline municipality. In such instances two (2) additional members who are recognized professionals in one or more of the following fields—architecture, landscape architecture and urban design—may be appointed by the local governing body of the municipality and may participate as full members. The method of appointment and term of office of said additional members shall be determined at the discretion of the local governing body of the municipality. Said appointments may be made for a specified term or may be limited to a single development action or plan.

\* \* \*

- (c) The County >> Mayor or Mayor's designee << ~~[[Manager]]~~ shall designate a person to serve as the County Staff Coordinator for the Committee. Administrative and secretarial staff shall be provided by the County. For all proposed development actions and plans located within unincorporated Miami-Dade County, the following Miami-Dade County departments >>, or their successors, << shall provide the staff reviews: >> Regulatory and Economic Resources (Divisions of << Environmental Resources Management >> and Development Services); << ~~[[;]]~~ Park>> s, << ~~[[and]]~~ Recreation, >> and Open Spaces; << ~~[[Planning and Zoning]]~~ and Public Works >> and Waste Management <<. These departments shall also provide similar professional staff support for any municipality which has not submitted an agreement to the County in accordance with the provisions of Section 33D-36 herein below.

**Section 2.** Section 33D-38 of the Code of Miami-Dade County, Florida, is hereby

amended to read as follows:

**Sec. 33D-38. Shoreline development action review criteria.**

The shoreline development actions and plans within the shoreline development review boundary shall be conducted in accordance with the provisions of this article. In addition to the criteria set forth below, guidelines and minimum standards in the shoreline development review manual, approved by implementing resolutions adopted pursuant to this article, shall also be used by this committee to provide consistency in this review process. These criteria and the guidelines and minimum standards contained in the shoreline development review manual shall apply Countywide within the shoreline development review boundary.

\* \* \*

(4) *Exceptions.* Whenever adherence to the criteria contained in subsections (1) through (3) hereinabove and/or the guidelines and minimum standards in the shoreline review manual are in conflict with existing County or municipal codes, and notwithstanding the provisions of these codes, the Shoreline Development Review Committee shall recommend one (1) or more of the following actions:

- a. That a waiver or variance of municipal or County code(s) be sought to provide the required shoreline and side setback and visual corridor except where it would be impossible or highly impractical to provide the required shoreline or side setback or visual corridor as a result of the size or configuration of the subject site.
- b. That additional public amenities such as a shoreline walkway, parks, docks, fishing piers, boardwalks, or viewing platforms be provided on site or at an adjacent public right-of-way and that appropriate provisions for maintenance of said facilities in perpetuity be made.
- c. That a connection be provided and maintained between existing public shoreline access facilities across or around the proposed development or along an existing right-of-way.

If none of the above actions is deemed appropriate by the Shoreline Review Committee, then the Committee shall recommend that improvement of shoreline access for the general public be provided at a specified nearby public site

or right-of-way either through contributions of land and/or material or through contribution to ~~[[the Biscayne Bay environmental enhancement trust fund]]~~ >> the Biscayne Bay Public Access Trust Fund<< for the purpose of providing public access to the shoreline within the shoreline development review boundary. Said access site(s) should preferentially be within one-half mile of the proposed development site and within the same shoreline basin area.

**Section 3.** Section 33D-39 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 33D-39. - >>Biscayne Bay Public Access Trust Fund.**

There is hereby created a Biscayne Bay Public Access Trust Fund, the funds of which shall be disbursed only for the purpose of furthering public access to Biscayne Bay to provide the maximum amount of public visual and physical access to the water through the provisions of places open to the public at large, such as parks, walkways, boardwalks, plazas, and observation areas along the shoreline. The County Mayor or Mayor's designee is hereby authorized to establish the Biscayne Bay Public Access Trust Fund for the sole purpose of receiving private and public sector funding to further public access to Biscayne Bay.

The Biscayne Bay Public Access Trust Fund shall be kept and maintained in trust by the County Mayor or Mayor's designee solely for the purposes set forth in this section and in a separate and segregated fund of the County which shall not be commingled with other County funds. Funds should only be disbursed for an authorized purpose pursuant to this section and may be disbursed to municipalities with zoning jurisdiction over part of the shoreline. The Trust Fund shall be invested only in accordance with the laws pertaining to the investment of County funds. Any deposits to the Trust Fund, including interest earned on such deposits, shall be used in accordance with the terms and conditions, if any, of each contribution, grant, or donation, including any resolutions of the Shoreline Development Review Committee accompanying such contribution, grant, or donation, or, if there are no such specific terms or limitations, those terms and conditions enumerated in this section.<<

**[[Judicial review.**

~~Whenever any municipal or County authority renders or issues any ordinance, resolution, permit or order in regard to any development action which meets the thresholds set forth in Section 33D-34 hereinabove or plan within the shoreline development review boundary, a copy of such ordinance, resolution, permit or order shall be submitted forthwith to the County staff coordinator of the Shoreline Development Review Committee. It shall be the duty of the County staff coordinator to place the matter before the Committee as soon as is reasonably practical, and in any event not less than twenty (20) days from the rendition of the ordinance, resolution, permit or order. At its meeting, the Committee shall consider whether, and the extent to which, the municipal or County authority has departed from the requirements of this article. Where it appears that the action of the municipal or County authority is substantially contrary to the Committee's recommendations and report, the Committee may authorize the filing of appropriate judicial proceedings in the Circuit Court for the Eleventh Judicial Circuit in and for Miami Dade County, Florida, to contest the action of the County or municipal authority.]]~~

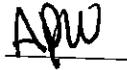
**Section 4.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 5.** 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 6.** 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: October 5, 2016

Approved by County Attorney as  
to form and legal sufficiency:



Prepared by:



Lauren E. Morse