

## MEMORANDUM

Agenda Item No. 7(F)

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**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:**

(Second Reading 8-2-11)  
June 7, 2011

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Ordinance relating to Zoning;  
clarifying voting procedures  
governing zoning hearings  
before the Boards; amending  
Sections 2-1, 33-308 and  
33-314 of the Code

Ordinance No. 11-62

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



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R. A. Cuevas, Jr.  
County Attorney

RAC/up

# Memorandum



**Date:** August 2, 2011

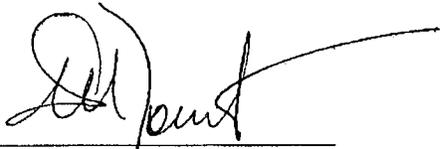
**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**From:** Alina T. Hudak  
County Manager 

**Subject:** Ordinance relating to zoning; clarifying voting procedures governing zoning hearings before Board of County Commissioners and community zoning appeals boards

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The proposed ordinance clarifying voting procedures governing zoning hearings before the Board of County Commissioners (BCC) and community zoning appeals boards will not have a fiscal impact to the County.

A handwritten signature in black ink, appearing to read "Susanne M. Torriente".

Susanne M. Torriente  
Sustainability Director

Fis4411



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** August 2, 2011

**FROM:** R. A. Cuevas, Jr.  
County Attorney

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

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**
- \_\_\_\_\_ **Ordinance creating a new board requires detailed County Manager’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(F)  
8-2-11

ORDINANCE NO. 11-62

ORDINANCE RELATING TO ZONING; CLARIFYING VOTING PROCEDURES GOVERNING ZONING HEARINGS BEFORE BOARD OF COUNTY COMMISSIONERS AND COMMUNITY ZONING APPEALS BOARDS; AMENDING SECTIONS 2-1, 33-308, AND 33-314 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA (“CODE”); PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, zoning items are quasi-judicial matters and, as such, require affirmative action of the zoning board to resolve; and

**WHEREAS**, in contrast to normal legislative items, for which a tie vote is deemed to be a denial of the item, a tie vote on a zoning item is deemed to not result in board action; and

**WHEREAS**, when a zoning item results in a tie vote, this Board and the Community Zoning Appeals Boards have historically interpreted their rules of procedure to permit additional motions to be made on the item until the next item is called or the meeting is adjourned, at which point the item is deemed to be deferred to the next regularly scheduled zoning meeting; and

**WHEREAS**, a contrary interpretation would require the zoning item to be automatically deferred upon the first tie vote, thereby requiring the applicant and the members of the public to return for a subsequent meeting the following month or later even if a slightly revised motion could lead to affirmative board action and resolve the item, and thus increasing the costs to the applicant and to the members of the public who wish to be heard on the item; and

**WHEREAS**, this Board seeks to codify its historical interpretation and clarify its rules of procedure addressing tie votes on zoning items,

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

**Section 1.** Section 2-1 of the Code of Miami-Dade County is hereby amended to read as follows:<sup>1</sup>

**Sec. 2-1. - Rules of procedure of County Commission.**

\* \* \* \*

Rule 7.01 Rules of debate.

\* \* \* \*

(h) *Tie votes.* Whenever action cannot be taken because the vote of the commissioners has resulted in a tie, and no other available motion on an item is made and approved before the next item is called for consideration or before a recess or adjournment is called, whichever occurs first, the item shall be removed from the agenda and shall be reintroduced only in accordance with the renewal provisions of Rule 7.01(1)>>.<< Notwithstanding any rule of procedure to the contrary, in zoning and other quasi-judicial matters when action on a resolution results in a tie vote, >>and no other available motion on the resolution is made and approved before the next matter is called for consideration or before a recess or adjournment is called, whichever occurs first,<< such resolution shall be carried over to the next regularly scheduled meeting for the consideration of such quasi-judicial matters unless the commission designates a different time for such reconsideration.

\* \* \* \*

**Section 2.** Section 33-308 of the Code of Miami-Dade County is hereby amended to read as follows:

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<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.

**Sec. 33-308. - Community Zoning Appeals Board—Organization.**

>>(A)<< The Director shall serve as secretary for the Community Zoning Appeals Boards, shall be in attendance at all meetings as an advisor and be permitted to propound questions and give evidence; provided, the Director shall have authority to designate a staff member of the Department to act in the Director's stead.

>>(B)<< Meetings of the Community Zoning Appeals Boards shall be held, where practical, in the area of each Community Zoning Appeals Board's jurisdiction at a time and place determined by the Director.

>>(C)<< Each Community Zoning Appeals Board shall elect a Chair and a Vice-Chair from its members, each of whom shall serve until a successor is elected.

>>(D)<< Rules and regulations for the Community Zoning Appeals Boards shall be adopted by the County >>Mayor or the Mayor's designee<< ~~[[Manager]]~~ and approved by the County Commission.

>>(E)<< The Chair, or Vice-Chair, or Acting Chair, may administer oaths and compel the attendance of witnesses in the same manner prescribed in the Circuit Court.

>>(F) Voting Requirements.<< No action shall be taken on any matter before the Community Zoning Appeals Boards unless a quorum of four (4) members is present, and only upon not less than a majority vote of all members present and voting provided however that any approval or denial of any application or portion thereof pursuant to Chapter 33 shall require not less than three (3) votes. When there is an insufficient number of votes to either approve or deny an application, the result shall be deemed a tie vote. Whenever a tie vote occurs, >>and no other available motion on the application is made and approved before the next application is called for consideration or before a recess or adjournment is called, whichever occurs first,<< the matter shall be carried over to the next regularly scheduled meeting.

>>(G)<< Minutes will be kept of all meetings and proceedings and shall include and state the vote of each member on each question, and the motion shall state the reason upon which it is made; such reason or reasons being based upon the prescribed guides and standards and good zoning and planning principles. If a member is absent from voting, the minutes shall so indicate. The Community Zoning Appeals Boards shall keep accurate records of their public hearings which shall be filed, together with their minutes and resolutions, with the Department, and the same shall be open for public inspection at reasonable times and hours.

>>(H)<< The Director shall furnish from the Department such staff as may be necessary to assist and advise the Community Zoning Appeals Boards in the fulfillment of their duties, and is authorized to retain a qualified reporter to record and transcribe the public hearing proceedings of the Community Zoning Appeals Board, and shall provide County transportation for such Board for the purpose of making inspections of sites involved in zoning applications.

**Section 3.** 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.**

\* \* \* \*

(G) >>The following additional procedures shall apply to zoning hearings before the County Commission:

(1) Deferrals.<< The County Commission may defer action on any matter before it in order to inspect the site in question, to remand to the Community Zoning Appeals Boards, or for any other justifiable and reasonable reason. Whenever a deferral is approved at the request of the applicant, the applicant shall be required to pay a deferral fee in the amount of round-trip public transit fare for each person present at the hearing in opposition to the application, or two hundred fifty dollars (\$250.00), whichever is greater. The Clerk of the Board shall prepare and have available at the hearing appropriate voucher forms, in duplicate, to be filed under oath by persons present to oppose the application in question. Each objector presenting a completed voucher to the Clerk shall be given two (2) transit tokens. At the end of the meetings at which the deferral was requested, the Clerk shall, for each deferral, total the number of vouchers issued, determine the value of transit fares represented by the tokens, and submit the deferral fee to the applicant, or his attorney. The applicant requesting the deferral shall pay the deferral fee to the Department, which shall then pay an amount equal to the value of the transit fares to the transit agency. Except for that portion of the deferral fee paid to the transit agency, all monies collected by the Department as deferral fees shall be deposited into a separate account and shall be expended only for purposes of administering and enforcing the provisions hereof. In the event that the applicant does not pay the deferral fee prior to the date of the scheduled deferred hearing, the application shall be deemed to have been voluntarily withdrawn without prejudice, the applicant shall be deemed to be in violation of this provision, and enforcement may be effectuated through all available means including but not limited to Chapter 8CC of the Code of Miami-Dade County, Florida. Notwithstanding the

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foregoing, the County Commission shall, at the time of approving a deferral, have the discretion to waive the provisions of this section upon a showing of good cause for the deferral.

>>(2) Record.<< When any final action has been taken by the Board of County Commissioners, its record, together with a certified copy of its minutes and resolutions pertaining to such action shall be transmitted to the Department for filing, and the same shall be open to the public for inspection at reasonable times and hours.

>>(3) Voting Requirements.<< Save and except as otherwise provided by ordinance, all actions taken by the Board of County Commissioners under this article shall be by a majority vote of all members present. When there is an insufficient number of votes to either affirm or reverse a Community Zoning Appeals Boards' resolution or on a direct application there is an insufficient number of votes to either approve or deny an application, the result shall be deemed a tie vote. >>Whenever a tie vote occurs, and no other available motion on the application is made and approved before the next application is called for consideration or before a recess or adjournment is called, whichever occurs first, the matter shall be carried over to the next regularly scheduled meeting.<<

\* \* \* \*

**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 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: August 2, 2011

Approved by County Attorney as  
to form and legal sufficiency: 

Prepared by: 

Dennis A. Kerbel

Prime Sponsor: Chairman Joe A. Martinez