

# Memorandum



**Date:** March 23, 2022

Agenda Item No. 2(B)(10)  
May 3, 2022

**To:** Honorable Chairman Jose “Pepe” Diaz  
and Members, Board of County Commissioners

**From:** Daniella Levine Cava   
Mayor

**Subject:** Zoning Hearing Notices - Directives No. 210175 and 210942

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The Board of County Commissioners (BCC) recently adopted two resolutions, both sponsored by Vice Chairman Oliver G. Gilbert, III, pertaining to zoning hearings and how they are communicated to the public. *Resolution No. R-176-21* directed the County Mayor to conduct a feasibility study regarding use of modern technologies, including but not limited to geolocation text messaging, to provide notice of zoning hearing to the public. *Resolution No. R-385-21* directed the County Mayor to prepare a report describing an implementation plan of the Board’s policy that whenever possible, zoning hearing newspaper notices be published in newspapers that serve areas of the County where such newspapers may better reach communities affected by a zoning application than the newspapers that the County currently employs for such notices.

As a result of the interrelation between the resolutions, and in an effort to provide a single comprehensive response to the directives, the following combined report has been prepared by the Regulatory and Economic Resources (RER) Department in consultation with the Information Technology Department (ITD), Communications and Customer Experience Department (CCED) and the County Attorney’s Office (CAO). The first section of the report seeks to address R-176-21, while the subsequent sections pertain to R-385-21 and overall recommendations.

## Executive Summary

To address the directive within R-176-21, RER intends to enhance its existing Active Zoning Hearing Viewer (Viewer) by implementing a geo-fencing<sup>1</sup> option that would allow users to automatically become subscribed to a wider range of zoning hearing records. These enhancements will allow citizens to subscribe to zoning notifications for activity within any particular community or area within the County, rather than on a parcel-specific basis (current functionality). The proposed improvements would allow residents to select their area of interest on the county map and automatically subscribe to current and future zoning hearing applications that are located within the indicated area of interest. Notifications would be distributed via email, phone call and/or text. The updating of the Viewer would require approximately ten (10) weeks to deliver and can be initiated upon acceptance of this report. These enhancements do not require the procurement of additional software as the current application has already been developed. Furthermore, IT support for development of these features can be absorbed by existing and allotted resources/personnel leading to no anticipated fiscal impact.

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<sup>1</sup> Geofencing: the use of GPS or RFID technology to create a virtual geographic boundary, enabling software to trigger a response when a mobile device enters or leaves a particular area.

R-385-21 directed the Mayor or Mayor’s designee to prepare a report describing an implementation plan of the Board’s policy stating that, whenever possible, a required zoning hearing newspaper notice be published in newspapers that serve particular areas of the County where such newspapers may better reach communities affected by a zoning application than the newspapers that the County currently uses for such notices. To determine the feasibility of publishing legal notices via the various newspaper publications in Miami-Dade County, RER staff undertook a comprehensive review of state law governing legal notices and research into circulation and other data available from the publishers. In the State of Florida, legal and official advertisements, including those in connection with zoning matters, are regulated by the minimum standards established in Section 50.011 of the Florida Statutes. Under the statutory criteria prior to 2021, five of the newspapers in the County qualified: the Daily Business Review, Miami Herald, Miami New Times, Miami Times, and Miami Today. The 2021 Florida Legislature adopted House Bill No. 35 (HB 35) which, among other things, updated the State’s requirements for the publication of legal notices with an effective date of January 1, 2022. It could not be determined, based on publicly available information, which publications are compliant with the updated State requirements as of January 1, 2022. Miami-Dade County staff will contact each of these publishers to advise them of the newly effective requirements in an effort to definitively confirm the viability of posting legal notices in their newspapers. Staff will request that each publication submit a certificate of qualification indicating compliance with the provisions in Florida Statute. Upon receipt, staff will assess which of the newspapers qualify and if any of the qualified newspapers would better serve a particular area of the County with regards to zoning hearing notices

### **Feasibility Study on Use of Modern Technologies to Provide Notice for Zoning Hearings to the Public**

On March 2, 2021, the Board of County Commissioners (Board) adopted resolution No. R-176-21, directing the County Mayor to conduct a feasibility study regarding use of modern technologies, including but not limited to geolocation text messaging, to provide notice of zoning hearing to the public, and to provide report.

Upon adoption of the resolution, RER and ITD initiated a comprehensive assessment of alternative and enhanced mechanisms for providing information regarding zoning applications to the public in a more proactive manner. Two primary alternatives were explored, these included (1) the enhancement of the County’s existing Active Zoning Hearing Subscription Viewer to incorporate geo-fencing and other features to keep residents more closely informed of proposed zoning actions, as well as (2) the development of a new stand-alone zoning mobile application that would incorporate many of the same features of the viewer. A summary of the analysis or each of the alternatives is presented below along with discussion with regards to the recommended path forward.

The Active Zoning Hearing Subscription Viewer allows citizens to subscribe to receive updates, either by email, phone call, and/or text messages regarding active zoning hearing applications of their choice. The viewer is currently available to the public on the County’s website at <https://www.miamidade.gov/zoning/>. “Active Zoning Hearing Subscription” is provided as a

“Featured Service” and takes the user to a GIS mapping tool that includes the ability for the public to subscribe to specific zoning applications. Upon subscription, the resident will receive progressive updates as to the status and various milestones reached in the zoning process for the given property selected. Notifications are provided to the subscriber via the communication method of their choosing and the option to unsubscribe is always available. The current Viewer also provides residents with the option to search for ongoing zoning processes within a given geographical area from a site of interest.

This mobile-friendly online viewer was implemented in April of 2021 in response to Ordinance No. 21-8, which amended existing noticing provisions pertaining to zoning actions in Section 33-310 of the Miami-Dade County Code. The Viewer, in its current form, places the County at the forefront of technology and citizen engagement by leveraging geospatial technology and integrating cloud communications software to keep residents actively informed of zoning hearings in real-time as the application travels through the process and arrives at major milestones. Prior to the implementation of the Viewer, residents could only search and view zoning notices on an application specific basis. As a result of the Viewer, notifications are currently provided directly to the subscriber informing them of all changes and offering the ability to view the zoning application record, overall status of the application, obtain hearing scheduling information, and view-access to documentation such as the hearing notices, site plans, and County recommendation memorandums.

In accordance with the amended Code section, notices resulting from subscriptions to the Viewer shall be considered of a courtesy nature, as the required legal notices are to be provided through newspaper advertisement and mailed notices to property owners surrounding the application site.

The intent of R-176-21 can be met by enhancing the existing Active Zoning Hearing Viewer by implementing a geo-fencing option that would allow users to automatically become subscribed to a wider range of zoning hearing records. The geo-fencing feature would allow for citizens to subscribe to zoning notifications for activity within any particular community or area within the County, rather than on a parcel specific basis. The proposed feature would allow residents to select their area of interest on the county map and automatically subscribe to current and future zoning hearing applications that are located within the indicated area of interest. From the point of subscription, the features and functionality of the system would come into operation. Notifications would be distributed using the selected communication method (email, phone call and/or text). Citizens can later choose to unsubscribe to any individual zoning hearing application notification or the entire area of interest. Additionally, an option for the user to subscribe to all zoning notifications in Miami-Dade County would be provided.

The updating of the Active Zoning Hearing Subscription Viewer application and implementation of the above-described enhancements would require approximately ten (10) weeks to deliver. These enhancements do not require the procurement of additional software as the current application has already been developed. Furthermore, IT support for development of these features can be absorbed by existing and allotted resources/personnel leading to no anticipated fiscal impact.

A second alternative/approach involves the creation of a stand-alone mobile application (app) for Miami-Dade County Zoning applications. Upon installation on the user’s mobile device, the application would have similar functions as the Viewer described above with the notable exception of providing the ability of utilizing the user’s geographical location through the location services feature of their mobile device for use in notifications. Such an application would conceptually allow for the County to generate geo-fences around parcels subject to zoning applications and notify residents who have downloaded the application and are physically within or pass through the geofenced area.

For such an application to be impactful, however, there are numerous challenges that must be overcome some of which are outside of the control of Miami-Dade County staff. One of the primary challenges is engagement. The application will only be effective if there is a high rate of adoption. Historically, government applications that provide a single service have not exhibited high adoption rates and therefore tend to be less effective than other applications which provide multiple utilities/services. In addition to the engagement challenge, the main benefit of the application is to notify users as they pass through an area where a zoning application is ongoing. For this to occur the user will have to opt for the application to have access to their location at all times rather than “while using the app”. This is a significant challenge since, according to a report by Upland Software’s location analytics team, users choose for applications to have access to location services at all times at a rate of only 19%, whereas “while using the app” and “never use location services” are selected 58% and 23% of the time, respectively. The combined effect of low adoption rates and inability to notify users due to inactivation of access to location services by the application may significantly diminish the impact and benefit of the application to the community.

The County has a limited history of developing and launching applications that make use of location services. The most notable of these is the Miami-Dade Transit application (Go Miami-Dade Transit). The development of this application was undertaken by ITD over several years. The most recent enhancements (2018), which leveraged the previous MDT tracker application developed in 2010, incorporated features that utilize location services (if activated) to advise users as to the Metrorail Station, Metromover, bus, or other transit facility nearest to them. These enhancements required hiring an application developer to effectuate the build-out of the desired functionalities. The development timeframe was approximately six (6) months and the investment/resource allocation to launch and support the application total approximately \$250,000 per year. Depending on specific requirements and complexity of the mobile zoning application, it is anticipated that at least six (6) months to one (1) year would be required for app development and approximately (6) additional months to gain acceptance by the Apple and Google stores. It is estimated that the fiscal impact associated with the development of such an application would be approximately \$200,000 with additional resources required for ongoing application support. At this time this expenditure is not contemplated within the County’s budget.

In order to provide the public with the most optimum level of service as soon as possible, it is recommended that the proposed enhancements to the existing Active Zoning Hearing Subscription Viewer, which incorporate geofencing, be undertaken. This can be achieved in a

period of 10 weeks offering users with a wealth of information and associated notifications (text, email, phone call) on any and all zoning application within the user’s indicated area(s) of interest. These enhancements can be considered a first phase (Phase I) of development to be followed by further analysis to determine the best mechanism by which an impactful and effective mobile application can be made available to the public. The second phase (Phase II) of development may involve the adaptation of the Active Zoning Hearing Subscription Viewer into a mobile application which has the desired location service dependent features described above. RER will commence with the execution of Phase I upon acceptance of this report.

### **Report on Publication of Zoning Hearing Newspaper Notices in Community Newspapers**

On April 20<sup>th</sup>, 2021, the Board of County Commissioners (Board) adopted resolution No. R-385-21 directing the County Mayor to prepare a report describing an implementation plan of the Board’s policy stating that, whenever possible, a required zoning hearing newspaper notice be published in newspapers that serve particular areas of the County where such newspapers may better reach communities affected by a zoning application than the newspapers that the County currently uses for such notices.

The publication of zoning hearing newspaper notices is governed by both Miami-Dade County Code and State law. In order to inform the considerations made in the analysis requested by the directive, a summary of the various regulatory frameworks is provided below.

**Miami-Dade County Regulatory Framework:** Section 33-310 of the County Code provides the notice requirements for zoning hearing items under the County’s jurisdiction. It specifically calls for the following:

- Courtesy mailed notice upon filing of application
- Legal newspaper notice/advertisement
- Final mailed notice; and
- Site posting

Additionally, the County has deployed a mobile-friendly online viewer for subscribers as well as the Zoning’s web portal as online alternatives. The online view will be utilized to provide courtesy notices to subscribers as previously stated in this report.

Regarding legal newspaper advertisement, Section 33-310(c)(1) of the Code provides that zoning hearing notices, for both the Board and the Community Zoning Appeals Boards (CZABs), shall be published in a newspaper of general circulation in Miami-Dade County. The County’s zoning hearing notices are currently advertised in the Neighbors section of the Miami Herald, along with zoning hearing notices of other local governments.

**State of Florida Regulatory Framework:** In the State of Florida, legal and official advertisements, including those in connection with zoning matters, are regulated by the minimum standards established in Florida Statutes. These standards are primarily found in Chapter 50 of the Florida Statutes, “Legal and Official Advertisements,” and more specifically in section 50.011.

The 2021 Florida Legislature passed House Bill No. 35 (HB 35) which, among other things, updated the State’s requirements for the publication of legal notices with an effective date of January 1, 2022. The legislative summary of the Bill states the following:

*A Bill “revising construction as to the satisfaction of publication requirements for legal notices; revising requirements for newspapers that are qualified to publish legal notices; authorizing the Internet publication of specified governmental agency notices on newspaper websites in lieu of print publication if certain requirements are met; requiring the Florida Press Association to seek to ensure equitable access for minority populations to legal notices posted on the statewide legal notice website; requiring the association to publish and maintain certain reports on the statewide legal notice website, etc.”*

In essence, HB 35 is a comprehensive update of the advertising requirements for legal and official notices. Regarding the ability of newspapers to host legal notices, HB 35 introduces a series of requirements that newspapers would have to fulfill in order to qualify for advertising the notices. Specifically, the updated statute requires that, in the case of a County like ours, the qualified media shall satisfy the criteria excerpted below (FS 50.011):

- (1) A publication in a newspaper that meets all the following:
  - (a) *Is printed and published at least once a week.*
  - (b) *Contains at least 25% of its words in the English language.*
  - (c) *Satisfies one of the following criteria:*
    - (i) *Has an audience consisting of at least 10 percent of the households in the county or municipality, as determined by the most recent decennial census, where the legal or public notice is being published or posted, by calculating the combination of the total of the number of print copies reflecting the day of highest print circulation, of which at least 25 percent of such print copies must be delivered to individuals’ home or business addresses, as certified biennially by a certified independent third-party auditor, and the total number of online unique monthly visitors to the newspaper’s website from within the state, as measured by industry-accepted website analytics software. The newspaper must*

*also be sold, or otherwise available to the public, at no less than 10 publicly accessible outlets. For legal and public notices published by nongovernmental entities, the newspaper’s audience in the county or municipality where the project, property, or other primary subject of the notice is located must meet the 10 percent threshold.*

*(ii) Holds periodicals permit as of March 1, 2021, and accepts legal notices for publication as of that date. Any such newspaper may continue to publish legal notices through December 31, 2023, so long as the newspaper continues to meet the requirements set forth in section 21 of chapter 99-2, Laws of Florida, and continues to hold a periodicals permit. Beginning January 1, 2024, and thereafter, any such newspaper must meet the criteria under subparagraph 1.*

*(iii) For newspapers publishing legal notices in a fiscally constrained county, holds a periodicals permit and meets all other requirements of this chapter. A newspaper qualified under this subparagraph does not need to meet the criteria under subparagraph 1. so long as the newspaper continues to hold a periodicals permit. For purposes of this subparagraph, the term “fiscally constrained county” means a county within a rural area of opportunity designated by the Governor pursuant to s. 288.0656 or a county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.*

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*(d) Is available to the public generally for the publication of official or other notices with no more than 75 percent of its content dedicated toward advertising, as measured in half of the newspaper’s issues that are published during any 12-month period, and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.*

*(e) Continually publishes in a prominent manner the name, street address, phone number, website URL of the newspaper’s approved print auditor, the newspaper’s most recent statement of ownership, and a statement of the auditor certifying the veracity of the newspaper’s print distribution and the number of the newspaper’s website’s monthly unique visitors, or the newspaper’s periodicals permit, if applicable, within the first five*

*pages of the print edition and the bottom portion of the homepage of the newspaper’s website.*

- (2) *Internet publication for governmental agency notices under s. 50.0211(1)(b) on the website of any newspaper in the county to which the legal notice pertains and on the statewide legal notice website as provided in s. 50.0211(5). A newspaper is deemed to be a newspaper in the county to which the legal notice pertains if it satisfies the criteria in subsection (1).*

Under the previous statutory criteria, five of the newspapers in the County qualified: the Daily Business Review, Miami Herald, Miami New Times, Miami Times, and Miami Today. Based on the results of a brief survey conducted by staff and submitted to these four newspapers, it would appear that at least one may not qualify based on the State’s first criterion that requires a minimum publication rate (print or digital) equal to 10% of the households in the County. For Miami-Dade County, based on current census data, 10% of households equates to approximately 90,000 households, meaning the individual newspapers must demonstrate that they circulate a combination of 90,000 unique publications between the physical publication and electronic monthly visitor count. As an example, if the newspaper circulates 25,000 publications and receives 70,000 unique visitors to the website, this equates to 95,000 and would meet this primary quantitative criterion.

Additionally, there are other criteria that must be met to qualify, such as the number of locations the newspaper is available and minimum number of newspapers delivered to unique properties. The State puts the onus on the individual periodical to demonstrate compliance with the updated statute and to follow the State requirements in doing so. Miami-Dade County staff sought to identify the publication of information stipulated by 50.0211(1)(e) on each of the home pages of the five (5) publications, which would allow for confirmation of compliance with the State’s requirements. However, of the various publications only the Miami Herald had a complete Statement of Ownership available on its homepage indicating owner, bond holders, number of issues published annually, print distribution, electronic distribution, and other information. In the case of the Miami Herald, the average paid print circulation is approximately 65,000 per issue and the number of monthly unique visitors to its website is greater than 10 million. This information was not available on the homepage of the other newspapers.

Miami-Dade staff will contact each of these publishers to advise them of the newly effective requirements of State law in an effort to definitively determine the viability of posting legal notices in their newspapers. Staff will request that each publication submit a certificate of qualification indicating compliance with the provisions in Florida Statute. Upon receipt, staff will assess which of the newspapers qualify and if any of the qualified newspapers would better serve a particular area of the County with regards to zoning hearing notices. Furthermore, the proposed enhancements to the Active Zoning Viewer will provide the public with the ability to



subscribe to all zoning notices electronically as an alternative mechanism to obtain Countywide zoning information.

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