

MEMORANDUM

Agenda Item No. 5(B)

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

DATE: (Public Hearing: 7-19-22)
July 7, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to
environmental protection;
amending section 8CC-10 of the
Code; increasing civil penalties
for specified violations of chapter
24

The accompanying ordinance was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.


Geri Bonzon-Keenan
County Attorney


GBK/gh

Memorandum



Date: July 7, 2022

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

From: Daniella Levine Cava 
Mayor

Subject: Ordinance Amending Section 8CC-10 of the Code of Miami-Dade County, Florida, Increasing Civil Penalties for Specified Violations of Chapter 24 of the Code

Executive Summary

This ordinance increases the civil penalties in section 8CC-10 for specified chapter 24 violations impacting water quality, including pollution discharges to ground or surface waters, unauthorized work in wetlands and other surface waters of the State, and prohibited discharges to sanitary sewers and stormwater sewers, that have the potential to result in adverse impacts to the ground or surface waters of Miami-Dade County, including Biscayne Bay. In addition to increasing civil penalties, the ordinance provides escalating civil penalties for second, third, or subsequent offenses.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached ordinance amending section 8CC-10 of the Code of Miami-Dade County, Florida (Code) relating to the increase in civil penalties for specified violations of chapter 24 and providing escalating penalties for second, third, or subsequent offenses.

Scope

This ordinance involves environmental regulation throughout Miami-Dade County (County).

Delegation of Authority

Upon approval by the Board, the Director of the Department of Regulatory and Economic Resources’ Division of Environmental Resources Management (DERM) or the Director’s designee will have the authority to impose specified civil penalties for environmental violations as part of the enforcement of chapter 24 of the Code.

Fiscal Impact/Funding Source

There is no fiscal impact associated with the proposed ordinance. Miami-Dade County DERM already utilizes Uniform Civil Violation Notices (“UCVNs”) as one enforcement tool to address chapter 24 violations. UCVNs carry a mandatory penalty and requirement to correct the violation. This ordinance does not change the current procedure; only the monetary amounts of penalties for specified types of violations are revised.

Track Record/Monitor

The RER-DERM Code Enforcement Section Manager, JoAnne Clingerman, will be responsible for monitoring the implementation of this ordinance.

Social Equity

The proposed ordinance increases the penalties set forth in section 8CC-10 for specified chapter 24 violations. Increasing monetary fines for environmental violations that directly or indirectly have an adverse effect on Miami-Dade County’s ground or surface water quality communicates the importance of protecting the County’s natural resources, protecting our drinking water, and improving water quality for a healthier Biscayne Bay, which is a valued resource to Miami-Dade County’s residents, visitors, and tourist-driven economy. These increased penalties will serve as a deterrent to ensure that property owners take proper measures when conducting activities that pose risks to ground or surface water quality, and they are commensurate with the severity of the often irreparable adverse impacts of such violations.

Background

One of DERM’s primary responsibilities is to oversee environmental regulations throughout the County pursuant to chapter 24 of the Code, to protect and preserve the public health, safety, and welfare. Ensuring compliance with these provisions helps to protect and preserve County resources, including air, ground and surface waters, soil, property, and natural resources. As part of this responsibility, DERM employs various regulatory processes to provide reasonable control and regulation of activities that may cause pollution or contamination or cause adverse impacts to our natural resources. DERM staff conduct inspections and monitor facilities and operations that require an environmental permit, as well as respond to environmental complaints throughout the County.

The Home Rule Amendment of the Florida Constitution, and the Miami-Dade County Home Rule Charter adopted pursuant thereto, grant the Board the authority to provide suitable penalties for violations of the Board’s ordinances. Section 1-5 of the Code provides that any person who violates or fails to comply with the County Code shall, in addition to all other enforcement measures authorized in the Code or by applicable law (such as administrative penalties established in section 403.121, Florida Statutes, for violations of state environmental control regulations), be subject to penalties as set forth in the schedule of civil penalties in section 8CC-10 of the Code. These penalties may be imposed through the issuance of Uniform Civil Violation Notices (“UCVNs”). UCVNs are an enforcement tool utilized to immediately address code violations to minimize conditions that may threaten public health and safety or contribute to further degradation of our natural resources.

An August 2019 Miami-Dade County Grand Jury Report declared Biscayne Bay to be in a “precarious balance” due to three major contributing factors: 1) sewage contamination; 2) excess nutrients; and 3) pollution and littering, including marine debris, plastics, and sediment that flows from canals into the bay. Following the Grand Jury Report, in June 2020, the Biscayne Bay Task Force (“BBTF”), which was created through Resolution No. R-165-19 by the Miami-Dade County Board of Commissioners (“Board”), submitted its report, titled “*A Unified Approach to Recovery for a Healthy & Resilient Biscayne Bay*” to the Board and County Mayor. The BBTF’s report included policy recommendations to improve the health and management of Biscayne Bay. One such policy recommendation is that the County review, utilize, and strengthen enforcement of local ordinances to attain pollution load reduction goals, with an emphasis on reducing pollutant loads in the Biscayne Aquifer and through stormwater outfalls.

As part of DERM’s review of section 8CC-10 (schedule of penalties) for chapter 24 violations, it was determined that for the most part, the monetary fines have not been revised or updated in decades and have not kept pace with current dollar values. As such, the issuance of UCVNs to address violations of chapter 24 has, to some extent, lost its effectiveness as a deterrent to those that may violate the County’s environmental regulations, including repeating the same offense.

It is not uncommon to hear violators equating the receipt of a UCVN for a chapter 24 violation as “the cost of doing business.” Typical violations that DERM Code Inspectors address through the issuance of UCVNs include the following:

- Nuisances and sanitary nuisances
- Waste dumping
- Discharges to ground or surface waters, including sediment runoff and failure to adequately implement erosion control measures
- Failure to obtain or comply with conditions of operating permits (such as industrial waste facilities, fats, oil, and grease discharge facilities, and domestic wastewater treatment plants)
- Failure to obtain or comply with conditions of class permits (such as for coastal construction, mangrove trimming, wetlands, stormwater management systems, and dewatering)
- Failure to obtain or comply with conditions of a tree removal or relocation permit
- Derelict and abandoned vessels in navigable waterways
- Effluent discharge violations to sanitary sewers


In addition, the Board’s recent enactment of the Florida Friendly Fertilizer Ordinance (Ordinance No. 21-26) specifically provides for enforcement by civil penalty through the issuance of UCVNs.

Providing suitable penalties for violations of the County’s environmental regulations, particularly those pertaining to protection of surface and ground water, is an important component in implementing the County’s Comprehensive Development Master Plan (CDMP) policies to protect water resources. In particular, Objective CON-2 of the CDMP’s Conservation, Aquifer Recharge and Drainage Element (the “Conservation Element”), which is required by section 163.3177(6)(c) of the Florida Statutes, calls for the County to “[p]rotect ground and surface water resources from degradation, provide for effective surveillance for pollution and clean up polluted areas to meet all applicable federal, state and County ground and surface water quality standards.”

In summary, the increase in civil penalties for specified chapter 24 violations affecting ground or surface water quality will provide further deterrence to committing violations, including violations affecting the health of Biscayne Bay; be commensurate with the severity and threat of

Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners
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these violations to water quality; better conform with the administrative penalties imposed for violations of state environmental control laws; and thereby provide more suitable penalties for violations of this Board’s ordinances addressing protection of the County’s natural ground and surface water resources.


Jimmy Morales
Chief Operations Office




MEMORANDUM

(Revised)

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

DATE: July 19, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 5(B)

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. 5(B)
7-19-22

ORDINANCE NO. _____

ORDINANCE RELATING TO ENVIRONMENTAL
PROTECTION; AMENDING SECTION 8CC-10 OF THE CODE
OF MIAMI-DADE COUNTY, FLORIDA; INCREASING CIVIL
PENALTIES FOR SPECIFIED VIOLATIONS OF CHAPTER 24;
PROVIDING SEVERABILITY, INCLUSION IN THE CODE,
AND AN EFFECTIVE DATE

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

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

Section 1. The memorandum referenced in the above recital is incorporated in this ordinance and is approved.

Section 2. Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 8CC-10. Schedule of Civil Penalties.

The following table shows the sections of this code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

The “descriptions of violations” below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed sections of this code, except to the extent that different types of violations of the same

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.

section may carry different civil penalties. For each section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this chapter, regardless of whether all activities proscribed or required within that particular section are described in the “Description of Violation” column. To determine the exact nature of any activity proscribed or required by this, the relevant section must be examined.

Code Section	Description of Violation	Civil Penalty
* * *		
24-15	Failure to have plans approved	[[200.00]] >> <u>2,500.00</u> <<
* * *		
24-18	Failure to properly >> <u>obtain</u> << [[secure]] required operating permit [[or comply with the conditions of an operating permit]]	250.00]] >> <u>500.00</u>
<u>24-18</u>	<u>Failure to comply with the conditions of an operating permit</u>	<u>250.00</u> <<
* * *		
24-22	Unlawfully circumventing Code requirements	[[200.00]] >> <u>1,000.00</u> <<
24-25	Violation of referenced rules >> <u>or</u> << [[and]] regulations >>, <u>other than rules or regulations promulgated by the State of Florida Department of Environmental Protection pertaining to Florida Litter Law (s. 403.413, F.S.)</u>	<u>1,000.00</u> << [[250.00]]

>> <u>24-25</u>	<u>Violation of referenced rules or regulations promulgated by the State of Florida Department of Environmental Protection pertaining to Florida Litter Law (s. 403.413, Florida Statutes), in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume</u>	<u>250.00</u>
<u>24-25</u>	<u>Violation of referenced rules or regulations promulgated by the State of Florida Department of Environmental Protection pertaining to Florida Litter Law (s. 403.413, Florida Statutes), in an amount exceeding 15 but less than 500 pounds in weight or exceeding 27 but less than 100 cubic feet in volume</u>	<u>1,000.00</u>
<u>24-25</u>	<u>Violation of referenced rules or regulations promulgated by the State of Florida Department of Environmental Protection pertaining to Florida Litter Law (s. 403.413, Florida Statutes), in an amount of 500 pounds or more in weight or 100 cubic feet or more in volume, or from a commercial vehicle, or for commercial purposes</u>	<u>2,500.00</u> <<
24-27	Causing a >> <u>nuisance</u> or<< sanitary nuisance	[[500.00]] >> <u>1,000.00</u> <<
24-28	Maintaining a sanitary nuisance >> <u>at a single-family residential property</u>	<u>1,000.00</u> << [[500.00]]
>> <u>24-28</u>	<u>Maintaining a sanitary nuisance at a property other than a single-family residential property</u>	<u>2,500.00</u> <<

24-29	Violations of Chapter 24 or of orders of >> <u>DERM</u> << Director [[of Department of Environmental Resources or of conditions of an operating permit >> <u>First offense</u> <u>Second offense within five years</u> <u>Third or subsequent offense within five years</u>	400.00]] <u>500.00</u> <u>1,000.00</u> <u>2,500.00</u> <<
* * *		
24-41.4	Open burning	[[250.00]] >> <u>750.00</u> <<
* * *		
24-42(1)	Discharge of prohibited substances into County waters	[[200.00]] >> <u>2,500.00</u> <<
24-42(2)	Exceeding effluent standards for discharges	[[200.00]] >> <u>2,500.00</u> <<
24-42(3)	Unlawful discharge affecting water quality	[[200.00]] >> <u>2,500.00</u> <<
24-42.1	Breach of effluent standards by new sewage treatment plants and industrial waste treatment facilities	[[400.00]] >> <u>2,500.00</u> <<
24-42.2	Noncompliance with provisions regulating sanitary sewer collection and transmission systems	[[250.00]] >> <u>1,000.00</u>

<u>24-42.3</u>	<u>Failure to obtain written approval prior to constructing, utilizing, operating, or allowing the operation of a wastewater collection and transmission system</u>	<u>2,500.00</u> <<
[[24-42.4	Discharging prohibited wastes or substances into sewers	300.00]]
>> <u>24-42.4</u>	<u>Discharging prohibited wastes into a sewer designed to carry stormwater that is connected directly or indirectly to discharge to surface waters</u>	<u>2,500.00</u>
<u>24-42.4</u>	<u>Discharging prohibited wastes into a sewer designed to carry stormwater but not discharging to surface waters</u>	<u>2,000.00</u>
<u>24-42.4</u>	<u>Discharging stormwater to a sanitary sewer</u>	<u>1,500.00</u>
<u>24-42.4</u>	<u>Discharging prohibited wastes or substances into a sanitary sewer in violation of local limits</u>	<u>2,500.00</u> << [[300.00]]
>> <u>24-42.4</u>	<u>Discharging prohibited wastes or substances into a sanitary sewer in violation of the Federal Pretreatment Standards</u>	<u>2,500.00</u> << [[300.00]]
<u>24-42.5</u>	Bypassing a waste treatment facility	[[200.00]] >> <u>2,500.00</u>
<u>24-42.6</u>	<u>Noncompliance with the provisions regulating FOG generating facilities</u>	<u>1,000.00</u> <<
* * *		

24-43.1	Noncompliance with provisions regulating [[waste—water]] >>wastewater<< disposal and treatment methods other than sanitary sewers	[[200.00]] >> <u>1,500.00</u> <<
* * *		
24-46	Noncompliance with provisions regulating liquid waste transporters	[[250.00]] >> <u>2,500.00</u> <<
* * *		
24-48	Failure by contractor to properly secure permit for specified types of work	[[500.00]] >> <u>2,000.00</u> <<
24-48	Failure by property owner or lessee to properly secure permit for specified types of work	[[400.00]] >> <u>1,000.00</u> <<
24-48.23	Prohibited floating structures	[[200.00]] >> <u>1,500.00</u> <<
24-48.24	Prohibited non-water dependent fixed structures	[[200.00]] >> <u>1,500.00</u> <<
* * *		

Section 3. 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 4. 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 5. 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:

Christopher J. Wahl

GKS for GBK
CJW