

MEMORANDUM

Agenda Item No. 7(B)


TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: (Second Reading 4-4-23)
January 17, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to real estate transactions in the incorporated and unincorporated areas; creating section 21-49.2 and amending section 8CC-10 of the Code; requiring disclosure relating to fats, oil, and grease (“FOG”) generators to be provided in certain real estate transactions; providing for enforcement by civil penalty or through a cause of action existing under Florida law; directing the County Mayor to conduct an educational campaign

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins and Co-Sponsor Commissioner Raquel A. Regalado.



Geri Bonzon-Keenan
County Attorney

GBK/smm

Memorandum



Date: April 4, 2023

To: Honorable Chairman Oliver G. Gilbert III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava". The signature is written in a cursive style and is positioned to the right of the printed name.

Subject: Fiscal Impact Statement for Ordinance Relating to Requiring Disclosure Relating to Fats, Oil, and Grease


The implementation of this Ordinance will not have a fiscal impact to Miami-Dade County, as the proposed changes will not require additional staffing resources or generate additional operational expenses. The proposed ordinance requires additional disclosures on real estate transactions.

A handwritten signature in blue ink, appearing to read "Jimmy Morales". The signature is written in a cursive style and is positioned above a horizontal line.

Jimmy Morales
Chief Operations Officer

Date: April 4, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: Social Equity Statement for Ordinance Creating Section 21-49.2 of Chapter 21
Relating to Real Estate Transactions Requiring Disclosure Relating to Fats, Oils,
and Grease (FOG) Generators in Certain Real Estate Transactions

The proposed ordinance creates Section 21-49.2 of Chapter 21 and amends Section 8CC-10, of the Code of Miami-Dade County (Code), to require a seller or lessor of real property with a Fats, Oils, and Grease (FOG) generator to provide a purchaser or lessee a disclosure statement. The disclosure statement will serve to advise a purchaser or lessee, prior to the execution of any instrument committing to purchase or lease a real property with a FOG generator that they will be subject to permitting requirements, regulations, operating permits, and ongoing maintenance. Additionally, the seller shall ensure that the disclosure instrument is signed by the purchaser, notarized, and recorded with the Clerk of the Court. For a lease, the lessor shall ensure that the disclosure instrument is signed by the lessee on the face of the lease. The ordinance also provides civil penalties for failing to provide the mandatory disclosure.

The aforementioned permitting requirements, regulations, operating permits, and ongoing maintenance required by County code are stipulated as mandatory requirements in the 2013 Federal Consent Decree between Miami-Dade County and the Environmental Protection Agency, Florida Department of Environmental Protection and the Department of Justice (Case 1:12-cv-24400-FAM) to redress violations of the Clean Water Act, National Pollutant Discharge Elimination System permits and the Florida Air and Water Pollution Control Act. These requirements, individually and collectively, as imposed by the Federal Consent Decree for the purpose of reducing Sanitary Sewer Overflows that endanger public health and the environment, are mandatory and not subject to variances or modification by the County, a Municipality, DERM, or the Board.

Currently, a purchaser or lessee of a property with a FOG generator may enter into a contract to purchase or lease a property with no knowledge of the permitting requirements, regulations, operating permits, and ongoing maintenance required of all FOG generators to protect the publicly owned sanitary sewer system. For those purchasers or lessees that execute an agreement with no knowledge of the aforementioned FOG generator requirements, they may execute an agreement, begin to make payments, and later discover that there are specific requirements pertaining to the FOG generator when they first apply for a certificate of use – when they are ready to open for business. Depending on the condition of the FOG control device and other factors, the purchaser or lessee may discover that they must first implement changes or install a new FOG control device prior to obtaining a certificate of use and opening for business. This can have a significant financial impact on a business/business owner.

It is anticipated that the proposed ordinance will have a positive impact on businesses, environment, and human health by increasing the awareness of purchasers or lessors of real property with a FOG generator to the risk of improperly maintained FOG control devices (grease traps) and better prepare them to successfully establish a business. It may prompt a purchaser or lessee to conduct an inspection of the property's FOG control devices, the results of which could help the purchaser or lessee negotiate repairs to the FOG control devices prior to closing or otherwise obtain a purchase price or rent that better addresses the obligations and risks that come with the FOG generator.

By mandating disclosure, a business owner of a FOG generator will be empowered with knowledge that will facilitate starting a business with a functional FOG control device that will be more protective of the publicly owned sanitary sewer and thereby reduce the impact on the environment from potential sanitary sewer overflows caused by FOG blockages and corrosion.



Jimmy Morales
Chief Operations Officer

230008



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: April 4, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 7(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. 7(B)
4-4-23

ORDINANCE NO. _____

ORDINANCE RELATING TO REAL ESTATE TRANSACTIONS IN THE INCORPORATED AND UNINCORPORATED AREAS; CREATING SECTION 21-49.2 AND AMENDING SECTION 8CC-10 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REQUIRING DISCLOSURE RELATING TO FATS, OIL, AND GREASE (“FOG”) GENERATORS TO BE PROVIDED IN CERTAIN REAL ESTATE TRANSACTIONS; PROVIDING FOR ENFORCEMENT BY CIVIL PENALTY OR THROUGH A CAUSE OF ACTION EXISTING UNDER FLORIDA LAW; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO CONDUCT AN EDUCATIONAL CAMPAIGN; PROVIDING SEVERABILITY, INCLUSION IN AND EXCLUSION FROM THE CODE, AND AN EFFECTIVE DATE

WHEREAS, facilities that generate fats, oil, and grease (“FOG”) have the potential to negatively impact human health, the environment, and public and private sewer infrastructure if FOG disposal is not properly managed; and

WHEREAS, on February 21, 2018, this Board adopted Ordinance No. 18-22, which created a new FOG Control Program, codified in section 24-42.6 of the Code of Miami-Dade County, Florida; and

WHEREAS, the County’s adoption of the new FOG Control Program was mandated under the Consent Decree, Case No. 1:12-cv-24400-FAM, effective December 6, 2013, between Miami-Dade County, the United States of America, and the State of Florida, to comply with the Federal Clean Water Act, chapter 403, Florida Statutes, and the Florida Administrative Code, with the goal

of eliminating sanitary sewer overflows and prohibited sewer bypasses that result in contamination of land and water resources, threaten public health, safety, and welfare, and damage publicly owned infrastructure; and

WHEREAS, the County developed the new FOG Control Program with stakeholder input and with the review and approval of the United States Environmental Protection Agency and the Florida Department of Environmental Protection; and

WHEREAS, the FOG Control Program sets minimum requirements and standards for the design and operation of any “FOG generator,” which is defined as “any nonresidential facility, including, but not limited to, restaurants, bakeries, hotel and cafeteria kitchens, commercial kitchens, kitchens serving hospitals, nursing homes, daycares, assisted living facilities and other healthcare facilities, food processing plants or such other nonresidential facilities that can introduce food waste or FOG into building sanitary drains, building sewers, onsite sewage treatment and disposal systems, or non-utility or utility sanitary sewer systems”; and

WHEREAS, FOG generator also includes “those nonresidential facilities that produce yellow grease,” but exempts certain industrial facilities; and

WHEREAS, among the FOG Control Program’s requirements is that a FOG generator obtain a FOG operating permit and submit an annual certification prepared by a professional engineer attesting that the FOG generator’s existing FOG control devices are functioning as designed and are in good working order; and

WHEREAS, FOG control devices are often referred to as grease traps; and

WHEREAS, FOG operating permits include best management practices and maintenance requirements, which vary depending on the type of FOG control device, such as grease waste drains, kitchen exhaust hoods, and grease storage areas; and

WHEREAS, despite the importance of the FOG Control Program to public health and the environment, there continue to be owners and operators of FOG generators who are either unaware of or otherwise not in compliance with the FOG Control Program; and

WHEREAS, because all FOG generators are legally required to comply with the FOG Control Program, lack of awareness can result in unexpected financial burdens for persons or businesses that come into possession of properties that qualify as FOG generators; and

WHEREAS, these situations are particularly unfortunate when the landlord or prior owner of the property has deliberately chosen not to disclose to the tenant or new owner that the FOG control devices on the property have technical problems or are otherwise not in compliance with the FOG Control Program; and

WHEREAS, persons and entities that are in the process of purchasing or leasing real property therefore may wish to know whether a FOG generator is located on the property; and

WHEREAS, requiring a seller or lessor of real property that contains a FOG generator to provide, before the completion of the transaction, a mandatory disclosure statement could help ensure that the purchaser or lessee is aware of the potential expenses, risks, and legal obligations that come with having a FOG generator; and

WHEREAS, such a disclosure could also prompt a purchaser or lessee to conduct an inspection of the property's FOG control devices, the results of which could help the purchaser or lessee negotiate repairs to the FOG control devices prior to closing or otherwise obtain a purchase price or rent that better addresses the obligations and risks that come with the FOG generator; and

WHEREAS, this Board therefore wishes to require: (1) a disclosure statement relating to FOG generators before the conveyance or lease of certain real property; and (2) acknowledgement of the disclosure by the purchaser or lessee; and

WHEREAS, because the FOG Control Program applies in both the incorporated and unincorporated areas of the County, this requirement should apply in both the incorporated and unincorporated areas; and

WHEREAS, making the disclosure requirement enforceable with civil penalties could help ensure compliance with this new requirement; and

WHEREAS, Florida law imposes duties on sellers in real estate transactions, including but not limited to the duty of a seller of residential property to disclose to the purchaser all known facts materially affecting the value of the property that are not readily observable and are not known to the purchaser; and

WHEREAS, Florida law further provides more generally that a person's violation of a duty imposed by ordinance may form the basis of a cause of action by another person injured by the violation; and

WHEREAS, to help ensure compliance with the FOG generator disclosure requirement, this Board intends for this requirement to impose on sellers and lessors a legal duty of disclosure enforceable by purchasers, lessees, or other parties with standing, through a cause of action existing under Florida law when the party has sustained financial injury caused by the failure to comply with the disclosure requirement,

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

Section 1. The foregoing recitals are incorporated as if set forth herein and are approved.

Section 2. Section 21-49.2 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>Sec. 21-49.2 - Required disclosures regarding fats, oil, and grease (“FOG”) generators for real estate transactions.

(a) Applicability.

- (1) This section shall be a minimum standard and shall apply to both the incorporated and unincorporated areas.
- (2) The County may enforce the provisions of this section in the incorporated and unincorporated areas of Miami-Dade County, and each municipality may enforce the provisions of this section within such municipality.
- (3) Any municipality may establish and enforce more stringent regulations and set forth such further penalties as such municipality may deem necessary.

(b) Definitions. As used in this section, the term:

- (1) Affected real property means any parcel of land on which a FOG generator is located.
- (2) FOG generator has the meaning provided in section 24-5.

(c) Disclosure statement requirement. Prior to the execution of any instrument committing an individual or entity to purchase or lease affected real property in Miami-Dade County, the seller or lessor shall provide the purchaser or lessee with the following statement, which shall be set forth conspicuously on a separate sheet of paper in at least 12-point font, and which shall be signed and dated by the purchaser or lessee:

FATS, OIL, AND GREASE (“FOG”) GENERATOR
DISCLOSURE

LAND INVOLVED IN THIS TRANSACTION HAS A FOG GENERATOR ON IT. AS DEFINED IN PART IN SECTION 24-5 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA (“CODE”), A “FOG GENERATOR” IS A NONRESIDENTIAL FACILITY THAT: CAN INTRODUCE FOOD WASTE OR FATS, OILS, AND GREASE INTO BUILDING SANITARY DRAINS, BUILDING SEWERS, ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS, OR NON-UTILITY OR

UTILITY SANITARY SEWER SYSTEMS; OR PRODUCES YELLOW GREASE. IMPROPERLY MAINTAINED FOG GENERATORS MAY POSE SUBSTANTIAL RISKS TO HUMAN HEALTH AND THE ENVIRONMENT. FOG GENERATORS ARE THEREFORE SUBJECT TO PERMITTING REQUIREMENTS AND OTHER REGULATIONS UNDER THE CODE, INCLUDING, BUT NOT LIMITED TO, THE REQUIREMENTS TO OBTAIN AN OPERATING PERMIT AND TO PERFORM ONGOING MAINTENANCE. FOG GENERATORS MAY ALSO BE SUBJECT TO OTHER LOCAL, STATE, AND FEDERAL REGULATIONS.

- (d) *Acknowledgment of FOG generator disclosure statement on instrument of conveyance or lease.* The seller or lessor shall ensure that the following statement appears in a prominent location on the face of the instrument conveying the affected real property, which instrument must be signed by the purchaser, notarized, and recorded with the Clerk of the Court, or, for a lease, signed by the lessee on the face of the lease:

I HEREBY CERTIFY THAT I HAVE READ, UNDERSTOOD, AND SIGNED THE FATS, OIL, AND GREASE (“FOG”) GENERATOR DISCLOSURE STATEMENT FOR THE CONVEYANCE OR LEASE OF THIS REAL PROPERTY, AS REQUIRED BY SECTION 21-49.2 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA.

- (e) *Enforcement.*
- (1) Failure to comply with this section shall constitute a violation. All matters enumerated and prohibited herein shall be independent of each other, and the violation of any one of the provisions of this section shall be a separate violation.
 - (2) Any seller or lessor who violates any provision of this section, or fails to comply therewith, or with any lawful rule, regulation, or written order promulgated under this section, shall be subject to fines in accordance with chapter 8CC and to any penalties or remedies provided in section 1-5 and chapter 8CC, as applicable.

- (3) It is also the intent of this section to impose on sellers and lessors a legal duty of disclosure enforceable by purchasers, lessees, or other parties with standing, through a cause of action existing under Florida law when such party has sustained financial injury caused by the failure to comply with the disclosure requirement. Notwithstanding the foregoing, this section shall not be construed as creating an express or implied private cause of action.
- (4) Miami-Dade County shall not be held liable for any damages or claims resulting from the seller's or lessor's failure to comply with this section.<<

Section 3. 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.

* * *

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.

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
	* * *	
>>21-49.2	<u>Failure to provide the disclosure statement to the purchaser or lessee in compliance with section 21-49.2</u>	<u>1,000.00</u>
21-49.2	<u>Failure to ensure acknowledgment of disclosure statement appears as required on instrument of conveyance or lease</u>	<u>1,000.00</u> <<
	* * *	

Section 4. *Educational campaign required.* This Board hereby directs the County Mayor or County Mayor’s designee to conduct an educational campaign for property owners and any individuals and businesses that use or work with FOG generators in Miami-Dade County, to educate and inform them as to: (1) the FOG Control Program generally; and (2) the requirements of this ordinance.

Section 5. 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 6. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of sections 2 and 3 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 7. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of section 4 of this ordinance shall be excluded from the Code of Miami-Dade County.

Section 8. 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:

EWJ for

Prepared by:

CJW

Christopher J. Wahl

Prime Sponsor: Commissioner Eileen Higgins
Co-Sponsor: Commissioner Raquel A. Regalado