

MEMORANDUM

Agenda Item No. 7(D)

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

DATE: (Second Reading: 12-12-23)
October 3, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to real estate transactions in the incorporated and unincorporated areas; amending section 21-49.1 of the Code; updating the septic tank system disclosure requirement in certain real estate transactions to require additional disclosure relating to the type of septic tank system on the property

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


Geri Bonzon-Keenan
County Attorney

GBK/gh

MDC001

Memorandum



Date: December 12, 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 Septic Tank System
Disclosure Requirement in Real Estate Transactions

The proposed ordinance amends section 21-49.1 of the Code of Miami-Dade County, Florida. Currently, the section requires a seller of any parcel of land on which a septic tank is installed or that is serviced by a septic tank system to provide a specific disclosure statement to a purchaser. A signed acknowledgment of receipt of that statement is also required on the instrument conveying the real property. This change will expand the disclosure statement requirement to include identifying if the septic tank system is a Type 1, 2, 3, or 4 Onsite Sewage Treatment and Disposal System, or if the seller does not know the type of septic tank system.

Implementation of this ordinance will not have a fiscal impact to the County. Section 21-49.1 does not provide for any enforcement by the County, rather it imposes a legal duty on sellers which is enforceable by purchasers under existing Florida law.

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

Jimmy Morales
Chief Operations Officer

Memorandum



Date: December 12, 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".

Subject: Social Equity Statement for Ordinance Relating to Septic Tank System
Disclosure Requirement in Real Estate Transactions

The proposed ordinance amends section 21-49.1 of the Code of Miami-Dade County, Florida. Currently, the section requires a seller of any parcel of land on which a septic tank is installed or that is serviced by a septic tank system to provide a specific disclosure statement to a purchaser. A signed acknowledgment of receipt of that statement is also required on the instrument conveying the real property. This change will expand the disclosure statement requirement to include identifying whether or not the septic tank system is a Type 1, 2, 3, or 4 Onsite Sewage Treatment and Disposal System, or whether the seller does not know the type of septic tank system.

Implementation of this ordinance will have a positive social equity impact as it will expand the transparency in real estate transactions and provide more specific information. More detailed information regarding the type of septic tank system may assist a purchaser in their understanding of potential costs and duties in maintaining the system prior to completing a real estate transaction. Since Florida Statutes prohibits mandating an inspection of a septic tank by local governments at the point of sale in a real estate transaction, these disclosures may prompt a purchaser to conduct a pre-purchase inspection. Having that information may assist the parties in their negotiations. Alternatively, this could have a negative impact on a seller of real estate where proper maintenance of a septic systems has been neglected, or the system is very old.

A handwritten signature in blue ink, appearing to read "Jimmy Morales".

Jimmy Morales
Chief Operations Officer



MEMORANDUM
(Revised)

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

DATE: December 12, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 7(D)

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(D)
12-12-23

ORDINANCE NO. _____

ORDINANCE RELATING TO REAL ESTATE TRANSACTIONS IN THE INCORPORATED AND UNINCORPORATED AREAS; AMENDING SECTION 21-49.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; UPDATING THE SEPTIC TANK SYSTEM DISCLOSURE REQUIREMENT IN CERTAIN REAL ESTATE TRANSACTIONS TO REQUIRE ADDITIONAL DISCLOSURE RELATING TO THE TYPE OF SEPTIC TANK SYSTEM ON THE PROPERTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, onsite sewage treatment and disposal systems (“OSTDSs”), commonly referred to as “septic tanks” or “septic tank systems,” treat domestic sewage, including wastewater from toilets, showers, sinks, and dishwashers, and are located either on the site from which the domestic sewage is generated or on an adjacent or nearby site; and

WHEREAS, in July 2022, the County Mayor estimated that about 110,000 properties in the County were using conventional OSTDSs as a means of sewage treatment and onsite disposal; and

WHEREAS, improperly maintained OSTDSs or OSTDSs that may otherwise be impaired, such as by rising groundwater levels, could cause substantial harm to human health and the environment by degrading groundwater and surface water quality, including water quality in Biscayne Bay; and

WHEREAS, on July 7, 2022, this Board adopted Ordinance No. 22-83, which institutes more rigorous standards for new and replacement OSTDSs by requiring the use of performance-based systems, rather than conventional systems, under certain circumstances; and

WHEREAS, Ordinance No. 22-83 classifies OSTDSs into four tiers, ranging from conventional systems (Type 1) to performance-based systems (Types 2, 3, and 4), with Type 4 producing effluent resulting in the most significant reduction in pollutants of the four types; and

WHEREAS, the requirements governing the type of OSTDSs to be installed became effective January 1, 2023, to allow for a proper transition by property owners, engineers, contractors, and the OSTDS industry; and

WHEREAS, Ordinance No. 22-83 also requires certain new or replacement OSTDSs to be registered with the County's Division of Environmental Resources Management (DERM) on and after January 1, 2023, and all other OSTDSs to be registered by January 1, 2024; and

WHEREAS, prior to the adoption of Ordinance No. 22-83, this Board adopted Ordinance No. 21-71, which requires any seller of real property on which an OSTDS is located, whether in an incorporated or unincorporated area of the County, to provide to the purchaser a disclosure statement relating to septic tank systems before the conveyance of the real property; and

WHEREAS, knowledge about septic tank systems may be relevant to the purchase of real property because maintaining a properly functioning septic tank system and complying with applicable regulations, which may include federal, state, and local regulations, could be costly for property owners; and

WHEREAS, requiring that a seller of real property that contains a septic tank system provide, before the completion of the transaction, a mandatory disclosure statement could help ensure that purchasers are aware of the septic tank system, the potential risks that septic tank systems pose, and the governmental regulations that could apply to septic tank systems; and

WHEREAS, such a disclosure could also prompt a purchaser to conduct a pre-purchase inspection of the septic tank system, the results of which could help the purchaser negotiate repairs to the septic tank system prior to closing or otherwise obtain a fairer purchase price; and

WHEREAS, now that Ordinance No. 22-83 classifies OSTDSs into four different types and further requires OSTDSs to be registered with the County, it could be helpful to purchasers of real property to know in advance of their purchase what type of OSTDS is on the property; and

WHEREAS, this Board therefore wishes to update the septic tank system disclosure requirement to require sellers to disclose to purchasers the type of OSTDS on the property; and

WHEREAS, under section 381.0065, Florida Statutes, “[a]n inspection of a [septic tank] system may not be mandated by a governmental entity at the point of sale in a real estate transaction”; and

WHEREAS, a seller of property with an OSTDS may not know what type of OSTDS is on the property without conducting an inspection of the OSTDS; and

WHEREAS, this Board therefore also wishes to provide such sellers the option of disclosing that the seller does not know the type of septic tank system on the property,

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

Section 1. The foregoing recitals are incorporated herein and approved.

Section 2. Section 21-49.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 21-49.1 - Required disclosures regarding septic tank systems for real estate transactions.

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.

* * *

- (c) *Disclosure statement requirement.* Prior to the execution of any instrument committing an individual or entity to purchase affected real property in Miami-Dade County, the seller shall provide the purchaser 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:

SEPTIC TANK SYSTEM DISCLOSURE

LAND INVOLVED IN THIS TRANSACTION HAS A SEPTIC TANK SYSTEM INSTALLED ON IT OR IS SERVICED BY A SEPTIC TANK SYSTEM. SEPTIC TANK SYSTEMS MAY BE SUBJECT TO LOCAL, STATE, AND FEDERAL REGULATIONS. IMPROPERLY MAINTAINED SEPTIC TANK SYSTEMS MAY POSE SUBSTANTIAL RISKS TO HUMAN HEALTH AND THE ENVIRONMENT. IT IS RECOMMENDED THAT THE PURCHASER OF THIS LAND CONSIDER OBTAINING AN INSPECTION OF THE SEPTIC TANK SYSTEM BY A QUALIFIED PROFESSIONAL.

>>CHAPTER 24 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, CLASSIFIES SEPTIC TANK SYSTEMS AS A TYPE 1, 2, 3, OR 4 ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEM (“OSTDS”), WITH TYPE 1 PROVIDING THE LOWEST LEVEL OF SEWAGE TREATMENT AND TYPE 4 PROVIDING THE GREATEST LEVEL OF SEWAGE TREATMENT.

THE SELLER OF THE LAND INVOLVED IN THIS TRANSACTION FURTHER DISCLOSES, WITH RESPECT TO THE ABOVE-REFERENCED SEPTIC TANK SYSTEM, THAT (THE SELLER SHALL CHECK ONE OF THE FOLLOWING PRIOR TO PROVIDING THIS STATEMENT TO THE PURCHASER):

- THE SEPTIC TANK SYSTEM IS A TYPE 1 OSTDS
- THE SEPTIC TANK SYSTEM IS A TYPE 2 OSTDS

- == THE SEPTIC TANK SYSTEM IS A TYPE 3 OSTDS
- == THE SEPTIC TANK SYSTEM IS A TYPE 4 OSTDS
- == THE SEPTIC TANK SYSTEM IS NOT A TYPE 1, 2, 3, OR 4 OSTDS
- == THE SELLER DOES NOT KNOW THE TYPE OF THE SEPTIC TANK SYSTEM<<

* * *

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:

GKS for GBK

Prepared by:

CJW

Christopher J. Wahl

Prime Sponsor: Commissioner Raquel A. Regalado
Co-Sponsor: Commissioner Kevin Marino Cabrera