

# MEMORANDUM

Agenda Item No. 7(G)

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

**DATE:** (Second Reading: 2-6-24)

December 12, 2023

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Ordinance relating to zoning; amending sections 33-11 and 33-284.86 of the Code; increasing maximum allowed height for walls and fences related to nonpublic educational facilities and public charter school facilities and child care facilities; amending sections 33-153 and 33-310.1; authorizing administrative modification of approved grade levels and certain other requirements that do not materially intensify the use of schools and child care facilities that were previously approved after public hearing; making technical changes

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



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Geri Bonzon-Keenan  
County Attorney

GBK/uw

MDC001

# Memorandum



**Date:** February 6, 2024

**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 Height for Walls and Fences for Public and Private Schools

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The implementation of this Ordinance will not have a fiscal impact to the County.

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.

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Jimmy Morales  
Chief Operations Officer

# Memorandum



**Date:** February 6, 2024

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


**From:** Daniella Levine Cava   
Mayor

**Subject:** Social Equity Statement for Ordinance Relating to Increased Height for Educational Facility Walls and Fences and the Administrative Modification of Grade Levels

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The proposed ordinance amends Sections 33-11 and 33-284.86 to increase the maximum height for walls and fences related to nonpublic educational facilities, public charter schools and child care facilities. It also amends Sections 33-153 and 33-310.1 to authorize the administrative approval of grade levels where there is no change in the total number of students.

This Code amendment amends two sections of the Code related to nonpublic educational facilities, public charter schools and child care facilities. It proposes to increase the height for walls and fences to 14 feet. Currently, the Code limits the height to three and a half feet in urban centers and six feet in other areas. This will provide additional safety for schools and limit their noise impacts to surrounding areas. The second change would allow for the administrative approval of changes to grade levels provided that there is no increase in the total number of students. Currently, the Code requires a public hearing to expand previously approved grade levels at private schools that have been approved by a public hearing and are subject to a condition specifying certain grade levels. This change would avoid the additional and unnecessary expense of a public hearing on public charter schools and private schools while limiting the impact to surrounding areas for grade level changes that do not introduce additional students to the area.

  
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Jimmy Morales  
Chief Operations Officer



**MEMORANDUM**  
(Revised)

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

**DATE:** February 6, 2024

**FROM:**   
Gen Bonzon-Keenan  
County Attorney

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

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(G)  
2-6-24

ORDINANCE NO. \_\_\_\_\_

ORDINANCE RELATING TO ZONING; AMENDING SECTIONS 33-11 AND 33-284.86 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; INCREASING MAXIMUM ALLOWED HEIGHT FOR WALLS AND FENCES RELATED TO NONPUBLIC EDUCATIONAL FACILITIES AND PUBLIC CHARTER SCHOOL FACILITIES AND CHILD CARE FACILITIES; AMENDING SECTIONS 33-153 AND 33-310.1; AUTHORIZING ADMINISTRATIVE MODIFICATION OF APPROVED GRADE LEVELS AND CERTAIN OTHER REQUIREMENTS THAT DO NOT MATERIALLY INTENSIFY THE USE OF SCHOOLS AND CHILD CARE FACILITIES THAT WERE PREVIOUSLY APPROVED AFTER PUBLIC HEARING; MAKING TECHNICAL CHANGES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, the Comprehensive Development Master Plan (“CDMP”) allows for the placement of schools in residential areas only when consistent with other CDMP goals, objectives, and policies and compatible with the neighborhood; and

**WHEREAS**, compatibility is often assessed through public hearings, but subjecting schools to public hearings for relatively modest adjustments to code requirements or to their previously approved facilities or operations that could otherwise be adequately reviewed by the County’s professional staff imposes significant costs on those schools; and

**WHEREAS**, in particular, pursuant to section 33-151.19(m) of the Code of Miami-Dade County (“Code”), all recreational and play areas of nonpublic schools and facilities must be surrounded by fences or walls, which serve to buffer sound and provide privacy; and

**WHEREAS**, section 33-11 currently limits fences or walls, including for schools, to a maximum height of six feet, except that in certain locations within urban center zoning districts, the maximum height is further limited to three and a half feet in height; and

**WHEREAS**, to better provide for the safety of schools and also limit their noise and other impacts on their surrounding areas, this Board finds that it is in the public interest to allow all public or private schools and child care facilities to have fences and walls of up to fourteen feet in height without having to seek approval after public hearing, except that when abutting a parcel zoned for or developed with a single-family or duplex use to allow fences or walls up to eight feet in height and except that fences or walls used to enclose permitted recreational uses to allow the maximum height necessary for the particular use; and

**WHEREAS**, in addition, pursuant to section 33-153, when public charter school facilities seek to expand their previously approved grade levels, a public hearing is required; and

**WHEREAS**, private schools that have been approved after a public hearing and are subject to a condition specifying certain grade levels would also require a public hearing to expand their previously approved grade levels; and

**WHEREAS**, public hearings to increase student grade levels without a concomitant increase in number of students impose an additional and unnecessary expense on public charter schools and private schools, whereas the impacts to the surrounding areas from such a change, which does not introduce additional people to the area, are relatively minor; and

**WHEREAS**, this Board finds that it is in the public interest to create an administrative modification process whereby schools can request to expand previously approved grade levels by obtaining technical staff review without a public hearing,

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

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

**Section 2.** Section 33-11 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:<sup>1</sup>

**Sec. 33-11. - Fences, walls, bus shelters and hedges.**

\* \* \*

>>(1) Fences and walls for nonpublic educational facilities and public charter school facilities. Notwithstanding any provision of this chapter to the contrary, fences or walls for nonpublic educational and child care facilities subject to article XA, and for public charter school facilities subject to article XI, may be erected up to 14 feet in height, subject to the following:

- (1) When abutting a parcel that is zoned for or developed with a single-family or duplex use, the maximum height of the fence or wall along that property line shall be eight feet.
- (2) Fences or walls used to enclose permitted recreational uses, such as baseball backstops, handball courts, and the like, shall be permitted to the maximum height necessary for the particular use, provided that the wall or fence complies with the applicable setbacks for accessory structures.<<

**Section 3.** Section 33-153 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 33-153. - Public hearing required in all districts.**

- >>(a)<< The establishment, expansion or modification of a charter school facility is permitted in any zoning district after public hearing upon demonstration that the standards established in this article have been met.
- >>(b)<< Any existing covenant or declaration of restrictions relating to an existing charter school facility shall be modified or deleted only in accordance with the provisions of >>article<< [[Article]] XXXVI [[of this Code]].
- >>(c) Notwithstanding any provision of this article to the

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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.

contrary, previously approved public charter school facilities may expand or modify grade levels administratively and modify or eliminate other conditions that do not materially intensify the use of the facility as provided in section 33-310.1.<<

**Section 4.** Section 33-284.86 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 33-284.86 - General Requirements.**

\* \* \*

H. *Walls, fences, and hedges.*

\* \* \*

>>6. Notwithstanding any other provisions of this chapter to the contrary, the maximum height for fences and walls for nonpublic educational and child care facilities subject to article XA, and for public charter school facilities subject to article XI, shall be as provided in section 33-11.<<

**Section 5.** Section 33-310.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 33-310.1. - Administrative modification or elimination of conditions and restrictive covenants.**

A. *Standards.* The Director is authorized to consider and approve applications to modify or eliminate any condition or part thereof which has been imposed by any final decision adopted by resolution, and to modify or eliminate any restrictive covenant, or part thereof, accepted at public hearing, where the requirements of at least one of the following subsections have been demonstrated. Upon demonstration that such requirements have been met, an application may be approved as to a portion of the property encumbered by the condition or the restrictive covenant where the condition or restrictive covenant is capable of being applied separately and in full force as to the



remaining portion of the property that is not a part of the application and both the application portion and the remaining portion of the property will be in compliance with all other applicable requirements of prior zoning actions and of this chapter.

I. Substantial Compliance With Previous Approval. The Director shall approve an application to modify or eliminate a condition or part thereof, or a restrictive covenant or part thereof, where it is demonstrated that the proposed modification or elimination will result in substantial compliance with the previous zoning action regarding a site plan, as demonstrated by all of the following:

(A) Development density and intensity have not materially changed, in that:

1. the number of buildings is not increased by more than 10 percent;
2. the number of stories is the same or fewer;
3. the height of the building(s) is the same or less;
4. the number of units is the same or fewer;
5. the lot coverage and floor area ratio are the same or less;
6. the number of bedrooms and corresponding parking spaces may be increased or decreased by as much as 10%, based on the entire plan, provided the plan complies with all other requirements of this

subsection and of this chapter; and

7. density or intensity (floor area ratio) may be transferred from one building to another or from one stage of development to another, provided that the total floor area ratio is not changed[[-]] >>; and

8. the number of students is the same or fewer where there is no expansion of school hours or no increase in vehicular trips is generated above that generated by the approved school plan.<<

\* \* \*

V. *Modification or Elimination of Conditions and Restrictive Covenants When No New Adverse Impacts Will Result.* The Director shall approve an application to modify an approved site plan, or modify or eliminate a condition or part thereof, or a restrictive covenant or part thereof (except where the covenant requires a public hearing >>for such modification<<), where it is demonstrated by the following that the modification or elimination will not result in a material new adverse impact on the public health, safety, welfare, or aesthetic values:

\* \* \*

(B) The modification or elimination of the condition, restrictive covenant, or part thereof will not create new adverse impacts. The application will be deemed not to create new adverse impacts upon demonstration of the following:

\* \* \*

19. the modification or elimination will not result in any material change in the manner or hours of operation on the subject property so differing from the similar existing or approved uses in the immediate vicinity that the convenient, safe, peaceful or intended uses of such uses is interrupted or materially diminished>>; it is provided that a modification to a previously approved nonpublic educational or child care facility subject to article XA, or a public charter school facility subject to article XI, to modify or eliminate grade levels without modifying the number of students, or that does not otherwise materially increase the number of students, the intensity of the facility use, or the expansion of the facility's operating hours, complies with this requirement<<;

\* \* \*

**Section 6.** 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 7.** 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 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:

Handwritten signatures in blue and black ink. The top signature is in blue ink and appears to be 'GBK'. The bottom signature is in black ink and appears to be 'JEM'.

Prepared by:

Lauren E. Morse  
Dennis A. Kerbel

Prime Sponsor: Commissioner Raquel A. Regalado