

MEMORANDUM

Agenda Item No. 11(A)(15)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

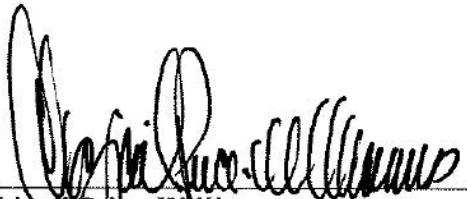
DATE: October 20, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution directing the
County Mayor to expeditiously
implement a program for the
temporary abeyance of the fats,
oil, and grease permit
requirement imposed by section
24-42.6(7)(c)(i) of the Code, as
approved by the United States
Environmental Protection
Agency and the Florida
Department of Environmental
Protection; and to provide a
report

Resolution No. R-1099-20

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor
Commissioner Esteban L. Bovo, Jr.



Abigail Price-Williams
County Attorney

APW/smm



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
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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. 11(A)(15)
10-20-20

RESOLUTION NO. R-1099-20

RESOLUTION DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXPEDITIOUSLY IMPLEMENT A PROGRAM FOR THE TEMPORARY ABEYANCE OF THE FATS, OIL, AND GREASE PERMIT REQUIREMENT IMPOSED BY SECTION 24-42.6(7)(C)(I) OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, AS APPROVED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND TO PROVIDE A REPORT

WHEREAS, on May 21, 2013, the Board adopted Resolution No. R-393-13, authorizing the execution of the Consent Decree, Case No. 1:12-cv-24400-FAM, effective December 6, 2013, between Miami-Dade County, the United States of America, the State of Florida, and the Florida Department of Environmental Protection ("FDEP"), in order to comply with the Federal Clean Water Act, Chapter 403, Florida Statutes, and the Florida Administrative Code, with the purpose of eliminating sanitary sewer overflows and prohibited bypasses; and

WHEREAS, paragraph 19(a) of the Consent Decree required the County to review, evaluate, and revise its existing Grease Trap Ordinance and Fats, Oil, and Grease ("FOG") Control Program, subject to review and approval by the United States Environmental Protection Agency ("EPA") and FDEP; and

WHEREAS, the Grease Trap Ordinance and FOG Control Program required food service establishments to install and maintain grease interceptors to minimize the discharge of fats, oil, and grease that would otherwise cause sanitary sewer overflows and prohibited sewer bypasses; and

WHEREAS, on September 7, 2017, the EPA and FDEP gave final approval for amendments to the Grease Trap Ordinance and FOG Control Program, which provided additional design and operation requirements to assist food service establishments, design professionals, contractors, and others with the design, construction, and maintenance of effective FOG control devices; and

WHEREAS, on February 21, 2018, the Board adopted Ordinance No. 18-22, which codified those amendments in the Code of Miami-Dade County, Florida, effective March 5, 2018; and

WHEREAS, section 24-42.6(7)(c)(i) of the Code, which was adopted as part of Ordinance No. 18-22, provides that, for changes in ownership of a business that is a FOG generator or a FOG control device operator, or for other changes that require the issuance of a certificate of use, municipal occupational license, or equivalent municipal approval to operate or use a business, the County shall not issue a written approval unless, among other things, the prior use had a valid FOG operating permit within the last 12 months; and

WHEREAS, this provision was designed to allow a gradual upgrade of FOG control systems so that upgrading would not be an excessive burden on businesses; and

WHEREAS, the coronavirus disease 2019 (COVID-19) pandemic has imposed severe economic hardship, including on businesses that are FOG generators or FOG control device operators, such as food service establishments; and

WHEREAS, section 24-42.6(7)(c)(i) therefore will potentially have the unintended effect of hindering food service establishments from reopening now and into next year due to the economic hardship of the COVID-19 pandemic; and

WHEREAS, the Consent Decree requires the County to continue to enforce its amended Grease Trap Ordinance and FOG Control Program; and

WHEREAS, section XI of the Consent Decree is a force majeure provision that allows the County to seek permission from the EPA and FDEP to delay the performance of obligations under the Consent Decree due to a force majeure event; and

WHEREAS, the County, through the Director of the Division of Environmental Resources Management of the Department of Regulatory and Economic Resources, has sought permission from the EPA and FDEP to impose a temporary abeyance of the requirement imposed by section 24-42.6(7)(c)(i) until December 31, 2021, due to the COVID-19 pandemic, for those facilities that have had a change in ownership or tenant; and

WHEREAS, a copy of the letter seeking such permission is attached to this resolution as exhibit 1; and

WHEREAS, this temporary abeyance of the requirement imposed by section 24-42.6(7)(c)(i) would help reduce financial and time burdens on businesses as they seek to reopen and resume operations; and

WHEREAS, other than observing this temporary abeyance of the requirement imposed by section 24-42.6(7)(c)(i), the County would continue to enforce the Grease Trap Ordinance and FOG Control Program and therefore continue to protect the public health, welfare, and environment; and

WHEREAS, on October 6, 2020, the EPA and FDEP granted the County's request for permission to impose the temporary abeyance; and

WHEREAS, for the benefit of the economy of Miami-Dade County, this Board wishes to direct the County Mayor or County Mayor's designee to expeditiously implement a program for the temporary abeyance,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

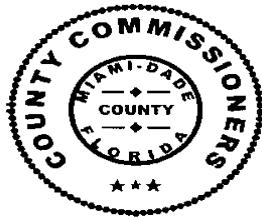
Section 1. Directs the County Mayor or County Mayor's designee to expeditiously implement a program for the temporary abeyance of the fats, oil, and grease permit requirement imposed by section 24-42.6(7)(c)(i) of the Code of Miami-Dade County, Florida, as approved by the United States Environmental Protection Agency and the Florida Department of Environmental Protection.

Section 2. Directs the County Mayor or County Mayor's designee to prepare a report summarizing the temporary abeyance program. The County Mayor or County Mayor's designee shall provide the report to this Board within 90 days of the effective date of this resolution and shall place the completed report on an agenda of the Board pursuant to Ordinance No. 14-65.

The Prime Sponsor of the foregoing resolution is Commissioner Esteban L. Bovo, Jr. It was offered by Commissioner **José "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Daniella Levine Cava** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	aye
Rebeca Sosa, Vice Chairwoman	aye
Esteban L. Bovo, Jr.	absent
Jose "Pepe" Diaz	aye
Eileen Higgins	aye
Joe A. Martinez	aye
Dennis C. Moss	aye
Xavier L. Suarez	aye
Daniella Levine Cava	aye
Sally A. Heyman	aye
Barbara J. Jordan	aye
Jean Monestime	absent
Sen. Javier D. Souto	aye

The Chairperson thereupon declared this resolution duly passed and adopted this 20th day of October, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Melissa Adames**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

CJW

Christopher J. Wahl



Carlos A. Gimenez, Mayor

Department of Regulatory and Economic Resources

Environmental Resources Management

701 NW 1st Court, 4th Floor

Miami, Florida 33136-3912

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miamidade.gov

VIA ELECTRONIC CORRESPONDENCE

September 22, 2020

CCN: 63385

File No: 8.DC.20.52

Chief, Environmental Enforcement Section
Environment and Natural Resources Division

Attn: Tom Mariani

U.S. Department of Justice

P.O. Box 7611

Washington, D.C. 20044-7611

RE: DOJ No. 90-5-1-1-4022/1

Tom.Mariani@usdoj.gov

Chief, Clean Water Enforcement Branch

Water Protection Division

Attn: Brad Ammons

U.S. Environmental Protection Agency, Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

Ammons.Brad@epa.gov

Rachael Amy Kamons

Environmental Reinforcement Section

U.S. Department of Justice

P.O. Box 7611

Ben Franklin Station

Washington, D.C. 20044-7611

Rachael.Kamons@usdoj.gov

Florida Department of Environmental Protection

Southeast District – West Palm Beach

Attn: Compliance/Enforcement Section

3301 Gun Club Road, MSC 7210-1

West Palm Beach, FL 33406

Jason.Andreotta@dep.state.fl.us

RE: Consent Decree (Case: No. 1:12-cv-24400-FAM),

Reference DOJ Case No. 90-5-1-1-4022/1,

Section VI, - Fats, Oils and Grease (“FOG”) Control Program Paragraph 19(a)

Section XI – Force Majeure, Paragraph 52

Revised Abeyance of Requirements under Section 24-42.6 of the Code of Miami-Dade County

Dear Sir/Madam:

This revised request for Abeyance of Requirements under Section 24-42.6 of the Code of Miami-Dade County (County) updates the August 27, 2020 request by including **“abeyance criteria”** pursuant to the September 21, 2020 teleconference between the Environmental Protection Agency (EPA), Florida Department of Environmental Protection (FDEP) and County.

In accordance with the Federal Consent Decree (**Case: No. 1:12-cv-24400-FAM**), Paragraph 19(a), the County revised its Grease Trap Ordinance and Fats, Oils, and Grease (FOG) Control Program pursuant to approvals by the EPA and FDEP. Said Ordinance became effective March 5, 2018, and included

provisions for requiring food service establishments to upgrade their FOG Control Devices (e.g., grease interceptors). Section 24-42.6(7)(c) of the Code of Miami-Dade County provides that:

For changes in ownership or other changes that require the issuance of a certificate of use, municipal occupational license, or equivalent municipal approval to operate or use a business, the Director or the Director's designee shall not issue a written approval until the Director or Director's designee finds that:

- (i) The prior use had a valid FOG operating permit within the last 12 months.
- (ii) There is no construction proposed or required.
- (iii) There are no changes to the back of house.
- (iv) No changes have been made, or are proposed, to the plumbing system, use, or facility operations that will impact the FOG control device.
- (v) A FOG control device condition assessment is performed by a licensed plumber or Florida Professional engineer and the findings, submitted to the Department in a form prescribed by the Director or the Director's designee, show that the FOG control device is functioning in accordance with the manufacturer's specifications and instructions and that the sampling point complies with Section 24-42.6(8).

The above criteria was developed to allow the upgrade of FOG control devices in a gradual manner that would not be excessively burdensome on businesses. However, its development, and in particular the requirement in Section 24-42.6(7)(c)(i) above, did not anticipate the emergence of a world pandemic and the impact it would have on our entire community, including businesses and more specifically, food service establishments. Not only has the pandemic severely affected the viability of food service establishments, but the provisions in Section 24-42.6(7)(c)(i) will potentially have the unintended effect of hindering food service establishments from re-opening now and into next year (i.e., 2021).

The County's first and foremost priority with the COVID-19 pandemic has been protection of the health and safety of the public, businesses and County staff. Now we are confronted with an unimaginable situation that requires immediate action. To this end, we are proposing holding in abeyance the requirement in Section 24-42.6(7)(c)(i) above subject to the **"abeyance criteria"** summarized below, commencing when EPA and FDEP approve or offer no objections to this request and ending on December 31, 2021. At the conclusion of this abeyance period, the requirements of Section 24-42.6(7)(c)(i) will be fully reinstated.

Abeyance Criteria		
Facility Criteria	Applicability	Upgrade Period
New Facility	Abeyance <i>NOT</i> applicable	Fully comply with Code prior to operating and/or making changes to operations.
Change in Use or Expansion		
Change in Ownership/Tenant Only	Abeyance Applicable	Facility with FOG Control Device Approved by DERM on or after January 1, 2015:
		Comply with FOG 2.0 within 36 months of CU approval.
		Facility with FOG Control Device NOT Approved by DERM on or after January 1, 2015:
		Comply with FOG 2.0 within 24 months of CU approval.
FOG2.0: FOG Control Device shall comply with requirements stipulated in Section 24-42.6 of the Miami-Dade County Code, as approved by FDEP/EPA. DERM: Division of Environmental Resources Management.		

This temporary abeyance would help to reduce the time and financial burden to these businesses as they desperately seek to open and operate under the new normal. During this period of abeyance, all other conditions shall apply and maintenance requirements shall continue to be enforced. Any food service establishment that does not comply with operational requirements in Section 24-42.6 in a timely manner, or is found to be affecting the building sewer or public sanitary sewer system in manner that can result in a sanitary nuisance, will be subject to all enforcement provisions of Chapter 24. Therefore, this temporary abeyance will not cause or contribute to the endangerment of the public health, welfare or the environment.

DERM's request is specifically limited to the requirements of Section 24-42.6(7)(c)(i) above and for the aforementioned requested timeframe. Furthermore, any permanent changes to Miami-Dade County's FOG Program requiring changes to its FOG Ordinance set forth in Section 24-42.6 of the Code of Miami-Dade County will be addressed pursuant the requirements of Paragraph 19(a)(xv).

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Should you have any questions regarding this matter, please call me at (305) 372-6754.

Sincerely,

Carlos L. Hernandez

for Lee N. Hefty, Director
Division of Environmental Resources Management

ec:

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Miami-Dade County
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Miami, Florida 33128

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Miami, Florida 33146

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Miami-Dade Department of Regulatory and
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