

## **MEMORANDUM**

Agenda Item No. 11(A)(18)

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

**DATE:** March 16, 2021

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

**SUBJECT:** Resolution dispensing with  
conflict resolution procedures  
prior to prosecuting the  
previously filed lawsuit against  
the City of Miami in accordance  
with Chapter 164, Florida  
Statutes by a three-fourths vote  
of commission members now in  
office

Resolution No. R-196-21

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The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Jose "Pepe" Diaz.



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Geri Bonzon-Keenan  
County Attorney

GBK/jp



**MEMORANDUM**  
(Revised)

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

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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) \_\_\_\_, CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_, or 3/4 membership  ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved Daniella Levine Caruso Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(18)  
3-16-21

RESOLUTION NO. R-196-21

RESOLUTION DISPENSING WITH CONFLICT RESOLUTION PROCEDURES PRIOR TO PROSECUTING THE PREVIOUSLY FILED LAWSUIT AGAINST THE CITY OF MIAMI IN ACCORDANCE WITH CHAPTER 164, FLORIDA STATUTES BY A THREE-FOURTHS VOTE OF COMMISSION MEMBERS NOW IN OFFICE

**WHEREAS**, on February 25, 2021, the City of Miami (the “City”) sent a letter to the County regarding a proposed pilot project to temporarily close four public streets at the intersections of SW 22nd Street near SW 14th Avenue, SW 23rd Street near SW 17th Avenue, SW 22nd Street near SW 16th Avenue, and SW 22nd Street near SW 16th Court by the erection of temporary barrier walls and delineators, and requesting County “review and approval” of the proposed temporary closures; and

**WHEREAS**, the City’s proposal for a “pilot project” included the installation of temporary flexible barrier walls at two of the intersections to accommodate emergency responders, as well as all necessary signage and striping; and

**WHEREAS**, on March 2, 2021, prior to receiving authorization or approval from the County, and contrary to its own pilot proposal, the City installed dangerous concrete barriers across and closing four public streets, asserting that it had authorization to erect such barriers without first obtaining permission or authorization from Miami-Dade County (the “City’s unlawful actions”); and

**WHEREAS**, the City's unlawful actions violated the Miami-Dade County Home Rule Amendment to the Florida Constitution and the Miami-Dade County Home Rule Charter (the "Home Rule Charter"), the Code of Miami-Dade County, Florida (the "County Code"), and well-established caselaw with respect to the County's exclusive jurisdiction over traffic flow in Miami-Dade County; and

**WHEREAS**, the City refused to remove such barriers after the County requested their removal noting that the barriers created a risk to the life, health, and safety of County and City residents and visitors; and

**WHEREAS**, in accordance with the authority granted by the Home Rule Charter and County Code, the County proceeded to remove the dangerous obstructions, but the City dispatched its police force to prevent the County from exercising its legal authority; and

**WHEREAS**, accordingly, the County filed a Complaint and Emergency Motion for Preliminary Injunction, Case Number 2021-5408 CA 01, (the "Lawsuit"), requesting the Court to order the City to immediately remove the concrete barriers, as well as other dangerous obstructions, which lacked sufficient reflectors and signage, obstructed the free flow of traffic, and posed an imminent danger and risk to the traveling public; and

**WHEREAS**, on March 7, 2021, the on-duty emergency judge held an emergency evidentiary hearing and after receiving testimony, the Court "order[ed] the City, consistent with its agreement in open Court, to remove the Dangers from the Roadways" by 5:00 pm the following day in order to "satisfy the County's immediate life, health and safety concerns brought about by the installation of the Dangers on the Roadways"; and

**WHEREAS**, to preserve the status quo, the Court allowed the City to replace such barriers with Type III barricades on a temporary or interim basis pending further Court Order in accordance with the County Engineer's testimony as to the appropriate manner to detour traffic, provided that such installation was consistent with the County's comments to the City's application; and

**WHEREAS**, the Emergency Judge limited his ruling to the City's creation of "Dangers in the Roadway" and reserved the remaining issues in the case to be decided by the judge who would be assigned to the case, and specifically including whether the City was required to obtain a permit prior to the installation of the road barriers; and

**WHEREAS**, while the City dispatched a crew and removed the concrete barriers and replaced them with Type III barricades, the City failed to comply with the County's comments to the permit as directed by the Court, including, but not limited to, requirements to protect life, health, and safety such as the submission and approval of a signed and sealed maintenance of traffic plan addressing turning movements, maneuverability of vehicles including emergency vehicles, a detour plan with adequate signage, and notice by VMS board for a two week period so that the public can be made aware of the restricted movements; and

**WHEREAS**, additionally, the City failed to obtain a permit from the Florida Department of Transportation ("FDOT"), to submit a maintenance of traffic plan to FDOT prior to installing signage, or to provide proof of concurrency from FDOT as required by the County comments; and

**WHEREAS**, the City's unlawful actions infringed on the County's exercise of its exclusive and Countywide jurisdiction over all traffic engineering matters, including the flow of traffic and traffic control devices; and

**WHEREAS**, the City has moved to abate the Lawsuit and requests that the County and the City enter into a dispute resolution process in accordance with Chapter 164 of the Florida Statutes; and

**WHEREAS**, the County's and the intervenor's significant legal rights will be compromised if a court proceeding does not take place before compliance with the provisions of Chapter 164 of the Florida Statutes; and

**WHEREAS**, because the unauthorized and illegal pilot program unilaterally commenced by the City shall not exceed a 90-day period, as set forth in the comments, there is inadequate time for the parties to complete the conflict resolution procedures prior to the expiration of the pilot program; and

**WHEREAS**, therefore, the City's requested abatement of the proceedings in order to pursue conflict resolution proceedings, allows for the continuation and likely completion of temporary public street closures in the form of a pilot program during the extended interim period, which substantially compromises the County's ability and right to exercise its exclusive jurisdiction over traffic flow; and

**WHEREAS**, residents of the Silver Bluff area, one of whom has intervened in this matter to contest the placement of the barriers, would be adversely affected by an abatement of these matters to allow for the conflict resolution proceedings set forth in Chapter 164; and

**WHEREAS**, thus, an abatement of the litigation pending the conclusion of conflict resolution procedures while the City conducts its pilot program could result in the loss of the County and affected residents' ability to adequately pursue their significant legal rights; and

**WHEREAS**, additionally, the City's failure to comply with the Court's Emergency Order and to comply with the County Engineer's comments on its application creates an immediate danger to the life, health, and safety of County and City residents and visitors; and

**WHEREAS**, Chapter 164 of the Florida Statutes provides that if the County, by a three-fourths vote of the membership now in office, finds an immediate danger to the health, safety, or welfare of the public requires immediate action, or that significant legal rights will be

compromised if a court proceeding does not take place before the dispute resolution processes are concluded, the conflict resolution procedure and abatement of the court action would not be required before proceeding with the Lawsuit,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA,** that this Board: (i) approves the foregoing recitals and incorporates them herein by reference; (ii) finds that pursuant to Section 164.1041(2), Fla. Stat., an immediate danger to the health, safety or welfare of the public requires immediate action; and (iii) finds that pursuant to Section 164.1041(2), Fla. Stat., the County’s significant legal rights will be compromised if the Lawsuit is abated and proceedings do not proceed before the City and the County may comply with the provision of Chapter 164 of the Florida Statutes. Accordingly, this Board, by a three-fourths vote of Commission members now in office, hereby dispenses with the procedures for conflict resolution as authorized by Florida law.

The Prime Sponsor of the foregoing resolution is Chairman Jose “Pepe” Diaz. It was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

	Jose “Pepe” Diaz, Chairman	<b>aye</b>	
	Oliver G. Gilbert, III, Vice-Chairman	<b>aye</b>	
Sen. René García	<b>aye</b>	Keon Hardemon	<b>aye</b>
Sally A. Heyman	<b>aye</b>	Danielle Cohen Higgins	<b>aye</b>
Eileen Higgins	<b>aye</b>	Joe A. Martinez	<b>aye</b>
Kionne L. McGhee	<b>aye</b>	Jean Monestime	<b>aye</b>
Raquel A. Regalado	<b>aye</b>	Rebeca Sosa	<b>aye</b>
Sen. Javier D. Souto	<b>aye</b>		

The Chairperson thereupon declared this resolution duly passed and adopted this 16<sup>th</sup> day of March, 2021. 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

**Melissa Adames**  
By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "AL", is written over a horizontal line.

Bruce Libhaber  
Debra Herman  
Annery Pulgar Alfonso