

MEMORANDUM

Agenda Item No. 5(B)

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

DATE: June 15, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to nonemergency medical transportation; amending sections 4-43, 4-44, 4-46, and 4-52 of the Code; amending definitions and application procedures; providing for administrative approval or denial of applications for certificates of public convenience and necessity; amending procedures for suspension and revocation proceedings; amending procedures for appeals from denials, suspensions, and revocations; amending provisions relating to transfer of certificates of public convenience and necessity

Ordinance No. 21-49

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Kionne L. McGhee and Co-Sponsor Commissioner Eileen Higgins.



Gerí Bonzon-Keenan
County Attorney

GBK/smm

Memorandum



Date: June 15, 2021

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

From: Daniela Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniela Levine Cava".

Subject: Fiscal Impact Statement for Ordinance Relating to Nonemergency Medical Transportation (#210990)

The proposed Ordinance amends Chapter 4, Article III of the Code of Miami-Dade County, Florida relating to the regulation of nonemergency medical transportation by providing for administrative approval or denial of applications for certificates of public convenience and necessity. The implementation of this ordinance will not have a fiscal impact to Miami-Dade County as it will not result in additional staffing needs or future operational costs.

A handwritten signature in black ink that reads "Jimmy Morales".

Jimmy Morales
Chief Operations Officer

Memorandum



Date: June 15 , 2021

To: Honorable Chairman Jose "Pepe" Diaz
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 Nonemergency Medical Transportation (#210990)

The proposed Ordinance amends Chapter 4, Article III of the Code of Miami-Dade County, Florida relating to the regulation of nonemergency medical transportation by providing for administrative approval of applications for certificates of public convenience and necessity.

Currently, the Code provides a two-step process for approval of applications which includes preparing an item for public hearing at Committee, followed by scheduling the item for final action by the Board. As a result, it can take several months for approval of an application. Administrative approval of applications would likely result in faster turnaround times for final action on nonemergency applications. This will increase the availability of licensed nonemergency transportation providers in Miami-Dade County, thus increasing competition and high service standards to the public.

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

Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

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

DATE: June 15, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 5(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. 5(B)
6-15-21

ORDINANCE NO. 21-49

ORDINANCE RELATING TO NONEMERGENCY MEDICAL TRANSPORTATION; AMENDING SECTIONS 4-43, 4-44, 4-46, AND 4-52 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; AMENDING DEFINITIONS AND APPLICATION PROCEDURES; PROVIDING FOR ADMINISTRATIVE APPROVAL OR DENIAL OF APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; AMENDING PROCEDURES FOR SUSPENSION AND REVOCATION PROCEEDINGS; AMENDING PROCEDURES FOR APPEALS FROM DENIALS, SUSPENSIONS, AND REVOCATIONS; AMENDING PROVISIONS RELATING TO TRANSFER OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, on December 18, 1980, the Board adopted Ordinance No. 80-145, later codified in Chapter 4, Article III of the Code of Miami-Dade County, Florida (the “Code”), providing for the regulation of non-emergency medical transportation; and

WHEREAS, at present the Code provides a two-step process for approval of applications for Certificates of Public Convenience and Necessity, which includes preparing an item for public hearing at Committee, followed by scheduling the item for final approval by the Board; and

WHEREAS, as a result, it can often take several months for approval of an application; and

WHEREAS, the two-step process must be followed even for existing providers seeking to add vehicles to their fleet; and

WHEREAS, revising the Code to provide for administrative approval or denial of applications would likely result in faster turnaround times for final action on said applications; and

WHEREAS, providing for administrative approval or denial of applications would be consistent with the approval process for certificates and licenses for other for-hire industries, including taxies, passenger motor carriers, and limousines; and

WHEREAS, the Board believes that it is in the best interest of the residents of the County to establish procedures for the administrative approval or denial of applications for Certificates of Public Convenience and Necessity,

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

Section 1. Section 4-43 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 4-43. – Definitions.

For the purposes of this article, the following definitions shall apply:

* * *

- (d) Director means the Miami-Dade County Consumer Services Department Director >>or the Director of a successor department responsible for regulating Chapter 4 of the Code or the Director's designee<<.
- (e) CSD means the Miami-Dade County Consumer Services Department >>or successor department responsible for regulating Chapter 4 of the Code<<.

¹ Words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< shall be added. Remaining provisions are now in effect and remain unchanged.

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Section 2. Section 4-44 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 4-44. – Obtaining a certificate of public convenience and necessity.

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- (c) ~~[[County Manager's recommendation.]]~~ >>Investigation of certificate applicants. The Director shall investigate each application and accompanying required documents and reject any application that is not properly filed or that is incomplete or untrue in whole or in part. Such investigation shall include a Miami-Dade Police Department background check, including but not limited to past business credit or financial standing and law enforcement records. The Director may approve or deny the issuance of certificates as specified in this chapter on such terms and conditions as the public interest may require. The Director's decision to reject or deny may be appealed in accordance with Section 4-52(d) of the Code of Miami-Dade County.<< ~~[[CSD shall review and investigate each application and report findings to the County Manager. Such investigation shall include a Miami-Dade Police Department background check, including but not limited to past business credit or financial standing and law enforcement records. CSD shall base its recommendations on the criteria contained in subsection (d) below, the thoroughness of the applications and the competence of the applicant. The County Manager may require any further investigation or additional information that he deems necessary. The County Manager shall submit a written report and recommendation to the Commission.]]~~
- (d) ~~[[Commission determination. The Commission shall hold at least two (2) public hearings each year if required to consider and take action upon pending certificate applications and transfer applications. The Commission, after such public hearing, by resolution may issue or refuse to issue the certificate as applied for, or may issue a certificate with such modifications or upon such terms and conditions as in its judgement the public convenience and necessity may require.]]~~ >>Director's determination.<< In reaching [[its]]

>>his or her<< determination, the ~~[[Commission]]~~
>>Director<< shall consider the application, ~~[[the County~~
~~Manager's report and recommendation, all matters presented~~
~~at the public hearing]]~~ and, among others, the following
criteria:

- (1) The ability of the applicant to provide the proposed services.
- (2) The adequacy of the management plan of the applicant.
- (3) The benefits that will accrue to the public interest from the proposed service.

~~[[Each resolution approving an application shall specify the~~
~~number of certificates that have been authorized thereby.]]~~
Each Certificate shall authorize a single nonemergency
vehicle.

The ~~[[County Manager]]~~ >>Mayor<< may prescribe rules
and regulations consistent with the criteria set forth in
subsection (d) (1), (2) and (3), above, for the approval and
issuance of emergency temporary certificates. Such
certificates shall be effective for no more than ninety (90)
days and may not be renewed without ~~[[Commission]]~~ >>the
Mayor's<< approval.

- (e) *Requirements for issuance of certificate.* After
~~[[Commission]]~~ approval and payment of a certificate fee,
CSD shall issue the applicant a conditional ninety-day
certificate and shall issue a full certificate provided that the
applicant has complied with the requirements of this article
~~[[and presents proof of approval by the Florida Department~~
~~of Health and Rehabilitation Services]]~~. No full certificate
shall be issued unless the applicant has presented proof of
insurance as required by Section 4-48 and passed the
required vehicle inspections. If the applicant fails to comply

with the requirements of this subsection within ninety (90) days after notification of ~~[[Commission]]~~ approval, such approval shall be automatically revoked and no certificate shall be issued.

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- (i) *Assignment, sale or transfer of certificate.* No certificate may be assigned, sold (either outright or under a conditional sales contract), transferred or its ownership structure changed or altered so as to result in a change or the possibility of change in the control of said certificate from the holder of said certificate to another until the proposed assignment, sale, transfer or change in control shall have been approved by the ~~[[Commission]]~~ >>Director<<. Any transfer of shares of stock or interest of any person or certificate holder so as to cause a change in the directors, officers, shareholders or managers of such person or certificate holder shall be deemed a transfer or assignment as contemplated in this section and subject to the same rules and regulations as any other transfer or assignment.

(1) ~~[[The Director is authorized to approve assignments, sales or transfers from one operator to another when requested, upon submission of an application and payment of the investigative fee as specified in subsection (b), above, and after an investigation and final determination, based on the criteria for initial certificate approval set forth in this section.]]~~

Appeals to the Director's decision shall be made >>pursuant to Section 4-52(d) of the Code of Miami-Dade County.<<
~~[[to the Commission.]]~~

(2) The Director shall issue a replacement certificate to any operator upon application, payment of a replacement fee and presentation of proof that the certificate has been lost or stolen, or that a certificate is requested for a replacement nonemergency vehicle.

(3) All other proposed assignments, sales or transfers must be approved by the ~~[[Commission]]~~ >>Director<< as specified in subsection (d), above, and must be supported by an application and fee as specified in subsection (b), above and an investigation and report as specified in subsection (c), above.

Section 3. Section 4-46 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 4-46. - Maintaining a certificate—Operating rules.

* * *

(f) *Records required.* Each operator shall maintain accurate records of all financial and operating information as may be required by CSD. CSD shall be granted access to these records for the purpose of inspection and/or copying same, upon five (5) days' prior notice. All such records and information shall be confidential except that they will become public records for the purpose of revocation or suspension hearings, or, if required by the ~~[[Board of County Commissioners]]~~ >>Director<<, for the purpose of approving or disapproving applications for new certificates or transfers of certificates.

* * *

Section 4. Section 4-52 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 4-52. - Enforcement and penalties.

* * *

(d) *Suspension or revocation of the certificate or chauffeur's registration.*

(1) *Grounds for suspension or revocation.* Except for automatic suspensions as provided for elsewhere in this article, nonemergency vehicle certificates and chauffeur's registrations are subject to suspension or revocation by the Director as follows:

a. Nonemergency certificate. Upon notice and hearing as hereinafter specified unless waived by the certificate holder when it appears that:

1. The holder thereof has ~~>>has pled nolo contendere, pled guilty, been found guilty, or<<~~ been convicted ~~>>(regardless of whether adjudication has been withheld)<<~~ of a felony or any criminal offense ~~>>which would preclude the issuance of the certificate, registration, or permit as provided in this chapter<<[[involving moral turpitude]];~~ or
2. The certificate was obtained by an application in which any material fact was omitted or falsely stated; or
3. The holder thereof has permitted the nonemergency vehicle to be operated in violation of any law; or
4. The holder thereof has failed after being notified in writing to comply with, or has willfully violated any of the provisions of this article; or
5. The operator has not complied with the requirements of subsection (c)(5), above; or
6. The certificate has been suspended three (3) or more times within a twelve-month period; or
7. The public interest will best be served by revocation or suspension; provided, however, that good cause be shown.

b. Chauffeur's registration. Upon notice and hearing as hereinafter specified unless waived by chauffeur when it shall appear that:

1. The chauffeur has failed, after being notified in writing, to comply with or has willfully violated any of the provisions of this article; or
2. The registration was obtained by an application in which any material fact was omitted or falsely stated; or
3. The chauffeur has not complied with the requirements of fine in subsection (c)(5), above; or
4. The registration has been suspended three (3) or more times within a twelve-month period; or
5. The public interest will best be served by revocation or suspension; provided, however, that good cause be shown.

(2) ~~[[Hearing procedure. All hearings required by this section shall be preceded by a minimum of ten (10) days' written notice. Said notice shall specify the Director's proposed action and the grounds upon which the action is predicated. The operator or chauffeur may be represented by legal counsel and shall be entitled to present a defense to the proposed action. Failure to appear at a duly noticed hearing shall be deemed a waiver of the right to hearing and an admission of the acts specified in the notice. All such hearings shall be conducted before a hearing examiner who shall not have responsibility for the enforcement of this article and who shall be designated by the Director. Insofar as is practicable, hearings shall be conducted in accordance with the rules of civil procedure governing the procedure in Circuit Court, except as may be provided in the Miami-Dade County Code or by rules adopted by the Board of County Commissioners. All such hearings shall be reported and, at the request of any party, transcribed.]]>> Appeals from decisions of Director and administrative hearings.~~

- a. Right to appeal. Any person or entity shall have the right to appeal application denials, suspensions, and revocations by the Director. The named party shall elect to either:
 - 1. Comply with the Director's decision in the manner indicated on the Notice of Director's decision; or
 - 2. Request an administrative hearing before a hearing officer to appeal the decision of the Director.
- b. Filing the appeal. Appeal by administrative hearing shall be accomplished by filing within 10 days after the date of the decision complained of a written notice of appeal to the Clerk of the Courts, Code Enforcement Section. The notice of appeal shall set forth concisely the nature of the decision appealed and the reasons or grounds for appeal.
- c. Failure to appeal. Failure to appeal the decision of the Director within the prescribed time period shall constitute a waiver of the person's right to an administrative hearing before the hearing officer. Where the Director's decision involves a suspension or revocation, a waiver of the right to an administrative hearing shall be treated as an admission of the violation and the Director's decision shall be deemed final and enforceable. No further remedies shall be granted and the decision shall stand.
- d. Hearing officers. Hearing Officers shall be appointed by the Clerk of the Courts, Code Enforcement Section.
- e. Scheduling and conduct of hearing.
 - 1. Upon receipt of a timely request for an administrative hearing, the hearing officer shall set the matter down for hearing on the next regularly

scheduled hearing date or as soon as possible thereafter or as mandated in the specified section of the Code.

2. The hearing officer shall send a notice of hearing by first class mail to the named party at his, her or its last known address. The notice of hearing shall include, but not be limited to, the following: the place, date, and time of the hearing; right of the named party to be represented by a lawyer; right of the named party to present witnesses and evidence; in the case of a Director's decision involving suspension or revocation, notice that failure of the named party to attend the hearing shall be deemed a waiver of the right to hearing and an admission of the acts specified in the notice; and notice that requests for continuances will not be considered if not received by the hearing officer at least 10 calendar days prior to the date set for hearing.
3. The hearing officers shall call hearings on a monthly basis or upon the request of CSD. No hearing shall be set sooner than 15 calendar days from the date of notice of the Director's decision, unless otherwise prescribed by this chapter.
4. A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the hearing officer at least 10 calendar days prior to the date set for the hearing. No additional continuances shall be granted without the concurrence of the CSD.

5. All hearings conducted by a hearing officer shall be open to the public. All testimony shall be under oath. If the named party has been properly notified, a hearing may proceed in the absence of the named party and the failure to attend a hearing shall be deemed a waiver of the right to a hearing and an admission of the acts specified in the notice.
6. The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.
7. The Clerk of the Board of County Commissioners shall provide clerical and administrative personnel as may be reasonably required by each hearing officer for the proper performance of his or her duties.
8. Each case before a hearing officer shall be presented by the Director or his or her designee.
9. The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses.
10. Each party shall have the following rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any relevant matter; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. All relevant evidence shall be admitted.
11. The hearing officer shall make findings of fact based on the evidence of record. In order to make a finding

upholding the Director's decision the hearing officer must find that a preponderance of the evidence supports the Director's decision and, where applicable, indicate that the named party was responsible for the violation of the relevant section of the Code as charged.

12. If the Director's decision is affirmed the named party may be held liable for the reasonable costs of the administrative hearing.
13. The fact-finding determination of the hearing officer shall be limited to whether the alleged violation occurred or whether competent, substantial evidence supports the Director's decisions. Based upon this fact-finding determination, the hearing officer shall either affirm or reverse the decision of the Director. If the hearing officer affirms the decision of the Director, the named party shall have 15 days from the date of the hearing officer's decision to comply with the decision of the Director. If the hearing officer reverses the decision of the Director and finds (1) the named party not responsible for the violation alleged; or (2) insufficient basis for the denial of application, a written decision shall be prepared setting forth the basis for such determination. If the hearing officer reverses the decision of the Director, the named party shall not be required to comply with the decision of the Director, absent reversal of the hearing officer's findings pursuant to Section 4-52(d)(2)(f). If the decision of the hearing officer is to affirm, then the following shall be included in the decision:

- (i) Decision of the Director.
- (ii) Administrative costs of the hearing.
- (iii) Date for compliance, if applicable.

14. The hearing officer shall have the power to:

- (i) Adopt procedures for the conduct of hearings;
- (ii) Subpoena alleged violators and witnesses for hearings; subpoenas may be served by the Miami-Dade County Police Department or by the hearing officer's staff;
- (iii) Subpoena evidence; and
- (iv) Take testimony under oath.

f. Appeals.

- 1. The named party or the county may appeal a final order of the hearing officer by filing a notice of appeal in the Circuit Court in and for Miami-Dade County, Florida, in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for the review of administrative action.
- 2. Unless the findings of the hearing officer are overturned in a proceeding held pursuant to section 4-52(d)(2)(f), all findings of the hearing officer shall be admissible in any further proceeding to compel compliance with the Director's decision.

- g. Nothing contained in this chapter shall prohibit Miami-Dade County from enforcing the Code by any other means authorized by law. The enforcement procedures outlined herein are cumulative to all others and shall not be deemed to be prerequisites to filing suit for the enforcement of any section of this Code. The words "action" and "decision" as used herein shall not include the filing of any action by the Director in any court. The Director may reconsider at any time any action or decision taken by the Director and therefore may modify such an action or decision.<<

~~[[Within a reasonable time after the conclusion of the hearing, the hearing examiner shall submit to the Director a statement of findings, conclusions and recommendations. If the hearing examiner affirms the Director's proposed action, the appellant shall pay the administrative costs of the hearing, unless such decision is reversed on subsequent appeal. The Director shall promptly notify all parties of his or her decision.~~

- ~~(3) Authority to subpoena witnesses, compel production of records. The hearing examiner shall have the power to administer oaths, subpoena witnesses upon the written request of any interested party, and may compel the production of records, books or papers. Should the hearing examiner without good cause refuse to subpoena witnesses or compel the production of books, records or papers, then any interested party may, without cost to the petitioner, petition the County Court to order the appearance of any witness or witnesses or order the production of any books, records or papers necessary to a fair and proper hearing. Failure of any witness ordered to appear or failure of any person ordered to produce books, records or papers may constitute a contempt of court and may be punishable in the same manner as any other contempt of court.~~

~~If any witness fails to honor a subpoena, the party requesting the same may apply to the County Court for a rule to show cause why the witness should not appear and, if after being ordered to appear by the Court, the witness fails to comply therewith, the Court after due notice and hearing may adjudge the witness in contempt of court and punish him accordingly. The subpoenaing party shall bear the cost of such subpoena.~~

- ~~(4) *Appeal of Director's decision.* The Director's decision may be appealed to the County Manager within ten (10) days of the date of said decision. Such appeal shall not stay the Director's decision. Upon such an appeal, the County Manager shall consider the transcription of the hearing and all evidence produced at the hearing. No further testimony or exhibits shall be permitted. The County Manager shall, within twenty (20) days, on the basis of the record established before the Director, either affirm, reverse or modify the Director's decision.~~
- ~~(5) [*Length of suspension.*] Suspensions pursuant to this section shall not exceed six (6) months. Three (3) or more suspensions within any twelve-month period may constitute grounds for revocation of the certificate or chauffeur's registration so suspended.~~
- ~~(6) *Appeal of County Manager's decision and Board of County Commissioner's decision.* Appeals from the County Manager's decisions pursuant to this section and appeals from any Board of County Commissioners' decision concerning certificates shall be by certiorari to the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, in accordance with the Florida Rules of Appellate Procedure.]]~~

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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 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. 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:

June 15, 2021

Approved by County Attorney as
to form and legal sufficiency:

GBK
D.P.C

Prepared by:

Dale P. Clarke

Prime Sponsor: Commissioner Kionne L. McGhee

Co-Sponsor: Commissioner Eileen Higgins