

MEMORANDUM

Amended
Agenda Item No. 5(G)

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

DATE: July 20, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to real estate transactions in the incorporated and unincorporated areas; creating section 21-49.1 of the Code; requiring that disclosure relating to septic tank systems be provided in certain real estate transactions; providing for enforcement through a cause of action existing under Florida law

Ordinance No. 21-71

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



Geri Bonzon-Keenan
County Attorney


GBK/uw

Memorandum



Date: July 20, 2021

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

From: Daniella Levine Cava
Mayor 

Subject: Fiscal Impact Statement for Ordinance Related to Real Estate Transactions in Incorp. Areas
& UMSA

This ordinance will not have a fiscal impact to the County. It provides a fine for non-disclosure of septic tank systems on property sales. It is difficult, at this time, to project revenues generated from fines collected as a result of violations.



Jimmy Morales
Chief Operations Officer


FIS03321 210923

Memorandum



Date: July 20, 2021

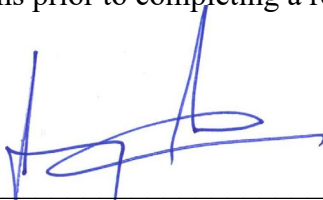
To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: Social Equity Statement for Ordinance Relating to Real Estate Transactions in the
Incorporated and Unincorporated Areas – No. 210923

The proposed ordinance creates section 21-49.1 and amends section 8CC-10 of the Code of Miami-Dade County relating to real estate transactions and septic tank systems. Specifically, the proposed ordinance places a legal duty on sellers of real estate to disclose to purchasers whether a property has or is serviced by a septic tank system, and to place an acknowledgment of the disclosure on the instrument of conveyance. The ordinance shall apply to both the incorporated and unincorporated areas.

The implementation of the ordinance will have a positive social equity impact as it will ensure additional transparency in real estate transactions and it will allow property sellers and purchasers to be informed about the presence of a septic tank and the purchaser’s duty to maintain the septic tank systems prior to completing a real estate transaction.

A handwritten signature in blue ink, appearing to read "Jimmy Morales", written over a horizontal line.

Jimmy Morales
Chief Operations Officer

210923



MEMORANDUM

(Revised)

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

DATE: July 20, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Amended
Agenda Item No. 5(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 _____ Amended
Veto _____ Agenda Item No. 5(G)
Override _____ 7-20-21

ORDINANCE NO. O-21-71

ORDINANCE RELATING TO REAL ESTATE
TRANSACTIONS IN THE INCORPORATED AND
UNINCORPORATED AREAS; CREATING SECTION 21-49.1
OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA;
REQUIRING THAT DISCLOSURE RELATING TO SEPTIC
TANK SYSTEMS BE PROVIDED IN CERTAIN REAL ESTATE
TRANSACTIONS; PROVIDING FOR ENFORCEMENT
THROUGH A CAUSE OF ACTION EXISTING UNDER
FLORIDA LAW; PROVIDING SEVERABILITY, INCLUSION
IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, septic tank systems are located onsite at individual properties and treat
wastewater from toilets, showers, sinks, dishwashers, and other onsite sources; and

WHEREAS, persons and entities that are in the process of purchasing real property may
wish to know whether the property has a septic tank system; 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, this Board wishes to require: (1) a disclosure statement relating to septic tank systems before the conveyance of the real property; and (2) acknowledgement of the disclosure by the purchaser; and

WHEREAS, because septic tank systems are present in both the incorporated and unincorporated areas of the County, this requirement should apply in both the incorporated and unincorporated areas; and

WHEREAS, Florida law imposes duties on sellers in real estate transactions, including but not limited to the duty of a seller of residential property to disclose to the purchaser all known facts materially affecting the value of the property which are not readily observable and are not known to the purchaser; and

WHEREAS, Florida law further provides more generally that a person's violation of a duty imposed by ordinance may form the basis of a cause of action by another person injured by the violation; and

WHEREAS, to help ensure compliance with the septic tank system disclosure requirement, this Board intends for this requirement to impose on sellers a legal duty of disclosure enforceable by purchasers, or other parties with standing, through a cause of action existing under Florida law when the purchaser or other party with standing has sustained financial injury caused by the seller's failure to comply with the disclosure requirement,

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

Section 1. The foregoing recitals are incorporated as if set forth herein and are approved.

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

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

(a) Applicability.

- (1) This section shall be a minimum standard and shall apply to both the incorporated and unincorporated areas.**
- (2) The County may enforce the provisions of this section in the incorporated and unincorporated areas of Miami-Dade County, and each municipality may enforce the provisions of this section within such municipality.**
- (3) Any municipality may establish and enforce more stringent regulations and set forth such further penalties as such municipality may deem necessary.**

(b) Definitions. As used in this section, the term:

- (1) Affected real property means any parcel of land on which a septic tank system is installed or that is serviced by a septic tank system.**
- (2) Septic tank system means a septic tank or an onsite sewage treatment and disposal system, as defined in section 24-5.**

(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:

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.

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.

- (d) Acknowledgment of septic tank system disclosure statement on instrument of conveyance. The seller shall ensure that the following statement appears in a prominent location on the face of the instrument conveying the affected real property, which instrument must be signed by the purchaser, notarized, and recorded with the Clerk of the Court:

I HEREBY CERTIFY THAT I HAVE READ, UNDERSTOOD, AND SIGNED THE SEPTIC TANK SYSTEM DISCLOSURE STATEMENT FOR THE CONVEYANCE OF THIS REAL PROPERTY, AS REQUIRED BY SECTION 21-49.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA.

- (e) Enforcement.

- (1) Miami-Dade County shall not be held liable for any damages or claims resulting from the seller's failure to comply with provisions of this section.
- (2) It is the intent of this section to impose on sellers a legal duty of disclosure enforceable by purchasers, or other parties with standing, through a cause of action existing under Florida law when the purchaser or other party with standing has sustained financial injury caused by the seller's failure to comply with the disclosure requirement. Notwithstanding the foregoing, this section shall not be construed as creating an express or implied private cause of action.<<

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:

July 20, 2021

Approved by County Attorney as
to form and legal sufficiency:

GBK
CJW

Prepared by:

Christopher J. Wahl

Prime Sponsor: Commissioner Eileen Higgins
Co-Sponsor: Commissioner Raquel A. Regalado