

MEMORANDUM

Substitute
Agenda Item No. 5(A)

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

DATE: January 17, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to
Comprehensive Development
Master Plan (CDMP) procedures;
amending section 2-116.1 of the
Code; providing additional
procedures related to certain
CDMP amendment applications;
providing additional procedures
for when certain types of CDMP
amendment applications fail to
receive number of votes required
for adoption; making technical
changes

Ordinance No. 23-1

This substitute differs from the original version in that: in proposed new subsections 2-116.1(3)(h)(7) and 2-116.1(4)(c)(6) on pages MDC009-12, the word “provided” in provision (i) is replaced with the word “except” to clarify that the provisions that follow are exceptions and not preconditions to the general three-deferral rule; in the same subsections, a new provision (i)(c) is added to create a 6-month rule under which applications that are deferred indefinitely are deemed withdrawn if no action is taken on them within 6 months; and new subparagraphs 2-116.1(3)(h)(8) and 2-116.1(4)(c)(7) are created to clarify that applications that are denied may only be brought back as new applications.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Danielle Cohen Higgins and Co-Sponsor Senator René García.



Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: January 17, 2023

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

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink, reading "Daniella Levine Cava".

Subject: Fiscal Impact Statement for Ordinance Relating to Procedures Related to CDMP
Amendment Applications

The implementation of this Ordinance will not create a fiscal impact to the County as it will not require additional staffing resources or lead to higher operating costs.

A handwritten signature in blue ink, reading "Jimmy Morales".

Jimmy Morales
Chief Operations Officer

Date: January 17, 2023

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

From: Daniella Levine Cava 
Mayor

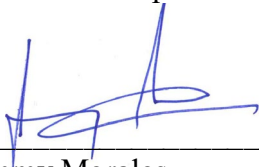
Subject: Social Equity for Ordinance Relating to Comprehensive Development Master Plan
(CDMP) Amendment Procedure for Deferrals

The proposed ordinance adds language to Section 2-116.1 of the Code of Miami-Dade County (Code), providing procedures related to motions to approve or transmit applications to move the Urban Development Boundary (UDB), deferrals of CDMP amendment applications related to the UDB and modifications to CDMP Declarations of Restrictions (covenants).

At present, the Code does not limit the number of times a CDMP application may be deferred until the Board takes action to approve, approve with change, or deny the application. The proposed ordinance would provide that, for UDB and covenant modification applications, which require a supermajority to approve, the final action on these applications will be deemed to be denial after 3 deferrals. The proposed ordinance provides an exception to the 3-deferral rule where one or more additional public hearings are provided for the subject application.

In addition, the ordinance creates a clarifying procedure for the adoption of small-scale or transmittal of standard amendments wherein a failure to adopt or transmit is considered a denial if no other motion succeeds in passing prior to adjournment or loss of quorum.

The proposed ordinance will provide greater predictability around the consideration, hearing, and decision-making on CDMP applications affecting the UDB that the Board does not take final action on at its first opportunity and provide a clearer set of rules for the public to understand. The exception to the 3-deferral rule requiring public hearings would give the public opportunities to be heard for applications experiencing protracted deliberation and provides greater transparency in the process. The proposed ordinance will also save valuable staff time and resources that must be devoted to applications that are deferred multiple times.



Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

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

DATE: January 17, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Substitute
Agenda Item No. 5(A)

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 _____

Substitute
Agenda Item No. 5(A)
1-17-23

ORDINANCE NO. 23-1

ORDINANCE RELATING TO COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP) PROCEDURES; AMENDING SECTION 2-116.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING ADDITIONAL PROCEDURES RELATED TO CERTAIN CDMP AMENDMENT APPLICATIONS; PROVIDING ADDITIONAL PROCEDURES FOR WHEN CERTAIN TYPES OF CDMP AMENDMENT APPLICATIONS FAIL TO RECEIVE NUMBER OF VOTES REQUIRED FOR ADOPTION; MAKING TECHNICAL CHANGES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, section 2-116.1 of the County Code provides certain procedures relating to the Board’s consideration and adoption of amendments to the Comprehensive Development Master Plan (CDMP); and

WHEREAS, as specified therein, any decision to include additional land within the Urban Development Boundary (UDB), to modify the Urban Expansion Area (UEA) boundary, or to redesignate to an urban use any land located outside the UDB (collectively, “UDB-related amendments”) requires an affirmative vote of two-thirds of the total membership of the Board then in office; and

WHEREAS, the CDMP also specifies that any decision to modify or release a previously approved declaration of restrictive covenants (hereinafter referred to as “covenant modification”) requires an affirmative vote of two-thirds of members present but not less than seven votes; and

WHEREAS, in addition, transmitting such applications for state review, as with other CDMP amendment applications, requires the affirmative vote of a majority of the total membership of the County Commission then in office; and

WHEREAS, if these types of applications fail to satisfy the applicable heightened vote requirement, the Code does not specify that such failure may constitute final action on transmittal or adoption of the application; and

WHEREAS, for applications for both UDB amendments and covenant modifications, this Board wishes to provide that, under certain circumstances, three deferrals can constitute final action to deny the application while providing an exception if the public hearing is reopened after receiving required notice; and

WHEREAS, this Board also wishes to provide that for applications for both UDB-related amendments and covenant modifications, such application's failure to garner the number of votes required for transmittal or adoption can constitute final action to deny the application under certain circumstances,

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

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

Section 2. Section 2-116.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-116.1. Amendment procedure for Comprehensive Development Master Plan.

* * *

- (2) *Application.* Except as specifically provided below, any request for amendments, modifications, additions or changes to the Comprehensive Development Master Plan shall be submitted to the Department during the period (also referred to as "application cycles") between January 1 and January

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.

31 inclusive (hereinafter “January period” or “January cycle”), May 1 and May 31 inclusive (hereinafter “May period” or “May cycle”), and during the period between October 1 and October 31 inclusive (hereinafter “October period” or “October cycle”), in each year only in accordance with the following provisions:

- (a) Applications related to the Urban Development Boundary. The provisions in this paragraph shall govern the following applications, which shall collectively be referred to as “UDB-related amendments”: Applications requesting amendment to the Urban Development Boundary (UDB) or to the Urban Expansion Area (UEA) boundary depicted on the Land Use Plan map, or applications to change the land use classification of land located outside of the UDB to a classification other than Agriculture, Open Land, or Environmental Protection.

* * *

- (b) All requests shall be made by filing an application in a form and containing the information prescribed by the Director of the Department.

>>(1)<< Applicants seeking to have their requests considered to be small-scale amendment applications, as provided in Section 163.3187, F.S., and eligible for processing in accordance with the procedures provided herein for final action, shall clearly state such request in the application.

>>(2)<< Text amendments that only modify the description of a Special District boundary may be considered small-scale amendments, provided that the acreage of the subject property does not exceed the small-scale thresholds.

>>(3)<< Small-scale amendment applications shall not be eligible to request amendments to modify or expand the UDB or UEA.

>>(4)<< All proposed plan amendment applications not requested for adoption as small-scale amendment applications, and all requested small-scale amendment applications which are not adopted but which are transmitted to the State Land Planning Agency and other review agencies for review and comment are

hereby defined as standard expedited amendment applications.

>>(5)<< Applications which are deemed by the Department to be unclear or incomplete may be supplemented no later than the fifth business day following notice from the Department that the application filed is deficient.

* * *

- (3) *Procedure upon application; Director of Regulatory and Economic Resources, Community Councils, Planning Advisory Board (PAB), and Board of County Commissioners; or applications pursuant to a compliance agreement.*

* * *

- (h) The Board of County Commissioners shall hold one public hearing within 180 calendar days following the end of the relevant filing period unless a greater time is deemed necessary by the Board of County Commissioners; however, the Director may extend the time if requested by the applicant prior to the earliest deadline for the publication of required notices for the hearing before the Board of County Commissioners.

* * *

- (4) The action to adopt any small-scale amendment to the CDMP shall be by ordinance enacted only upon vote of the majority of the total membership of the County Commission then in office.

- (5) Notwithstanding any other provision to the contrary, any decision to >>adopt a modification or release of<< ~~[[make amendments, modifications, additions, or changes to]]~~ a declaration of restrictive covenants that was accepted in connection with a prior application to amend the CDMP >>(collectively referred to as a “covenant modification”)<< shall require a vote of two-thirds ~~[[$\frac{2}{3}$]]~~ of members present, but not less than seven affirmative votes.

- (6) The transmittal action shall be taken by resolution of the Board of County Commissioners. The decision to transmit shall be by affirmative vote of not less than a majority of the total membership of the County Commission then in office.

>>(i)<< Following the adoption of the resolution pertaining to transmittal, the Board may consider the approval on first reading of one ~~[(4)]~~ or more ordinances to subsequently take final action on the transmitted applications.

>>(ii)<< The Board of County Commissioners hereby authorizes and directs the County Mayor or the Mayor's designee to transmit all documents and information required by Sections 163.3184(3) and (4), F.S., following the hearing, on behalf of the Board in accordance with the timeframes established in Section 163.3184, F.S.

>>(7) Additional rules for applications for UDB-related amendments and covenant modifications. Notwithstanding any other provisions of this code to the contrary, the following shall govern motions to defer or transmit applications for UDB-related amendments or covenant modifications or to adopt applications for covenant modifications pursuant to this subsection (3):

- (i) Deferrals. After the public hearing on such application is closed, upon the third deferral of the application, the final or transmittal action shall be deemed a denial,<< >>except<<² ~~[[provided]]~~ >>that:
- a. If, after a deferral, the public

² The differences between the substitute and the original item are indicated as follows: Words double stricken through and/or ~~[[double bracketed]]~~ are deleted, words double underlined and/or >>double arrowed<< are added.

hearing is reopened and such public hearing complies with the notice requirements set forth in this section, then previous deferrals shall not count toward the three-deferral limit; and

b. If a meeting at which such application is on the agenda is cancelled, _____ postponed, adjourned, or loses quorum before the item is considered at such meeting, such meeting shall not count toward the three-deferral limit.<<

>>c. Notwithstanding _____ any provision to the contrary, after the public hearing is closed, if an application is deferred or otherwise _____ postponed indefinitely and no action is taken by the Board of County Commissioners for a period of six months following the latest postponement, the application shall be deemed withdrawn and may only be brought back before the Board if refiled as a new application in accordance with this section.<<

>>(ii) Failure to obtain required supermajority vote. If a motion to adopt such a small-scale amendment or to transmit such a standard amendment fails to receive the minimum number of votes required by this paragraph (3)(h) for the applicable action, and no other available motion is made and approved before recess, adjournment, or loss of quorum, or before the next matter is called for consideration, whichever occurs first, the final or transmittal action on the application

shall be deemed a denial.<<

>>(8) Effect of denial. If an application is denied, it may only be brought back before the Board of County Commissioners if refiled as a new application in accordance with this section.<<

* * *

- (4) *Procedures for final actions after transmittal to state review agencies.* After applications are transmitted for state review as instructed by the Board of County Commissioners, subsequent County actions shall be as follows:

* * *

- (c) All public hearings conducted by the Board of County Commissioners to take final action on applications to amend the CDMP shall be advertised in the manner required by Section 163.3184, F.S.

* * *

- (2) All amendments, modifications, additions or changes to the comprehensive development master plan shall be by ordinance enacted only upon vote of the majority of the total membership of the County Commission then in office, except that any decision to >>adopt a UDB-related amendment<< ~~[[include any additional land within the Urban Development Boundary, to modify the Urban Expansion Area boundary, or to redesignate to an urban use any land located outside the UDB]]~~ shall require a vote of two-thirds ~~[[$\frac{2}{3}$]]~~ of the total membership of the County Commission then in office.

- (3) Notwithstanding any other provision to the contrary, any decision to >>adopt a covenant modification<< ~~[[make amendments, modifications, additions, or changes to a~~

~~declaration of restrictive covenants that was accepted in connection with a prior application to amend the CDMP]] shall require a vote of two-thirds [[(2/3)]]~~ of members present, but not less than seven affirmative votes.

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*

>>(6) Additional rules for applications for UDB-related amendments and covenant modifications. Notwithstanding any other provisions of this code to the contrary, the following shall govern motions to defer or take final action on applications for UDB-related amendments or covenant modifications pursuant to this subsection (4):

(i) Deferrals. After the public hearing on such application is closed, upon the third deferral of the application, the final action shall be deemed a denial, << >>except<< [[provided]] >>that:

a. If, after a deferral, the public hearing is reopened and such public hearing complies with the notice requirements set forth in this section, then previous deferrals shall not count toward the three-deferral limit; and

b. If a meeting at which such application is on the agenda is cancelled, _____ postponed, adjourned, or loses quorum before the item is considered at such meeting, such meeting shall not count toward the three-deferral limit.<<

>>c. Notwithstanding _____ any provision to the contrary, after the public hearing is closed, if an application is deferred or otherwise _____ postponed indefinitely and no action is

taken by the Board of County Commissioners for a period of six months following the latest postponement, the application shall be deemed withdrawn and may only be brought back before the Board if refiled as a new application in accordance with this section.<<

>>(ii) Failure to obtain required supermajority vote. If a motion to adopt such amendment fails to receive the minimum number of votes required by this paragraph (4)(c) for adoption, and no other available motion is made and approved before recess, adjournment, or loss of quorum, or before the next matter is called for consideration, whichever occurs first, the final action on the application shall be deemed a denial.<<

>>(7) Effect of denial. If an application is denied, it may only be brought back before the Board of County Commissioners if refiled as a new application in accordance with this section.<<

- (5) *Additional exceptions from application cycle filing and other procedural requirements.* Notwithstanding other requirements of this section, the following types of applications shall be exempt from the requirement to file within an application cycle.

* * *

- (b) *Procedure for amendment concurrently with Development of Regional Impact Development Order.* Applications related to a proposed development of regional impact (DRI), including requests to modify an approved DRI, may be filed at times other than the filing periods prescribed herein as provided by section 380.06, Florida Statutes. Such

applications shall be processed in accordance with the following provisions:

*

*

*

- (4) Not later than 120 days after the filing of an application pursuant to this paragraph, the Board of County Commissioners shall conduct a public hearing and make a determination on the transmittal of the application pursuant to section 163.3184, Florida Statutes.
- (i) The public hearing shall be advertised in the manner required by section 163.3184, Florida Statutes, for the advertisement of public hearings at which the Board of County Commissioners will consider the transmittal of proposed plan amendments.
- (ii) The transmittal actions of the Board of County Commissioners and the transmittal by the County Mayor or the Mayor's designee shall occur in the manner prescribed in subsection 2-116.1(3) herein.

*

*

*

- (6) Board of County Commissioners final actions on any application filed pursuant to this paragraph >>(5)(b)<< ~~[[~~(b)~~]]~~ shall be >>governed by the procedures for final action set forth in paragraph (4)(c).<< ~~[[by affirmative vote of not less than a majority of the total membership of the County Commission then in office, except that:~~
- (i) ~~Any decision to include any additional land within the Urban Development Boundary, or to redesignate to urban use any land outside the Urban Development Boundary, or to modify the Urban Expansion Area boundary shall require the affirmative vote of two-thirds of the total membership of the~~

- ~~County Commission then in office;
and~~
- (ii) ~~Any decision to make amendments,
modifications, additions, or changes
to a declaration of restrictive
covenants that was accepted in
connection with a prior application to
amend the CDMP shall require a vote
of two-thirds of members present but
not less than seven affirmative
votes.]]~~

* * *

- (c) Procedure for amendments implementing military base reuse plans, pursuant to Section 288.975, F.S. Notwithstanding other requirements of this section, applications requesting amendments to the CDMP, to enable base reuse activities authorized by a base reuse plan approved by record of decision issued by the military branch having jurisdiction over a military base which has been closed or which is designated for closure or realignment, may be filed and approved in accordance with the optional procedures provided in Section 288.975, F.S., and in Section 2-116.1(5)(b) through (5)(b)(12), herein, if authorized by the Board of County Commissioners or County Mayor as provided in paragraph (5)(b)(1). CDMP amendments necessary to initially adopt the military base reuse plan pursuant to Section 288.975, F.S., shall be exempt from the limitation on frequency of plan amendments contained in Section 2-116.1(2), herein.

* * *

- (7) The Board of County Commissioners shall hold one ~~[[4]]~~ public hearing not later than ~~>>50<< [[fifty (50)]]~~ weeks after the County Mayor or the Mayor's designee submits notice to the State Land Planning Agency of Miami-Dade County's intent to use the optional provisions of Section 288.975, F.S. ~~>>(i)<<~~ The hearing held pursuant to this paragraph shall be advertised in accordance with Section 163.3184(11), F.S., and shall be held

on a weekday approximately >>10<<
[[ten (10)]] days after the day that the
advertisement is published.

>>(ii)<< At this hearing the Board shall
consider transmitting to the State
agencies listed in Section 288.975(8),
F.S., (hereinafter State review
agencies) a copy of the amendments
proposed pursuant to Section
288.975, F.S., or petitioning the
secretary of the State Land Planning
Agency for an extension of the
deadline if justified and necessary, in
conformance with Section
288.975(9)(b), F.S.

>>(iii)<< The transmittal action shall be
taken by approving on first reading an
ordinance to take final action on the
proposed amendments>>, provided
that any UDB-related amendments
shall be subject to the rules for such
amendments set forth in paragraph
(3)(h)<<.

>>(iv)<< The Board of County
Commissioners shall take final action
after future public hearing to occur
after State review agencies have
received the transmitted proposed
amendments and had opportunity to
review and comment.

>>(v)<< Notwithstanding any other
provision of this >>section<<
[[Section]], petition for extension of
the deadline may be approved by
motion approved by majority of a
quorum of the Board of County
Commissioners in attendance at any
meeting of the Board of justified and
necessary in conformance with
Section 288.975(9)(b), F.S.,

>>(vi)<< The County Mayor or the Mayor's
designee is authorized and directed to
transmit to the state review agencies
the amendments authorized by
approval at first reading along with all

supporting information required by Section 288.975 and Chapter 163, Part 2, F.S., and pertinent administrative rules adopted pursuant thereto. Transmittal shall occur by hand delivery, or certified or express mail service, with return receipt, not later than >>10<< ~~[[ten-(10)]]~~ days after approval of transmittal by the Board of County Commissioners, and the transmittal letter shall specify that all State review agencies shall return comments directly to the Miami-Dade County Department of Regulatory and Economic Resources or successor agency as the County's coordinator of the CDMP amendment process.

>>(vii)<< Not more than five ~~[[5]]~~ days after transmittal of the proposed plan amendments to the State, the Department shall cause the commencement of the State review period to be advertised in a newspaper of general circulation in Miami-Dade County with invitation for public comments to be submitted to the Department within >>60<< ~~[[sixty-(60)]]~~ days after publication of this advertisement. Miami-Dade County shall consider all comments received not later than >>60<< ~~[[sixty-(60)]]~~ days after publication of this advertisement. If a listed State review agency has not provided comments within >>70<< ~~[[seventy-(70)]]~~ days after transmittal, the Director may determine that comments have not been timely provided and that no objection has been issued by that agency and he may proceed to schedule the activities listed in following paragraphs (8) through (12), herein.

* * *

(10) >>The following shall govern final action on amendments implementing military base reuse plans:<<

(a) Not later than >>60<< ~~[[sixty (60)]]~~ days after the Department has received timely comments from all of the State review agencies, the Board of County Commissioners shall conduct a public hearing and shall take final action to adopt, adopt with changes or not to adopt the proposed amendments.

>>(i)<< Any such changes must be within the scope of the application filed and the proposals made pursuant to, and as authorized by, Section 2-116.1, Code of Miami-Dade County, or within the scope of the written comments received from the State review agencies or other affected persons pursuant to Section 288.975, F.S.

>>(ii) The public hearing and final action shall be governed by the procedures for final action set forth in paragraph (4)(c).<< ~~[[The public hearing conducted by the Board of County Commissioners to take final action on the proposed amendments to the CDMP shall be advertised in the manner required by Section 163.3184(11), F.S. The hearing shall be held on a weekday approximately ten (10) days after the date that the advertisement is published. All amendments, modifications, additions or changes to the Comprehensive Development~~

~~Master Plan shall be by ordinance enacted only upon vote of the majority of the total membership of the County Commission then in office, except that any decision to include any additional land within the Urban Development Boundary (UDB), or to redesignate land outside the UDB to an urban use, or to include or exclude any land within the Urban Expansion Area boundary, shall require a vote of two thirds ($\frac{2}{3}$) of the total membership of the County Commission then in office. Notwithstanding any other provision to the contrary, any decision to make amendments, modifications, additions, or changes to a declaration of restrictive covenants that was accepted in connection with a prior application to amend the CDMP shall require a vote of two thirds ($\frac{2}{3}$) of members present, but not less than seven affirmative votes.]]~~

* * *

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:

January 17, 2023

Approved by County Attorney as
to form and legal sufficiency:

EWJ for

Prepared by:

DK

Dennis A. Kerbel
James Eddie Kirtley

Prime Sponsor: Commissioner Danielle Cohen Higgins
Co-Sponsor: Senator René García