

MEMORANDUM

Agenda Item No. 11(A)(5)

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

DATE: April 2, 2024

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution directing the County Mayor to conduct a study to determine whether any year-round boating-restricted areas (idle speed, no wake zones; slow speed, minimum wake zones; numerical speed limit zones; or vessel-exclusion zones) should be established on the portion of Biscayne Bay north of the MacArthur Causeway until the County line and to prepare a report presenting the findings of the study and making recommendations to this Board

Resolution No. R-282-24

This item was amended at the March 12, 2024 PortMiami, Resiliency, and Sustainability Committee to change the scope of the study required by the resolution from Biscayne Bay to the portion of Biscayne Bay north of the MacArthur Causeway until the County line and makes conforming changes to the title and recital clauses.

The accompanying resolution was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Micky Steinberg and Commissioner Kevin Marino Cabrera.



Geri Bonzon-Keenan
County Attorney

GBK/ks

MDC001



MEMORANDUM
(Revised)

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

DATE: April 2, 2024

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 11(A)(5)

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)(5)
4-2-24

RESOLUTION NO. _____ R-282-24

RESOLUTION DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO CONDUCT A STUDY TO DETERMINE WHETHER ANY YEAR-ROUND BOATING-RESTRICTED AREAS (IDLE SPEED, NO WAKE ZONES; SLOW SPEED, MINIMUM WAKE ZONES; NUMERICAL SPEED LIMIT ZONES; OR VESSEL-EXCLUSION ZONES) SHOULD BE ESTABLISHED ON THE PORTION OF BISCAYNE BAY NORTH OF THE MACARTHUR CAUSEWAY UNTIL THE COUNTY LINE AND TO PREPARE A REPORT PRESENTING THE FINDINGS OF THE STUDY AND MAKING RECOMMENDATIONS TO THIS BOARD

WHEREAS, residents and visitors enjoy riding jet skis, boats, and other vessels on the waters of Miami-Dade County, and particularly in Biscayne Bay; and

WHEREAS, in the past few years, Miami-Dade County has seen a surge in recreational and commercial vessel activity on County waters; and

WHEREAS, while this increase in activity enlivens cultural life in the County and supports the County economy, the County must ensure that boating in County waters is being conducted safely; and

WHEREAS, there has been an increasing number of boaters in Biscayne Bay>>, and in particular the portion of Biscayne Bay north of the MacArthur Causeway until the County line,<<¹ who are operating at high speeds or otherwise engaging in unsafe behavior; and

WHEREAS, it may therefore be appropriate to establish boating speed restrictions in certain areas of Biscayne Bay; and

¹ Committee amendments are indicated as follows: Words stricken through and/or [[double bracketed]] are deleted, words underscored and/or >>double arrowed<< are added.

WHEREAS, section 327.46, Florida Statutes, prescribes the conditions under which local governments may establish boating-restricted areas, which may include (1) idle speed, no wake zones; (2) slow speed, minimum wake zones; (3) numerical speed limit zones; and (4) vessel-exclusion zones; and

WHEREAS, local governments may establish by ordinance certain types of boating-restricted areas without obtaining the prior approval of the Florida Fish and Wildlife Conservation Commission (“FWC”) in the types of areas listed in paragraph (1)(b) of section 327.46, which include, for example, areas within certain distances from boat ramps, hoists, landing facilities, fuel dispensers, bridges, lock structures, and certain swim areas; and

WHEREAS, local governments may establish certain other types of boating-restricted areas, set forth in paragraph (1)(c) of section 327.46, but only after applying to and obtaining the approval of FWC; and

WHEREAS, for example, a county may apply to FWC for approval of an ordinance establishing a slow speed, minimum wake or numerical speed limit boating-restricted area if the area is “[s]ubject to unsafe levels of vessel traffic congestion” or “[a]n area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a significant risk of collision or a significant threat to boating safety”; and

WHEREAS, the procedures for applying to FWC for such an approval, which may include a public hearing before FWC, are provided in section 327.46, Florida Statutes, and chapter 68D-21 of the Florida Administrative Code; and

WHEREAS, local government ordinances adopted under section 327.46 must conform to the statutory requirements and cannot be premised on extra-statutory criteria such as noise abatement, shoreline protection, or protection of marine wildlife; and

WHEREAS, in adopting such ordinances, local governments must consult and coordinate with the governing body of any municipality in which the boating-restricted area would be located, as well as with the United States Coast Guard (the “Coast Guard”) and the United States Army Corps of Engineers (the “Army Corps”) if the boating-restricted area is to be on the navigable waters of the United States; and

WHEREAS, law enforcement, including the Marine Patrol Unit of the Miami-Dade County Police Department, cannot enforce boating regulations established under section 327.46 until the boating-restricted areas are marked on the water with uniform regulatory markers in accordance with federal and state law; and

WHEREAS, section 7-26 of the Code of Miami-Dade County, Florida, codifies the boating-restricted areas the County has established, some of which are in Biscayne Bay, others of which are on canals; and

WHEREAS, section 327.46 also empowers FWC to establish boating-restricted areas by rule pursuant to the Administrative Procedure Act, but FWC’s rulemaking power is not subject to the same substantive constraints that section 327.46 imposes on local governments; and

WHEREAS, in addition to its authority to establish boating-restricted areas under section 327.46, FWC may also establish rules regulating the speed and operation of motorboats for the protection of manatees under the process provided in section 379.2431(2), Florida Statutes, which allows for the participation of the county commission of any county where such a regulation would take effect; and

WHEREAS, to promote boating safety on Biscayne Bay and respond to the concerns of Miami-Dade County residents, this Board wishes to direct the County Mayor or County Mayor's designee to conduct a study to determine whether any boating-restricted areas should be established on >>the portion of<< Biscayne Bay >>north of the MacArthur Causeway until the County line<< and to make recommendations to this Board,

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

Section 1. This Board directs the County Mayor or County Mayor's designee to conduct a study to determine whether any year-round boating-restricted areas should be established on >>the portion of<< Biscayne Bay >>north of the MacArthur Causeway until the County line<<. The study shall be conducted with reference to sections 327.46 and 379.2431, Florida Statutes, and the regulations promulgated thereunder. The study shall consider not only boating-restricted areas that the County may establish, but also boating-restricted areas that only the state may establish. In conducting the study, the County Mayor or County Mayor's designee shall collaborate with federal and state agencies that have jurisdiction over matters pertaining to boating safety or Biscayne Bay, including the Coast Guard, the Army Corps, and FWC, as well as with municipalities that border Biscayne Bay. If the County Mayor or County Mayor's designee determines that boating restrictions should be established in any given area, the County Mayor or County Mayor's designee shall consult and coordinate with the agencies and municipalities with jurisdiction over the area regarding the recommended boating restrictions.

Section 2. The County Mayor or County Mayor's designee shall prepare a report presenting the findings of the study and making recommendations to this Board as to whether boating-restricted areas should be established on >>the portion of<< Biscayne Bay >>north of the MacArthur Causeway until the County line<<. For each recommended boating-restricted area, the

report shall identify, at a minimum, the following: (1) the boundaries of the area, including whether the area falls within or borders any municipality; (2) the type of boating restriction (idle speed, no wake zone; slow speed, minimum wake zone; numerical speed limit zone and, if so, the numerical speed limit; or vessel-exclusion zone); (3) the justification for the boating restriction, including the specific statutory authorization pursuant to which the restriction would be established and whether the County or only the state has the authority to establish the restriction; (4) any data and other information that support the establishment of the proposed boating restriction, including, for any restrictions that would need to be approved by FWC, all relevant data and information that would need to be submitted to FWC pursuant to section 327.46(1)(c), Florida Statutes; and (5) whether the Coast Guard, the Army Corps, FWC, and any municipalities that fall within or border the area have any objections to the boating-restricted area and, if so, what those objections are.

Section 3. The County Mayor or County Mayor’s designee shall provide the report to this Board within 120 days of the effective date of this resolution and place the completed report on an agenda of the full Board without committee review pursuant to rule 5.06(j) of the Board’s Rules of Procedure.

The Co-Prime Sponsors of the foregoing resolution are Commissioner Micky Steinberg and Commissioner Kevin Marino Cabrera. It was offered by Commissioner **Eileen Higgins** , who moved its adoption. The motion was seconded by Commissioner **Kevin Marino Cabrera** and upon being put to a vote, the vote was as follows:

	Oliver G. Gilbert, III, Chairman	aye	
	Anthony Rodríguez, Vice Chairman	aye	
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	absent
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 2nd day of April, 2024. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

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

Christopher J. Wahl