

MEMORANDUM

Agenda Item No. 4(A)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: June 2, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to County rights-of-way and easements within municipalities; amending sections 2-103.1 and 2-103.4 of the Code; prohibiting municipalities from charging fees, imposing requirements, or requiring permits for work on County-owned or County-maintained rights-of-way or easements within municipalities; making technical and conforming changes

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.



Abigail Price-Williams
County Attorney

APW/uw



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: June 2, 2020

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Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 4(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 _____

Agenda Item No. 4(A)
6-2-20

ORDINANCE NO. _____

ORDINANCE RELATING TO COUNTY RIGHTS-OF-WAY AND EASEMENTS WITHIN MUNICIPALITIES; AMENDING SECTIONS 2-103.1 AND 2-103.4 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROHIBITING MUNICIPALITIES FROM CHARGING FEES, IMPOSING REQUIREMENTS, OR REQUIRING PERMITS FOR WORK ON COUNTY-OWNED OR COUNTY-MAINTAINED RIGHTS-OF-WAY OR EASEMENTS WITHIN MUNICIPALITIES; MAKING TECHNICAL AND CONFORMING CHANGES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the Code of Miami-Dade County, Florida currently requires that any person or entity doing construction work on County-owned or County-maintained rights-of-way within unincorporated and incorporated areas of the County acquire a permit from the County Department of Transportation and Public Works; and

WHEREAS, although a County permit is required for work on County-owned or County-maintained rights-of-way located with municipalities, many municipalities also require a municipal permit and the payment of certain fees for said construction work; and

WHEREAS, prohibiting municipalities from requiring municipal permits or the payment of a fee for work on County-owned or County-maintained rights-of-way would help streamline both County public works projects and private construction projects that affect County rights-of-way; and

WHEREAS, it is in the best interest of the County to be the sole permitting agency for construction work on County-owned or County-maintained rights-of-way within the unincorporated and incorporated areas of the County,

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

Section 1. Section 2-103.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-103.1. - Construction of public utilities or works in public rights-of-way; construction of paving and drainage on private property—Permit required; effect of installation of County facility; exemption.

(a) It shall be unlawful for any person, corporation, partnership, association>>, governmental agency<< or other legal entity to >>do any construction work, including the construction or installation of utilities and other public works,<< ~~[[construct utilities or other public works,]]~~ except ~~[[for the construction or installation of]]~~ mailboxes>>, on any rights-of-way or<< ~~[[in road and street right-of-way and]]~~ easements >>within<< ~~[[in]]~~ the unincorporated ~~[[area]]~~ >>areas<< of ~~[[this]]~~ >>the<< County >>, or on any County-owned or County-maintained rights-of-way or easements<< ~~[[; and in rights-of-way of roads and—streets]]~~ located within >>any municipality<< ~~[[municipalities that are maintained by Miami-Dade County]]~~, without first having obtained a permit from the ~~[[Public Works]]~~ Department >>of Transportation and Public Works or its successor department<<. All ~~[[said]]~~ >>such<< construction work ~~[[in]]~~ >>on<< said ~~[[right-of-way]]~~ >>rights-of-way or easements<< shall conform to uniform standards established by the official manual of public works construction. It shall also be unlawful for any person, corporation, partnership, association>>, governmental agency<< or other legal entity to construct paving or drainage on private property for areas used for vehicle driveways or parking >>within<< ~~[[in]]~~ the unincorporated ~~[[area]]~~ >>areas<< of ~~[[this]]~~ >>the<< County, >>or on any County-owned or County-maintained rights-of-way or easements within any municipality<< without first having obtained a permit from the ~~[[Public Works]]~~ Department >>of Transportation and Public Works or its successor department. Municipalities are prohibited from charging any fees, imposing

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.

any requirements including, but not limited to, maintenance of traffic requirements or requiring that any permit be obtained for any construction, maintenance, or improvements done by any person, corporation, partnership, association, governmental agency, or other legal entity on any County-owned or County-maintained rights-of-way or easements within the municipality<<.

If the Director of the ~~[[Public Works]]~~ Department >>of Transportation and Public Works or its successor department<< determines that the permittee is not performing the construction in accordance with the conditions of the permit or the approved plans upon which the permit was issued or in conformance with the uniform standards established by the official manual of public works construction, ~~[[he]]~~ >>the Director<< may order suspension of the permit or the stopping of work until such time as the permittee has complied with the permit, plans or standards. In such case, the permittee shall take all necessary precautions to leave the work area in a safe and secure condition.

The Director of the ~~[[Public Works]]~~ Department >>of Transportation and Public Works or its successor department<< may withhold the issuance of public works permits to a contractor if that contractor has previously been issued a citation regarding work that requires a public works permit as listed in Chapter 8CC of the Code of Miami-Dade County, and the citation is still outstanding ~~[[forty-five (45)]]~~ >>45<< days after the date the citation was issued.

In the event of any future widening, repairs, installation, construction, or reconstruction, by or for Miami-Dade County, of any road, bridge, canal, culvert, traffic signal, streetlight, water distribution system, sewage collection system, storm drainage system, or any other County facility within the public right-of-way in which the permittee or owner has constructed any utility, said permittee or owner shall move or remove such utility as may be required for the public convenience as and whenever specified by the Director of the ~~[[Public Works]]~~ Department >>of Transportation and Public Works or its successor department<< ~~[[and at his own expense]]~~. >>Said removal or relocation shall be at the permittee's or owner's sole expense.<<

Permits for the installation of liquefied petroleum gas in easements will be issued by the Miami-Dade County Fire Safety Bureau rather than the ~~[[Public Works]]~~ Department >>of Transportation and Public Works or its successor department<<.

The term "right-of-way" or "rights-of-way" shall be construed throughout this article to include, but not be limited to, all proposed dedications of public rights-of-way set forth on official grading and drainage plans required to accompany approved and valid tentative plats, as well as all existing or dedicated rights-of-way.

Provided, however, the United States, federal agencies and their contractors, in the execution of federal projects authorized by Congress, are exempted from the provisions of Sections 2-103.1 through 2-103.7 and 2-103.10 through 2-103.13.

- (b) Whenever any person, corporation, partnership, association, County Department or other >>governmental agency<< legal entity performs any construction or public ~~[[work]]~~ >>works<< within ~~[[an]]~~ existing >>rights-of-way<< ~~[[right-of-way]]~~ located within >>the<< unincorporated >>areas of the<< ~~[[Miami Dade]]~~ County, or ~~[[in]]~~ >>on any County-owned or County-maintained rights-of-way<< ~~[[right-of-ways of roads or streets]]~~ located within >>any municipality<< ~~[[municipalities that are maintained by the County]]~~, the >>rights-of-way<< ~~[[right-of-way]]~~, including sidewalks, curbs and gutters, >>and<< landscaping ~~[[and]]~~ must be restored to their legally permissible preexisting condition, including any aesthetic enhancements thereto and any adjacent private property damaged during construction, within ~~[[forty-five (45)]]~~ >>30<< days of completion of the construction or public work in that right of way or within ~~[[forty-five (45)]]~~ >>30<< days of damage to the affected property or area, ~~[[which-ever]]~~ >>whichever<< occurs first. Prior to the time such construction work begins, the contractor, by posting the construction site, shall inform the local community of the requirement to restore the >>rights-of-way<< ~~[[right-of-way]]~~ as well as any affected adjacent private property and the fines that could be imposed for each failure to do so. All work to be done pursuant to this Section shall be performed in compliance with the Public Works Manual. Any entity failing to restore the right-of-way to its preexisting condition or better within the time permitted shall be subject to a civil fine of five hundred dollars (\$500.00) per violation per day until such time as the right-of-way is restored, as well as five hundred dollars (\$500.00) per day for each affected adjacent private property until it is restored.

Section 2. Section 2-103.4 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 2-103.4. - Same—Same—Waiver.

The ~~[[Public Works]]~~ Department >>of Transportation and Public Works or its successor department<< shall waive the permit fee for all work performed by a governmental agency, except for utility construction, whether this work is performed by employees of the governmental agency or by a private firm or corporation under contract with the governmental agency. However, such governmental agency or private firm or corporation under contract therewith shall not be relieved of the responsibility for obtaining a permit for work covered in Section 2-103.1. ~~[[In addition to the above, the Public Works Department will waive the permit fee for any work in the rights of way of roads or streets located within municipalities that are maintained by Miami Dade County, providing a municipal permit fee has been or will be imposed for the same work. However, a Public Works Department permit must be obtained for this work.]]~~

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:

Approved by County Attorney as
to form and legal sufficiency:

Handwritten signature in black ink, appearing to read "GBL" followed by a flourish.

Prepared by:

Handwritten signature in black ink, appearing to be a stylized "A" followed by a flourish.

Annery Pulgar Alfonso

Prime Sponsor: Commissioner Eileen Higgins