

# MIAMIBEACH

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To: Commissioner Ricky Arriola

From: Raul J. Aguila  
City Attorney



Date: April 24, 2018

Subject: Annexation Process

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Pursuant to your request, this memo addresses the process applicable to the City of Miami Beach's proposed annexation of the City of North Bay Village.

I. **Miami-Dade County Law Controlling.**

Annexations in the State of Florida are governed by Chapter 171, Part 1, Florida Statutes, which requires in general that the annexation site(s) be contiguous to the city<sup>1</sup>, must be reasonably compact, and not create enclaves or result in pocket or finger areas in serpentine patterns of unincorporated area. Municipalities in Miami-Dade County, however, are not bound by the annexation process in Chapter 171, but instead are subject to the procedures set forth in County Charter Section 6.04 and County Code Chapter 20.<sup>2</sup>

II. **Miami-Dade County Charter, Section 6.04 "Changes in Municipal Boundaries"**<sup>3</sup>.

A. *The planning director shall study municipal boundaries with a view to recommending their orderly adjustment, improvement, and establishment. Proposed boundary changes may be initiated by the Planning Advisory Board, the Board of County Commissioners, the governing body of a municipality, or by a petition of any person or group concerned.*

B. *The Board of County Commissioners, after obtaining the approval of the municipal governing bodies concerned, after hearing the recommendations of the Planning Advisory Board, and after a public hearing, may by ordinance effect boundary changes, with an*

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<sup>1</sup> See, Fla. Stat. sec. 171.031.

<sup>2</sup> The Florida Constitution granted Miami-Dade County home rule power to establish, at its discretion, the applicable method of a municipality's annexation of land. See, Fla. Const. Art VIII, sec.6(e) at fn#3(c), providing that the County: "May change the boundaries of, merge, consolidate, and abolish and may provide a method for changing the boundaries of, merging, consolidating and abolishing from time to time all municipal corporations, county or district governments, special taxing districts, authorities, boards, or other governmental units whose jurisdiction lies wholly within Dade County, ..." (E.A.)

<sup>3</sup> **Note:** Although the subject of "annexation" was on the initial list of areas for proposed study during the County's 2017 Charter Review process, the County's Charter Review Task Force did not select it for substantive discussion. As such, the County Code and Charter provisions referenced hereinabove are not (presently) subject to amendment, and the City may thus rely upon its existing language in its annexation analysis.

*affirmative vote of the members of the Board of County Commissioners. In making such decision, the Board shall consider whether commercial areas are included in the boundaries of the proposed area to be annexed for the mere benefit of increasing the tax base of the annexing municipality. Changes that involve the annexation or separation of an area of which more than 250 residents are electors shall also require an affirmative vote of a majority of those electors voting. Upon any such boundary change any conflicting boundaries set forth in the charter of such municipality shall be considered amended.*

C. *No municipal boundary shall be altered except as provided by this Section.*

Under the County Charter, annexation may be initiated by either the County's Planning Advisory Board, the County Commission, a municipality's governing body (i.e., the Miami Beach City Commission), or by citizen Initiative Petition. Once initiated, the annexation must be approved by the City Commissions of both Miami Beach and North Bay Village<sup>4</sup>; obtain recommendation (positive or negative) of the County's Planning Board; obtain majority approval of the electors of North Bay Village<sup>5</sup>; and then be presented to the County Commission for its approval at a public hearing.

### III. **Miami-Dade County Code Chapter 20, Article I "Boundary Change Procedure"**.

County Code Chapter 20 is the implementing legislation for County Charter Section 6.04.<sup>6</sup> Below is an overview of the steps the City of Miami Beach ("CMB") must take to annex North Bay Village ("NBV"):<sup>7</sup>

➤ **County Code Section 20-3:**

- CMB must provide written notice<sup>8</sup> of its intent to adopt a Resolution, re: annexation of North Bay Village, mailed to all owners of property "within the area and within six hundred (600) feet thereof in such proposed boundary changes, according to the current tax assessment roll, and pursuant to published notice" (no notice shall be required when all owners of property within the area and within six hundred (600) feet thereof shall consent in writing to the proposed boundary change). County Code Section 20-3;
- CMB adopts its Annexation Resolution proposing change in City's boundaries by annexation of North Bay Village, after public hearing and pursuant to the above written notice;
- Three certified copies of CMB's Resolution, together with proof of compliance with the notice requirements, must then be filed with the Clerk of the County Commission, and must be accompanied with additional specific materials set forth specifically in County Code Section 20-3 (A)-(H). Note in particular, one of these details that must be filed with the City's Annexation Resolution is a petition indicating the consent of 20% of NBV's electors.

<sup>4</sup> CMB will need clarification from County's Office of Management and Budget (#305-375-5143) regarding County Charter Section 6.04 because although it appears to require both CMB and NBV City Commission approval prior to County Commission consideration the only provision in County Code Chapter 20 addressing NBV's consent is in Code Section 20-1, which relates solely to "Annexation Initiated by Planning Board" (inappropriate under our facts).

<sup>5</sup> The County Election Department's last reported election of the City of North Bay Village occurred on November 8, 2016, evidencing the number of NBV registered electors as exceeding 250 in number.

<sup>6</sup> County Code Chapter 20, Article I, in its entirety, is attached for your information.

<sup>7</sup> The outline above is based upon the presumption that CMB is the party initiating annexation, and that CMB intends to annex the entirety of NBV.

<sup>8</sup> Pursuant to Code Chapter 20, CMB must pay for the cost of all required notices.

- County Code Section 20-5:
  - Upon the County's receipt of the CMB Resolution and accompanying material (as set forth above), the Clerk of County Commission shall place the matter on an "ensuing" regular meeting agenda of the County Commission and shall notify CMB of that meeting date;
  - CMB may be heard "briefly" at the County Commission's meeting;
  - After CMB's presentation, the County Commission refers the matter to the County Planning Advisory Board ("PAB") for review, study, consideration and recommendations.
  
- County Code Section 20-6:
  - Prior to PAB consideration, the annexation report must be reviewed by the appropriate County personnel<sup>9</sup>;
  - After Administrative review, PAB receives CMB's Resolution and studies/considers the requested boundary change;
  - PAB then gives written notice of a public hearing to consider annexation to all owners of property within the area and within six hundred (600) feet thereof. Written mailed courtesy notice of the public hearing is also provided to adjacent municipalities;
  - PAB shall then conduct a public hearing regarding the proposed boundary changes, hear from all interested persons and any municipality, and vote on its recommendation subject to those guidelines set forth in Code Section 20-6(b);
  - The PAB's recommendation, along with Administration's report, is presented to the County Manager's office for review and recommendation;
  - Above recommendations are presented to County Commission.
  
- County Code Section 20-7:
  - Clerk of County Commission sets matter for public hearing at regular meeting of County Commission, with notice furnished to CMB, all property owners within the area and within six hundred (600) feet thereof, and any adjacent municipality.
  - At public hearing, the County Commission reviews and considers the recommendations of PAB, and affords to all interested persons opportunity to be heard upon the merits and propriety of proposed boundary changes;
  - After public hearing, the County Commissioners consider the matter pursuant to guidelines set forth in Code Section 20-7(A);
  - County Commission then votes on the requested changes "...by motion, or may direct the County Attorney to prepare an appropriate ordinance accomplishing the proposed boundary change, which ordinance shall be placed on the official agenda of a subsequent regular meeting of the County Commission for consideration and adoption on first reading, or the County Commission may defer such requested boundary change for further consideration at a subsequent meeting, at which no public hearing or discussion by others than members of the County Commission shall be required."<sup>10</sup>

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<sup>9</sup> "...The statements contained in the annexation report pertaining to the quality, quantity, cost and timing of the services the municipality will extend to the areas requested for annexation will be reviewed by the appropriate County department to determine if the services proposed are adequate. The statements pertaining to the financing of the services and analysis of the tax load on the area to be annexed will be reviewed by the Miami-Dade County Budget Officer." *Id.*

<sup>10</sup> Note that the County Code reserves onto the County Commission the ability to condition its approval of annexation upon certain matters. See, i.e., County Code section 20-8.7 "Mitigation on Proposed Boundary Changes"; and County Code section 20-8.8 "Retention of modification or deletion of covenants or declaration of restrictions".

➤ County Code Section 20-9(b):

- Since more than 250 electors reside in NBV, an election “may” be called by the County Commission on the question of whether NBV should be annexed. Note: County Charter Section 6.04(B) states that such election “shall” be called.<sup>11</sup> **My discussion with the County’s Office of Management and Budget confirms that this election requirement is mandatory.**

IV. City Charter amendment re: CMB Municipal Boundaries.

Once the above election has occurred, resulting in approval of annexation by a majority of the electors of the area to be annexed, the CMB Charter is considered automatically amended<sup>12</sup> (i.e., no CMB voter approval needed) to incorporate the newly amended CMB boundary. Once the new boundary description is finalized, copy of same should be forwarded to the City Clerk for his transmittal of the new description to Municode (for its codification of the new municipal boundary).

RJA:JO/mmm  
Attachment

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<sup>11</sup> Charter Section 6.04(B) provides: “Changes that involve the annexation or separation of an area of which more than 250 residents are electors *shall* also require an affirmative vote of a majority of those electors voting.” See, also, County Code Section 20-2, providing that annexations “...shall be initiated by the Board of County Commissioners only by resolution adopted in accordance...with the controlling provisions of Section 5.04 [sic] of the Home Rule Charter. County Charter Section 6.04(B).

<sup>12a</sup> ...*Upon any such boundary change any conflicting boundaries set forth in the charter of such municipality shall be considered amended.*” County Charter Section 6.04(B).

## ARTICLE I. - BOUNDARY CHANGE PROCEDURE

### Sec. 20-1. - Initiated by Planning Advisory Board.

- (a) The Director of the Department of Planning and Zoning and the Planning Advisory Board shall conduct a continuing study of all municipal boundaries in cooperation with municipal officials, and make recommendations to the Board of County Commissioners for the orderly adjustment, improvement and establishment of feasible boundaries for all municipalities, commensurate with the comprehensive plan of development for Miami-Dade County, and in compliance with the preliminary land use plan governing the areas involved in any such proposed boundary changes.
- (b) All proposed changes in municipal boundaries initiated by the Planning Advisory Board shall be submitted to the governing bodies of the municipalities concerned for consideration and approval, prior to submission of such proposal to the Board of County Commissioners, and shall be considered by the Board of County Commissioners only upon notice to the municipality or municipalities affected and to the owners of property within the area and within six hundred (600) feet thereof.

(Ord. No. 60-42, § 1, 11-29-60; Ord. No. 70-2, § 1, 1-7-70; Ord. No. 95-215, § 1, 12-5-95; Ord. No. 01-168, § 1, 10-23-01)

**Cross reference**— Planning Department, § 2-104 et seq.; appointment and duties of Planning Director, §§ 2-104 and 2-105; Planning Advisory Board, § 2-107 et seq.; land use plan, § 2-111.

### Sec. 20-2. - Initiated by county commission.

Any proposed change in the boundaries of a municipality shall be initiated by the Board of County Commissioners only by resolution adopted in accordance with rules of procedure governing the meetings and actions of the Board and upon notice to the municipality or municipalities involved, concerned or affected thereby, and shall be accomplished in accordance with the controlling provisions of Section 5.04 of the Home Rule Charter.

(Ord. No. 60-42, § 2, 11-29-60)

**Cross reference**— Rules of procedure of County Commission, § 2-1.

### Sec. 20-3. - Initiated by governing body of municipality.

Any proposed boundary change desired by the governing body of a municipality shall be initiated by resolution of such governing body adopted after a public hearing held pursuant to written notice mailed to all owners of property within the area and within six hundred (600) feet thereof in such proposed boundary changes, according to the current tax assessment roll, and pursuant to published notice; provided, however, that no notice shall be required when all owners of property within the area and within six hundred (600) feet thereof shall consent in writing to the proposed boundary change. The cost of such notice shall be paid by the governing body of the municipality. Three (3) duly certified copies of such resolution requesting the proposed boundary changes, together with proof of compliance with the notice requirements aforesaid, shall be filed with the Clerk of the County Commission, and shall be accompanied by the following:

- (A) An accurate legal description of the lands or land area involved in such proposed boundary change.
- (B) A map or survey sketch accurately showing the location of the area involved, the existing boundaries of the municipality or municipalities affected, and indicating the relation of the area involved to the existing municipal boundaries.

- (C) Certificate of the County Supervisor of Registration certifying that the area involved in the proposed boundary change contains either more than two hundred fifty (250) residents who are qualified electors, or less than two hundred fifty (250) residents who are qualified electors.
- (D) A brief statement setting forth the grounds or reasons for the proposed boundary changes.
- (E) A statement declaring whether an enclave, as defined in Section 20-7(A)(1)(c), borders the municipality and whether the proposed boundary change includes such enclave.
- (F) In addition to the foregoing, there shall be filed with the Clerk of the County Commission the following information:
  - (1) *Land use plan and zoning.* The municipality shall present a general land use plan and a map showing proposed zoning for the subject area which, if annexed, will be enacted by the municipality. In addition, the municipality shall provide a comparison between existing County land use regulations governing the subject area and the relevant municipal land use regulations, including, but not limited to, any zoning restrictions pertaining to location of businesses and hours and days of sale for businesses, to identify how businesses may be impacted upon annexation. This information shall be submitted regardless of size of area or state of existing development.
  - (2) *List of services to be provided.* In this section the municipality shall describe in detail the character and amount of services which the municipality would provide to the area if annexed. The discussion of service levels shall take into account not only existing development but changes in the character and extent of development which may be reasonably anticipated in the near future based on the land use plan and zoning for the area as submitted by the municipality in accordance with (1) above. The statements pertaining to the various services shall be set forth under the headings listed below. The character and amount of services now being received in the area sought for annexation shall be set forth for comparative purposes.
    - (a) Police protection.
    - (b) Fire protection.
    - (c) Water supply and distribution.
    - (d) Facilities for the collection and treatment of sewage.
    - (e) Garbage and refuse collection and disposal.
    - (f) Street lighting.
    - (g) Street construction and maintenance.
    - (h) Park and recreation facilities and services.
    - (i) Building inspection.
    - (j) Zoning administration.
    - (k) Local planning services.
    - (l) Special services not listed above.
    - (m) General government.
  - (3) *Timetable for supplying the services listed above.* For each of the services listed the time schedule for the provision of that service shall be set forth. The timetable shall be in terms of how soon after the annexation ordinance is finally adopted will the service be provided. If changes in the character and extent of the development in the area can reasonably be anticipated, these changes shall be taken into account in the proposed timetable.
  - (4) *Financing of the services listed above.* For each of the services listed above, estimates of the costs of providing, maintaining and operating the service shall be set forth along with

the methods used in making the estimates. The sources of funds which the municipality would utilize in providing, maintaining and operating the services listed shall be stated for each service and the effect this will have on the remainder of the municipality shall be analyzed.

- (5) *The tax load on the area to be annexed.* This section of the report shall discuss in narrative form, including estimated figures, the direct and indirect tax revenue from the area sought for annexation after annexation compared with the current period before annexation. Particularly this section shall clearly and concisely appraise the tax impact on the property owners and others residing and/or doing business in the area, and on those residing and/or doing business within the municipality. Methods utilized in making estimates contained in this section shall be fully and clearly set forth.
- (6) *Identification of any areas designated as terminals in the County's Adopted Land Use Plan Map ("terminals").* The municipality shall set forth the following information in its annexation petition or shall supplement its annexation petition, if such petition is pending as of the effective date of this ordinance:
  - a. The reason that any area designated terminals and areas located within one-half (½) mile surrounding any area designated terminals ("surrounding areas") should be annexed to the municipality;
  - b. The impact that annexation may have on the operation and future development of facilities within any area designated terminals and surrounding areas;
  - c. The municipality's assessment of the present and future importance to the economy, job generation, and future development of the County and the region of any area designated terminals and surrounding areas proposed to be included in the area annexed;
  - d. Whether the land uses within areas designated terminals and surrounding areas are compatible with adjacent land uses within the annexing municipality; and
  - e. A proposed Interlocal Agreement with the County which would include provisions agreeing to the County's retention of master plan and regulatory control over any area designated terminals and surrounding areas, which shall set forth with specificity the limitations and conditions to be imposed on the municipality's jurisdiction of the area proposed for annexation.
- (7) *Existing Community Redevelopment Agency.* The municipality shall acknowledge in writing, in a format acceptable to the Office of Management and Budget or its successor department, the existence of any community redevelopment agency operating within the area proposed to be annexed and shall agree to be bound by the provisions of Section 20-8.9 of the Code.
- (G) Certificate of the Director of the Department of Planning and Zoning certifying that in the Director's sole determination an area proposed for annexation or separation having two hundred and fifty (250) or fewer registered electors is more than fifty (50) percent developed residential. This certification will determine whether an election of registered electors will be required as provided in Section 20-9.
- (H) A petition filed with the Clerk of the County Commission indicating the consent of twenty (20) percent of the electors in the area proposed for annexation provided however, no petition shall be required where the property proposed for annexation is vacant or where there are two hundred fifty (250) or less resident electors.

(Ord. No. 60-42, § 3, 11-29-60; Ord. No. 64-21, § 1, 5-19-64; Ord. No. 66-60, § 1, 11-15-66; Ord. No. 70-2, § 2, 1-7-70; Ord. No. 96-39, § 1, 2-20-96; Ord. No. 96-73, § 1, 5-21-96; Ord. No. 96-136, § 1, 9-17-96; Ord. No. 01-168, § 1, 10-23-01; Ord. No. 05-112, § 2, 6-7-05; Ord. No. 07-

176, § 1, 12-4-07; Ord. No. 14-18, § 1, 2-27-14; Ord. No. 17-16, § 1, 3-7-17; Ord. No. 17-33, § 1, 6-6-17)

Sec. 20-3.1. - Exception to filing and consideration of requests for annexation.

No proposed boundary change request shall be filed, nor shall any filed request be heard, considered, or approved, pursuant to Section 20-7 or Section 20-8 by the Board of County Commissioners when the governing body requesting the change has omitted as part of the boundary change application information on an existing enclave, as defined in Section 20-7(A)(1)(c), adjacent to the municipality's boundaries or when the boundary change application creates a new enclave.

(Ord. No. 07-176, § 2, 12-4-07)

Sec. 20-4. - Initiated by individual or group.

Any person or group desiring a proposed boundary change to any municipality shall initiate the same by filing with the Clerk of the County Commission a written petition in substantially the form prescribed and furnished by the Director of the Office of Management and Budget which shall be accompanied by the documents and information prescribed in Section 20-3(A) through (F) hereof, together with a duly certified resolution of the governing body of the municipality involved approving such proposed boundary change, and shall give written notice to all owners of property within the area and within six hundred (600) feet thereof of his proposal for a boundary change. The cost of such notice shall be paid by the initiating individual or group.

(Ord. No. 60-42, § 4, 11-29-60; Ord. No. 70-2, § 3, 1-7-70; Ord. No. 95-215, § 1, 12-5-95; Ord. No. 01-168, § 1, 10-23-01; Ord. No. 14-18, § 1, 2-27-14)

Sec. 20-4.1. - Exception to filing and consideration of requests for annexation.

Notwithstanding anything in this article to the contrary, no annexation request shall be filed, nor shall any request be heard, considered, or approved, pursuant to Section 20-7 or Section 20-8 by the Board of County Commissioners, prior to December 1, 1998, except upon a prior two-thirds ( 2/3 ) vote of the membership of the County Commission to allow such filing, hearing, consideration or approval.

(Ord. No. 96-146, § 1, 10-8-96; Ord. No. 97-211, § 1, 12-2-97; Ord. No. 01-218, § 1, 12-18-01)

**Editor's note**— Ord. No. 01-218, § 1, adopted Dec. 18, 2001 amended section 20-4.1. Section 6 of said ordinance provided for the repeal of said ordinance 90 days from its effective date.

Sec. 20-5. - Initial consideration of proposed boundary changes.

The Clerk of the County Commission, upon receipt of a request for boundary change filed in compliance with Section 20-3 or Section 20-4 hereof, shall cause such matter to be placed upon the official agenda of an ensuing regular meeting of the County Commission, and shall notify the person, group or municipality initiating the boundary change of the date of the regular meeting at which such matter will be considered by the County Commission. A representative of the petitioners or of such municipality, as the case may be, may be heard briefly by the County Commission in respect to the merits or propriety of the request for such boundary change. The County Commission shall refer such proposed boundary change to the County Planning Advisory Board for review, study, consideration and recommendations.

(Ord. No. 60-42, § 5, 11-29-60)

Sec. 20-6. - Consideration by Planning Advisory Board.

- (a) The Planning Advisory Board, upon receipt of a petition or resolution referred by the County Commission shall study, review and consider the request for boundary changes embodied therein. The Planning Advisory Board shall conduct a public hearing in respect to such proposed boundary changes and hear from all interested persons and any municipality. The Planning Advisory Board may require the petitioners or the municipality to furnish any additional information, data or instruments deemed necessary or desirable for consideration of such request. The Planning Advisory Board shall give written notice of such public hearing to all owners of property within the area and within six hundred (600) feet thereof. The cost of such notice shall be paid by the individual, group or municipality initiating the proposed change. In notifying area residents of a public hearing to consider an annexation application, written courtesy notices of said public hearing shall be mailed to any adjacent municipality. In the event any municipality other than the municipality initiating the proposed boundary change appears before the Planning Advisory Board claiming to be materially affected by the proposed boundary change, the Planning Advisory Board recommendations shall include the reason the municipality is materially affected, how the municipality's concerns affect the application, and a recommendation on how the Board of County Commissioners should address the materially affected municipality's concern.

Before the Planning Advisory Board studies and reviews the request, the annexation report will be reviewed by the appropriate County personnel. The statements contained in the annexation report pertaining to the quality, quantity, cost and timing of the services the municipality will extend to the areas requested for annexation will be reviewed by the appropriate County department to determine if the services proposed are adequate. The statements pertaining to the financing of the services and analysis of the tax load on the area to be annexed will be reviewed by the Miami-Dade County Budget Officer. Upon completion of these reviews, the entire application will be reviewed in accordance with this section by the Planning Advisory Board and then forwarded to the County Manager's office for review and recommendation prior to submittal to the Board of County Commissioners for their consideration.

- (b) The Planning Advisory Board shall make written recommendations to the County Commission concerning such proposed boundary changes. Copies of such recommendations shall be filed with the Clerk of the County Commission, and copies shall be mailed to a representative of the petitioners or the municipality. In evaluating the appropriateness of a boundary change request, the Planning Advisory Board shall consider the guidelines in Section 20-7, as well as whether the annexation:
- (1) will divide a historically recognized community;
  - (2) will if approved result in an annexation area that is compatible with existing planned land uses and zoning of the municipality to which the area is proposed to be annexed;
  - (3) will, if currently qualified, continue to be eligible for any benefits derived from inclusion in federal or state enterprise zones, or targeted area assistance provided by federal, state and local government agencies;
  - (4) will impact public safety response times;
  - (5) will introduce barriers to municipal traffic circulation due to existing security taxing districts, walled communities and/or private roads;
  - (6) to the degree possible, will be served by the same public service franchises, such as cable and communication services, as the existing municipality, or will it have full access to all available municipal programming through its franchises provider;
  - (7) if identified by the federal government as a flood zone or by emergency planners as an evacuation zone, has the annexing municipality indicated its preparedness to address any extraordinary needs that may arise;

- (8) will be connected to municipal government offices and commercial centers by public transportation; and
  - (9) to the degree possible, will be contained in one or more school district boundaries governing admission to elementary, middle and high schools as the adjoining municipal area.
- (c) The Planning Advisory Board's recommendation to the Board of County Commissioners shall be either:
- (1) Approval of the proposed boundary change;
  - (2) Approval of the proposed boundary change on a modified basis;
  - (3) Deferral of the proposed boundary change for more information;
  - (4) Deferral of the proposed boundary change to permit modification; or
  - (5) Denial of the proposed boundary change.

(Ord. No. 60-42, § 6, 11-29-60; Ord. No. 64-21, § 2, 5-19-64; Ord. No. 70-2, § 4, 1-7-70; Ord. No. 95-176, § 1, 10-5-95; Ord. No. 05-86, § 2, 5-3-05; Ord. No. 07-176, § 3, 12-4-07; Ord. No. 14-19, § 1, 2-27-14)

**Annotation—** AO 4-49.

Sec. 20-7. - Public hearing.

The Clerk of the County Commission, upon receipt of the recommendations of the Planning Advisory Board, shall set the matter of such proposed boundary changes for public hearing at a regular meeting of the County Commission and cause notice of such public hearing to be published in a daily newspaper of general circulation in Miami-Dade County at least once not less than one (1) week prior to the date of such public hearing. Notice of such public hearing shall be furnished to a representative of the petitioner or the municipality initiating the proposed boundary change, to all property owners within the area and within six hundred (600) feet thereof and any adjacent municipality. The cost of such notice shall be paid by the individual, group or municipality initiating the proposed change. At such public hearing, the County Commission shall review and consider the recommendations of the Planning Advisory Board, and shall afford to all interested persons an opportunity to be heard upon the merits and propriety of the proposed boundary changes.

- (A) At the conclusion of the public hearing the Board of County Commissioners, in evaluating the appropriateness of a petition for boundary change shall consider the following guidelines:
- (1) The suitability of the proposed boundaries, in conjunction with the existing municipality, provide for a municipal community of interest that is both cohesive and inclusive. The proposed annexation area should:
    - (a) Not divide a U.S. Census Designated Place, to the extent feasible,
    - (b) Include adjacent areas of ethnic minority and lower income residents in which a majority of those residents have so petitioned,
    - (c) Have contiguity and not create any unincorporated enclave area(s). An unincorporated enclave area is defined as an area that would be 1) surrounded on more than eighty (80) percent of its boundary by one (1) or more municipalities and 2) of a size that could not be serviced efficiently or effectively,
    - (d) Have natural or built barriers as boundaries, to the extent feasible, and
  - (2) The existing and proposed projected property tax cost for municipal-level services to average homeowners in the area as currently unincorporated and as included as part of the annexing municipality,

- (3) The proposed annexation area is totally contained within the Urban Development Boundary depicted on the future Land Use Plan map of the Miami-Dade County Comprehensive Development Master Plan,
  - (4) The impact of the proposal on the revenue base of the unincorporated area, and on the ability of the County to efficiently and effectively provide services to adjacent remaining unincorporated areas,
  - (5) The financial impacts of the proposed boundary change on the remaining unincorporated areas of Miami-Dade County. Specifically in order to insure fiscal equity the per capita taxable property value of the proposed annexation area should fall between twenty thousand dollars (\$20,000.00) and forty-eight thousand dollars (\$48,000.00) in order to assure that fiscal viability is maintained in the unincorporated area. The range of per capita taxable value shall not apply to the annexation of unincorporated enclave areas that are surrounded by more than eighty (80) percent of their boundary by one (1) or more municipalities and are of a size that can not be served efficiently or effectively,
  - (6) Any other factor that arises by virtue of recommendations of the Boundaries Commission, pursuant to Section 20-30 of the Code,
  - (7) Any other factor that arises by virtue of any special or unique circumstances of a given area,
  - (8) Whether the proposed annexation excludes areas designated terminals on the County's Adopted Land Use Plan Map; alternatively, if included, the County retains applicable master plan and regulatory authority over any area designated terminals and areas, excluding existing incorporated municipalities, located within one-half (½) mile surrounding any area designated terminals ("surrounding areas") so as to protect the operations, land uses authorized within such area, and future development of areas designated terminals and surrounding areas located therein,
  - (9) Whether the proposed annexation provides that the County retains master plan and regulatory authority over areas designated terminals and surrounding areas to encourage the use of public transportation and urban infill development,
  - (10) How businesses may be impacted upon annexation, based on a comparison between existing County land use regulations governing the subject area and the relevant municipal land use regulations, including, but not limited to, any zoning restrictions pertaining to location of businesses and hours and days of sale for businesses,
  - (11) Whether there is a community redevelopment agency operating within the area proposed to be annexed.
- (B) At the conclusion of such public hearing, the County Commission, in the exercise of its discretion, may deny the requested boundary change, by motion, or may direct the County Attorney to prepare an appropriate ordinance accomplishing the proposed boundary change, which ordinance shall be placed on the official agenda of a subsequent regular meeting of the County Commission for consideration and adoption on first reading, or the County Commission may defer such requested boundary change for further consideration at a subsequent meeting, at which no public hearing or discussion by others than members of the County Commission shall be required.

(Ord. No. 60-42, § 7, 11-29-60; Ord. No. 70-2, § 5, 1-7-70; Ord. No. 95-176, § 1, 10-5-95; Ord. No. 02-99, § 1, 6-18-02; Ord. No. 05-86, § 2, 5-3-05; Ord. No. 05-112, § 2, 6-7-05; Ord. No. 07-176, § 4, 12-4-07; Ord. No. 17-16, § 2, 3-7-17; Ord. No. 17-33, § 1, 6-6-17)

Sec. 20-8. - Enactment of ordinance changing boundaries.

The enactment of any ordinance providing for changes in municipal boundaries shall be accomplished in accordance with the requirements of Section 1.02 of the Home Rule Charter, this Chapter, and the Rules of Procedure governing meetings of the Board of County Commissioners.

(Ord. No. 60-42, § 8, 11-29-60; Ord. No. 96-39, § 1, 2-20-96; Ord. No. 96-73, § 1, 5-21-96)

**Cross reference**— Ordinances changing municipal boundaries, Appendix B.

Sec. 20-8.1. - Retention of electric franchise revenues.

Any changes in the boundaries of municipalities involving the annexation of unincorporated areas of the County shall be made subject to the provisions of Ordinance No. 89-81 granting an electric franchise to the Florida Power & Light Company, and shall be effective only upon the condition and with the reservation herein stated that the County shall continue to collect and receive all electric franchise revenues accruing within such annexed areas from the effective date of Ordinance No. 89-81 during the full term of the County franchise in the same manner as though such annexed areas remained a part of the unincorporated areas of the County. Every ordinance enacted to effectuate the annexation of unincorporated areas of the County to a municipality shall expressly set forth such condition, unless the Board of County Commissioners, for good cause, shall waive such condition by two-thirds vote of the entire membership of the board.

(Ord. No. 61-8, § 1, 2-21-61; Ord. No. 97-94, § 2, 6-17-97)

**Editor's note**— Section 20-8.1 was added by Ord. No. 61-8, enacted February 21, 1961, and effective ten (10) days thereafter. Such section was designated as Section 8A of Ord. No. 60-42 and codified as § 20-8.1 by the editor, § 3 of Ord. No. 61-8 providing that the section shall be included in the Code and numbered to conform to the numbering system of the Code.

Sec. 20-8.2. - Retention of all utility tax revenues.

Any changes in the boundaries of municipalities involving the annexation of unincorporated areas of the County, and shall be effective only upon the condition and with the reservation that the County shall forever continue to collect and receive all utility tax revenues accruing within such annexed areas in the same manner as though such annexed areas remained a part of the unincorporated areas of the County. Every ordinance enacted to effectuate the annexation of unincorporated areas of the County to a municipality shall expressly set forth such condition.

(Ord. No. 70-84, § 1, 11-17-70)

**Editor's note**— Ord. No. 70-84, § 1, was codified by the editors as § 20-8.2 pursuant to § 3 of said ordinance.

Sec. 20-8.3. - Reserved.

**Editor's note**— Section 1 of Ord. No. 08-85, adopted July 1, 2008, repealed § 20-8.3, retention of cigarette tax revenues, in its entirety. Former § 20-8.3 derived from Ord. No. 70-85, adopted Nov. 17, 1970.

**Editor's note**— Ord. No. 70-85, § 1, was codified as § 20-8.3 pursuant to § 3 thereof.

Sec. 20-8.4. - Retention of garbage and refuse collection and disposal.

Any changes in the boundaries of municipalities involving the annexation of unincorporated areas of the County shall be effective only upon the condition and with the reservation that the County shall either forever continue to collect and dispose of all residential waste in such annexation areas in the same manner as though such annexed areas remained part of the unincorporated areas of the County, unless the authority to collect such waste is delegated by the County to the governing body of the municipality throughout a twenty (20) year interlocal agreement which provides for collection services, and a twenty (20) year interlocal agreement which provides for disposal services in substantially the form approved by Resolution No. R-1198-95. Every ordinance enacted to effectuate the annexation of unincorporated areas of the County to a municipality shall expressly set forth such condition.

(Ord. No. 96-30, § 6, 2-6-96)

Sec. 20-8.5. - Annexing Municipality's Responsibilities for Bond Indebtedness.

Any changes in the boundaries of a municipality involving the annexation of unincorporated areas of the County shall be effective only upon the condition that such municipality shall be responsible for (i) its pro-rata share of any County debt outstanding for the area annexed at the time of the annexation; and with respect to any municipality that is part of the Stormwater Utility, debt outstanding for the area annexed at the time the municipality elects to be separated from the Stormwater Utility through an interlocal agreement or by exemption and (ii) its pro-rata share of any refunding of such debt. The municipality's annual pro-rata share of debt service for the annexed area shall be determined by multiplying the total debt service on the outstanding debt in each Fiscal Year by the municipality's percentage share of pledged revenues (revenues pledged by the County to the repayment of the debt). The municipality's percentage share shall be determined by dividing the pledged revenues collected within the annexed area during the County's Fiscal Year in which annexation is executed, and with respect to the Stormwater Utility in the Fiscal Year in which the municipality elects to separate from the Stormwater Utility district; by the total pledged revenues collected in that same Fiscal Year. It is further provided that the annexation shall be effective only upon the condition that the County continues to collect and distribute the pledged revenues in a manner that is consistent with the requirements of the debt. The requirements of this section shall be the subject of an interlocal agreement between the County and the annexing municipality that shall be adopted by the annexing municipality prior to the County Commission's adoption of any ordinance authorizing a boundary change.

(Ord. No. 05-97, § 1, 5-17-05)

Sec. 20-8.6. - Areas and Facilities of Countywide Significance.

- (a) Definition. "Areas and Facilities of Countywide Significance" consist of any private or public lands, including surface, subsurface, and appurtenant airspace and improvements thereupon, located in unincorporated Miami-Dade County as of the date of this ordinance that are deemed necessary by the Board of County Commissioners for the coordinated use of lands, development and service delivery within the County to promote the health, safety, order, convenience, prosperity, and welfare of the current and future residents and tourists of this County.
- (b) Designation. The Board of County Commissioners hereby designates each of the following lands listed on Exhibit A, as an "Area or Facility of Countywide Significance". Any future designation of lands as an Area or Facility of Countywide Significance may be made by resolution of the Board of County Commissioners, upon a finding that:
  - 1) The area or facility is susceptible to substantial change and development that will detrimentally affect the facility or land;

- 2) There is a need for the continued, unimpaired functioning of the area or facility by the greater community; and
- 3) The service provided at or by the area or facility, or at a combination of areas or facilities, is a significant resource to the greater community.

If the Board of County Commissioners determines that an area or facility no longer meets the definition of an "Area or Facility of Countywide Significance" as defined herein, the Commission, by resolution, may relinquish regulatory control to the municipality in which such area or facilities are located.

- (c) Regulatory Jurisdiction Over Areas or Facilities of Countywide Significance Reserved to the County. Jurisdiction for purposes of comprehensive planning, zoning and building and other development approvals (including but not limited to land use, site plan approvals, issuance of building permits, building inspections, issuance of certificates of occupancy, zoning applications, special exceptions, variances, building or zoning moratoria, and all other types of functions typically performed by the departments responsible for building, planning and/or zoning), water and sewer installations, compliance with environmental regulations, and utility regulation shall be and are hereby vested in Miami-Dade County regardless of any municipal code, charter, or ordinance provision to the contrary. If an "Area or Facility of Countywide Significance" is located in an area which is sought to be annexed to a municipality or incorporated, the County shall not transfer operation, maintenance, or regulatory jurisdiction of such Area or Facility to a municipality, unless expressly permitted herein.
- (d) Applicability. The requirements of this ordinance apply to unincorporated areas annexed after the effective date of this ordinance.
- (e) Condition of Annexation. The provisions of this section shall be considered a condition of annexation for any area annexed after the effective date of this ordinance and shall be the subject of an interlocal agreement between the County and the annexing municipality. This interlocal agreement shall be adopted by the annexing municipality prior to the County Commission's adoption of any ordinance authorizing a boundary change.

(Ord. No. 05-141, § 2, 7-7-05)

**Editor's note**— Ord. No. 05-141, § 2, adopted July 7, 2005, amended the Code with the addition of a new § 20-8.5. In order to avoid the duplication of section numbers, the provisions of said ordinance have been included herein as § 20-8.6 at the discretion of the editor.

Sec. 20-8.7. - Mitigation on proposed boundary changes.

- (a) The Board of County Commissioners may require as a condition of municipal boundary change involving an area that is not revenue neutral, that the municipality shall agree to make an annual mitigation payment to the County's Municipal Services Trust Fund in the Unincorporated Municipal Services Area Budget. The amount of the annual mitigation payment shall be determined by the Board of County Commissioners. For purposes of this section, "a revenue neutral area" is defined as an area that previously, as part of the unincorporated municipal service area, generated revenues equal to or less than the cost of services provided to the area by the County.
- (b) In determining whether as a condition of any municipal boundary change the annexing municipality will be required to pay an annual mitigation payment to the County's Municipal Services Trust Fund, the Board of County Commissioners may consider, among other factors deemed appropriate by the Board, whether the proposed annexation will eliminate enclave areas in the unincorporated area.

(Ord. No. 05-142, § 1, 7-7-05)

**Editor's note**— Ord. No. 05-142, § 1, adopted July 7, 2005, amended the Code with the addition of a new § 20-8.5. In order to avoid the duplication of section numbers, the provisions of said ordinance have been included herein as § 20-8.7 at the discretion of the editor.

Sec. 20-8.8. - Retention of modification or deletion of covenants or declaration of restrictions.

The Board of County Commissioners shall require, as a condition of municipal boundary change, that the Board retain jurisdiction over the modification or deletion of (i) declarations of restrictive covenants accepted by either the Board or a Community Zoning Appeals Board in connection with a Comprehensive Development Master Plan application or zoning application, and (ii) development agreements subject to the Florida Local Government Development Agreement Act (Sections 163.3220—163.3243, Florida Statutes), regardless of whether such declaration or agreement provides for modification or deletion by a successor governmental body. It is provided, however, that the Board of County Commissioners may not exercise such jurisdiction unless the applicable municipality has first approved the modification or deletion.

(Ord. No. R-13-06, § 1, 1-23-13; Ord. No. 17-43, § 9, 7-6-17)

Sec. 20-8.9. - Continuation of Existence of Community Redevelopment Agency as a Condition of Annexation; Municipality Required to Agree to Pay Tax Increment; Future Governance of Such Community Redevelopment Agency.

Each municipality proposing to annex a portion of the unincorporated area shall agree that any community redevelopment agency which is operating wholly or partially within the area proposed to be annexed at the time of the annexation shall continue to exist until the expiration of the life of the community redevelopment agency in accordance with the terms of the community redevelopment plan in existence on the date of the annexation or as otherwise provided by law. The municipality shall agree to pay, when due, the tax increment from municipal ad valorem tax revenues that Miami-Dade County would have been required to pay if the area were not annexed. The amount of such payments will be calculated on an annual basis by the County's Office of Management and Budget or successor office and shall be paid into the trust fund established pursuant to Section 163.387, Florida Statutes.

The governing body of the municipality shall have the right to approve any amendments to the community redevelopment plan or bond issuances that will extend the life of the community redevelopment agency that are proposed after the incorporation of the area, subject to approval by the Board of County Commissioners and applicable taxing authorities.

If the Board of County Commissioners is acting as the governing body of the community redevelopment agency, the Board of County Commissioners, in its sole discretion, may, upon the request of the municipality, delegate those certain delegable powers under Chapter 163, Part III, Florida Statutes, to the governing body of the new municipality or to a board of commissioners selected by the municipality that is to be established pursuant to Section 163.356, Florida Statutes.

If the governing body of the community redevelopment agency is comprised of members appointed by the Board of County Commissioners, the municipality, the community redevelopment agency, Miami-Dade County and other taxing authorities will have to agree in order to delegate or transfer those certain delegable powers to the governing body of the municipality or to a board of commissioners selected by the municipality. If the delegable powers are not transferred to the governing body of the municipality, as provided herein, upon each vacancy in office of the governing body of the community redevelopment agency, the Board of County Commissioners, may in its sole discretion, allow the governing body of the municipality to fill the vacancy.

The provisions of this section shall be considered a condition of annexation. Every ordinance enacted to effectuate the annexation of unincorporated areas of the County to a municipality shall expressly set forth such conditions, unless this condition is waived by a 2/3's vote of the membership of

the Board. Furthermore, the provisions of this section shall also be included in an interlocal agreement between the municipality, any non-County taxing authorities, and the Board of County Commissioners. Such interlocal shall be approved by the municipality and any non-County taxing authorities prior to the Board's adoption of an ordinance effectuating an annexation.

(Ord. No. 17-33, § 1, 6-6-2017)

Sec. 20-9. - Election on proposed boundary changes; required.

- (a) If a boundary change involves the annexation or separation of an area having two hundred fifty (250) or fewer resident electors, and the area is more than fifty (50) percent developed residential, no proposed boundary change shall be accomplished unless a majority of resident electors voting at such an election approve such boundary change. All costs of such elections shall be paid in advance by the persons, group or municipality initiating the proposed boundary change. If a boundary change involves the annexation or separation of an area having two hundred fifty (250) or fewer resident electors, and the area is less than fifty (50) percent developed residential, the Commission may by ordinance effect the boundary change in accordance with Section 5.04.B of the Home Rule Charter. The determination of whether an area is more or less than fifty (50) percent developed residential shall be made in the sole discretion of the Director of the Department of Planning and Zoning.
- (b) In the event that a boundary change involves the annexation or separation of an area of which more than two hundred fifty (250) residents are electors, the Board of County Commissioners, pursuant to Section 5.04(B) of the Home Rule Charter of Miami-Dade County, Florida, may call an election to be held for the purpose of submitting to these electors the question whether the proposed boundary change shall be approved or disapproved. All costs of such elections shall be paid in advance by the persons, group or municipality initiating the proposed boundary change.

(Ord. No. 60-42, § 9, 11-29-60; Ord. No. 64-21, § 3, 5-19-64; Ord. No. 68-83, § 1, 12-17-68; Ord. No. 96-39, § 1, 2-20-96; Ord. No. 96-73, § 1, 5-21-96; Ord. No. 01-168, § 1, 10-23-01)

Secs. 20-10—20-19. - Reserved.