

Practice Update

Miami-Dade County Adopts Ordinance Enacting Disclosure Requirements for Sellers/Lessors of Properties Containing Grease Traps

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All sellers or lessors of properties containing Fats, Oils, and Grease (FOG)[1] generators, as defined in section 24-5(113) of the Code of Miami-Dade County (Code), are now required to disclose, at the time of conveyance or lease, the presence of the FOG generator on any parcel of land on which a FOG generator is located. This requirement applies to every subdivided unit within a large development (e.g., a shopping mall) located within a single unified parcel that has a use with a FOG Control Device[2] (e.g., a restaurant) anywhere within the Affected Real Property.[3] Note, this disclosure requirement is separate from the requirement that a FOG generator obtain an operating permit pursuant to section 24-18(A)(18) of the Code.

The Miami-Dade County Board of County Commissioners (BCC) adopted Ordinance No. 23-23, creating Code Section 21-49.2, to require a seller or lessor of real property that contains a FOG generator to provide, before the completion of the transaction, a mandatory disclosure statement that could help ensure that the purchaser or lessee is aware of the potential expenses, risks, and legal obligations that come with acquiring an interest in property that has a FOG generator and is responsible for maintaining a

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FOG control device (also referred to as a “Grease Trap”).^[4] Additionally, such a disclosure could also prompt a purchaser or lessee to conduct an inspection of the property’s FOG control devices, the results of which could help the purchaser or lessee negotiate repairs to the FOG control devices prior to closing or otherwise obtain a purchase price or rent that better addresses the obligations and risks that come with the FOG generator. Section 21-49.2 prescribes the following disclosure statement:

FATS, OIL, AND GREASE (FOG) GENERATOR
DISCLOSURE

LAND INVOLVED IN THIS TRANSACTION HAS A FOG GENERATOR ON IT. AS DEFINED IN PART IN SECTION 24-5 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, A FOG GENERATOR IS A NONRESIDENTIAL FACILITY THAT: CAN INTRODUCE FOOD WASTE OR FATS, OILS, AND GREASE INTO BUILDING SANITARY DRAINS, BUILDING SEWERS, ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS, OR NON-UTILITY OR UTILITY SANITARY SEWER SYSTEMS; OR PRODUCES YELLOW GREASE. IMPROPERLY MAINTAINED FOG GENERATORS MAY POSE SUBSTANTIAL RISKS TO HUMAN HEALTH AND THE ENVIRONMENT. FOG GENERATORS ARE THEREFORE SUBJECT TO PERMITTING REQUIREMENTS AND OTHER REGULATIONS UNDER THE CODE, INCLUDING, BUT NOT LIMITED TO, THE REQUIREMENTS TO OBTAIN AN OPERATING PERMIT AND TO PERFORM ONGOING MAINTENANCE. FOG GENERATORS MAY ALSO BE SUBJECT TO OTHER LOCAL, STATE, AND FEDERAL REGULATIONS.^[5]

The FOG Disclosure Template can be found [here](#).

The FOG Control Program (Program), set forth in [section 24-42.6](#) of the Code, provides minimum requirements on FOG generators, including standards for the design and operation of FOG

control devices. Among the Program requirements is that a FOG generator obtain a FOG operating permit, pursuant to section 24-18, and submit an annual certification prepared by a professional engineer attesting that the existing FOG control devices are functioning as designed and are in good working order. Pursuant to Ordinance No. 23-23, the County revised its Grease Trap Operating Permit Application Form to: (1) reference the new FOG generator disclosure statement required before the sale or lease of certain real property; and (2) confirm acknowledgement by both the FOG operating permit applicant and the property owner as to whether the required FOG disclosure was provided. The FOG Control Program applies in both the incorporated and unincorporated areas of the County, and section 21-49.2(a)(1) expressly provides that the FOG disclosure requirement applies in both the incorporated and unincorporated areas.

It is important to note that the FOG disclosure requirement appears to apply more broadly than the operating permit requirement. Although only FOG operating permit applicants are required to provide attestation to the County as to whether the disclosure was provided, the disclosure requirement appears to apply to all conveyances of affected real property.^[6] The disclosure is triggered by the presence of a FOG generator on the same parcel and is not limited to the specific commercial unit housing the FOG generator. But while the failure to provide the FOG disclosure may subject the seller or lessor to penalties, only a FOG permit applicant is required to report receipt or non-receipt of the disclosure to the County.

Enforcement and Penalties

Florida law imposes duties on sellers in real estate transactions, including but not limited to the duty of a seller of residential property to disclose to the purchaser all known facts materially affecting the value of the property that are not readily observable and are not known to the purchaser. Florida law further provides more generally that a person's

violation of a duty imposed by ordinance may form the basis of a cause of action by another person injured by the violation.

To help ensure compliance with the FOG generator disclosure requirement, Ordinance No. 23-23 expressed the BCC's legislative intent that this requirement impose on sellers and lessors a legal duty of disclosure enforceable by purchasers, lessees, or other parties with standing, through a cause of action existing under Florida law when the party has sustained financial injury caused by the failure to comply with the disclosure requirement.[7]

In addition, any seller or lessor who violates any provision of this section, or fails to comply therewith, or with any lawful rule, regulation, or written order promulgated under that section, shall be subject to fines in accordance with chapter 8CC of the Code and to any penalties or remedies provided in section 1-5 and chapter 8CC, as applicable.[8] As provided in Ordinance No. 23-23, the seller or lessor will be subject to a fine of \$1,000 for: failing to provide the disclosure statement to the purchaser or lessee in compliance with section 21-49.2; or failing to ensure acknowledgement of disclosure statement appears as required on the instrument of sale or lease.

[1] FOG is any substance such as vegetable or animal product used in, or a byproduct of, the cooking or food preparation process, that can cause or lead to corrosion, blockages, reduced flow, or interference with the sanitary sewer system when discharged. *See* Code § 24-5(113); Miami-Dade County FOG Control Device Guidance Manual at 4 (June 2021) (County FOG Manual).

[2] Equipment designed to remove, hold, and prevent the passage of FOG to onsite sewage systems. *See* Code § 24-5(126); County FOG Manual at 4. Such as a Grease Trap.

[3] “Affected Real Property” means “any parcel of land on which a FOG generator is located.” *See* Code § 21-49.2(b)(1); Miami-Dade County Ordinance No. 23-23 (FOG Generator Disclosure Ordinance).

[4] Ordinance No. 23-23 at MDC008-09.

[5] Section 21-49.2(c) provides: *Disclosure statement requirement.* Prior to the execution of any instrument committing an individual or entity to purchase or lease affected real property in Miami-Dade County, the seller or lessor shall provide the purchaser or lessee with the following statement, set forth conspicuously on a separate sheet of paper in at least 12-point font, and which shall be signed and dated by the purchaser or lessee

[6] *See* § 21-49.2(b)(1), (c).

[7] § 21-49.2(e)(3).

[8] *See* Code § 8CC-10.

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