

MEMORANDUM

Agenda Item No. 7(B)

(Second Reading 05-08-07)

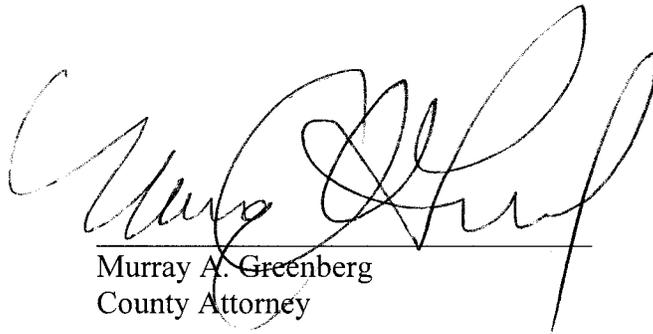
TO: Honorable Chairman Bruno A. Barreiro
And Members, Board of County Commissioners

DATE: March 6, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Ordinance Amending
the Code Pertaining
to investigation of
complaints by the
Ethics Commission

The accompanying ordinance was prepared and placed on the agenda at the request of Commissioner Joe A. Martinez.



Murray A. Greenberg
County Attorney

MAG/dc

Memorandum



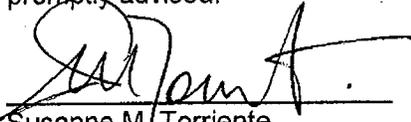
Date: May 8, 2007

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George J. Burgos
County Manager

Subject: Ordinance Amending the Code Pertaining to Investigation of Complaints by the Ethics Commission

The ordinance amending the Miami-Dade County Code Whistleblower legislation may have a fiscal impact to the County. It is anticipated that the implementation of this ordinance may increase the number of complaints received by the Ethics Commission. However, at this time, it is difficult to estimate accurately the potential increase of complaints. In the event the Ethics Commission requires additional resources to deal with the increased complaints, the Board of County Commissioners will be promptly advised.


Susanne M. Torriente
Assistant County Manager

Fiscal00206



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: May 8, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 7(B)

Please note any items checked.

- "4-Day Rule" ("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
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor

Agenda Item No. 7(B)

Veto _____

05-08-07

Override _____

ORDINANCE NO. _____

ORDINANCE AMENDING SECTION 2-56.28.17 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, PERTAINING TO THE INVESTIGATION OF COMPLAINTS BY THE ETHICS COMMISSION; PROVIDING ADDITIONAL PROTECTION TO EMPLOYEES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

Section 1. Section 2-56.28.17 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-56.28.17. Remedies.

- (1) Any employee protected by this division who has the right to file an appeal of an adverse personnel action under Section 2-47 shall also have the right to have the hearing examiner appointed under that section consider the issue of whether the adverse action was in violation of this division. The hearing examiner shall include in his findings of fact and conclusions a determination of whether the adverse action was in violation of this section and shall recommend an appropriate remedy.
- (2) Any employee protected by this division who does not have the right to file an appeal under Section 2-47 may file a written complaint within sixty (60) days after the action prohibited by this division with the Miami-Dade County Personnel Director. The Director shall refer the complaint to a panel of impartial persons from whom a hearing

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.

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examiner shall be selected. The panel shall be comprised of all persons available to serve as a hearing examiner under Section 2-47. Such hearing examiners may be paid a fee for their services, but shall not be deemed County officials or employees within the purview of Sections 2-10.2, 2-11.1 or otherwise. The hearing examiner shall conduct a hearing after notice to the complainant and the County department, political subdivision or special district involved. The hearing shall be conducted in accordance with the procedures applicable to hearings under Section 2-47, except as may be provided herein. Any interested party may procure the attendance of witnesses and the production of records at such hearing in the manner provided by Section 2-50. All hearings requested pursuant to this paragraph shall be commenced insofar as is practicable within sixty (60) days of the Personnel Director's receipt of the complaint, except that the Director shall have the authority to extend such time for reasonable cause.

- (3) The hearing examiner shall transmit his findings of facts, conclusions of law and any recommendations together with a transcript of all evidence taken before him and all exhibits received by him to the County Manager for a final decision. The Manager may sustain, reverse or modify the adverse personnel action. In any case in which the hearing examiner finds that the employee filed a frivolous complaint in bad faith, the hearing examiner may recommend and the Manager may direct the employee to pay the costs of the hearing, including the employer's attorney's fees.

>>(4) Investigation by Ethics Commission. In addition to the remedies set forth above,

- (a) Any employee protected under this division who alleges retaliation may, in lieu of or in addition to seeking the relief set forth above, file a written complaint with the Miami-Dade County Ethics Commission alleging a prohibited personnel action, no later than 60 days after the prohibited personnel action.
- (b) Within ten working days after receiving a complaint under this section, the Ethics Commission shall acknowledge receipt of the complaint and provide copies of the complaint and any other preliminary information available concerning the disclosure of

information under this Section to the department or employee accused of retaliation.

(c) Fact finding. Upon the filing of a complaint with the Ethics Commission under this section, the Ethics Commission shall:

(i) Conduct a preliminary investigation and a fact finding hearing within 60 days regarding the allegation of retaliation, to the extent necessary, to determine whether there is probable cause to believe that a prohibited personnel action under this Section has occurred, is occurring, or is to be taken.

(ii) Within 90 days after receiving the complaint, provide the accused department or employee and the complainant with a fact-finding report. The fact-finding report shall be presumed admissible in any subsequent or related administrative or judicial review.

(iii) Based on its fact-finding report, recommend to the County Manager an appropriate course of action. The Manager shall thereafter take appropriate remedial action in accordance with Section 2-56.28.18.

(5) Any employee found by the Ethics Commission to have retaliated against another County employee in violation of this section shall be considered to have committed a violation of the County's Code of Ethics and shall be subject to disciplinary action up to and including dismissal from County employment.<<

Section 2. 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 3. 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.

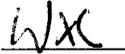
Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



William X. Candela

Sponsored by Commissioner Joe A. Martinez