MEMORANDUM

Agenda Item No. 7(A)

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

DATE: May 22, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Ordinance pertaining to Chapter 26 of the Code entitled "Park and Recreation Department Rules and Regulations"; criminal background checks

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The accompanying ordinance was prepared and placed on the agenda at the request of Senator Javier D. Souto.

Murray A. Greenberg
County Attorney

MAG/bw

Memorandum

MIAMI-DADE COUNTY

Date: May 22, 2007

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

From: George M. Burgess
County Manager

Subject: Ordinance pertaining to Chapter 26 of the Code entitled "Park and Recreation Department Rules and Regulations"; criminal background checks

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The ordinance pertaining to the criminal background checks will have an estimated fiscal impact of $208,000 to Miami-Dade County. The estimate includes the cost of one staff position in the Park and Recreation Department ($60,000 in salary and fringes) to implement and monitor compliance with the ordinance and the cost of conducting the background checks. The requirements in the ordinance may deter citizens from providing volunteer services. However, the impact cannot be determined at this time. Furthermore, Parks Programming Partners and other groups providing volunteer related services in Miami-Dade County Parks will be financially impacted due to the requirements of the ordinance.

Alex Muñoz
Assistant County Manager

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MEMORANDUM

(Revised)

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

DATE: May 22, 2007

FROM: Murray A. Greenberg County Attorney

SUBJECT: Agenda Item No. 7(A)

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
Veto _____
Override _____

Agenda Item No. 7(A)
5-22-07

ORDIDANCE NO. _____

ORDINANCE PERTAINING TO CHAPTER 26 OF THE CODE OF MIAMI-DADE COUNTY ENTITLED "PARK AND RECREATION DEPARTMENT RULES AND REGULATIONS"; DELETING SECTION 26-33; CREATING ARTICLE III TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR ALL PERSONS WORKING OR VOLUNTEERING ON COUNTY PARK PROPERTY; REQUIRING CONFIRMATION THAT AN EMPLOYEE OR VOLUNTEER IS NOT LISTED ON THE NATIONAL SEX OFFENDER PUBLIC WEBSITE; PROHIBITING SEXUAL OFFENDERS, SEXUAL PREDATORS, CERTAIN VIOLENT FELONS, CERTAIN NARCOTICS TRAFFICKERS, AND NON-LEGAL IMMIGRANTS FROM WORKING OR VOLUNTEERING ON PARK PROPERTY BELONGING TO MIAMI-DADE COUNTY; PROVIDING AUTHORITY FOR ENFORCEMENT BY CIVIL PENALTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, this Board is concerned about the security and safety of children visiting Miami-Dade County parks; and

WHEREAS, there is a strong likelihood that children visiting County-owned or operated parks will come into direct contact with persons working or volunteering on County-owned or operated park property; and

WHEREAS, the County currently requires criminal background checks only of staff members and volunteers of fairs, carnivals, and Programming Partners operating on County-owned or operated park property; and

WHEREAS, requiring criminal background checks of all persons working or volunteering on County-owned or operated park property would reduce the incidence of direct contact between children and sexual predators or violent felons,

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

Section 1. Section 26-33 of the Code of Miami-Dade County (the "Code") is hereby deleted in its entirety:[1]

[[~~Sec. 26-33. The Shannon Melendi Act.~~

~~A. All Programming Partner staff and volunteers who will have direct contact with program participants, at their expense, must show proof of official statewide background checks (either through the Florida Department of Law Enforcement or the Miami-Dade Police) for substance abuse, family violence and crimes of moral turpitude. The Department will seek a cooperative agreement with the Miami-Dade Police Department to provide such services at a discount for Partners. All Programming Partner staff must show proof of legal immigrant status in the United States. The Programming Partner shall keep records of all background checks and proof of legal immigrant status.~~

~~B. All Programming Partner staff and permanent volunteer coaches shall wear a picture identification at all times while on County property and at all times when in direct contact with program participants.~~

~~C. All fair and carnival employees or agents who will have direct contact with children under the age of 18 in a Miami-Dade County park, shall, at their expense, show proof of official statewide background checks (either through the Florida Department of Law Enforcement or the Miami-Dade Police) for substance abuse, family violence and crimes of moral turpitude. All fair and carnival employees or agents working in a Miami-Dade County park must show either proof of U.S. citizenship or legal immigrant status in the United States. The employer of any fair or carnival employee serving in a Miami-Dade County park shall keep records of all background checks and proof of legal immigrant status.~~

~~D. All fair and carnival employees or agents who will have direct contact with children under the age of 18 in a Miami-Dade County park shall wear a picture identification at all times while on County property and at all times when in direct contact with program participants.~~]]

[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.

Section 2. Article III of Chapter 26 of the Code is hereby created as follows:

Chapter 26 PARK AND RECREATION DEPARTMENT RULES AND REGULATIONS

* * *

ARTICLE III. THE SHANNON MELENDI ACT

Sec. 26-37. Definitions.

As used in this article the following terms shall have the following meanings:

A. *Community-based Organization (CBO)* shall refer to any not-for-profit agency, group, organization, society, association, partnership, or individual whose primary purpose is to provide a community service to improve or enhance the well-being of the community of Miami-Dade County at large or to improve or enhance the well-being of certain individuals within this community who have special needs.

B. *Child Event Worker* shall refer to any full- or part-time employee, agent, volunteer, independent contractor, or employee or volunteer of an independent contractor of a carnival or fair that hosts amusement rides in a park owned or operated by Miami-Dade County. The following persons shall be exempted from this definition:

(1) Any volunteer who is on a park owned or operated by Miami-Dade County for a period not to exceed 72 consecutive hours;
(2) Members of the working media;
(3) Official sponsors of a carnival or fair who are at all times accompanied by a person having undergone a criminal background check;
(4) Law enforcement personnel;
(5) Emergency or fire rescue personnel;
(6) Persons conducting deliveries;
(7) Military recruitment personnel; and
(8) Inspectors or compliance officers for Miami-Dade County, the state of Florida, or the federal government.

C. *Conviction* shall refer to a determination of guilt of a criminal charge which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

D. *Park vendor* shall refer to any full- or part-time employee, agent, volunteer, independent contractor, or employee or volunteer of an independent contractor that has a contract with, or permit from, Miami-Dade County to rent or sell food, beverages, sporting equipment, or any other goods or services in a park owned or operated by Miami-Dade County. The following persons and events shall be exempted from this definition:

(1) Any volunteer who is on a park owned or operated by Miami-Dade County for a period not to exceed 72 consecutive hours;
(2) Members of the working media;
(3) Law enforcement personnel;
(4) Emergency or fire rescue personnel;
(5) Persons conducting deliveries;
(6) International or national sporting events;
(7) One-day events; and
(8) Carnivals, festivals, trade shows, and fairs that do not host amusement rides.

E. *Professional Background Screener* shall refer to any person, company, organization or agency which, for monetary fees, dues, or on a not-for-profit basis, regularly engages in whole or in part in the practice of researching and assembling criminal history information on specific persons for the purpose of furnishing criminal history reports to third parties.

F. *Programming Partner* shall refer to any Not-For-Profit Program Service Provider that is selected by the Department under Article II of this chapter and the accompanying Administrative Order to provide programs in County Park and Recreation Facilities.

G. *Sexual Offender* shall include any individual who meets the criteria of a "sexual predator" as defined in Section 775.21(4) of the Florida Statutes, or a "sexual offender" as defined in Section 943.0435 of the Florida Statutes, or who is listed on the National Sex Offender Public Website owned or operated by the United States Department of Justice.

H. *Volunteer* shall refer to any individual performing volunteer duties for a CBO, for a Programming Partner, or for the Miami-Dade Park and Recreation Department for more than 72 consecutive hours in any six (6) month period. Students volunteering in order to fulfill high school graduation requirements shall be exempted from this definition.

Sec. 26-38. Background checks Required for Child Event Workers, Park Vendors, and Programming Partner or Community-Based Organization (CBO) Employees and Volunteers.

A. Prior to employing, or allowing to volunteer, a person whose duties would require physical presence on park property owned or operated by Miami-Dade County, employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall secure a nationwide criminal background check of all such prospective child event workers, park vendors, employees or volunteers having obtained legal immigrant status in the United States more than 120 days prior to the scheduled start of employment or volunteerism.

The nationwide criminal background checks shall be conducted by a Professional Background Screener and shall include a report as to whether each child event worker, park vendor, staff member or volunteer is listed on the National Sex Offender Public Registry, and a comprehensive report and analysis, obtained from no less than two independent databases/sources, on the nationwide criminal history of such child event worker, park vendor, staff member or volunteer.

B. Every year, employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall secure nationwide criminal background checks for existing park vendors, child event workers, staff members, and volunteers whose duties require physical presence on park property owned or operated by Miami-Dade County.

C. Any child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who:

(1) has been convicted of a felony involving violence within the past five (5) years; or
(2) has been convicted of a felony involving the trafficking of narcotics within the past (5) years; or
(3) is a sexual offender or a sexual predator; or
(4) has failed to provide the Programming Partner or CBO with proof of United States citizenship or legal immigration status in the United States,

shall be prohibited from working or volunteering on park property owned or operated by Miami-Dade County. All child event workers, park vendors, and staff members and volunteers of a Programming Partner or CBO shall submit to their employer, to the Programming Partner, or to the CBO an affidavit affirming that no work or volunteer duties will be performed on park property owned or operated by Miami-Dade County in violation of this sub-section.

D. Employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall maintain copies of the results of the criminal background checks required by this section for a period of two (2) years from the date they were secured. Employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall maintain the affidavits required by Section 26-38(C) and the copies of the proof of United States citizenship or legal immigration status until the person is no longer a child event worker, park vendor, staff member, or volunteer.

Employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall, upon request, provide copies of these documents to Miami-Dade County or to any law enforcement personnel with jurisdiction.

E. Every child event worker, park vendor, and staff member and volunteer of a Programming Partner or CBO shall wear, in a conspicuous and visible manner, an identification badge that contains his/her photograph and full name while working or volunteering on park property owned or operated by Miami-Dade County, except when in costume and during a performance. The identification badge shall be of a size, design, and format approved by the Miami-Dade Park and Recreation Department.

F. Penalties and Enforcement.

(1) It shall be unlawful for an employer of child event workers, an employer of park vendors, or a Programming Partner or CBO to knowingly permit or allow any child event worker, park vendor, staff member, or volunteer to work or volunteer on park property owned or operated by Miami-Dade County in violation of this section.

(2) It shall be unlawful for any child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO to work or volunteer on park property owned or operated by Miami-Dade County in violation of this section.

(3) Any person who shall violate a provision of this section, or fail to comply therewith, or with any of the requirements thereof, shall upon conviction thereof in the County Court, be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment.

(4) Any person who violates or fails to comply with this section shall also be subject to civil penalties in accordance with Chapter 8CC of this code. Each day of violation or noncompliance shall constitute a separate offense.

Sec. 26-39. Miami-Dade Park and Recreation Department Employees and Volunteers.

A. The Miami-Dade Park and Recreation Department shall secure a nationwide criminal background check prior to employing, or allowing to volunteer, a person whose primary duties would require physical presence on park property owned or operated by Miami-Dade County. This nationwide criminal background check shall be conducted through the Florida Department of Law Enforcement.

B. Every year, the Miami-Dade Park and Recreation Department shall secure nationwide criminal background checks for existing employees and volunteers whose primary duties require physical presence on park property owned or operated by Miami-Dade County. These nationwide criminal background checks shall be conducted by a Professional Background Screener and shall include a report as to whether each employee or volunteer is located on the National Sex Offender Public Registry, and a comprehensive report and analysis, obtained from two independent databases/sources, on the nationwide criminal history of such employee or volunteer.

C. Any employee or volunteer of the Miami-Dade Park and Recreation Department who:

(1) has been convicted of a felony involving violence within the past five (5) years; or
(2) has been convicted of a felony involving the trafficking of narcotics within the past (5) years; or
(3) is a sexual offender or a sexual predator; or
(4) has failed to provide the Miami-Dade Park and Recreation Department with proof of United States citizenship or legal immigration status in the United States,

shall be prohibited from working or volunteering on park property owned or operated by Miami-Dade County. All employees and volunteers of the Miami-Dade Park and Recreation Department shall submit to the Miami-Dade Park and Recreation Department an affidavit affirming that no work or volunteer duties will be performed on park property owned or operated by Miami-Dade County in violation of this sub-section.

D. The Miami-Dade Park and Recreation Department shall maintain copies of the results of the criminal background checks required by this section for a period of two (2) years from the date they were secured. The Miami-Dade Park and Recreation Department shall maintain the affidavits required by Section 26-39(C) and shall maintain copies of the proof of United States citizenship or legal immigration status until the person is no longer an employee or volunteer.

E. Every employee and volunteer of the Miami-Dade Park and Recreation Department shall wear, in a conspicuous and visible manner, an identification badge that contains his/her photograph and full name while working or volunteering on park property owned or operated by Miami-Dade County, except when in costume and during a performance. The identification badge shall be of a size, design, and format approved by the Miami-Dade Park and Recreation Department.

F. Penalties and Enforcement.

(1) It shall be unlawful for any employee or volunteer of the Miami-Dade Park and Recreation Department to work or volunteer on park property owned or operated by Miami-Dade County in violation of this section.

(2) Any person who shall violate a provision of this chapter, or fail to comply therewith, or with any of the requirements thereof, shall upon conviction thereof in the County Court, be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment.

(3) Any person who violates or fails to comply with this chapter shall also be subject to civil penalties in accordance with Chapter 8CC of this code. Each day of violation or noncompliance shall constitute a separate offense.

Section 3. Section 8CC-10 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

Sec. 8CC-10. Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. For each Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this Chapter 8CC, regardless of whether all activities proscribed or required within that particular section are described in the "Description of Violation" column. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

* * *

Code Section	*Description of Violation*	*Civil Penalty*
>>26-38(A)	Failure to secure nationwide criminal background check of a prospective child event worker, park vendor, or employee or volunteer of a Programming Partner or CBO whose duties would require physical presence on Miami-Dade County-owned or operated park property	500.00
26-38(B)	Failure to secure nationwide criminal background check of an existing park vendor, child event worker, or staff member or volunteer of a Programming Partner or CBO whose duties require physical presence on Miami-Dade County-owned or operated park property	500.00
26-38(C)	Permitting or performing work or volunteerism on Miami-Dade County-owned or operated park property by child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who has been convicted of a felony involving violence within the past five (5) years	500.00
	Permitting or performing work or volunteerism on Miami-Dade County-owned or operated park property by child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who has been convicted of a felony involving the trafficking of narcotics within the past five (5) years	500.00
	Permitting or performing work or volunteerism on Miami-Dade County-owned or operated park property by child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who is a sexual offender or a sexual predator	500.00
	Permitting or performing work or volunteerism on Miami-Dade County-owned or operated park property by child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who has failed to provide proof of United States citizenship or legal immigration status	500.00
26-38(D)	Failure to collect or maintain copies of criminal background checks, affidavits, or United States citizenship or legal immigration status proof of a child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO	500.00

26-38(E)	Failure of child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO to wear in a conspicuous and visible manner the required identification badge while working or volunteering on Miami-Dade County-owned or operated park property	250.00
26-39(E)	Failure of Park and Recreation Department employee or volunteer to wear in a conspicuous and visible manner the required identification badge while working or volunteering on Miami-Dade County-owned or operated park property	250.00<<

Section 4. 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 5. 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 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 6. 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: MR

Monica Rizo

Sponsored by Senator Javier D. Souto