MEMORANDUM

Alternate
Agenda Item No. 7(A)

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

DATE: October 16, 2007

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance codifying the Community Periodical Advertising Program

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The accompanying ordinance was prepared and placed on the agenda at the Airport and Tourism Committee.

This alternate is different from the original in that the original required participating periodicals to be printed in Miami-Dade County. This alternative requires participating periodicals to be printed in the State of Florida.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: October 16, 2007

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

From: George M. Burgess
County Manager

Subject: Ordinance codifying the Community Periodical Advertising Program

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The ordinance codifying the Community Periodical Advertising Program will have an estimated impact of $80,000 for the cost of complying with the bi-annual auditing requirements and appeals processes included in the ordinance. However, the ordinance requires departments to spend a minimum of one-third of their discretionary print advertising budget through the Community Periodical Advertising Program. Based on the FY 2006-07 budgeted amount for all departments' print advertising, $658,000 (one-third of $1.815 million) would be expended under this program. This is a reduction from the current mandated amount of $1,050,000.

FOR
Susanne M. Torriente
Assistant County Manager

Fis01207

MEMORANDUM

(Revised)

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

DATE: October 16, 2007

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Alternate 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 _____

Alternate
Agenda Item No. 7(A)
10-16-07

ORDINANCE NO. _____

ORDINANCE CODIFYING THE COMMUNITY PERIODICAL ADVERTISING PROGRAM; PROVIDING QUALIFICATIONS, STANDARDS, DEFINITIONS, APPLICATIONS, PENALTIES AND OTHER MATTERS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the Community Periodical Advertising Program was created, funded and established in 1993, under Resolution R-1679-93, to provide a valuable and complimentary source of information to the multi-ethnic "poor, elderly and disadvantage citizens who cannot afford to buy or subscribe to a newspaper of daily circulation;" and

WHEREAS, in both 1998 and 2005, the Board of County Commissioners of Miami-Dade reaffirmed this valuable program and County funds dedicated to the program; and

WHEREAS, the Board of County Commissioners recognizes that in a community with 1,787,000 minority residents of diverse cultural, national, language and racial ethnicities, it is essential to provide them with information concerning their local government services and programs; and

WHEREAS, the 2000 Population Census indicates that almost 80 percent (79.33) of Miami-Dade County's population is comprised of ethnic minorities: 57.32% Hispanic, 18.96% blacks and 3% other ethnic minorities; and

WHEREAS, the Community Periodical Advertising Program continues to provide an alternate method of disseminating news to poor, elderly and disadvantaged residents who cannot afford to subscribe to mainstream newspapers, but should not be used as an entitlement program

to encourage the proliferation of new periodicals to sustain themselves through public dollars; and

WHEREAS, the guidelines established under Resolution R-1679-93 and further ratified under Resolution R-678-98 established criteria including a requirement that the periodical prove continuous publication for a period of three years prior to becoming eligible to participate in the community periodical program, that, unlike mainstream newspapers, the periodical be distributed free of charge to the general public, that the periodical's main office be located in Miami-Dade County, among other criteria; and

WHEREAS, the County annually expends substantial funds on public advertisements in community periodicals; and

WHEREAS, the existing criteria has proven to be insufficient to effectively administer a program that has grown through the years; and

WHEREAS, the Board of County Commissioners recognizes the need to establish standards and criteria for the Community Periodical Advertising Program to strengthen the program and better reflect the original goals set when the program was created more than decade ago; and

WHEREAS, the County has a strong history of supporting small local businesses and contractors, because they are the backbone of Miami-Dade County's economy and generate a multiplier effect on the local economy; and

WHEREAS, requiring participants in the program to have headquarters in Miami-Dade County will encourage economic development in the County, tend to direct County funds to county taxpayers, and encourage diverse journalistic, investigative, and editorial writing in the County; and requiring participants to print in the State of Florida is method to encourage, foster

and develop the printing industry in Miami-Dade County and Florida in a manner less restrictive than limiting printing to Miami-Dade County only; and

WHEREAS, requiring participants in the program to have headquarters in Miami-Dade County will ensure that participants have the familiarity and understanding of the unique ethnic and cultural communities of the County which is needed to effectively reach out to these groups, and will further foster the growth of smaller, alternative forums responsive to these communities which are not currently served by the larger, commercial media outlets headquartered outside of Miami-Dade County,

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

Section 1. A new section of the Miami-Dade County Code is hereby created to read as follows:

> **Miami-Dade County Community Periodical Advertising Program**
>
> **Section 1. Purpose.**
>
> The purpose of this ordinance is to codify the standards, criteria, and applications governing the Miami-Dade County Community Periodical Program. In line with its intent when originally established, the purpose of this program is to provide news and information about Miami-Dade County's programs and services, and other public service announcements to the poor, elderly and disadvantaged citizens who cannot afford to buy or subscribe to a mainstream newspaper.
>
> **Section 2. Definitions.**
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> "Periodical, business entity, or person" means a periodical, business entity or person that owns more than a 50 percent interest in any periodical participating in this program.

"Year" means the County fiscal year which extends from October 1st to September 30th.

Section 3. Program Described – No Rights Conveyed.

It is the intention of Miami-Dade County to publish advertising in the periodicals that qualify and become a part of this program. No rights to receive advertising contracts are granted by qualifying for or participating in this program. The decision of whether, what, and how much to publish in a particular periodical remains in the sole discretion of Miami-Dade County, which may consider any lawful factor in making its decision including but not limited to rates, target audience, frequency and consistency of publication, while advertising rates shall remain the sole discretion of the individual periodical operating in a free market economy. No one periodical, business entity, or person shall receive more than 9% of the programs budget for advertisement in any one year. The exercise of the County's discretion in this regard shall not be subject to any appeal. Nothing herein shall restrict the ability of an individual periodical to adopt whatever rate it deems appropriate, provided that Miami-Dade County may decline to purchase advertising based upon the rate.

Section 4. Qualifications.

To qualify for participation in this program a community periodical must meet the following conditions, and have a history of meeting the conditions in subsections (a), (b), (c), (e), (f), (g), (h), (i), (k), and (l) for three years prior to entering the program:

(a) be circulated free of charge;

(b) contain articles of local, national, or international news of interest to the general public;

(c) be published in amounts of no less than 5,000 copies for each edition which must be distributed within Miami-Dade County;

(d) contain no less than 12 pages in each edition;

(e) prominently display the publication date on the masthead, cover, inside cover or other easily viewed location;

(f) be published continuously throughout the year on a schedule set before the year begins, either once per month, twice per month, or four times per month;

(g) have a main office or headquarters from which the periodical is published with a street address located in Miami-Dade County;

(h) have an occupational license that reflects its main office or headquarters street address and that is valid for the year in which the periodical intends to participate in the program;

(i) be printed in the State of Florida;

(j) be distributed in an established manner, either by mail or by delivery to no less than 10 different distribution points dispersed throughout the community it serves;

(k) have a history of having published continuously for at least three years prior to the first year for which it seeks to participate in the program;

(l) be registered as a vendor with the Miami-Dade County Department of Procurement Management;

(m) have a rate card reflecting the periodical's standard rates;

(n) provide Miami-Dade County with price guarantee for rates for the year in which it intends to participate that comply with the rate requirements of this ordinance and guarantee that Miami-Dade County will receive the lowest rates charged by the periodical; and

(o) otherwise have complied with the provisions of this ordinance regarding including, but not limited to, applications, upkeep of records, reporting changes in information, and audit.

Section 5. Applications

To participate, a periodical must submit an application in a form prepared by Miami-Dade County. The application will contain separate sections addressing each of the required qualifications of the program. At a minimum, the application form will require the following documents to be attached to the application: a current issue, printer's invoices, valid occupational license, proof of registration as a vendor with Miami-Dade County, rate card, business documents reflecting ownership, for example, articles of incorporation or partnership agreement. No submitted application will be complete without such documents. In addition, prior to admitting a periodical to the program, the administration will confirm the publication history by reviewing all issues published in the prior three years as required by subsection (4) (k). The application must be signed and notarized by an owner or officer of the periodical. The Miami-Dade County may require the applicant

to file the application in person or to participate in an application review meeting.

Section 6. Responsibility to Update Application and Other Information.

The periodical will have an ongoing responsibility to update the information contained in its application and any other information it provides the County regarding this program. Such updating of information shall be filed with Miami-Dade County within ten working days of the change.

Section 7. Responsibility to Provide Copies of Issues while in Program.

Once a periodical has entered the program, the periodical must provide Miami-Dade County with all copies of the issues that it publishes in order for the County to confirm that the periodical publishes on the schedule it has provided. This requirement applies whether or not the periodical is receiving advertising from the County.

Section 8. Proof of Publication and Payment.

In the event that the County contracts to have the periodical publish advertising, the following applies to payment:

(a) The periodical must invoice the County for the advertising, provide a copy of issue containing the advertisement, and provide three copies of a tear sheet of the advertisement.

(b) Miami-Dade County will remit payment within thirty (30) days of receiving these materials.

(c) Miami-Dade County may decline to pay the invoice if the conditions governing the publication of the advertising are not met, including but not limited to:

(1) Failure to place the advertisement according to insertion order provided with the advertisement;

(2) Failure to place advertisement according to the date stipulated on insertion order;

(3) Placing an advertisement without having an insertion order accompany the advertisement; and

(4) Failure to charge the correct rate that is guaranteed at time of application.

Section 9. Retaining Records and Audits.

(a) A periodical that is paid to publish advertising as part of this program must retain for three years the following records for each year in which it received advertising: (1) copies of publications; (2) copies of invoices for advertising to other entities; (3) printers receipts showing the number of copies of each issue printed; (4) copies of checks or other form of payment to the printer showing proof that the printer was paid for printing the issues; (5) the distribution points where the paper is distributed.

(b) Audits. Any periodical that participates in this program, whether or not it receives advertising, is subject to audits by officers and agents of the County to ensure compliance with the provisions of this ordinance. The periodical will make its accounts and records, including but not limited to the records mentioned above, available to the County at reasonable times and places as the County determines necessary to conduct the audits. These audits may include investigations to insure that the periodicals statements regarding circulation are accurate and that the periodical has complied with the qualifications required under Section 4 during the preceding three years.

Section 10. Suspension and Termination.

(a) Suspension. The County may formally suspend a periodical for any period of time up to and including twelve months for any of the following reasons:

(1) failure to report changes in the information provided to the County within ten days of the change, when such change of information would not disqualify the periodical from participating in the program.

(2) failure to publish according to the schedule provided on two or three occasions in any six month period;

(3) on one occasion submitting an invoice for more than the guaranteed amount or when no insertion order was sent; and

(4) single or accidental violations of the terms of this ordinance that County determines do not warrant termination.

(b) Termination. The County may formally terminate a periodical for any period of time from one to three years for any of the following reasons:

(1) misrepresenting a material fact on the application that impacts the periodical's qualification for the program;

(2) failure to report changes in the information provided to the County within ten days of the change, when such change of information would disqualify the periodical from participating in the program;

(3) failure to publish according to the schedule provided on four or more occasions in any six month period;

(4) on two or more occasions, submitting an invoice for more than the guaranteed amount or when no insertion order was sent;

(5) charging Miami-Dade County a higher rate than any other customer for an advertisement of the same or comparable size; or

(6) other multiple or intentional violations of the terms of this ordinance.

A periodical that is formally terminated must reapply by submitting a new application after its termination is over.

Section 11. Departments Required to Purchase Advertising Through this Program -- Administrative Matters.

(a) Community Periodical Advertising Expenditure. Each Department or County Entity that purchases print advertisements, will expend no less than one third its discretionary print advertisement budget through this program. As used in this section "discretionary print advertising" means all print advertisements, except those that are legally required to be published in newspapers of general circulation. As part of each annual budget, the County Manager will provide the Board of County Commissioners a report that sets forth for each department the total budgeted print advertising dollars, the discretionary print advertising dollars, the print advertising dollars that are legally required to be published in newspapers of general circulation, and the non-print

advertising dollars. If a specific amount for the program is established in the budget ordinance, the specific amount so established will control and the above-provisions will not apply.

(b) This ordinance will govern the program commencing Fiscal Year 2007-08. All Community Periodicals intending to participate in the program must submit new applications pursuant to this ordinance.

(c) Periodical Representative. The periodicals participating in this program may elect or appoint a representative who may serve as a spokesperson, advisor and monitor for the program on behalf of the participating periodicals. This spokesperson shall represent private parties only and shall not be deemed a County official, employee, or agent for any purpose.

Section 12. Appeals.

Any periodical aggrieved by an administrative decision may appeal that decision by filing a written notice of appeal with the Clerk of the Board of County Commissioners, 111 N.W. 1st Street, Suite 1700, Miami, Florida within 20 days of the issuance of the written decision. The notice must fully explain the basis for the appeal and the reasons why the periodical believes the decision was wrong. The Miami-Dade County will have the appeal scheduled to be heard by one of the Hearing Officers provided for under Chapter 8CC of the Miami-Dade County Code and a hearing will be conducted under the provisions of that Chapter. An appeal of the Hearing Examiner's decision may be taken as provided in that Chapter.

Section 13. Censorship.

The County will not withhold advertising from a periodical because of the periodical's editorial or news content attacking the actions of the County government or any County official. Any County employee who receives any instruction, order, or direction to withhold advertising for this reason will immediately report the instruction, order to the Commission on Ethics and the Inspector General who shall investigate to determine the truth of the statement and may refer to appropriate agency.

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: RAC

Prepared by: TWL

Thomas W. Logue

Sponsored by the Airport and Tourism Committee