

## MEMORANDUM

Agenda Item No. 4(D)

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

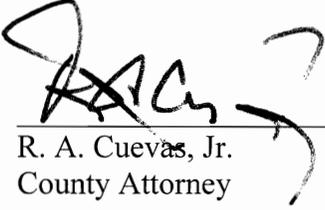
**DATE:** March 4, 2008

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

**SUBJECT:** Ordinance relating to  
subpoena powers of the  
Independent Review Panel

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The accompanying ordinance was prepared and placed on the agenda at the request of Vice-Chairwoman Barbara J. Jordan

  
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R. A. Cuevas, Jr.  
County Attorney

RAC/bw



# MEMORANDUM

(Revised)

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

DATE: March 4, 2008

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

SUBJECT: Agenda Item No. 4(D)

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. 4(D)  
03-04-08

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AMENDING ARTICLE 1C SECTION 2-11.45 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; GRANTING SUBPOENA POWER TO THE INDEPENDENT REVIEW PANEL (IRP), WITH CERTAIN CONDITIONS, PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, this Board established the Independent Review Panel (IRP) by ordinance in 1980 to provide a civilian panel to address serious complaints from the community about Miami-Dade Police and other County employees or departments; and

**WHEREAS**, the IRP is composed of members of community groups or organizations and other civilians of integrity and community representation, whose mandate is to hold public hearings, make factual determinations, draw conclusions, propose recommendations, and prepare interim and final reports on matters relating to serious complaints or grievances made against an employee, agency or instrumentality of Miami-Dade County. The Panel may also hold hearings, render findings of fact and conclusions of law and issue recommendations; and

**WHEREAS**, the only vehicle the IRP has been given to obtain sworn testimony, documents or other evidence in furtherance of its mission is to “request any person, including the supervisor of the Internal Review Section of the Miami-Dade Police Department, to give sworn testimony or to produce documentary or other evidence;” and

**WHEREAS**, the IRP has historically encountered significant resistance to obtaining the cooperation of witnesses, including county employees and civilian witnesses, by such requests; and

**WHEREAS**, the City of Miami has recently established a civilian investigative panel (“CIP”) to serve as independent citizens’ oversight within the City of Miami, with a similar mission to the IRP and authority to conduct investigations related to allegations of police misconduct; review policies of the police department; and forward complaints alleging criminal activity to relevant agencies; and

**WHEREAS**, the CIP was given the right to request issuance of subpoenas for the purpose of obtaining evidence from witnesses and production of books, papers, and other evidence, provided that no immunity be conferred by the CIP; and

**WHEREAS**, the IRP has voted in favor of obtaining subpoena power and desires that this Board grant it said ability to compel testimony to fulfill its mission; and

**WHEREAS**, an amendment to the ordinance that created the IRP to grant it subpoena power can be crafted to permit the IRP to better fulfill its function, without conferring immunity on those who give compelled testimony, so as to prevent its exercise of that power from interfering with the interests of prosecutorial agencies; and

**WHEREAS**, there is precedent for the granting of subpoena power by this Board, in that it has already accorded said power to the Ethics Commission, the Auditor of the Board of County Commissioners of Miami-Dade County, and the Inspector General; and

**WHEREAS**, the original intent of the Board in creating the IRP can best be effectuated by amending the ordinance to empower the IRP to issue subpoenas,

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

Section 1. Section 2-11.45 of the Code of Miami-Dade County, Florida, is hereby

amended to read as follows:<sup>1</sup>

**Sec. 2-11.45 – Authority and powers generally.**

\* \* \*

(e) The Panel may request any person~~[[, including the supervisor of the Internal Review Section of the Miami Dade Police Department,]]~~to give sworn testimony or to produce documentary or other evidence >>to facilitate its investigation of complaints.

(f) The Panel may by a majority of the entire membership subpoena relevant witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the duties of the Panel or to the exercise of its powers.

(g) Thereafter, the Executive Director of the Panel shall consult with the State Attorney and the U.S. Attorney for the Southern District of Florida prior to issuing a subpoena on behalf of the Panel.

(h) The Panel shall not interfere with any ongoing criminal investigation of the State Attorney or the U.S. Attorney for the Southern District of Florida where the State Attorney or the U.S. Attorney for the Southern District of Florida has explicitly notified the Panel in writing that the Panel's investigation is interfering with an ongoing criminal investigation.

(i) If the individual being subpoenaed is a law enforcement officer, and that officers' employing agency has commenced an investigation, the subpoena may not be issued until the Panel has determined that agency has made an initial determination whether to proceed with disciplinary action and has reached an initial finding with respect thereto.

(j) Said subpoenas shall be signed, served and enforced pursuant to applicable law, provided that no immunity shall be conferred by the Panel.

(k) When a County employee appears before the Panel in response to a subpoena, such employee shall be formally advised prior to the commencement of testimony that if the employee has a good-faith belief that the testimony would tend to be self-incriminating, and if, in reliance upon that good-faith belief, the employee declines to answer any question, that the employee's decision not to

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<sup>1</sup> 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.

5

provide testimony will not subject him or her to any adverse employment consequences. Any employee who, after receiving such advice, decides to testify or provide evidence, must sign a statement acknowledging that the employee understands the advice and is testifying or providing evidence voluntarily and knowingly.

(l) A witness who is the subject of an investigation shall be informed of the nature of the investigation and provided with a copy of the complaint prior to being interrogated. Said complaint must be sworn to under oath prior to the issuance of a subpoena to any county employee.

(m) A person who appears before the Panel in response to a Panel request for testimony may be represented by counsel or any other representative of his or her choice, which representative may be present at all times during the subject's appearance before the Panel.

(n) The Panel may hold evidentiary hearings requiring witnesses. Only the subject of the complaint, witnesses, their attorneys or representatives and Panel members may participate in evidentiary hearings.

(o) Policies and procedures shall be established to ensure compliance with Chapter 119 of the Florida Statutes.

(p) In the case of a refusal to obey a subpoena issued to any person, the Panel may make application to any circuit court of this State which shall have jurisdiction to order the witness to appear before the Panel and to produce evidence, if so ordered, or to give testimony touching on the matter in question. Any person who fails to obey the order may be punished in a court of law.

(q) The Panel may delegate to its staff the authority to administer oaths and affirmations.<<

~~[(f)]~~ >>(r)<< The Panel may conduct or participate in conferences, inquiries, meetings or studies.

~~[(g)]~~ >>(s)<< The Panel may request the County Attorney to render opinions relating to its duties, jurisdiction or power.

~~[(h) The Panel shall not interfere with any ongoing criminal investigation of the State Attorney.]~~

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 reentered 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:

JAC

Prepared by:

RJB

Ronald J. Bernstein

Sponsored by Vice-Chairwoman Barbara J. Jordan