Memorandum

MIAMI-DADE COUNTY

Date: May 6, 2008

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

Agenda Item No. 10(L)(1)(A)

From: George M. Burgess
County Manager

Subject: Resolution Establishing Implementing Order 2-8 for the Ethical Campaign Practices Ordinance

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RECOMMENDATION

It is recommended that the Board approve the attached Implementing Order regarding the Expedited Process for the Ethical Campaign Practices Ordinance.

SCOPE

The attached Implementing Order establishes the procedural requirements for the recent amendments to the Ethical Campaign Practices ordinance. The amended Ethical Campaign Practices ordinance requires an expedited procedure, summarized in Attachment 1 to this memorandum, for complaints filed within fifty days of a primary, general or special election.

BACKGROUND

On January 23, 2007, Section 5.02 of the Home Rule Charter was amended to state: "The organization and operating procedure of administrative departments shall be set forth in regulations, which the Mayor shall develop, place into effect by administrative orders and submit to the Board". In the past, administrative orders served as a vehicle to set forth these operating procedures and also implement policies passed by the Board of County Commissioners. As a result of the Charter change, implementing orders now serve as the mechanism for the Board to implement policies that were previously adopted through administrative order.

This Implementing Order provides for the selection and appointment of hearing examiners to make probable cause determinations. Hearing Examiners will be either retired judges or local attorneys who have previously served as hearing examiners. The expedited process requires notification within five days of any complaint received prior to a primary, general or special election. The candidate respondent will have three days to provide a written response. The hearing examiner will make a written determination within three days of receiving the written documentation. The parties may also request a probable cause hearing.

For complaints filed ten days or less before an election, the Hearing Examiner will make a determination within four days of receipt of the complaint. The Hearing Examiner may hold a hearing or make a determination based on the written submissions of the parties.

Finally, the Implementing Order provides that a candidate respondent may appeal the decision of the hearing examiner by requesting a public hearing before the Ethics Commission.

Alina Tejeda Hudak
Assistant County Manager

cmo14308

MEMORANDUM

(Revised)

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

DATE: May 6, 2008

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

SUBJECT: Agenda Item No. 10(L)(1)(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. 10(L)(1)(A)
5-6-08

RESOLUTION NO. _____

RESOLUTION APPROVING IMPLEMENTING ORDER 2-8 ESTABLISHING EXPEDITED PROCESS FOR DISPOSITION OF ALLEGED VIOLATIONS OF ETHICAL CAMPAIGN PRACTICES ORDINANCE

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves Implementing Order 2-8 establishing an expedited process for the disposition of alleged violations of the Ethical Campaign Practices Ordinance, in substantially the form attached hereto and made a part hereof.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz
Carlos A. Gimenez
Joe A. Martinez
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Dennis C. Moss
Natacha Seijas
Rebeca Sosa

The Chairman thereupon declared the resolution duly passed and adopted this 6th day of May, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY THE BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. GKS

Gerald K. Sanchez

Y

I.O. No.: 2-8
Ordered:
Effective:

MIAMI-DADE COUNTY
IMPLEMENTING ORDER

ETHICAL CAMPAIGN PRACTICES - EXPEDITED HEARING PROCEDURE

AUTHORITY:
Section 1.02 of the Miami-Dade County Home Rule Charter and Section 2-11.1.1 of the Code of Miami-Dade County.

POLICY:
In order to promote the speedier resolution of complaints brought pursuant to the Ethical Campaign Practices Ordinance, the Ethics Commission will conduct expedited proceedings of ethical campaign practices complaints filed within fifty days of a primary, general or special election.

PURPOSE:
The following Implementing Order outlines the expedited complaint procedure.

NOTIFICATION
The Ethics Commission will notify the candidate within five working days of any complaint received within fifty days of a primary, general or special election. If the complaint is received within twenty days of the election, the Ethics Commission must notify the candidate, by personal service, within two working days of the filing of the complaint with the Ethics Commission.

SELECTION AND APPOINTMENT OF HEARING EXAMINERS
The Ethics Commission may create a pool of hearing examiners to make probable cause determinations. Hearing Examiners may be retired judges who served at least ten years on the bench or local attorneys who have served as hearing examiners for Miami-Dade County. Upon receipt of a complaint, the Executive Director will select a hearing examiner from the pool established by the Ethics Commission. The hearing examiner will have the authority to rule on any procedural motion, including motions for extension of time, filed by either the Advocate or the respondent.

DETERMINATION OF VIOLATION
For complaints filed more than twenty days before the election, the candidate will have three days to submit a written response to a legally sufficient complaint. The Advocate may also file a probable cause memorandum. The Executive Director will distribute the complaint, the response and the probable cause memorandum, if any, to a hearing examiner chosen from the pool. The Hearing Examiner will make a written determination within three days of receiving the probable cause memoranda from the Respondent and the Advocate. Upon motion by either the Advocate or the candidate respondent, the Hearing Examiner may hold a probable cause hearing. All applicable time periods under this section will be reduced to two working days for complaints received less than twenty days before the election. The applicable time period does not include Saturday, Sunday or legal holidays and is not automatically extended for service by mail.

TEN - DAY COMPLAINTS
For all complaints received within ten days of an election, the Respondent has the right to a probable cause hearing within two working days of receiving notice of the complaint. The hearing examiner will make a probable cause determination at the conclusion of the probable cause hearing based upon the written pleadings, evidence and the oral arguments of the Respondent. The Advocate may also present argument at any probable cause hearing. If the Respondent waives his or her right to a hearing, the hearing examiner's determination will be based on the written submissions of the Complainant and the Respondent received within two working days of the filing of the complaint.

APPEAL OF PROBABLE CAUSE DETERMINATION
The candidate respondent will have three days from the date of service of the probable cause determination to appeal the determination by requesting a hearing before the Ethics Commission.

PUBLIC HEARING
Pursuant to 2-1074 (b) of the Code of Miami-Dade County, the Ethics Commission may upon motion by the Respondent or on its own motion set a public hearing, conduct further investigation , enter into settlements or issue a public report and final order on the matter.

County Manager

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 7(A)
10-24-06

ORDINANCE NO. **06-157**

ORDINANCE AMENDING SECTION 2-11.1.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO ETHICAL CAMPAIGN PRACTICES ORDINANCE; PROVIDING THAT NO COMPLAINT MAY BE FILED WITHIN FIVE DAYS OF ELECTION; PROVIDING FOR EXPEDITED ENFORCEMENT PROCEEDINGS UNDER CERTAIN CIRCUMSTANCES; 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 2-11.1.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 2-11.1.1. Ethical campaign practices ordinance.

* * *

(B) *Miami-Dade County Commission on Ethics and Public Trust.* The Miami-Dade County Commission on Ethics and Public Trust ("Ethics Commission") shall have jurisdiction over the Ethical Campaign Practices Ordinance. The Ethics Commission shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the mandatory and voluntary fair campaign practices provided in subsections (C) and (D).

* * *

(E) *Procedure.* The procedures provided in Chapter 2, Article LXXVI>>II<< of the Code of Miami-Dade County shall govern all complaints or requests for advisory opinion brought pursuant to the Ethical Campaign Practices

[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.

Ordinance. >>Notwithstanding the foregoing, the Ethics Commission may conduct an expedited proceeding, with the assistance of hearing examiners, when a complaint is filed pursuant to the Ethical Campaign Practices Ordinance within fifty (50) days of a primary, general or special election. Expedited proceedings shall be governed by an administrative order adopted by the County Commission and rules of procedure promulgated by the Ethics Commission.<< No action may be taken on a complaint filed more than 1 year after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation.

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:

Gerald K. Sanchez

Sponsored by Chairman Joe A. Martinez

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Attachment 1
COMMISSION ON ETHICS & PUBLIC TRUST

ETHICAL CAMPAIGN PRACTICES - EXPEDITED COMPLAINT PROCESS FLOWCHART

Time Line	NOTICE	RESPONSE	PC HEARINGS	DETERMINATION	APPEAL
Complaints received within 50 to 20 days prior to Election date	First 5 days - Mail or Personal Service LS determination Appointment of Hearing Examiner	Next 3 days - Respondent's response Written response OR request hearing before Examiner	PC Hearing will be held within 3 days of receipt of hearing request	PC determination within 3 working days	After PC determination, Respondent has 3 days to request hearing before full Ethics Commission
Complaints received within 20 to 10 days prior to Election date	Within 2 working days, by Personal Service LS determination Appointment of Hearing Examiner	Upon receipt, respondent has 2 working days to reply Written response OR request hearing before Examiner	PC hearing will be held within 2 days of receipt of hearing request	PC determination within 1 working day	After PC determination, Respondent has 3 days to request hearing before full Ethics Commission
Complaints received within 10 days of Election date	Within 2 working days, by Personal Service LS determination Appointment of Hearing Examiner	Upon receipt, respondent has 24 hours to reply Written response OR request hearing before Examiner	PC hearing will be held within 24 hours of receipt of hearing request	PC determination at conclusion of hearing or within 1 working day of receipt of response	After PC determination, Respondent has 2 days to request hearing before full Ethics Commission