MEMORANDUM

Agenda Item No. 7(E)

(Second Reading 7-1-08)

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

DATE: May 6, 2008

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

SUBJECT: Ordinance amending Sections 2-2011, et. seq. of the Code concerning the community periodical advertising program

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Dennis C. Moss.

R. A. Cuevas, Jr.
County Attorney

RAC/up

Memorandum

MIAMI-DADE COUNTY

Date: July 1, 2008

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

From: George M. Burgess
County Manager

Subject: Ordinance amending Sections 2-2011, et. seq. of the Code concerning the community periodical advertising program

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The ordinance related to community periodical advertising program will not have a fiscal impact to Miami-Dade County.

Judi Zito, Director
Government Information Center

fis04108

MEMORANDUM

(Revised)

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

DATE: July 1, 2008

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

SUBJECT: Agenda Item No. 7(E)

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(E)

7-1-08

ORDINANCE NO. _____

ORDINANCE AMENDING SECTIONS 2-2011, ET. SEQ. CODE OF THE MIAMI-DADE COUNTY, CONCERNING THE COMMUNITY PERIODICAL ADVERTISING PROGRAM; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, it would serve the purposes of the Miami-Dade County Community Periodical Program, to (a) recognize that a charge for mailing should not preclude a periodical from participating in the program provided at least 95% of the copies for each edition are distributed in public places free of charge; (b) maintain the requirements that participating periodicals be published for free (as modified above), be printed in Miami-Dade County, and be a County vendor, but eliminate the requirement that these conditions be satisfied for three years prior to joining the program, provided the periodical has satisfied the other conditions which are required for three years prior to joining the program, such as publishing continually, on schedule, from a main office in Miami-Dade County, with an occupational license, etc.; and (c) clarify the address where appeals should be filed,

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

Section 1. Sections 2-2011, et. seq. of the Code of Miami-Dade County is hereby amended to read as follows:[1]

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[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.

* * *

Article CXXVIII, Miami-Dade County Community Periodical Advertising Program

Section 2-2011. 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 2-2012. Definitions.

"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 2-1013. 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 2-2014. 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),~~]]>>and<<(k), [[~~and (l)~~]] for three years prior to entering the program:

(a) Be circulated free of charge [[~~;~~]]>>. A periodical will be deemed circulating free of charge even if it charges for copies that are delivered by mail provided that at least ninety-five percent of its circulation is distributed at distribution points in public places in Miami-Dade County where the public can obtain copies free of any charge. The periodical shall not display a per edition charge anywhere in the publication, but may advertise a subscription rate for copies delivered by mail;<<

(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 8 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 Miami-Dade County;

(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

(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 2-2015. 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 2-2016. 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 2-2017. 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 2-2018. 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 2-2019. 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) printers receipts showing the number of copies of each issue printed; (3) copies of checks or other form of payment to the printer showing proof that the printer was paid for printing the issues; (4) 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 2-2020. 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; or

(5) 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 2-2021. 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. Unless the budget ordinance indicates otherwise, moneys allocated in the budget for the program will be spent on the purchase of advertising and not on administrative expenses such as audits.

(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 2-2022. Appeals.

Any periodical aggrieved by an administrative decision may appeal that decision by filing a written notice of appeal with the Clerk of the >>Courts, Code Enforcement<<[[~~Board of County Commissioners~~]], 111 N.W. 1st Street, Suite >>1750<<[[~~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 2-2023. 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:

Prepared by:

Thomas W. Logue

Prime Sponsor: Commissioner Dennis C. Moss