MEMORANDUM

Agenda Item No. 7(D)

(Second Reading 3-3-09)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: December 2, 2008

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

SUBJECT: Ordinance amending Section 2-8.9 of the Code relating to the Living Wage Ordinance

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Natacha Seijas and Co-Sponsor Vice-Chairman Jose "Pepe" Diaz.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: March 3, 2009

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Ordinance amending Section 2-8.9 of the Code relating to the Living Wage Ordinance

---

The ordinance relating to the Living Wage Ordinance will not have a fiscal impact to Miami-Dade County as all projects subject to Living Wages are part of the FY 2008-09 Adopted Budget.

This ordinance if implemented would require unpaid sanctions for violations of the ordinance to bear interest. This ordinance also clarifies that contractors shall pay the current living wage rate applicable at the time covered services are performed and adjusted each fiscal year.

Susanne M. Torriente
Assistant County Manager

Fis02309

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: March 3, 2009

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

SUBJECT: Agenda Item No. 7(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 Mayor'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(D)
3-3-09

ORDINANCE NO. _____

ORDINANCE AMENDING SECTION 2-8.9 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA (THE LIVING WAGE ORDINANCE) TO CLARIFY COVERED SERVICES, DEFINITIONS, AND APPLICATION OF PENALTIES AND SANCTIONS; 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 2-8.9 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 2-8.9. Living Wage Ordinance for County service contracts and County employees.

Definitions.

* * *

Living >>W<<[[~~w~~]]age.

(A) *Living wage paid.*

(1) *Service contractors.* All service contractors as defined by this Chapter, [[~~including General Aeronautical Service Permittees~~]] [[~~(subject to restrictions if any applicable to such permit)~~]], performing covered services [[~~with Miami-Dade County~~]] shall pay to all of its employees providing covered services, [[~~a~~]] >>the current<< Living Wage >>rate<<, [[~~of no less than $8.56 per hour with a health benefit plan as described in this section, or otherwise $9.81 per hour, or the current~~

[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.

~~rate~~ ~~for the given year~~]] >>applicable to the time when the covered service is performed as that rate is adjusted each fiscal year<< in the manner provided for herein for the adjustment of the Living Wage rate.

* * *

(B) *Health Benefit Plan.*

(1) For a covered employer or the County to comply with the [[~~l~~][>>L<<iving [[~~w~~]]>>W<<age provision by choosing to pay the lower wage scale when a covered employer also provides a Health Benefit Plan, such Health Benefit Plan shall consist of payment of [[~~at least $1.25 per hour~~]] >>the current rate applicable to the time when the covered service is performed as that rate is adjusted each budget year in the manner provided for herein for the adjustment of the Living Wage rate<< towards the provision of a Health Benefit Plan for employees and, if applicable, their dependents. The minimum amount of payment by a Service Contractor for the provision of a Health Benefit Plan on a per-hour basis will be calculated based on a maximum of a 40-hour work week. Overtime hours will not require additional payments towards the provision of a Health Benefit Plan. If the Service Contractor pays less than the required amount for providing a Health Benefit Plan provided in this section, then the Service Contractor may comply with the Living Wage requirements by paying >>the covered employee<< the difference between the premium it pays for the Health Benefit Plan of the Covered Employee and the minimum amount required by this section for a qualifying Health Benefit Plan. The Service Contractor may require that all employees enroll in a Health Benefit Plan offered by the Service Contractor, provided that the employee is not required to pay a premium contribution for employee-only coverage. Proof of the provision of a Health Benefit Plan must be submitted to the >>County<< [[~~awarding authority~~]] to qualify >>to pay<< [[~~for~~]] the >>applicable<< wage rate for employees with a >>qualifying<< Health Benefit Plan. Health Benefit

Plan for purposes of complying with this section shall qualify if it includes the benefits contained in a standard health benefit plan meeting the requirements set forth in §627.6699(12)(a) Florida Statutes.

* * *

(F) *Posting.* A copy of the [[~~l~~]]>>L<<iving [[~~w~~]]>>W<<age rate >>notice issued by the County<< shall be kept posted by the employer at the site of the work in a prominent place where it can easily be seen by the employees and shall be supplied to the employee within a reasonable time after a request to do so. In addition, Service Contractors shall forward a copy of the requirements of this Ordinance to any person submitting a bid >>or issued a permit or lease agreement<< for a subcontract on any service contract covered by this Chapter. [[~~Posting requirements will not be required where the~~]] >>Covered<< employer>>s are also required to<< print[[~~s~~]] the following statements on the front of the individual's first paycheck and every six months thereafter: "You are required by Miami-Dade County law to be paid at least [insert applicable rate under this Chapter] dollars an hour. If you are not paid this hourly rate, contact your supervisor or a lawyer." All notices will be printed in English, Spanish, and Creole.

* * *

Implementation.

(A) *Procurement Specifications >>and Contracts<<.* The Living Wage shall be required in the procurement specifications >>and contract language<< for all County service contracts for covered services [[~~on which bids or proposals shall be solicited on or after the effective date of this Ordinance~~]]. The procurement specifications >>and contract language<< for applicable contracts shall include a requirement that Service Contractors agree to produce all documents and records relating to payroll and compliance with this Ordinance upon request from the Applicable Department or as otherwise provided by the County Manager by Administrative Order.

(B) *Information distributed.* All requests for bids or requests for proposals for service contracts, whether advertised or informally solicited, >>and permits, leases and any other

agreement issued by the Miami-Dade Aviation Department for covered services<< shall include appropriate information about the requirements of this Ordinance.

(C) *Maintenance of [[~~p~~]]>>P<<ayroll [[~~r~~]]>>R<<ecords.* Each covered employer shall maintain payrolls for all covered employees and basic records relating thereto and shall preserve them for a period of three (3) years >>from the expiration, suspension or termination date of the contract in which the requirements of this Chapter were applicable<<. The records shall contain >>at a minimum<<:

(1) the name and address of each covered employee;

(2) the job title and classification;

(3) the number of hours worked each day;

(4) the gross wages earned and deductions made;

(5) annual wages paid;

(6) a copy of the social security returns and evidence of payment thereof;

(7) a record of fringe benefit payments including contributions to approved plans; and

(8) any other data or information [[~~the Living Wage Commission~~]] >>the County<< should require from time to time.

(D) *Reporting payroll.* >>No less frequently than<< [[~~E~~]]>>e<<very six (6) months >>or otherwise at the County's request<<, the covered employer shall [[~~file~~]] >>submit to the County (or if by request within the requested time frame)<< [[~~the Applicable Department~~]] a complete >>certified<< payroll showing the employer's payroll records for each [[e]]>>C<<overed [[e]]>>E<<mployee working on the contract(s) for covered services for [[~~one~~]] >>the applicable<< payroll period. Upon request >>by the County<<, the covered employer shall produce for inspection and copying its payroll records for any or all of its covered employees for the prior three (3) year period. It shall be the responsibility of the

Applicable Department to examine all payrolls for compliance within sixty (60) days of receipt.

(E) *Reporting employment activity.* >>Upon request by the County but in any event no less frequently than<< [[~~E~~]]>>e<<very six (6) months, the covered employer [[~~will file with the Applicable Department reports of~~]] >>must submit to the County<< [[~~within the specified time frame an~~]] [[~~e~~]]>>an E<<mployment [[~~a~~]]>>A<<ctivit[[~~ies~~]] >>y Report Form containing the following information:<< [[~~be made publicly available, including:~~]]

(1) race and gender of employees hired and terminated; and

(2) zip code of employees hired and terminated; and

(3) wage rate of employees hired and terminated.

Commission on a Living Wage, Establishment and Responsibility

(A) *Establishment.* The County Commission shall establish a fifteen (15) person commission entitled the "Living Wage Commission" the purpose of which shall be to review the effectiveness of this Chapter, review certifications submitted by covered employers to the County[[~~,~~]] >>to include<< review>>ing<< complaints filed by employees and to make recommendations to the >>Applicable Department,<< County Mayor and the County Commission regarding >>same<<[[~~the above listed matters~~]].

* * *

Compliance and [[e]]>>E<<nforcement

* * *

(D) *Sanctions Against service contractors.* For violations of this Ordinance as determined pursuant to the procedures set forth by Administrative Order, the County may sanction a service contractor for violations of this Ordinance by requiring the service contractor to pay wage restitution to the affected employee. The County may also sanction the service contractor >>for violations<< in at least one of the following additional ways:

(1) [[~~Damages payable to the County in the sum of up to five hundred dollars $(500.00) for each week for each covered employee found to have not been paid in accordance with this Chapter~~]]>>Penalties payable to the County in an amount equal to 10% of the amount of the underpayment of wages and/or benefits for the first instance of underpayment; 20% for the second instance; and for the third and successive instances 30% of the amount of underpayment. A fourth violation shall constitute a default of the contract where the underpayment occurred and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized to defray costs of administering the Living Wage provisions.<<

(2) [[~~The County may suspend or terminate payment under the contract or terminate the contract with the service contractor~~]] >>The sum of up to five hundred dollars $(500.00) for each week for each covered employee found to have not been paid in accordance with this Chapter;<<

(3) [[~~The County may declare the Covered Employer ineligible for future service contracts for three (3) years or until all penalties and restitution have been paid in full, whichever is longer. In addition all employers shall be ineligible under this section where principal officers of the employer were principal officers of an employer who has been declared ineligible under this Chapter; and~~]]>>Suspend payment or terminate payment under the contract or terminate the contract with the service contractor;<<

(4) [[~~All such sanctions recommended or imposed shall be a matter of public record.~~]] >>If a service contractor fails to cure a Notice of Violation or pay any sanctions that are assessed by the County, such service contractor and all officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners,

qualifiers, divisions or other organizational elements of the non-complying service contractor may be declared by the County to be ineligible for bidding on or otherwise participating in Living Wage contracts and permits until all required payments have been paid in full and regardless of whether such payment has been made may also be declared ineligible for bidding or otherwise participating in Living Wage contracts for a period of up to three (3) years. In addition all covered employers shall be ineligible for Living Wage contracts and permits under this section where any officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of the covered employer were officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of a covered employer who has been declared ineligible under this Chapter;<<

(5) [[~~A Service Contractor who fails to respond to a notice of noncompliance, fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by DBD after a Compliance Meeting shall be deemed not to have complied with the requirements of this section as stated in the notice or determination of non-compliance and, in the case of underpayment of the Living Wage required, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the employee and the Service Contractor may be fined the applicable penalty for such underpayment as follows. In the case of underpayment of the required Living Wage rate, the amount equal to the amount of such underpayment may be withheld from the Service Contractor and remitted to the employee and in addition, the Service Contractor may also be fined for such noncompliance as follows:~~]]>>In addition to any other sanctions provided for herein, for violations other than underpayment of wages and/or benefits, damages payable to the County in the

amount of $500/week for each week in which the violation remains outstanding.<<

[[~~(A) for the first underpayment, a penalty in an amount equal to 10% of the amount of the underpayment for the first violation.~~

~~(B) for the second underpayment, a penalty in an amount equal to 20% thereof;~~

~~(C) for the third and successive underpayments, a penalty in an amount equal to 30% thereof.~~

~~(D) A fourth violation, shall constitute a default of the subject contract and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray DBD's costs of administering the Living Wage provisions. If the required payment is not made within, the noncomplying Service Contractor and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County Living Wage contracts for a period of three (3) years.~~]]

>>(6) A service contractor who fails to timely and adequately respond in the manner and within the timeframe set forth in a written request from the County to a notice of noncompliance, or fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by the County after a Compliance Meeting shall be deemed not to have complied with the requirements of this section as stated in the notice or determination of non-compliance and, in the case of underpayment of the Living Wage required, an amount sufficient to pay any underpayment shall be withheld from contract proceeds to include any deposits, and/or bonds and remitted to the employee and the Service Contractor may be fined the

applicable penalty for such underpayment as defined herein.

(7) All such sanctions recommended or imposed shall be a matter of public record.

(E) *Interest on Unpaid Sanctions.* All sanctions imposed pursuant to the authority of this Chapter shall bear interest at the same rate as the State of Florida statutory rate for judgments provided by Florida Statutes §55.03.<<

[[~~(E)~~]]>>(F)<<*Retaliation and discrimination barred.* An employer shall not discharge, reduce the compensation or otherwise discriminate against any employee for making a complaint to the Living Wage Commission, the applicable department, the County, or otherwise asserting his or her rights under this Chapter, participating in any of its proceedings or using any civil remedies to enforce his or her rights under the Chapter. Allegations of retaliation or discrimination, if found by the County Manager pursuant to procedures set forth by Administrative Order or by a court of competent jurisdiction under paragraph (C), shall result in an order of restitution and reinstatement of a discharged employee with back pay to the date of the violation or such other relief as deemed appropriate. In addition, the County Manager or the Court may impose an additional sanction of up to five hundred dollars ($500.00) for each week since the covered employee was discharged as a result of prohibited retaliation under this Chapter.

[[~~(F)~~]]>>(G)<<*Remedies herein non-exclusive.* No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the right under this Chapter in a court of law.

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:

Eric A. Rodriguez

Prime Sponsor: Commissioner Natacha Seijas

Co-Sponsor: Vice-Chairman Jose "Pepe" Diaz