

MEMORANDUM

BPS
Agenda Item No. 1(G)5

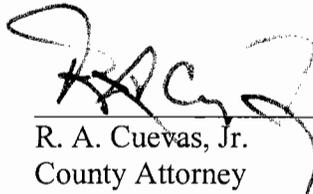
TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: March 10, 2009

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

SUBJECT: Ordinance amending Section
8CC-4 of the Code; providing
relief from County civil
penalties relating to continuing
violations to address economic
crisis

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.



R. A. Cuevas, Jr.
County Attorney

RAC/jls



MEMORANDUM

(Revised)

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

DATE: February 17, 2009

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

SUBJECT: Agenda Item No. 4(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 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.4(E)
2-17-09

ORDINANCE NO. _____

ORDINANCE PROVIDING RELIEF FROM COUNTY CIVIL PENALTIES RELATING TO CONTINUING VIOLATIONS TO ADDRESS ECONOMIC CRISIS; ESTABLISHING GRACE PERIOD FOR THE IMPOSITION OF CIVIL PENALTIES RELATED TO CONTINUING VIOLATIONS; AMENDING SECTION 8CC-4 OF THE CODE OF MIAMI-DADE COUNTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Miami-Dade County is experiencing a grave economic crisis and; and

WHEREAS, during this difficult economic times, many citizens of our County are unable to satisfy standing County violations which by operation of Code result in continuing violations which add to their economic hardship; and

WHEREAS, the Board of County Commissioners wishes to provide relief to those persons affected by this grave economic crisis by creating a grace period for the imposition of continued violations under the Code for a finite period in the manner more particularly set forth below,

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

Section 1. The Code of Miami-Dade County is hereby amended as follows:¹

* * *

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.

Section 8CC-4. Civil penalties and related terms construed.

(a) Penalties for violations of the ordinances to be enforced by this chapter shall be in the amount prescribed in the schedule of civil penalties in Section 8CC-10.

(b) An “uncorrectable violation” is a violation which cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an ongoing condition of circumstance. Each reoccurrence of an uncorrectable violation shall constitute a separation violation and shall subject the violator to an additional penalty in the same amount as that prescribed for the original violation. If, however, a violation has been once found guilty of an uncorrectable violation, and causes the same uncorrectable violation to occur a second time, each reoccurrence of the uncorrectable violation y such violation shall constitute a “repeat violation” as provided in Section 8CC-4(d).

(c) “Continuing violations” are those violations which remain uncorrected beyond the reasonable time period for correction contained in either the civil violation notice or the final order of the Hearing Officer, whichever is applicable. For each day of continued violation after the time for correction has run, an additional penalty in the same amount as that prescribed for the original violation shall be added. The maximum total penalty for any one (1) continuing violation shall be fixed at (20) times the original penalty amount, provided, however, that continuing violations of the provisions of Section 33-107 relating to murals shall be fixes at thirty (30) times the original penalty amount. When the maximum penalty for a continuing violation of the provisions of Section 33-107 relating to murals has accrued, the violation shall be referred to the county attorney’s office for appropriate enforcement action.

* * *

(f) Continuing violation penalties shall accrue from the date of correction given in the civil violation notice until the correction is made and payment of the fine is received if a request for administrative hearing is not timely filed. If the named violator requests an administrative hearing on a correctable violation and loses his appeal, the Hearing Officer shall determine a reasonable time period within which correction of the violation must be made, based on the considerations set forth in Section 8CC-3(d). If correction is not made within the period set by the Hearing Officer, continuing violation penalties shall begin after the time for correction has run. No continuing violation penalties shall accrue during the time period from the date of the civil violation notice until the date of the administrative hearing, if the named violator timely requests an administrative hearing to appeal the decision of the Code Inspector. >>No continuing violation penalties shall accrue during the time period commencing on the effective date of this ordinance and ending ninety (90) days thereafter, as such end date may be extended by the Board of County Commissioners (the “Continuing Violation Grace Period).<< Continuing violation penalties cannot be imposed by the Hearing Officer for uncorrectable violations.

* * *

(h) Civil penalties assessed pursuant to this chapter are due and payable to Miami-Dade County on the last day of the period allowed for the filing of an appeal from the Hearing Officer's decision, or, if proper appeal is made, when the appeal has been finally decided adversely to the named violator.

>>(i) The creation of a Continuing Violation Grace Period shall not affect the validity of the underlying enforcement action relating to any violation or create any right, actions or cause of action for reimbursement of any civil penalty assessed pursuant to this chapter.<<

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 re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate work.

Section 4. This ordinance shall become effective 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:



Hugo Benitez

Prime Sponsor: Commissioner Rebeca Sosa