MEMORANDUM

Agenda Item No. 7(A)

TO:	Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners	**DATE:**	(Second Reading 6-30-09) May 5, 2009
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Ordinance creating a new section of the Code; establishing official County policy that information about certain legally-required notices of the creation or increase in countywide taxes, special assessments, or fees that are published or delivered in English will also be published or delivered in Spanish and Haitian Creole

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan, and Co-Sponsors Vice-Chairman Jose "Pepe" Diaz, Commissioner Audrey M. Edmonson, Commissioner Rebeca Sosa, and Senator Javier D. Souto.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: June 30, 2009

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

From: George M. Burgess
County Manager

Subject: Ordinance establishing official County policy that information about certain legally-required notices

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The ordinance establishing official County policy that information for certain legally-required notices which are published in English also be published in Spanish and Haitian Creole will have an estimated annual impact of $3,000.

Assistant County Manager

fis04109

MEMORANDUM
(Revised)

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

DATE: June 30, 2009

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

SUBJECT: Agenda Item No. 7(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 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(A)
6-30-09

ORDINANCE NO. _____

ORDINANCE CREATING A NEW SECTION OF THE MIAMI-DADE COUNTY CODE; ESTABLISHING OFFICIAL COUNTY POLICY THAT INFORMATION ABOUT CERTAIN LEGALLY-REQUIRED NOTICES OF THE CREATION OR INCREASE IN COUNTYWIDE TAXES, SPECIAL ASSESSMENTS, OR FEES THAT ARE PUBLISHED OR DELIVERED IN ENGLISH WILL ALSO BE PUBLISHED OR DELIVERED IN SPANISH AND HAITIAN CREOLE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE

WHEREAS, Florida law requires that legal notices be published or otherwise delivered in various forms to notify the public of the creation or increase of various taxes, special assessments, or fees and such publication or delivery is normally done in English; and

WHEREAS, Miami-Dade County has a diverse population which includes large communities of people who speak Spanish or Haitian Creole; and

WHEREAS, the purpose of such legal notice, which is to inform and educate members of the public, would be better served by also publishing or delivering information about the notice in Spanish and Haitian Creole when the communities impacted include people who speak these languages; and such dissemination would not replace formal legal notice, but only supplement and enhance it,

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

Section 1. A new section of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

Sec. 2-73.3. Publication in Spanish, and Haitian Creole of Information about Certain Countywide Tax, Special Assessment, and Fee Notices.

(a) It is the official policy of Miami-Dade County that information about certain legal notices regarding taxes, special assessments, and fees that are published or delivered in English also be published or delivered in Spanish and Haitian Creole to the communities that speak Spanish or Haitian Creole.

(b) This policy applies when (a) there is an increase or creation of a tax, special assessment, or fee; (b) the tax, special assessment, or fee is countywide; (c) notice of such increase or creation is legally required by statute to be published or delivered; and (d) the legally required notice is published or delivered in English. In addition, when it is reasonably foreseeable that the creation or increase of a tax, special assessment, or fee that is less than countywide in scope will impact a substantial number of persons who speak Spanish or Haitian Creole, efforts shall be made to provide information in Spanish or Haitian Creole about any legally-required notices which are published or delivered in English.

(c) This policy does not require a word-for-word translation of the legal notice, but only the publication or delivery of information about such notice. Such information may include a reference to sources such as the 311 call center or the Miami-Dade County Web Pages for more precise information. This policy does not require the publication of the budget book in any language other than English.

(d) The official in charge of providing the legal notice shall have discretion to determine the best and most cost effective method to provide information about the notice in Spanish and Haitian Creole.

(d) This additional information is intended to supplement and not replace formal legal notice as required by governing law. Any mistakes or failure to provide such supplemental

information, therefore, shall not provide a basis to challenge any legal action taken pursuant to the formal legal notice.

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: RAC

Prepared by: TWL

Thomas W. Logue

Prime Sponsor: Commissioner Barbara J. Jordan

Co-Sponsors: Vice-Chairman Jose "Pepe" Diaz
Commissioner Audrey M. Edmonson
Commissioner Rebeca Sosa
Senator Javier D. Souto

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda Item:	**7(A)**
File Number:	**091175**
Committee(s) of Reference:	**Board of County Commissioners**
Date of Analysis:	June 15, 2009
Type of Item:	Code Amendment
Prime Sponsor:	Commissioner Barbara J. Jordan
Co-Sponsor:	Senator Javier D. Souto; Jose "Pepe" Diaz; Audrey M. Edmonson; and Rebeca Sosa

Summary

This ordinance creates a new section of the Code requiring certain legally-required notices in countywide taxes, special assessments, or fees published in English also be published in Spanish and Creole.

Background and Relevant Legislation

The population in Miami-Dade County today is much larger when compared to the 1980s within the Hispanic and Haitian-American population. According to the 2000 Census, there are thirty-three Florida counties where the Hispanic population is five percent or greater, and twelve in which it exceeds fifteen percent. Many of those counties are among the most populous and fastest growing in the state. Almost one-third of Florida's Hispanic population reported during the 2000 Census that they could either not speak English "at all" (269,785 persons), or that they did not speak English "well" (432,977 persons). Population projections indicate at least twelve Florida counties will have a Hispanic population of fifteen percent or greater by 2010.[1]

Haitian-Americans are also a growing segment of Florida's population. Over 233,000 Haitian-Americans now live in Florida. The primary language spoken by Haitian immigrants is Haitian Creole. The majority of Florida's Haitian-American population is concentrated in the three most populous southern counties. Almost half (over 95,000) of the state's Haitian-American population lives in Miami-Dade County, while most of the remaining Haitian-Americans in Florida live in Palm Beach (over 30,000) and Broward Counties (over 62,000).[2]

[1] Ensuring that Florida's language minorities have access to the ballot: Jonel Newman, Stetson Law Review, May 10. 2002.
[2] Ensuring that Florida's language minorities have access to the ballot: Jonel Newman, Stetson Law Review, May 10. 2002.

The Sunshine Law, s. 286.011, F.S, requires that meetings of a public board or commission be "open to the public." All meetings of any board or commission of a state agency or authority, or of an agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State Constitution, at which official acts are to be taken, are declared to be public meetings open to the public at all times, and no resolution, rule or formal action is considered binding except as taken or made at such meeting. Also, the boards or commissions must provide reasonable notice of these meetings.[3]

The Florida Supreme Court has recognized the importance of public participation in open meetings, stating that "specified boards and commissions...should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made." [4]

While the right of citizens to attend such meetings has been acknowledged by the legislative body of this state, the issue of implementing standards for non-English speaking minorities to have access to government information has not been expressly addressed. Similarly, the courts have not articulated clear standards obligating local governments to publish public notices regarding special assessments and/or increase in countywide taxes in Spanish and Creole.

Local governments commonly adopt rules and/or policies to ensure that the public is notified and the orderly conduct of public meetings, which require orderly behavior on the part of persons attending those meeting. These rules/policies are not uniform in the state, and may limit public comment in some instances. For example, in 1993, the Miami-Dade Board of County Commissioners (BCC), repealed County Ordinance 93-46 prohibiting the use of any language other than English for government business.[5]

Also, on March 6, 2007, the BCC, through Ordinance 07-39, amended Section 12-23 of the Code to read:

- Any person gathering signatures for an initiative, referendum, or recall petition must be a qualified elector of Miami-Dade County.
- **The title and text of the ordinance or the Charter provision sought to be enacted or repealed shall be provided in English, Spanish, and Creole. (Those that do not include the title and text of the ordinance or the Charter provision sought to be enacted or repealed, in English, Spanish, and Creole shall be disqualified)**

[3] Section 286.011(1), F.S.

[4] Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, 699 (Fla. 1969).

[5] Ensuring that Florida's language minorities have access to the ballot: Jonel Newman, Stetson Law Review, May 10. 2002.

Laws on Access to Work-Related Benefits and Enforcement of Workers' Rights on the State Level Agency Services for Limited English Proficiency (LEP)[6]

State Language Access Laws

1. The California Dymally-Alatorre Bilingual Services Act of 1973 requires any state agency to distribute non-English language written materials through its local offices or facilities that serve a substantial number of non-English speaking persons.

    a. In the 2002 legislature, in SB 987, California revised the Bilingual Services Act's criteria for what constitutes a "substantial number of non-English-speaking people." The new law is the country's most comprehensive. It requires every state agency and state department to establish an effective bilingual services program that develops, implements, coordinates, and monitors a departmental plan, including a procedure for accepting and resolving complaints. The agency or department's survey and plan to provide services to non-English-speaking people must be updated every two years.

2. Also in 2002, Maryland enacted SB 265, an access law that requires all state agencies to provide services to individuals with limited English proficiency, and all vital documents offered by state agencies to be translated into any language spoken by 3% of the overall population within a geographic service area. The law also requires all other state entities to review their functions regularly to determine the need to create further access for LEP individuals.

    a. Maryland licensing boards must present evidence to the General Assembly within two years regarding whether English should be a bona fide requirement of professional licensing.

3. Massachusetts unemployment compensation law requires that all notices and materials be available in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other language that is the primary language of at least 10,000 or .5% of all residents of the commonwealth.

4. Florida law requires state agencies to translate educational and instructional materials they produce to describe their services and benefits.[7]

5. Texas and New Jersey statutes explicitly address bilingual services for Spanish-speaking claimants only.

6. A number of states and localities require, either as a matter of law or policy, interpreters to be provided in administrative hearings. These include Arkansas, District of Columbia, Indiana, Maine, Minnesota, New York, Oregon, Rhode Island, Texas, and Washington.

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[6] National Employment Law Project, *Low Pay, High Risk: State Models for Advancing Immigrant Workers' Rights* (updated November 2003); www.nelp.org

[7] Fla. Stat. Ch. 443.151.

Budgetary Impact
According to Government Information Center staff, the County spent $596,473 on advertisement in the first two quarters of FY 2008-09. Of this amount, $350,217 or 59% was used for legal notifications, those legally required by statute and courtesy legal notices that were placed to reach a broad audience.

Prepared by: Michael Amador-Gil