

## MEMORANDUM

Agenda Item No. 7(A)

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

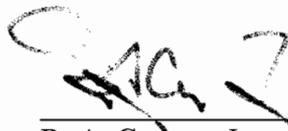
**DATE:** (Second Reading 12-15-09)  
June 30, 2009

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

**SUBJECT:** Ordinance relating to Miami-  
Dade County Commission on  
Ethics and Public Trust

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

  
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R. A. Cuevas, Jr.  
County Attorney

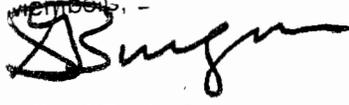
RAC/jls

# Memorandum



**Date:** December 15, 2009

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

**From:** George M. Burgess   
County Manager

**Subject:** Ordinance relating to Miami-Dade Commission on Ethics and Public Trust

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The ordinance relating to Miami-Dade Commission on Ethics and Public Trust will not have a fiscal impact to Miami-Dade County.

  
Assistant County Manager

fis01010



# MEMORANDUM

(Revised)

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

**DATE:** December 15, 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)  
12-15-09

ORDINANCE NO. \_\_\_\_\_

ORDINANCE RELATING TO MIAMI-DADE COUNTY COMMISSION ON ETHICS AND PUBLIC TRUST; AMENDING SECTION 2-1074 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, TO CLARIFY AUTHORITY OF COMMISSION ADVOCATE, STATE ATTORNEY AND INSPECTOR GENERAL REGARDING COMPLAINTS FILED WITH ETHICS COMMISSION; PROVIDING THAT THE CHAIRPERSON OF THE ETHICS COMMISSION MAY ISSUE SUBPOENAS; REQUIRING ETHICS COMMISSION TO FORWARD COPY OF FINAL ORDER FINDING A VIOLATION TO ENTITY WITH AUTHORITY TO TAKE APPROPRIATE DISCIPLINARY ACTION; 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 2-1074 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:<sup>1</sup>

**CHAPTER 2**

**ADMINISTRATION**

\* \* \*

**ARTICLE LXXVIII.**

**COMMISSION ON ETHICS AND  
PUBLIC TRUST**

<sup>1</sup> 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.

**Sec. 2-1074. Procedure on complaint of violation or request for advisory opinion within Ethics Commission's jurisdiction.**

(a) *Legally sufficient complaint.*

(1) ~~[[Upon a written complaint filed by t]]>>T<<he Inspector General, the Advocate or the State Attorney >>may conduct an investigation of any alleged violation of any ordinance<< [[and which alleges a violation]] within the jurisdiction of the Ethics Commission[[;]]>>. The Inspector General, the Advocate or State Attorney may file a complaint with the Ethics Commission pursuant to any such investigation that he or she has undertaken.<< [[t]]>>T<<he Ethics Commission shall conduct an investigation of said complaint. Any complaint filed by the Inspector General, the Advocate or the State Attorney shall be sworn to by the person filing the complaint before a notary public and shall contain the following language: Personally known to me and appeared before me, \_\_\_\_\_, whose signature appears below, being first duly sworn, says that the allegations set forth in this complaint are based upon facts which have been sworn to as true by a material witness or witnesses and which if true would constitute the offenses alleged and that this complaint is instituted in good faith. Within five (5) days after receipt of a complaint by the Ethics Commission, a copy of the complaint shall be sent to the alleged violator.~~

(2) Upon a written complaint, except for a complaint filed by the Inspector General, the Advocate or the State Attorney as provided for in Section 2-1074 (a) (1), which alleges the elements of a violation within the Ethics Commission's jurisdiction and is (i) executed on a form prescribed by the Ethics Commission, (ii) based substantially upon the personal knowledge of the complainant and (iii) signed under oath or affirmation by the complaining person, the Ethics Commission shall investigate any alleged violation within its jurisdiction. Within thirty (30) days after receipt of a complaint by the Ethics Commission, a copy shall be sent to the alleged violator.

(b) *Preliminary investigation and public hearing.* A preliminary investigation shall be undertaken by the Ethics Commission of each legally sufficient complaint over which the Ethics Commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. Where a complaint is filed pursuant to subsection (a)(1), the Ethics

Commission shall within sixty (60) days from the receipt of the complaint, unless extended by the Ethics Commission for good cause, determine whether the complaint is legally sufficient. If, upon completion of the preliminary investigation, the Ethics Commission finds no probable cause to believe that a violation has been committed, the Ethics Commission shall dismiss the complaint with the issuance of a report to the complainant and the alleged violator. If the Ethics Commission finds from the preliminary investigation probable cause to believe that a violation has been committed, it shall notify via certified mail the complainant and the alleged violator, otherwise known as the respondent, in writing. Where a complaint is filed pursuant to subsection (a)(1), the Ethics Commission shall make a probable cause determination within sixty (60) days from the date the complaint is filed. Where a complaint is filed pursuant to subsection (a)(2), the Ethics Commission shall make a probable cause determination within sixty (60) days from the date the complaint is filed. Upon request submitted to the Ethics Commission in writing, any person who the Ethics Commission finds probable cause to believe has committed a violation of a provision within its jurisdiction shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if the request is not received within twenty-one (21) days following the mailing of the probable cause notification required by this subsection. The Ethics Commission may on its own motion require a public hearing, may conduct such further investigation as it deems necessary, and may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of Miami-Dade County. The public hearing provided for in this Section 2-1074 shall be held within sixty (60) days of the probable cause determination unless extended by the Ethics Commission for good cause.

(c) *Investigations.* Investigations shall be conducted by Ethics Commission staff or by any other person or agency so designated by the Ethics Commission under the supervision of the Executive Director and/or the Inspector General. Investigations shall be limited to the allegations of the complaint, but shall include an investigation of all facts and persons materially related to the complaint at issue.

(d) *Counsel.*

(1) *Counsel to Ethics Commission.* The Ethics Commission shall select counsel to advise the Ethics Commission.

(2) *Advocate.* The Ethics Commission shall retain legal counsel to serve as the Advocate. The Advocate shall prosecute cases before the Ethics Commission. >>The Advocate shall also be empowered to conduct an investigation of any alleged violation of any ordinance within the jurisdiction of the Ethics Commission both prior to and after the filing of a complaint with the Ethics Commission. The Advocate shall be empowered to issue subpoenas relating to any investigation authorized by the Chairperson of the Ethics Commission as provided in subsection (g).<<

(3) *Respondent.* The respondent may appear on his or her own behalf or may be represented by a lawyer. All notices and communications to a respondent represented by a lawyer shall be made through respondent's lawyer.

(4) *Complainant.* To the limited extent the complainant is entitled to participate in or observe Commission proceedings, the complainant may be represented by legal counsel. All notices and communications to a complainant represented by a lawyer shall be made through complainant's lawyer.

(5) *Legal Opinion From County or City Attorney.* Where a complaint or request for an advisory opinion requires interpretation of a particular ordinance within the jurisdiction of the Ethics Commission as provided in Section 2-1072, the County Attorney and any City Attorney may provide the Ethics Commission with a nonbinding legal opinion.

(e) *Public meetings and public records.* All proceedings, the complaint, and other records relating to the preliminary investigation as provided herein shall be confidential and exempt from the provisions of Section 119, Florida Statutes, either until the alleged violator requests in writing that such investigation and records be made public records or the preliminary investigation is completed notwithstanding any provision of Chapter 120, Florida Statutes, and Chapter 286, Florida Statutes. As provided in Section 2-1074(b), the preliminary investigation is completed when the probable cause determination is made. All other proceedings conducted pursuant to this subsection shall be public meetings within the meaning of Chapter 286, Florida Statutes, and all other documents made or received by the Ethics Commission shall be public records within ~~[[the of]]~~ Chapter 119, Florida Statutes.

(f) >>Response.<< Any response to a request of a person within the Ethics Commission's jurisdiction shall be addressed in the first instance to the person making the request.

(g) *Subpoena.* The Ethics Commission shall be empowered to subpoena, audit, and investigate. The >>Chairperson of the<< Ethics Commission may >>authorize the issuance of<< ~~[[by a two thirds (2/3) vote of the entire membership]]~~ subpoena>>s as to<< relevant witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the duties of the Ethics Commission or to the exercise of its powers. The Ethics Commission may delegate to its investigators the authority to administer oaths and affirmations. Prior to issuing a subpoena, the Executive Director shall notify the State Attorney and the U.S. Attorney for the Southern District of Florida. In the case of a refusal to obey a subpoena issued to any person, the Ethics Commission may make application to any circuit court of this State which shall have jurisdiction to order the witness to appear before the Ethics Commission and to produce evidence, if so ordered, or to give testimony touching on the matter in question. Any person who fails to obey the order may be punished in a court of law.

(h) *Subpoenas for discovery; discovery.* At any time after the Ethics Commission orders a public hearing of the matter, the >>Chairperson of the<< Ethics Commission may >>authorize the issuance of<< ~~[[issue]]~~ subpoenas to effect discovery upon the written request of respondent or Advocate. The requesting person shall give the name and address of each witness he or she wishes to have deposed and shall describe with particularity those documents or other items that the person wishes to have the witness produce, bring or deliver pursuant to a subpoena duces tecum. Subpoenas shall be issued as provided in Section 2-1074(g). Parties may also obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. The chairperson or a member of the Ethics Commission designated by the chairperson may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

(i) *Subpoenas for public hearing.* The respondent and the Advocate shall submit to the Executive Director a list of all witnesses he or she wishes to have subpoenaed to attend the

hearing. The lists shall contain the correct names and addresses of the witnesses and shall describe with particularity those documents or other items that he or she wishes to have the witness bring to the hearing pursuant to subpoena duces tecum. Subpoenas shall be issued as provided in Section 2-1074(g).

\* \* \*

(p) *Public order imposing penalty.* Upon completion of any investigation initiated under this subsection, the Ethics Commission shall make a finding and public report as to whether any provision within its jurisdiction has been violated. If the Ethics Commission finds, based upon clear and convincing evidence in the record, that a violation has been committed, the Ethics Commission shall issue an order imposing the appropriate penalty as provided in the ordinance being enforced. The public report and final order shall include a determination as to whether the violation was intentional or unintentional. >>Where the Ethics Commission finds that a person has violated this section, a copy of the final order shall be forwarded to the individual or entity with authority to take the appropriate disciplinary action, if any.<< The Ethics Commission shall within eighteen months of the filing of a complaint, render a final report disposing of said complaint. If a person fails to comply with said order issued by the Ethics Commission, the Ethics Commission may make application to any circuit court of this State which shall have jurisdiction to order the violator to comply with the order of the Ethics Commission. Any violator who fails to obey the order may be punished by the court.

\* \* \*

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:

Handwritten signature of JAC, consisting of the letters 'JAC' in a stylized, cursive font, with a horizontal line underneath.

Prepared by:

Handwritten signature of GKS, consisting of the letters 'GKS' in a stylized, cursive font, with a horizontal line underneath.

Gerald K. Sanchez

Prime Sponsor: Commissioner Rebeca Sosa