

MEMORANDUM

Agenda Item No. : 7 (B)

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 Conflict
of Interest and Code of Ethics
Ordinance

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa and Co-Sponsor Commissioner Sally A. Heyman.



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 Conflict of Interest and Code of Ethics Ordinance

The ordinance relating to Conflict of Interest and Code of Ethics Ordinance will not have a fiscal impact to Miami-Dade County. Any increase in workload will be offset by the additional fines in the ordinance.


Assistant County Manager

fis00810



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(B)

Please note any items checked.

- "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
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(B)
12-15-09

ORDINANCE RELATING TO CONFLICT OF INTEREST AND CODE OF ETHICS ORDINANCE (“ETHICS ORDINANCE”); AMENDING DEFINITION OF IMMEDIATE FAMILY TO INCLUDE DOMESTIC PARTNER, STEPCHILDREN AND STEPPARENTS; AMENDING DEFINITION OF FINANCIAL INTEREST AND EMPLOYEES; PROVIDING FOR DEFINITION OF DOMESTIC PARTNER AND CONTRACT STAFF; PROVIDING THAT CONTRACT STAFF MUST COMPLY WITH CERTAIN PROVISIONS OF THE ETHICS ORDINANCE; PROHIBITING COUNTY COMMISSIONERS, MAYOR, QUASI-JUDICIAL PERSONNEL AND ADVISORY PERSONNEL FROM PARTICIPATING FOR SPECIFIED TIME PERIOD IN ANY MATTER REGARDING PRIOR EMPLOYER OR ENTITY IN WHICH OFFICIAL HELD A FINANCIAL INTEREST; PROVIDING THAT COMMISSION STAFF MAY SOLICIT GIFTS ON BEHALF OF NONPROFIT ORGANIZATIONS UNDER CERTAIN CIRCUMSTANCES; PROVIDING THAT GOVERNMENTAL LETTERHEAD MAY ONLY BE USED FOR OFFICIAL PUBLIC BUSINESS; PROHIBITING FORMER MEMBER OF COMMUNITY COUNCIL FROM APPEARING BEFORE COMMUNITY COUNCIL FOR PERIOD OF TWO YEARS AFTER SERVICE; DELETING EXEMPTION THAT PROVIDES THAT FORMER COUNTY OFFICIALS, DEPARTMENTAL PERSONNEL AND EMPLOYEES ARE NOT PROHIBITED FROM LOBBYING ON BEHALF OF GOVERNMENTAL ENTITIES, NONPROFIT ENTITIES OR EDUCATIONAL INSTITUTIONS WITHIN THE TWO-YEAR PERIOD AFTER COUNTY SERVICE; PROVIDING THAT DEPARTMENTAL PERSONNEL AND EMPLOYEES WHO WERE PREVIOUSLY EMPLOYED BY A NOT-FOR-PROFIT ENTITY ARE PRECLUDED FOR SPECIFIED PERIOD OF TIME FROM PERFORMING CONTRACT-RELATED DUTIES REGARDING THAT ENTITY; AMENDING JURISDICTION OF ETHICS COMMISSION TO INCLUDE CONTRACT STAFF AND CONSULTANTS; INCREASING FINES WHERE PERSON INTENTIONALLY VIOLATES ETHICS ORDINANCE; 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 2-11.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-11.1. Conflict of Interest and Code of Ethics Ordinance.

(a) *Designation.* This section shall be designated and known as the "Miami-Dade County Conflict of Interest and Code of Ethics Ordinance." This section shall be applicable to all County personnel as defined herein, and shall also constitute a minimum standard of ethical conduct and behavior for all municipal officials and officers, autonomous personnel, quasi-judicial personnel, advisory personnel, departmental personnel and employees of municipalities in the County insofar as their individual relationships with their own municipal governments are concerned. References in the section to County personnel shall therefore be applicable to municipal personnel who serve in comparable capacities to the County personnel referred to.

(b) *Definitions.* For the purposes of this section the following definitions shall be effective:

(1) The term "Commissioners" shall refer to the Mayor and the members of the Board of County Commissioners as duly constituted from time to time.

(2) The term "autonomous personnel" shall refer to the members of semi-autonomous authorities, boards, and agencies as are entrusted with the day to day policy setting, operation and management of certain defined County functions or areas of responsibility, even though the ultimate responsibility for such functions or areas rests with the Board of County Commissioners.

(3) The term "quasi-judicial personnel" shall refer to the members of the Community Zoning Appeals Board and such

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.

other boards and agencies of the County as perform quasi-judicial functions.

(4) The term "advisory personnel" shall refer to the members of those County advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the Board of County Commissioners.

(5) The term "departmental personnel" shall refer to the Manager, his >>or her<< department heads, the County Attorney and all Assistant County Attorneys.

(6) The term "employees" shall refer to all other ~~[[salaried]]~~ personnel employed by the County.

(7) The term "compensation" shall refer to any money, gift, favor, thing or value or financial benefit conferred in return for services rendered or to be rendered.

(8) The term "~~[[controlling]]~~ financial interest" shall refer to ownership, directly or indirectly, ~~[[to ten (10)]]~~ >>of one (1)<< percent or more of the outstanding capital stock in any corporation >>,<< ~~[[or]]~~ a direct or indirect interest of ~~[[ten (10)]]~~ >>one (1)<< percent or more in a firm, partnership, or other business entity >>or where one (1) percent or more of a person's annual taxable income is attributable to income derived from an entity or other person.<<

(9) The term "immediate family" shall refer to the spouse, >>domestic partner,<< parents >>, stepparents<< ~~[[and]]~~ children~~[[;]]~~ >>and stepchildren<< of the person involved.

(10) The term "transact any business" shall refer to the purchase or sale by the County of specific goods or services for a consideration.

(11) The term "Ethics Commission" shall refer to the Miami-Dade County Commission on Ethics and Public Trust.

>>(12) The term "domestic partner" shall mean a person who is a party to a valid domestic partnership relationship as described in section 11A-72(b)(1), (2), (3), (4) and (6) of the Code.

(13) The term "contract staff" shall mean any employee of an independent contractor, subcontractor (of any tier), consultant

or sub-consultant (of any tier), designated in a contract with the County as a person who shall be required to comply with the provisions of Subsections 2-11.1 (g), (h), (j), (l), (m), (n) and (o) of the Conflict of Interest and Code of Ethics Ordinance.<<

(c) *Prohibition on transacting business within the County.*

(1) No person included in the terms defined in subsection (b)(1) through (6) and in subsection (b)(9) shall enter into any contract or transact any business, except as provided in subsections (c)(2) through (c)(6) in which he or she or a member of his or her immediate family has a financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. Willful violation of this subsection shall constitute malfeasance in office and shall effect forfeiture of office or position.

(2) County employees' limited exclusion from prohibition on contracting with the county. Notwithstanding any provision to the contrary herein, subsections (c) and (d) shall not be construed to prevent any employee as defined by subsection (b)(6) [excluding departmental personnel as defined by subsection (b)(5)] or his or her immediate family as defined by subsection (b)(9) from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or any member of his or her immediate family has a [[controlling]] financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County, as long as (1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, (2) the employee has not participated in determining the subject contract requirements or awarding the contract, and (3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance. However, this limited exclusion shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

(3) Limited exclusion from prohibition on autonomous personnel, advisory personnel and quasi-judicial personnel contracting with county. Notwithstanding any provision to the contrary herein, subsections (c) and (d) shall not be construed to prohibit any person defined in subsection (b)(2), (b)(3) and (b)(4) from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the board member or any member of his or her immediate family has a ~~controlling~~ financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County. However, any person defined in subsection (b)(2), (b)(3) and (b)(4) is prohibited from contracting with any agency or department of Miami-Dade County subject to the regulation, oversight, management, policy-setting or quasi-judicial authority of the board of which the person is a member.

(4) Any person defined in subsections (b)(2) through (b)(4) and subsection (b)(6) shall seek a conflict of interest opinion from the Miami-Dade County Commission on Ethics and Public Trust ("the Ethics Commission") prior to submittal of a bid, response, or application of any type to contract with the County by the person or his or her immediate family. A request for a conflict of interest opinion shall be made in writing and shall set forth and include all pertinent facts and relevant documents. If the Ethics Commission finds that the requirements of this section pertaining to exclusions for persons defined in subsections (b)(2) through (b)(4) and subsection (b)(6) are not met and that the proposed transaction would create a conflict of interest, the person defined in subsections (b)(2), (b)(3), (b)(4) or (b)(6) may request a waiver from the Board of County Commissioners within ten (10) days of the Ethics Commission opinion by filing a notice of appeal to the Ethics Commission. The Ethics Commission shall forward the notice of appeal and its opinion and any pertinent documents to the Clerk of the Board of County Commissioners (the "Clerk") forthwith. The Clerk shall place the request on the commission agenda for consideration by the Board. The Board of County Commissioners may grant a waiver upon an affirmative vote of two-thirds (2/3) of the entire Board of County Commissioners, after public hearing, if it finds that the requirements of this ordinance pertaining to the exclusion for a County employee from the Code have been met and that the proposed transaction will be in the best interest of the County. The Board of County Commissioners may, as provided in subsection (c)(6), grant a waiver to any person defined in subsection (b)(2) through (b)(4)

regarding a proposed transaction. Such findings shall be included in the minutes of the board. This subsection shall be applicable only to proposed transactions, and the Board may in no case ratify a transaction entered into in violation of this subsection.

If the affected person or his or her immediate family member chooses to respond to a solicitation to contract with the County, such person shall file with the Clerk a statement in a form satisfactory to the Clerk disclosing the person's interest or the interest of his or her immediate family in the proposed contract and the nature of the intended contract at the same time as or before submitting a bid, response, or application of any type to contract with the County. Along with the disclosure form, the affected person shall file with the Clerk a copy of his or her request for an Ethics Commission opinion and any opinion or waiver from the Board. Also, a copy of the request for a conflict of interest opinion from the Ethics Commission and any opinion or waiver must be submitted with the response to the solicitation to contract with the County.

Notwithstanding any provision herein to the contrary, the County and any person or agency acting for Miami-Dade County shall not award a contract to any person defined in subsections (b)(2) through (b)(4) and subsection (b)(6) or his or her immediate family individually or through a firm, corporation, partnership or business entity in which the person or any member of his or her immediate family has a ~~controlling~~ financial interest, unless the Ethics Commission has rendered an opinion that entering the contract would not be a conflict of interest or the Board waives the conflict in accordance with the provisions of this ordinance.

The County Manager is directed to include language in all solicitations for county contracts advising persons defined in subsections (b)(2) through (b)(4) and subsection (b)(6) of the applicable conflict of interest code provisions, the provisions of this ordinance, including the requirement to obtain an Ethics Commission opinion and make disclosure, and the right to seek a legal opinion from the State of Florida Ethics Commission regarding the applicability of state law conflict of interest provisions.

(5) Nothing herein shall prohibit or make illegal (1) the payment of taxes, special assessments or fees for services provided by County government; (2) the purchase of bonds, anticipation notes or other securities that may be issued by the County through

underwriters or directly from time to time; (3) the participation of the persons included in the terms defined in subsection (b)(1) through (6), except for employees of the general services administration and their "immediate family" as defined in (b)(9), in the public auction process utilized by the County for the disposal of surplus motor vehicles; (4) the purchase of surplus personal property, pursuant to administrative order, by persons defined in subsection (b)(1) through (6) and (9); (5) an application for direct assistance from the Miami-Dade County Department of Housing and Urban Development or an application to participate in a program administered by the Department of Special Housing has been submitted by an applicant who is a County person as defined in subsection (b) and who would but for this section be eligible for such assistance from said department; provided, however, that the exception provided in this paragraph shall not extend to an employee of the Miami-Dade County Department of Housing and Urban Development or the Department of Special Housing who participates in the administration of said programs; or (6) an application to participate in a single-family mortgage loan program sponsored by the Housing Finance Authority of Miami-Dade County, has been submitted by a County person as defined in subsection (b), and would but for this section be eligible for participation in said program; provided, however, that the exception provided in this paragraph shall not extend to an employee of the Miami-Dade County Finance Department who participates in the administration of said single-family mortgage loan program.

(6) Extension of waiver to county commissioners, autonomous personnel, quasi-judicial personnel, and advisory personnel. The requirements of this subsection may be waived for a particular transaction only by affirmative vote of two-thirds of the entire Board of County Commissioners, after public hearing. Such waiver may be affected only after findings by two-thirds of the entire Board that:

(1) An open-to-all sealed competitive bid has been submitted by a County person as defined in subsection (b)(2), (3) and (4), or

(2) The bid has been submitted by a person or firm offering services within the scope of practice of architecture, professional engineering, or registered land surveying as defined by the laws of the State of Florida and pursuant to the provisions of the Consultants' Competitive Negotiation Act, and when the bid

has been submitted by a County person defined in subsection (b)(2), (3) and (4), or

(3) The property or services to be involved in the proposed transaction are unique and the County cannot avail itself of such property or services without entering a transaction which would violate this subsection but for waiver of its requirements, or

(4) That the property or services to be involved in the proposed transaction are being offered to the County at a cost of no more than 80 percent of fair market value based on a certified appraisal paid for by the provider, and

(5) That the proposed transaction will be to the best interest of the County.

Such findings shall be spread on the minutes of the Board. This subsection shall be applicable only to prospective transactions, and the Board may in no case ratify a transaction entered in violation of this subsection.

Provisions cumulative. This subsection shall be taken to be cumulative and shall not be construed to amend or repeal any other law pertaining to the same subject matter.

(d) *Further prohibition on transacting business with the County.* No person included in the terms defined in subsections (b)(1) through (6) and in subsection (b)(9) shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or any member of his immediate family has a ~~controlling~~ financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. The remaining provisions of subsection (c) will also be applicable to this subsection as though incorporated herein by recitation.

Additionally, no person included in the term defined in subsection (b)(1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or

beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.

>>Additionally, no person included in the term defined in subsection (b)(1) who was previously employed by or held a financial interest in a for-profit entity, not-for-profit entity, partnership or other business entity (hereinafter "business entity") shall, for a period of eighteen (18) months following termination of his or her prior relationship with the business entity, vote on or participate in any way in any matter relating to that entity. <<

(e) *Gifts.*

(1) *Definition.* The term "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single sitting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.

(2) *Exceptions.* The provisions of subsection (e)(1) shall not apply to:

- a. Political contributions specifically authorized by State law;
- b. Gifts from relatives or members of one's household;
- c. Awards for professional or civic achievement;
- d. Material such as books, reports, periodicals or pamphlets which are solely informational or of an advertising nature[[-]]>>:;<<
- e. Gifts solicited by County employees or

departmental personnel on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business[[-]]>>:<<

f. Gifts solicited by Commissioners on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business[[-]]>>:<<

g. Gifts solicited by Commissioners >>, or their staff members,<< on behalf of any nonprofit organization for use solely by that organization where neither the Commissioner, nor his or her staff receives any compensation as a result of the solicitation. As used in this subsection, a "nonprofit organization" shall mean any entity described in section 501(c)(3) of the Internal Revenue Code (the "Code") that is tax exempt under section 501(a) of the Code. As used in this subsection, "compensation" means any money, gift, favor, political contribution, thing of value or other financial benefit.

(3) *Prohibitions.* A person described in subsection (b)(1) through (6) shall neither solicit nor demand any gift. It is also unlawful for any person or entity to offer, give or agree to give to any person included in the term defined in subsection (b)(1) through (6) or for any person included in the term defined in subsection (b)(1) through (6) to accept or agree to accept from another person or entity, any gift for or because of:

a. An official public action taken, or to be taken, or which could be taken;

b. A legal duty performed or to be performed, or which could be performed; or

c. A legal duty violated or to be violated, or which could be violated by any person included in the term defined in subsection (b)(1).

(4) *Disclosure.* Any person included in the term defined in subsection (b)(1) through (6) shall disclose as provided herein any gift, or series of gifts from any one person or entity, having a value in excess of one hundred dollars (\$100.00). Said disclosure shall be made by filing a copy of the disclosure form required by Chapter 112, Florida Statutes, for "local officers" with the Clerk of the Board of County Commissioner simultaneously with the filing of the form with the Secretary of State.

(f) *Compulsory disclosure by employees of firms doing business with the County.* Should any person included in the terms defined in subsections (b)(1) through (6) be employed >>either himself or herself or through a member of his or her immediate family,<< by a corporation, firm, partnership or business entity in which he >>or she<< does not have a ~~[[controlling]]~~ financial interest, ~~[[either himself or through a member of his immediate family,]]~~ and should the said corporation, firm, partnership or business entity have substantial business commitments to or from the County or any County agency, or be subject to direct regulation by the County or a County agency, then said person shall file a sworn statement disclosing such employment and interest with the Clerk of the Circuit Court in and for Miami-Dade County.

(g) *Exploitation of official position prohibited.* No person included in the terms defined in subsection (b)(1) through (6) >>and (b)(13)<< shall use or attempt to use his >>or her<< official position to secure special privileges or exemptions for himself >>or herself<< or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners. >>The use of governmental letterhead shall be limited to official public business.<<

(h) *Prohibition on use of confidential information.* No person included in the terms defined in subsection (b)(1) through (6) >>and (b)(13)< shall accept employment or engage in any business or professional activity which he might reasonably expect would require or induce him >>or her<< to disclose confidential information acquired by him >>or her<< by reason of his >>or her<< official position, nor shall he >>or she<< in fact ever disclose confidential information garnered or gained through his >>or her<< official position with the County, nor shall he >>or she<< ever use such information, directly or indirectly, for his >>or her<< personal gain or benefit.

* * *

(j) *Conflicting employment prohibited.* No person included in the terms defined in subsections (b)(1) through (6) >>and (b)(13)< shall accept other employment which would impair his >>or her<< independence of judgment in the performance of his >>or her<< public duties.

(k) *Prohibition on outside employment.*

(1) No person included in the terms defined in subsections (b)(5) [departmental personnel] and (6) [employees] shall receive any compensation for his or her services as an officer or employee of the County, from any source other than the County, except as may be permitted by Section 2-11 of this Code of Ordinances.

(2) All full-time County and municipal employees engaged in any outside employment for any person, firm, corporation or entity other than Miami-Dade County, or the respective municipality, or any of their agencies or instrumentalities, shall file, under oath, an annual report indicating the source of the outside employment, the nature of the work being done pursuant to same and any amount or types of money or other consideration received by the employee from said outside employment. Said County employee's reports shall be filed with the supervisor of elections no later than 12:00 noon on July 1st of each year, including the July 1st following the last year that person held such employment. Municipal employee reports shall be filed with the Clerk of their respective municipalities. Said reports shall be available at a reasonable time and place for inspection by the public. The County Manager or any city [[M]]>>m<<anager may require monthly reports from individual employees or groups of employees for good cause.

(l) *Prohibited investments.* No person included in the terms defined in subsections (b)(1) through (6) >>and (b)(13)<< shall have personal investments in any enterprise, either himself >>, herself,<< or through a member of his >>or her<< immediately family, which will create a substantial conflict between his >>or her<< private interests and the public interest.

(m) *Certain appearances and payment prohibited.*

(1) No person included in the terms defined in subsections (b)(1), (5)>>,<< [[and]]>>,<< (6) >>and (13)<< [commissioners, >>the Mayor,<< departmental personnel>>,<< [[and]] employees >>and contract staff<<] shall appear before any County Board or agency and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor shall such person receive compensation, directly or indirectly or in any form, for services rendered to a third person, who has applied for or is seeking some

benefit from the County or a County agency, in connection with the particular benefit sought by the third person. Nor shall such person appear in any court or before any administrative tribunal as counsel or legal advisor to a part>>y<< who seeks legal relief from the County or a County agency through the suit in question.

(2) No person included in the terms defined in subsections (b)(2), (3) and (4) [autonomous personnel, quasi-judicial personnel, and advisory personnel] shall appear before the County board or agency on which he or she serves, either directly or through an associate, and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor shall such person receive compensation, directly or indirectly or in any form, for services rendered to a third party, who has applied for or is seeking some benefit from the County board or agency on which such person serves, in connection with the particular benefit by the third party. Nor shall such person appear in any court or before any administrative tribunal as counsel or legal advisor to a third party who seeks legal relief from the County board or agency on which such person serves through the suit in question. However, this section shall not prohibit an architect serving without compensation on the Miami-Dade County Board of Energy Regulation or on any architectural Board, whose sole function is to pass on the aesthetics of plans submitted, from submitting plans on behalf of a client so long as such member makes known his >>or her<< representation of the applicant and disqualifies himself >>or herself<< from speaking or voting or otherwise participating on such application.

(n) *Actions prohibited when financial interests involved.* No person included in the terms defined in subsections (b)(1) through (6) >>and (b)(13)<< shall participate in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest. ~~[[A financial interest is defined as a special financial interest, direct or indirect, as that term is used in Section 4.03 of the County's Charter; or as a financial interest as defined in Section 769 of the Restatement of the Law of Torts as an investment or something in the nature of an investment.]]~~ This section shall not prohibit any official, officer, employee or person from taking official action (1) to promote tourism or downtown development or redevelopment within the County or any portion thereof, or (2) to authorize the expenditure of public funds for promoting tourism or downtown

development or redevelopment, so long as no such authorized public funds are to be paid to such person or a member of his >>or her<< immediate~~[[ly]]~~ family or any business in which he >>or she<< or any member of his >>or her<< immediate family has a financial interest.

(o) *Acquiring financial interests.* No person included in the terms defined in subsections (b)(1) through (6) >>and (b)(13)<< shall acquire a financial interest in a project, business entity or property at a time when he >>or she<< believes or has reason to believe that the said financial interest will be directly affected by his >>or her<< official actions or by official actions by the County or County agency of which he >>or she<< is an official, officer >>,<< ~~[[or]]~~ employee >>or contract staff<<.

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(q) *Continuing application after county service.*

(1) No person who has served as an elected county official, i.e., mayor, county commissioner, or a member of the staff of an elected county official, or as county manager, senior assistant to the county manager, department director, departmental personnel or employee shall, for a period of two (2) years after his or her county service or employment has ceased, lobby any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling, or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether direct or indirect. Additionally, no person who has served as a community council member shall, for a period of two (2) years after his or her county service ~~[[or employment]]~~ has ceased, >>appear on behalf of a third person before the community council upon which he or she has served, or<< lobby, with regard to any zoning or land use issue, any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, request for ruling, or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether direct or indirect. Nothing contained in this Subsection (q)(1) shall prohibit any individual included within the provisions of this subsection from submitting a routine

administrative request or application to a county department or agency during the two-year period after his or her county service has ceased.

(2) ~~[[The provisions of this Subsection (q) shall not apply to officials, departmental personnel or employees who become employed by governmental entities, 501(c)(3) non-profit entities or educational institutions or entities, and who lobby on behalf of such entities in their official capacities.]]~~

(3) The provisions of this section shall apply to all individuals as described in Subsection (q)(1) who leave the county after the effective date of the ordinance from which this section derives.

(4) ~~[[Any former county officer, departmental personnel or employee who has left the county within two (2) years prior to the effective date of this ordinance and has entered into a lobbying contract prior to the effective date of this ordinance shall, for a period of two (2) years after his or her county service or employment has ceased, comply with Subsection (q) as it existed prior to the effective date of the ordinance from which this section derives and as modified by this Subsection (q)(4) when lobbying pursuant to said contract. No former county officer, departmental personnel or employee who has left the county within two (2) years prior to the effective date of the ordinance from which this section derives shall for a period of two (2) years after his or her county service or employment has ceased enter into a lobbying contract to lobby any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling, or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami Dade County or one (1) of its agencies or instrumentalities is a party or has a direct and substantial interest; and in which he or she participated directly or indirectly as an officer, departmental personnel or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, during his or her county service or employment. As used herein, a person participated "directly" where he or she was substantially involved in the particular subject matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, during his or her county service or employment. As used herein, a person participated "indirectly" where he or she knowingly participated in any way in the~~

~~particular subject matter through decision, approval, disapproval, recommendation, the rendering of legal advice, investigation or otherwise, during his or her county service or employment. Former county officers, departmental personnel and employees who have left the county within two (2) years prior to the effective date of the ordinance from which this section derives shall execute an affidavit on a form prepared by the Office of the Inspector General prior to lobbying any county officer, departmental personnel or employee stating that the requirements of this section do not preclude said person from lobbying any officer, departmental personnel or employee of the county. The Inspector General shall verify the accuracy of each affidavit executed by former county officers, departmental personnel or employees.]]~~

(5) Any individual who is found to be in violation of this Subsection (q) shall be subject to the penalties provided in either Subsection ~~[[(1)]]~~ >>(bb)(1)<< or Subsection ~~[[(2)]]~~ >>(bb)(2)<<.

(r) *Ethics Commission to render opinions on request.*
Whenever any person included in the terms defined in subsection (b)(1) through (6) ~~[[and subsection]]~~ >>_<< (b)(9) >>and (b)(13)<< is in doubt as to the proper interpretation or application of this Conflict of Interest and Code of Ethics Ordinance as to himself or herself, or whenever any person who renders services to the County is in doubt as to the applicability of the said ordinance as to himself or herself, he or she may submit to the Ethics Commission a full written statement of the facts and questions he or she has. The Ethics Commission shall then render an opinion to such person and shall publish these opinions without use of the name of the person advised unless such person requests the use of his or her name.

(s) *Lobbying.*

* * *

(9) The Ethics Commission shall investigate any person engaged in lobbying activities who may be in violation of this subsection (s). In the event that a violation is found to have been committed the Ethics Commission may, in addition to the penalties set forth in subsection ~~[[(z)]]~~ >>(bb)<<, prohibit such person from lobbying before the County Commission or any committee, board or personnel of the County as provided herein. Every lobbyist who is found to be in violation of this section shall be prohibited from

registering as a lobbyist or lobbying in accordance with the following schedule:

1st violation for a period of 90 days from the date of determination of violation;

2nd violation for a period of one (1) year from the date of determination of violation;

3rd violation for a period of five (5) years from the date of determination of violation;

A bidder or proposer shall be subject to the debarment provisions of Section 10-38 of the Code of Miami-Dade County as if the bidder or proposer were a contractor where the bidder or proposer has violated this section, either directly or indirectly or any combination thereof, on three (3) or more occasions. As used herein, a "direct violation" shall mean a violation committed by the bidder or proposer and an "indirect violation" shall mean a violation committed by a lobbyist representing said bidder or proposer. A contract entered into in violation of this section shall also render the contract voidable. The County Manager shall include the provisions of this subsection in all County bid documents, RFP, RFQ, CBO and CDBG applications; provided, however, the failure to do so shall not render any contract entered into as the result of such failure illegal per se.

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(v) *Voting Conflicts* [[:]]>>:;<< *Members of Advisory and Quasi-Judicial Boards.*

>>(1)<< No person included in the terms defined in subsections (b)(3) (quasi-judicial personnel) and (b)(4) (advisory personnel) shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves >>or<< [[, and]] the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor.

>>(2)<< Additionally, no person included in the term defined in subsection (b)(3) and (b)(4) who was previously employed by or

held a financial interest in a for-profit entity, not-for-profit entity, partnership or other business entity (hereinafter "business entity") shall, for a period of eighteen (18) months following termination of his or her prior relationship with the business entity, vote on or participate in any way in any matter relating to that entity. The prohibition provided for in this paragraph relating to advisory personnel shall only apply to those individuals serving on advisory boards which have the authority to recommend the award of grants or contracts.<<

* * *

(x) *Prohibition on county employees and departmental personnel performing contract-related duties.* No person included in subsections (b)(5)(departmental personnel) and (b)(6) (employees), who was previously employed by or held a ~~[[controlling]]~~ financial interest in a for-profit ~~[[firm]]~~ >>entity<<, >>not-for-profit entity,<< partnership or other business entity (hereinafter "business entity") shall, for a period of two years following termination of his or her prior relationship with the business entity, perform any county contract-related duties regarding the business entity, or successor in interest, where the business entity is a county bidder, proposer, service provider, contractor or vendor. As used in this subsection (x), "contract-related duties" include, but are not limited to: service as a member of a county certification, evaluation, selection, technical review or similar committee; approval or recommendation of award of contract; contract enforcement, oversight or administration; amendment, extension or termination of contract; or forbearance regarding any contract. Notwithstanding the foregoing, the provisions of this subsection (x) shall not apply to the County Manager or the Director of Procurement Management.

(y) *Powers and jurisdiction of Ethics Commission.* The Ethics Commission shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the conflict of Interest and Code of Ethics Ordinance. Jurisdiction of the Ethics Commission shall automatically extend to Commissioners, >>the Mayor,<< autonomous personnel, quasi-judicial personnel, departmental personnel, employees, >>contract staff<< advisory personnel, immediate family, lobbyists as defined in subsections (b) and (s) who are required to comply with the Conflict of Interest and Code of Ethics Ordinance; and any other person required to comply with the Conflict of Interest and Code of Ethics Ordinance including, but not limited to, contractors >>,consultants<< and

vendors. In the event that the Ethics Commission does not assume jurisdiction as provided in the preceding sentence, the Ethics Commission may refer the complaint to the State Attorney for appropriate action. Notwithstanding the foregoing, the Ethics Commission shall not have jurisdiction to consider an alleged violation of subsection (c) if the requirements of subsection (c) have been waived for a particular transaction as provided therein.

* * *

(bb) *Penalty.*

(1) *Proceeding before Ethics Commission.* A finding by the Ethics Commission that a person has violated this section shall subject said person to an admonition or public reprimand and/or a fine of five hundred dollars (\$500.00) for the first such violation and one thousand dollars (\$1,000.00) for each subsequent violation. >>Where the Ethics Commission finds that a person has intentionally violated this section and determines that a fine is appropriate, said person shall be subject to a fine of one thousand dollars (\$1,000.00) for the first such violation and two thousand dollars (\$2,000.00) for each subsequent violation.<<Actual costs incurred by the Ethics Commission, in an amount not to exceed five hundred dollars (\$500.00) per violation, may be assessed where the Ethics Commission has found an intentional violation of this section. The Ethics Commission may also order the person to pay restitution when the person or a third party has received a pecuniary benefit as a result of the person's violation. The procedure for determining restitution shall be governed by an administrative order adopted by the County Commission and rules of procedure promulgated by the Ethics Commission.

(2) *Prosecution by State Attorney in State court.* Every person who is convicted of a violation of this section in State court shall be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment in the County Jail for not more than thirty (30) days, or by both such fine and imprisonment.

Section 3. 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 4. 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.

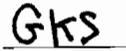
Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



Gerald K. Sanchez

Prime Sponsor: Commissioner Rebeca Sosa
Co-Sponsor: Commissioner Sally A. Heyman

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



Legislative Notes

Agenda Item: 7F
File Number: 091903
Committee(s) of Reference: BCC
Date of Analysis: October 13, 2009
Type of Item: Ordinance Amending the Conflict of Interest & Ethics Ordinance
Sponsors: Commissioner Rebeca Sosa; Commissioner Sally Heyman
Commission District: Countywide

Summary

This proposed ordinance amends the Conflict of Interest & Ethics Ordinance substantively and stylistically. In general, the proposed ordinance expands the jurisdiction of the Ethics Commission to include jurisdiction over additional personnel and additional individuals, deletes certain exemptions, amends definitions, limits participation by certain County personnel in quasi-judicial matters following termination, adds penalties for willful non-compliance, deletes obsolete provisions, and corrects punctuation and gender-based terms.

Specifics

The specific substantive amendments and changes are as follows, in pertinent part.

Definitions	Sect. 2-11.1(b)	the term "financial interest" is redefined to mean 1% ownership of stock, or 1% ownership of a business, and is expanded to include 1% income derived from an entity or person; it replaces the existing definition which requires a 10% "controlling" financial interest
		the term "immediate family" is expanded to include domestic partners, step children, and step parents
		the term "contract staff" has been added and is defined as any employee of an independent contractor, subcontractor, consultant or sub-consultant designated to comply with this ordinance

Transacting Business	Sect. 2-11.1(d)	prohibits, for 18 months following severance of a financial interest or business relationship with the non-profit , for-profit or other business entity, participation by the Mayor or Commissioners in matters relating to a for-profit, non-profit or other business entities for which the person previously worked or held a financial interest
Gifts	Sect. 2-11.1(e)(2)(g)	includes staff among the list of persons subject to the provisions governing gifts
Exploitation of Position	Sect. 2-11.1(f)	expands prohibited conduct to include the use of governmental letterhead other than for official public business
After County Service	Sect. 2-11.1(q)(1)	prohibits Community Council members from appearing on behalf of third persons before the community council upon which they served, in addition to proscribing lobbying
After County Service	Sect. 2-11.1(q)(2)	deletes the exemption currently provided to County personnel which allowed county employees or officials employed by a non-profit or governmental entity to lobby on behalf of such entities following County service
Voting Conflicts	Sect. 2-11.1(v)	prohibits for 18 months participation by advisory personnel and quasi-judicial personnel in matters relating to a for-profit, non-profit or other business entities for which the person previously worked
Non-Profit Relationship	Sect. 2-11.1(x)	prohibits County employees from performing any county contract-related duties regarding a non-for-profit entity for a 2-year period following severance of a financial interest or business relationship with the non-profit entity; currently non-profit entities were not included in the prohibition, only for-profits.
Ethics Commission	Sect. 2-11.1(y)	expands the jurisdiction of the Ethics Commission to include jurisdiction over contract staff, Commissioners' staff, the Mayor and consultants
Penalties	Sect. 2-11.1(bb)	adds as a new penalty of a \$1000 for the 1 st violation and \$2000 for each subsequent violation for "intentional violation" of the ethics ordinance

Background and Relevant Legislation

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance governs, among other things, the minimum standard of ethical conduct and behavior for all County officials, quasi-judicial personnel, departmental personnel and employees when acting under the authority delegated by the County. The ordinance is to protect the integrity of government operations and to ensure that the County government operates independently and impartially and not for personal gains. Accordingly, the ethics ordinance establishes specific policies which address conflicts of interest, capitalizing on opportunities, and external activities and business relationships.

The proposed ordinance generally embodies the above-noted objectives requiring key County personnel and certain persons subject to County rules and regulations to avoid actual or apparent conflicts of interests.

Policy Change and Implication

The proposed ordinance does constitute a change in policy. It broadens the scope of the existing ordinance by addressing; (1) interests or activities involving non-profit organizations that may result in a conflict of interest between County personnel, officials and the general public, (2) compromising situations involving quasi-judicial decisions, (3) certain post-employment business relationships, (4) persons not previously covered or exempt, and (5) willful misconduct. Collectively, the proposed amendments are more stringent than the existing ordinance.

Budgetary Impact

None

Prepared by: Lauren Young-Allen