

MEMORANDUM

Agenda Item No. 4(D)

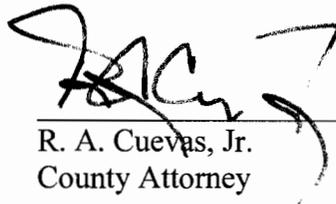
TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: September 15, 2009

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

SUBJECT: Ordinance pertaining to
Chapter 26 of the Code;
“Park and Recreation
Department Rules and
Regulations” to all allow
supervised inmate work crews
on County parks

The accompanying ordinance was prepared and placed on the agenda at the request of
Prime Sponsor Senator Javier D. Souto.



R. A. Cuevas, Jr.
County Attorney

RAC/jls



MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss **DATE:** September 15, 2009
and Members, Board of County Commissioners

FROM: R. A. Cuevas, Jr. **SUBJECT:** Agenda Item No. 4(D)
County Attorney

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. 4(D)
9-15-09

ORDIDANCE NO. _____

ORDINANCE PERTAINING TO CHAPTER 26 OF THE CODE OF MIAMI-DADE COUNTY ENTITLED "PARK AND RECREATION DEPARTMENT RULES AND REGULATIONS"; AMENDING SECTION 26-37 TO ALLOW SUPERVISED INMATE WORK CREWS ON COUNTY PARKS, TO EXEMPT SUPERVISED VOLUNTEERS FROM UNDERGOING CRIMINAL BACKGROUND CHECKS, TO PROHIBIT PERSONS ARRESTED FOR CERTAIN CRIMES FROM WORKING OR VOLUNTEERING ON COUNTY PARKS, AND TO REQUIRE EMPLOYERS, PROGRAMMING PARTNERS AND CBOS TO REPORT ARRESTS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

Section 1. Section 26-37 of Chapter 26 of the Code is hereby amended as follows:

ARTICLE III. THE SHANNON MELENDI ACT

Sec. 26-37. Definitions.

As used in this article the following terms shall have the following meanings:

- A. *Community-based Organization (CBO)* shall refer to any not-for-profit agency, group, organization, society, association, partnership, or individual whose primary purpose is to provide a community service to improve or enhance the well-being of the community of Miami-Dade County at large or to improve or enhance the well-being of certain individuals within this community who have special needs.
- B. *Child Event Worker* shall refer to any full- or part-time employee, agent, volunteer, independent contractor, or employee or volunteer of an independent contractor of a carnival or fair that hosts amusement rides in a park owned or operated by Miami-Dade County. The following persons shall be exempted from this definition:
 - (1) Law enforcement personnel;
 - (2) Emergency or fire rescue personnel;
 - (3) Persons conducting deliveries; and
 - (4) Military recruitment personnel.

- C. *Conviction* shall refer to a determination of guilt of a criminal charge which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.
- D. *Park vendor* shall refer to any full- or part-time employee, agent, volunteer, independent contractor, or employee or volunteer of an independent contractor that has a contract with, or permit from, Miami-Dade County to ~~[[rent or sell]]~~ >>provide<< food, beverages, sporting equipment, or any other goods or services in a park owned or operated by Miami-Dade County. The following persons and events shall be exempted from this definition:
- (1) Law enforcement personnel;
 - (2) Emergency or fire rescue personnel;
 - (3) Persons conducting deliveries;
 - (4) International or national sporting events;
 - (5) One-day events; ~~[[and]]~~
 - (6) Carnivals, festivals, trade shows, and fairs that do not host amusement rides>>; and
 - (7) On Metropolitan or District parks, inmate work crews under the direct and constant supervision and control of a Miami-Dade County Corrections and Rehabilitation Department officer, except that in no event shall such inmate work crew include a sexual predator or a sexual offender<<.
- E. *Professional Background Screener* shall refer to any person, company, organization or agency which, for monetary fees, dues, or on a not-for-profit basis, regularly engages in whole or in part in the practice of researching and assembling criminal history information on specific persons for the purpose of furnishing criminal history reports to third parties.
- F. *Programming Partner* shall refer to any Not-For-Profit Program Service Provider that is selected by the Department under Article II of this chapter and the accompanying Administrative Order to provide programs in County Park and Recreation Facilities.
- G. *Sexual Offender* shall include any individual who meets the criteria of a “sexual predator” as defined in Section 775.21(4) of the Florida Statutes, or a “sexual offender” as defined in Section 943.0435 of the Florida Statutes, or who is listed on the National Sex Offender Public Website owned or operated by the United States Department of Justice.
- H. *Violent felony* shall refer to the following felonies: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.

- I. *Volunteer* shall refer to any individual performing volunteer duties for a CBO, for a Programming Partner, for the Miami-Dade Park and Recreation Department, as a child event worker, or as a park vendor for more than three (3) days in any six (6) month period. ~~[[Students volunteering in order to fulfill high school graduation requirements]]~~ >>The following individuals<< shall be exempted from this definition >>: (1) Students volunteering in order to fulfill high school graduation requirements; and (2) Individuals who are volunteering under the direct and constant supervision of a Miami-Dade County police officer, a Miami-Dade County corrections officer or a certified Miami-Dade County Park and Recreation Department supervisor<<.

Sec. 26-38. Background checks Required for Child Event Workers, Park Vendors, and Programming Partner or Community-Based Organization (CBO) Employees and Volunteers.

- A. Upon adoption of this ordinance, employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall secure a nationwide criminal background check of all existing child event workers, park vendors, employees, and volunteers whose duties require physical presence on park property owned or operated by Miami-Dade County. In addition, prior to employing, or allowing to volunteer, a person whose duties would require physical presence on park property owned or operated by Miami-Dade County, employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall secure a nationwide criminal background check of all such prospective child event workers, park vendors, employees or volunteers.

The nationwide criminal background checks shall be conducted by a Professional Background Screener and shall include a report as to whether each child event worker, park vendor, staff member or volunteer is listed on the National Sex Offender Public Registry, and a comprehensive report and analysis, obtained from no less than two independent databases/sources, on the nationwide criminal history of such child event worker, park vendor, staff member or volunteer.

- B. Every three (3) years thereafter, employers of park vendors, and Programming Partners and CBOs shall secure nationwide criminal background checks for existing park vendors, staff members, and volunteers whose duties require physical presence on park property owned or operated by Miami-Dade County. However, employers of child event workers shall secure nationwide criminal background checks for existing child event workers whose duties require physical presence on park property owned or operated by Miami-Dade County every year thereafter.
- C. Any child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who:
- (1) has been convicted of a violent felony or conspiracy to commit a violent felony within the past five (5) years; or
 - (2) has been convicted of a felony involving the trafficking of a controlled substance within the past (5) years; or

- (3) has two (2) or more convictions for a violent felony, for conspiracy to commit a violent felony, or involving the trafficking of a controlled substance; or
- (4) is a sexual offender or a sexual predator; or
- (5) has failed to provide the employer, Programming Partner or CBO with proof of United States citizenship or legal immigration status in the United States >>: or
- (6) Has been arrested for and charged with a crime which, if convicted, would result in the designation of sexual predator or sexual offender<<

shall be prohibited from working or volunteering on park property owned or operated by Miami-Dade County >>except that in the case of those persons categorized under C(6) of this section, the prohibition from working or volunteering shall be lifted if and when such person is acquitted of such criminal charges<<. All child event workers, park vendors, and staff members and volunteers of a Programming Partner or CBO shall submit to their employer, to the Programming Partner, or to the CBO an affidavit affirming that no work or volunteer duties will be performed on park property owned or operated by Miami-Dade County in violation of this sub-section and that any arrest will be reported to his/her employer within forty-eight (48) hours of such arrest. >>Employers of child event workers, employers of park vendors, Programming Partners, and CBOs shall, in turn, notify the Miami-Dade Park and Recreation Department, in writing, within twenty-four (24) hours of a child event worker, park vendor, staff member or volunteer reporting his/her arrest to such employer, Programming Partner or CBO.<<

- D. Employers of child event workers shall maintain copies of the results of the criminal background checks required by this section for a period of two (2) years from the date they were secured, and employers of park vendors, Programming Partners, and CBOs shall maintain such copies for a period of three (3) years from the date they were secured. Employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall maintain the affidavits required by Section 26-38(C) and the copies of the proof of United States citizenship or legal immigration status until the person is no longer a child event worker, park vendor, staff member, or volunteer.

Employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall, upon request, provide copies of these documents to Miami-Dade County or to any law enforcement personnel with jurisdiction.

- E. Every child event worker, park vendor, and staff member and volunteer of a Programming Partner or CBO shall wear, in a conspicuous and visible manner, an identification badge that contains his/her photograph and full name while working or volunteering on park property owned or operated by Miami-Dade County, except when in costume and during a performance. The identification badge shall be of a size, design, and format approved by the Miami-Dade Park and Recreation Department.

F. Penalties and Enforcement.

(1) It shall be unlawful for an employer of child event workers, an employer of park vendors, or a Programming Partner or CBO to knowingly permit or allow any child event worker, park vendor, staff member, or volunteer to work or volunteer on park property owned or operated by Miami-Dade County in violation of Sec. 26-38.

(2) It shall be unlawful for any child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO to work or volunteer on park property owned or operated by Miami-Dade County in violation of Sec. 26-38.

(3) Any person who shall violate a provision of Sec. 26-38, or who shall knowingly or willingly provide false or erroneous information to his/her employer, or fail to comply therewith, or with any of the requirements thereof, shall upon conviction thereof in the County Court, be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment.

(4) Any person who violates or fails to comply with Sec. 26-38 may be subject to civil penalties in accordance with Chapter 8CC of this code. Each day of violation or noncompliance shall constitute a separate offense.

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 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: JAC

Prepared by: MR

Monica Rizo

Prime Sponsor: Senator Javier D. Souto