MEMORANDUM

Special Item No. 3

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

DATE: May 3, 2010

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

SUBJECT: Ordinance amending Chapter 25A of the Code; authorizing the Commission to take action if specified conditions pertaining to the financial status of the Public Health Trust have occurred or will likely occur, including assignment of technical experts and formation of a Board with specified powers to oversee the Public Health Trust

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

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(Revised)

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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 _____

Special Item No. 3
5-3-10

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 25A OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; AUTHORIZING THE COMMISSION TO TAKE ACTION IF SPECIFIED CONDITIONS PERTAINING TO THE FINANCIAL STATUS OF THE PUBLIC HEALTH TRUST HAVE OCCURRED OR WILL LIKELY OCCUR, INCLUDING ASSIGNMENT OF TECHNICAL EXPERTS AND FORMATION OF A BOARD WITH SPECIFIED POWERS TO OVERSEE THE PUBLIC HEALTH TRUST FOR UP TO TWENTY-FOUR (24) MONTHS UNLESS SHORTENED OR LENGTHENED BY RESOLUTION OF THE COMMISSION; WAIVING THE PROCEDURES FOR CREATION AND REVIEW OF COUNTY BOARDS OF ARTICLE IB OF THE CODE FOR ANY OVERSIGHT BOARD ESTABLISHED UNDER AUTHORITY OF THIS 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. Chapter 25A of the Code of Miami-Dade County, Florida, is hereby amended by adding Section 25A-9 to read as follows:[1]

* * *

>>Sec. 25A-9. **Financial Sustainability.**

It is the intent of the Commission to promote, protect, maintain, and improve the health and safety of all residents and visitors of Miami-Dade County through a fully functioning and sustainable public health trust.

[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.

(a) *Conditions.* The Commission finds that it is in the best interest of the public it serves to take action to preserve the Trust and to ensure its financial sustainability by requiring the Trust to notify the Commission, the Mayor and the Commission Auditor when any one of the following conditions occurs:

(1) Trust failure to, within the same fiscal year in which due, timely make any applicable debt payments as a result of a lack of funds.

(2) Trust failure to pay uncontested claims from creditors within ninety (90) days after the claim is presented, as a result of a lack of funds.

(3) Trust failure to transfer at the appropriate time, due to a lack of funds:

(i) taxes withheld on the income of employees; or

(ii) employer and employee contributions for either federal social security or any pension, retirement, or benefit plan of an employee.

(4) Trust failure to pay for one pay period, due to a lack of funds:

(i) Wages and salaries owed to employees; or

(ii) Retirement benefits owed to former employees.

(5) An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, for which sufficient resources of the Trust, as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, are not available to cover the deficit. Resources available to cover reported deficits include net assets that are not otherwise restricted by federal, state, or local laws, bond covenants, contractual agreements, or other legal constraints. Fixed or capital assets, the disposal of which would impair the ability of the Trust to carry out its functions, are not considered resources available to cover reported deficits.

(6) An advance of any County funds to the Trust, due to a

lack of Trust funds to address operational needs, to support operational needs and expenses.

(b) *Notice*. When one or more of the conditions specified in Subsection (a) have occurred, or likely will occur within one hundred twenty (120) days, the Trust shall submit written notice to the Mayor, Chairperson and members of the Commission, and the Commission Auditor.

(c) *Assistive Measures*. Upon notification by the Trust or another party that one or more of the conditions in Subsection (a) have occurred or likely will occur, the Commission shall determine whether the Trust needs assistance to resolve or prevent the condition. If assistance is needed, the Commission may assist the Trust by forming an oversight board and directing the Mayor to provide technical assistance to the Trust, as detailed below:

(1) *Oversight Board*. The Commission may establish a specially empowered Oversight Board of Trustees ("Oversight Board") that shall oversee the currently sitting Board of Trustees during the Oversight Board's tenure. The currently sitting Board of Trustees shall be responsible for the operation, maintenance, and governance of the Trust and its Designated Facilities, as that term is defined and used in Section 25A-2(a), [Designated Facilities] herein. However, during its tenure, the Oversight Board shall oversee the activities of the Trust and currently sitting Board of Trustees. The Oversight Board shall, within ten days of final Board of Trustees action by resolution, have veto authority over any such currently sitting Board of Trustee action. Any veto action by the Oversight Board shall be the final action on that resolution.

The Oversight Board shall serve for no longer than twenty four (24) months or such shorter or longer period of time as determined by resolution of the Commission. The Mayor and the County Attorney shall provide appropriate support to the Oversight Board.

During the tenure of the Oversight Board, the terms of all currently sitting voting members of the Board of Trustees and ex-officio members shall continue through expiration as provided for in Section 25A-3(e), [Tenure of Trustees] herein, and in accord with their original appointment to the Board of Trustees.

During the tenure of the Oversight Board, the provisions of Sections 25A-3(d), [Appointment and removal of Trustees], and 25A-3(e), [Tenure of Trustees] herein, shall apply solely to the currently sitting Board of Trustees. A currently sitting Trustee may be removed by a majority vote of the Board of County Commissioners for cause.

(i) Composition and Organization. The Oversight Board shall be composed of seven (7) voting members, none of whom shall be an employee of the Trust. The Oversight Board members shall be appointed by resolution of the Commission after having been selected from a list of persons nominated by the Mayor. The Commission may remove any Oversight Board Trustee for cause and shall have the power to fill any vacancy occurring on the Oversight Board. Each member of the Oversight Board shall be a United States citizen and a permanent resident and duly qualified elector of Miami-Dade County, unless the Commission waives the residency requirement. Each member of the Oversight Board shall be of an outstanding reputation of integrity, responsibility, and commitment to serving the community and a proven management and/or financial background.

Before entering upon the duties of office, each appointee to the Oversight Board shall give bond in the amount of one hundred thousand dollars ($100,000.00) to the Clerk of the Commission for the faithful performance of the duties of office, however the Trust shall reimburse Oversight Board appointees for the expense of the performance bonds. Each appointee shall take the prescribed oath of office. Oversight Board Trustees shall serve without compensation but shall be entitled to reimbursement for necessary expenses incurred in the discharge of their duties.

The Mayor shall nominate one (1) member of the Oversight Board to serve as Chairperson of the Board, and one (1) member to serve as its Vice-Chairperson. The Oversight Board, by majority vote following nomination, shall elect its Chairperson and Vice-Chairperson. The Oversight Board shall adopt such rules and bylaws as are necessary for conducting Oversight Board business.

The Oversight Board shall hold regular meetings and record such meetings in accordance with the requirements for the Board of Trustees as described in Section 25A-3(f), [Organization, powers and duties of the Board of Trustees], herein.

(ii) Power and duties. During the tenure of the Oversight Board, the Oversight Board shall be authorized to execute such powers as provided for in this Section 25A-9. During the tenure of the Oversight Board, the governance powers and all other powers and duties of the currently sitting Board of Trustees shall remain as provided for in Chapter 25A of the Code, except that those powers and duties shall be limited by the Oversight Board's veto authority and shall be modified as provided for hereinafter:

(A) *Appointment and Evaluation of the Chief Executive Officer.* The Oversight Board, in its sole discretion, shall be empowered to evaluate, compensate, appoint, suspend and/or remove a Chief Executive Officer of the Trust. The Oversight Board shall evaluate the Chief Executive Officer's performance and compensation periodically, at its discretion, but no less than annually. During the tenure of the Oversight Board, the Trust Compensation and Evaluation Committee as described in Section 25A-3(f), [Organization, powers and duties of the Board of Trustees], herein, shall cease to meet and make recommendations regarding compensation for the Trust Chief Executive Officer and any other Trust personnel.

(B) *Health care delivery policies.* The Oversight Board shall create a baseline budget for the Trust, develop policies, systems, procedures and practices to promote successful operation of the Trust and its Designated Facilities and to ensure financial sustainability of the Trust. The Oversight Board shall recommend health care policies to be approved by the Commission relevant to the short and long term financial sustainability of the Trust and the Designated

Facilities and, at conclusion of the Oversight Board's tenure, provide a Ten Year Financial Sustainability Exit Plan.

(C) *Intergovernmental Cooperation.* The proposed annual operating agreement between the Trust and Miami-Dade County, as described in Section 25A-4(i), [Intergovernmental cooperation], herein shall be approved by the Oversight Board and then submitted to the Board of County Commissioners for approval in September of the applicable year. During the tenure of the Oversight Board, the Trust/County Committee, as described in Section 25A-4(i), herein, shall cease to meet, review, approve, and make recommendations regarding the Annual Operating Agreement.

(D) *Reviews.* The Oversight Board may make such reviews of records, reports, and assets of the Trust and Designated Facilities as are needed. The Oversight Board may review the operations, functionality of information technology systems, accountability and billing practices, management, efficiency, productivity, and financing of functions and operations of the Trust and the Designated Facilities.

(E) *Consultations.* The Oversight Board shall contract with private consultants as needed, consult with officials and auditors of the Trust, and may consult with the appropriate officials and auditors of the County, regarding any steps necessary to bring the books of account, accounting systems, or financial procedures of the Trust into compliance with applicable accrediting, state and federal requirements.

(iii) Financial support for the Public Health Trust. The Oversight Board shall be empowered to enact resolutions requesting that the County Commission effectuate the issuance of bonds. The Oversight Board shall be empowered to enact resolutions authorizing the Trust to borrow money.

(iv) Trust/University of Miami Annual Operating Agreement. During the tenure of the Oversight Board, the

membership of the Trust/UM Committee as described in Section 25A-3(f), [Organization, powers and duties of the Board of Trustees], herein, shall consist solely of the Trust Chief Executive Officer, the Chairperson of the currently sitting Board of Trustees, or his or her designee, and the Chairperson of the Oversight Board, or his or her designee. The Trust/UM Committee shall have responsibility to negotiate the Annual Operating Agreement with the University of Miami and shall submit their recommendations regarding the Annual Operating Agreement to the Oversight Board for its review and approval.

(v) Reporting. During its tenure, the Oversight Board shall report to the Commission at least monthly, unless otherwise required by the Commission.

(2) *Technical Assistance.* The Commission shall direct the Mayor or his designee to place at the Trust such technical experts and/or representatives of the County to staff and support the Oversight Board as needed, for such time as needed, to:

(i) address those managerial and fiscal factors giving rise to the applicable conditions of Subsection (a) herein, and

(ii) to support the Trust daily operations.<<

Section 2. The standards and procedures for creation and review of County Boards provided in Article IB, Sections. 2-11.36 through 2-11.40, shall not apply to any Oversight Board established under authority of this ordinance.

Section 3. This ordinance shall supersede those provisions of any existing ordinance, resolution or policy in conflict herewith.

Section 4. 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 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance 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 6. 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:

RAC for VCC

Eugene Shy, Jr.
Valda Clark Christian

Prime Sponsor: Commissioner Barbara J. Jordan