MEMORANDUM

Agenda Item No. 7(E)

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

DATE: July 8, 2010

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

SUBJECT: Ordinance amending Section 2-11.1 of the Code relating to Conflict of Interest and Code of Ethics Ordinance

---

The attached ordinance was amended at the 6-10-10 Health, Public Safety & Intergovernmental committee by deleting the following language: "The use of governmental letterhead shall be limited to official public use."

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

MIAMI-DADE COUNTY

Date: July 8, 2010

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

From: George M. Burgess
County Manager

Subject: Ordinance amending Section 2-11.1 of the Code of Miami-Dade County

---

The ordinance amending Section 2-11.1 of the Code relating to the definition change to the terms domestic partner, immediate family, contract staff, and employees will have no fiscal impact to Miami-Dade County. Although no compliance with this ordinance would result in the impositions of new fines, at this time it's very difficult to calculate any potential new revenues.

Alina Hudak,
Assistant County Manager

Fis05110

MEMORANDUM

(Revised)

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

DATE: July 8, 2010

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

SUBJECT: Agenda Item No. 7(E)

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(E)
7-8-10

ORDINANCE NO. _____

ORDINANCE AMENDING SECTION 2-11.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO CONFLICT OF INTEREST AND CODE OF ETHICS ORDINANCE ("ETHICS ORDINANCE"); AMENDING DEFINITION OF IMMEDIATE FAMILY TO INCLUDE DOMESTIC PARTNER, STEPCHILDREN AND STEPPARENTS; PROVIDING FOR DEFINITION OF DOMESTIC PARTNER AND CONTRACT STAFF; AMENDING DEFINITION OF EMPLOYEE; PROVIDING THAT CONTRACT STAFF MUST COMPLY WITH CERTAIN PROVISIONS OF THE ETHICS ORDINANCE; 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; 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

[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.

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 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) percent or more of

the outstanding capital stock in any corporation or a direct or indirect interest of ten (10) percent or more in a firm, partnership, or other business entity.

(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 and/or principal 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. Prior to determining whether to designate a person as contract staff in a RFP, RFQ, bid or contract, the Mayor of his or her designee shall seek a recommendation from the Executive Director of the Ethics Commission. <<

* * *

(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.~~]][2]

(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 >>or she<< 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<<

[2] Committee amendments are indicated as follows: words double stricken through and/or [[double bracketed]] shall be deleted, words double underlined and/or >>double arrowed<< constitute the amendment proposed.

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<<.

* * *

(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.

* * *

(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.

* * *

(cc) *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: RAC

Prepared by: GKS

Gerald K. Sanchez

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