MEMORANDUM

Agenda Item No. 7(C)

(Second Reading 11-4-10)

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

DATE: September 21, 2010

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

SUBJECT: Ordinance relating to the protection of employees disclosing specified information; amending Section 2-56.28.16 of the Code, to substitute the County Mayor or Mayor's designee for the Manager or his designee and to permit disclosure to the Office of Inspector General

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

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: November 4, 2010

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

From: George M. Burgess
County Manager

Subject: Ordinance amending Sections 2-56.28.16 of the Code of Miami-Dade County relating to the protection of employees

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The ordinance amending Section 2-56.28.16 will not have a fiscal impact to the County. The ordinance substitutes the County Mayor or Mayor's designee for the Manager or his designee and includes the Office of the Inspector General to receive disclosed information relating to the protection of employees disclosing specified information regarding the reporting of unlawful activity, fraud, waste, abuse, misfeasance or malfeasance.

Alina Hudak,
Assistant County Manager

fis7710

MEMORANDUM
(Revised)

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

DATE: November 4, 2010

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

SUBJECT: Agenda Item No. 7(C)

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(C)
11-4-10

ORDINANCE NO. _____

ORDINANCE RELATING TO THE PROTECTION OF EMPLOYEES DISCLOSING SPECIFIED INFORMATION; AMENDING SECTION 2-56.28.16 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, TO SUBSTITUTE THE COUNTY MAYOR OR MAYOR'S DESIGNEE FOR THE MANAGER OR HIS DESIGNEE AND TO PERMIT DISCLOSURE TO THE OFFICE OF INSPECTOR GENERAL; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, it is in the best interest of the County and its employees that the avenues for reporting unlawful activity, fraud, waste, abuse, misfeasance or malfeasance not be unnecessarily restricted, but be easily accessible; and

WHEREAS, the Florida Whistle-blower's Act, F.S. § 112.3187, permits disclosure of such information to agency inspector generals, the local chief executive officer or other appropriate local official; and

WHEREAS, Section 2-56.28.11, et seq., of the Code of Miami-Dade County, pertaining to the protection of employees disclosing specified information, is intended to be interpreted consistently with the Florida State Whistle-blower's Act; and

WHEREAS, Section 2-56.28.11, et. seq., currently permits disclosure only to the County Manager or his designee and, in certain instances, to the Commission on Ethics and Public Trust; and

WHEREAS, the County's chief executive is now the County Mayor and the Mayor or Mayor's designee should be substituted for the Manager or his designee; and

WHEREAS, the Board wishes to include the Inspector General as one of the agencies to whom employees may disclose protected information,

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

Section 1. Section 2-56.28.15 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 2-56.28.15. To whom information disclosed.

(a) Except as set forth in Subsection (b) hereof, the information disclosed under this division must be disclosed to the >>Office of Inspector General, the<< County [[~~Manager~~]] >>Mayor<< or such official or officials as [[~~he~~]] >>the Mayor<< may designate to receive such information on his behalf.

(b) Employees with information, as defined in Section 2-56.28.14, concerning the Miami-Dade Aviation Department shall disclose such information directly to the Miami-Dade County Commission on Ethics and Public Trust >>or the Office of Inspector General<<. Employees who disclose such information to the Miami-Dade County Commission on Ethics and Public Trust >>or the Office of the Inspector General<< shall be entitled to the full protection of this ordinance and to the remedies and awards it provides.

* * *

Sec. 2-56.28.17. Remedies.

(1) Any employee protected by this division who has the right to file an appeal of an adverse personnel action under Section 2-47 shall also have the right to have the hearing examiner appointed under that section

[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.

consider the issue of whether the adverse action was in violation of this division. The hearing examiner shall include in his findings of fact and conclusions a determination of whether the adverse action was in violation of this section and shall recommend an appropriate remedy.

(2) Any employee protected by this division who does not have the right to file an appeal under Section 2-47 may file a written complaint within sixty (60) days after the action prohibited by this division with the Miami-Dade County Personnel Director. The Director shall refer the complaint to a panel of impartial persons from whom a hearing examiner shall be selected. The panel shall be comprised of all persons available to serve as a hearing examiner under Section 2-47. Such hearing examiners may be paid a fee for their services, but shall not be deemed County officials or employees within the purview of Sections 2-10.2, 2-11.1 or otherwise. The hearing examiner shall conduct a hearing after notice to the complainant and the County department, political subdivision or special district involved. The hearing shall be conducted in accordance with the procedures applicable to hearings under Section 2-47, except as may be provided herein. Any interested party may procure the attendance of witnesses and the production of records at such hearing in the manner provided by Section 2-50. All hearings requested pursuant to this paragraph shall be commenced insofar as is practicable within sixty (60) days of the Personnel Director's receipt of the complaint, except that the Director shall have the authority to extend such time for reasonable cause.

(3) The hearing examiner shall transmit his findings of facts, conclusions of law and any recommendations together with a transcript of all evidence taken before him and all exhibits received by him to the County [[~~Manager~~]] >>Mayor or Mayor's designee<< for a final decision. The [[~~Manager~~]] >>Mayor or Mayor's designee<< may sustain, reverse or modify the adverse personnel action. In any case in which the hearing examiner finds that the employee filed a frivolous complaint in bad faith, the hearing examiner may recommend and the [[~~Manager~~]] >>Mayor or Mayor's designee<< may direct the employee to pay the costs of the hearing, including the employer's attorney's fees.

Sec. 2-56.28.18. Relief.

In any case brought under this division in which the County [[~~Manager~~]] >>Mayor or Mayor's designee<< finds that the employee has been discharged, disciplined, or subjected to other adverse personnel action in violation of this division, the [[~~Manager~~]] >>Mayor or Mayor's designee<< may:

(a) Reinstate the employee to the same position held before the adverse action was commenced or to an equivalent position, or award reasonable front pay as alternative relief,

(b) Reinstate the employee's fringe benefits and seniority rights, as appropriate, and

(c) Compensate the employee, if appropriate, for lost wages, benefits or other lost remuneration caused by the adverse action.

Sec. 2-56.28.19. Reporting employee's award program.

Employees who report information pursuant to this division which results in the County's recovery of public funds shall be eligible to apply for an award of up to ten (10) percent of the net amount recovered or one hundred thousand dollars ($100,000.00), whichever is less. The precise amount of any such award shall be set by the County [[~~Manager~~]] >>Mayor or Mayor's designee<< in accordance with the following procedure: The [[~~Manager~~]] >>Mayor or Mayor's designee<< shall select for each application a panel of three (3) County administrators who shall conduct an informal hearing for the purpose of recommending to the County [[~~Manager~~]] >>Mayor or Mayor's designee<< whether an award should be granted and the amount of any such award. The panel's recommendation shall include consideration of:

(1) The significance of the information revealed to improving the efficiency of the County;

(2) The likelihood that the County would have learned of the information if the employee had not reported it; and

(3) If the information was reported by more than one employee, whether and how it should be apportioned.

The panel's written recommendation shall be submitted to the [[~~Manager~~]] >>Mayor or Mayor's designee<< whose decision as to whether an award should be granted and the amount thereof shall be final.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency: RAC

Prepared by:

Lee Kraftchick

Prime Sponsor: Commissioner Sally A. Heyman