

MEMORANDUM

Agenda Item No. 7(A)
(Second Reading 5-7-13)
September 18, 2012

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE:

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

SUBJECT: Ordinance amending Chapter
11A, Article VI of the Code
relating to the Office of Fair
Employment Practices; creating
Section 11A-37.1 of the Code;
establishing appeals process for
Miami-Dade County Employees

The accompanying ordinance was placed on the agenda at the request of Prime Sponsor
Commissioner Dennis C. Moss.



R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum



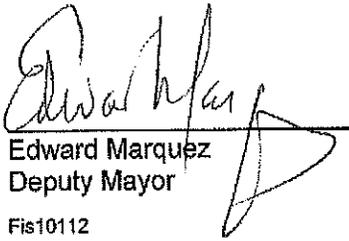
Date: May 7, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Ordinance Creating Section 11A-37 of the Code

The proposed ordinance establishes an appeals process for any County employee or applicant protected under Section 11A-27 of the Code to file an appeal of an adverse determination or ruling by the Director of the Office of Human Rights and Fair Employment Practices. Currently, the Department receives approximately 125 cases from County employees per year and it is estimated that at least 30 percent (or 38 cases) will be appealed. Based on current cases per employee workload, it is estimated that the Department would require two additional positions, in addition to operational expenses to support hearing examiners, court reporters, and mailings. The two additional positions will cost approximately \$65,000 each. The costs for hearing officers and court reporters are estimated at \$1,000 and \$600 per hearing, respectively, or \$60,800 per year (\$1,600 x 38). In addition, the Department estimates another \$1,000 annually for the cost of mailing hearing notices, final orders, and disposition letters, which are required to be sent via certified mail. The total annual estimated impact to the County would be approximately \$191,000 annually.


Edward Marquez
Deputy Mayor
Fis10112



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: May 7, 2013

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

SUBJECT: Agenda Item No. 7(A)

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 Mayor'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

Agenda Item No. 7(A)

Veto _____

5-7-13

Override _____

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 11A, ARTICLE VI OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA RELATING TO THE OFFICE OF FAIR EMPLOYMENT PRACTICES; CREATING SECTION 11A-37.1 OF THE CODE; ESTABLISHING APPEALS PROCESS FOR MIAMI-DADE COUNTY EMPLOYEES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, this Board, in exercising its police powers related to public safety, health and general welfare, declared as the policy of Miami-Dade County to eliminate and prevent discrimination in employment, public accommodations, credit and financing practices, and housing accommodations because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status or sexual orientation as well as source of income in housing only; and

WHEREAS, this Board also sought to ensure employees of the County have a means to enforce their rights to family medical leave; and

WHEREAS, this Board in furtherance of this policy enacted Ordinance No. 97-17, as amended, which is codified in Chapter 11A of the Code of Miami-Dade County ("Code"); and

WHEREAS, for purposes of enforcement of Chapter 11A, this Board established a quasi-judicial board pursuant to Section 11A-5 of the Code known as the Miami-Dade Commission on Human Rights ("CHR"), which has jurisdiction to hear matters arising from claims of discrimination in employment, family leave, public accommodations, credit and financing practices, and housing accommodations because of race, color, religion, ancestry,

national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation;
and

WHEREAS, this Board also established the position of the CHR Director whose duties, functions, powers and responsibilities include but are not limited to enforcement of Chapter 11A, Articles II, III, IV, V, and VIII, investigating claims of discrimination, conciliation, issuing probable cause determinations and staffing the CHR; and

WHEREAS, both the CHR and CHR Director do not have jurisdiction to address any complaint naming Miami-Dade County, the State of Florida or the federal government; and

WHEREAS, although the CHR does not have jurisdiction to address matters related to Miami-Dade County, this Board declared that it is the policy of Miami-Dade County to provide equal employment opportunity for Miami-Dade County employees without regard to race, sex, color, national origin, religion, age, disability, ancestry, marital status, pregnancy, sexual orientation or veteran's status and to prohibit unlawful discrimination on such basis; and

WHEREAS, in accordance with this policy, this Board established the Miami-Dade County Office of Fair Employment Practices ("FEP") and the position of the FEP Director, whose duties, functions, powers and responsibilities include, but are not limited to jurisdiction over complaints of discrimination by County employees and applicants arising under Chapter 11A, Article IV of the Code, which is subject to final review by the County Mayor; and

WHEREAS, unlike non-County employees, County employees, who disagree with the findings of the FEP Director or the County Mayor cannot appeal these findings to the CHR, a similar County board or hearing examiner; and

WHEREAS, this Board finds that County employees should be given the option to have their appeals heard by an independent and impartial hearing examiner who should have a level of

independence or influence from the Board and the County administration in order to ensure that process remains impartial without interference from external sources,

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

Section 1. Section 11A-27 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 11A-27. - Exception to jurisdiction; Miami-Dade County employees.

- (1) Any employee of Miami-Dade County who believes he or she has been aggrieved by a violation of this article may file a complaint with the Fair Employment Practices Director.
- (2) The Fair Employment Practices Director shall have ~~[[exclusive]]~~ jurisdiction to resolve any complaint ~~[[or amended complaint]]~~ of violation of this article filed by or on behalf of an employee of Miami-Dade County >>within three hundred sixty-five (365) days of the alleged discriminatory employment action<<, and in connection therewith, may exercise any and all powers granted to him or her by Article VI of this chapter.

Section 2. Section 11A-36 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec 11A-36. >>Miami<< Dade County Office of Fair Employment Practices recognized; office of Director established.

- (a) ~~[[The Miami-Dade County Office of Fair Employment Practices is hereby recognized as a division of the Office of the County Manager.~~
- (b)]] The position of Director of the Office of Fair Employment Practices is hereby created and established. The Director shall be

¹Words 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.

appointed by and will serve at the will of the County ~~[[Manager]]~~ >>Mayor<< The position shall be exempt from the classified service of the County. The County ~~[[Manager]]~~ >>Mayor<< shall appoint such assistants to the Director as may be necessary, subject to budgetary limitations.

Section 3. Section 11A-37 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec 11A-37. Duties and powers.

The duties, functions, powers and responsibilities of the Office and its Director shall include the following:

- (1) Pursuant to Section 11A-28, ~~[[exclusive]]~~ jurisdiction over complaints of employment discrimination by county employees and applicants arising under Article IV of this chapter. ~~[[, provided however, any Department Director who disagrees with the Director's resolution of a complaint may appeal that decision to the Office of the County Manager.]]~~
- (2) Enforcement of the provisions of this article and rules and regulations promulgated hereunder.
- (3) Overall jurisdiction in the development implementation and monitoring of fair employment guidelines as they relate internally to Miami-Dade County.
- (4) Subject to the approval of the County ~~[[Manager]]~~ >>Mayor or County Mayor's designee<< and the County Attorney, review and approve department affirmative action plans which address ~~[[under utilization]]~~ >>underutilization<< of minorities, women and the disabled.
- (5) Monitor County hiring and employment practices to ensure compliance with federal and state employment discrimination legislation. Reports of noncompliance shall be forwarded to the County ~~[[Manager]]~~ >>Mayor or County Mayor's designee and the County Commission<< for review and determination.
- (6) Establish rules and procedures for processing and resolving complaints of employment discrimination by County employees.
- (7) Promulgation of rules and regulations to ensure fair employment practices within the County's employment system.

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- (8) Assure that information and technical assistance is provided to all County administrators, County employees, and applicants for employment, concerning fair employment practices.
- (9) Publish and disseminate public information and materials relating to equal employment opportunities and fair employment practices, including serving as a fair employment resource to the community at large.
- (10) Make annual reports to the County ~~[[Manager]]~~ >>Mayor or County Mayor's designee<< and the County Commission concerning the status of Miami-Dade County employment system as it relates to fair employment practices, the enforcement of the provisions of this article and recommendations concerning methods by which to improve the County's fair employment practices.
- (11) Perform such other administrative duties as may be assigned by the County ~~[[Manager]]~~ >>Mayor<<.

Section 4. Article VI of the Code of Miami-Dade County, Florida, is hereby amended to create Section 11A-37.1 to read as follows:

>>**Sec. 11A-37.1. Appeals Process**

(1) Any County employee or applicant protected by Section 11A-27 may file an appeal of an adverse determination of the Director within fifteen (15) days of receipt of the determination, unless the complaint involves the discipline of an employee with a right to appeal under Section 2-47 of the Code. If the complaint involves the discipline of an employee with the right to appeal, any issue of discrimination or retaliation shall be resolved through the process established under section 2-47 of the Code of Miami-Dade County or, to the extent available under any applicable collective bargaining agreement, through grievance and arbitration. County employees and applicants with the right to appeal the Director's determination shall have the right to have a hearing examiner appointed under this article, subject to budgetary appropriations by the Board of County Commissioners, to review the determination of the Director. The hearing examiner shall conduct an evidentiary hearing and make findings of fact and a recommendation as to whether there has been a violation of Section 11A-28 and if so shall recommend an appropriate remedy.

(2) Any hearing examiner appointed pursuant to this article shall be sufficiently independent to assure that no external interference or influence adversely affects the independence and objectivity of the hearing officer. Accordingly, there will be no external influence on the hearing examiner in the performance of his or her duties from any persons, including the Mayor or any member of the administrative staff, and that no Commissioner or employee of a Commissioner shall take part in the appointment or removal of officers and employees in the administrative services of the County, as such external influence would adversely affect the independence and objectivity of the hearing examiner.

(3) Upon receipt of a request for an appeal, the Director shall refer the appeal request to a hearing examiner available to serve as such under Section 2-47. Subject to budgetary appropriations by the Board of County Commissioners, 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 County employee or applicant and the County department 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 one hundred twenty (120) days of the Director's determination, except that the Director shall have the authority to extend such time for reasonable cause.

(4) The hearing examiner shall transmit his or her findings of facts, and any recommendations, including any proposed remedies as set forth in subsection (5) of this section, together with a transcript of all evidence taken before him or her and all exhibits received by him or her to the Mayor or Mayor's designee for a final decision. The Mayor or Mayor's designee may sustain, reverse or modify the Director's decision. 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 Mayor or Mayor's designee may direct the employee to pay the costs of the hearing, including the County's attorney's fees.

(5) Remedies. In the event the hearing examiner finds that there has been a violation of section 11A-28, he or she may recommend the following remedies, and no others:

- (a) Hiring of the applicant or promotion of the employee with accrued seniority, with accrued benefits and with back pay;
 - (b) Reinstatement of 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,
 - (c) Reinstatement of the employee's fringe benefits and seniority rights, as appropriate,
 - (d) Compensation of the employee, if appropriate, for lost wages, benefits or other lost remuneration caused by the adverse action; and/or.
 - (e) Requiring reasonable accommodation.
- (6) The Mayor or the Mayor's designee's final order shall be subject to review in accordance with the Florida Rules of Appellate Procedure. For purposes of such review, any original jurisdictional notices required to be filed under the Florida Rules of Appellate Procedure shall be filed with the Director. The Director shall provide the index and record on appeal when required by, and in accordance with, the Florida Rules of Appellate Procedure. A fee may be charged by the Director for the preparation and transmission of the record on appeal to the court of competent jurisdiction. Such fee may be waived by the Director if the party requesting the record is indigent.
- (7) Any County employee found to have discriminated or retaliated against another County employee or applicant in violation of this section shall be considered to have committed a violation of the section and shall be subject to disciplinary action up to and including dismissal from County employment.
- (8) A career service employee, except in the case of disciplinary action, shall have the option of utilizing an unfair labor practice procedure, or a grievance procedure established under Section 447.101 of the Florida Statutes or the procedures set forth in this Article VI, but such employee is precluded from availing himself or herself to more than one of these procedures. Applicants shall have the option of utilizing an unfair labor practice procedure or the procedures set forth in this Article VI, but such applicant is precluded from availing himself or herself to more than one of these procedures. Once an employee or applicant has selected a forum for his or her appeal to be heard, he/she is

bound by that decision and cannot seek to be reheard in another forum.

(9) The Mayor or the Mayor's designee shall provide an annual report to the Board of County Commissioners with regard to the number of cases filed under this Article VI and the disposition of said cases. <<

Section 5. 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 6. 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 7. 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:



Terrence A. Smith

Prime Sponsor: Commissioner Dennis C. Moss