



## MEMORANDUM

Agenda Item No. 4(A)

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**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners


**DATE:** November 20, 2012

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

**SUBJECT:** Ordinance creating Article X  
of Chapter 11A of the Code  
allowing workers to Earn Paid  
Sick Time

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

  
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R. A. Cuevas, Jr.  
County Attorney

RAC/cp



# MEMORANDUM

(Revised)

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County Attorney

**SUBJECT:** Agenda Item No. 4(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 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(A)  
11-20-12

ORDINANCE NO. \_\_\_\_\_

ORDINANCE CREATING ARTICLE X OF CHAPTER 11A OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, ALLOWING WORKERS TO EARN PAID SICK TIME; AMENDING SECTION 11A-1(1) REGARDING POLICY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, most workers in Miami-Dade County will at some time during each year need limited time off from work to take care of their own health needs or the health needs of their families; and

**WHEREAS**, many workers in Miami-Dade County are not entitled to earn any paid sick days; and

**WHEREAS**, low-wage workers are less likely to have paid sick days than the workforce as a whole and often cannot afford to lose income or risk their jobs by staying home when sick; and

**WHEREAS**, according to the Opinion Research Center at the University of Chicago, nearly one-quarter of workers nationwide have lost a job or been threatened with job loss when they have needed time off to care for their own health or an ill family member;<sup>1</sup> and

**WHEREAS**, according to an August 2012 report by the Restaurant Opportunities Center of Miami entitled "Serving While Sick in Miami-Dade" workers that cannot afford to stay home sick due to low wages are concentrated in the industries with the greatest risk of contagion from regular contact with the public such as in the restaurant industry; and

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<sup>1</sup> Smith, T., & Kim, J. (2010, June). *Paid Sick Days: Attitudes and Experiences*. National Opinion Research Center at the University of Chicago for the Public Welfare Foundation publication. Retrieved 25 October 2012, from <http://www.publicwelfare.org/resources/DocFiles/psd2010final.pdf>

**WHEREAS**, according to the “Serving While Sick In Miami-Dade” report, nine out of ten Miami-Dade restaurant workers have no access to paid sick days and over forty-seven 47% of restaurant workers in Miami-Dade County report that they have worked while sick; and

**WHEREAS**, the lack of paid sick days among restaurant workers and other industries that work closely with the public increases the potential for the spread of contagion and creates public health risks; and

**WHEREAS**, a paid sick days standard would benefit workers and their families by increasing economic and job security, promoting good health, and allowing workers to care for sick children and family members; and

**WHEREAS**, a paid sick days standard would contribute to the public health and create health care savings in Miami-Dade County by increasing preventative care and promoting the use of regular medical providers rather than hospital emergency departments; and

**WHEREAS**, a paid sick days standard would benefit employers by reducing worker turnover, increasing productivity, decreasing the spread of illness in the workplace, lowering the likelihood of accidents on the job, and elevating the practices of socially responsible businesses; and

**WHEREAS**, voters across the political spectrum strongly support paid sick days legislation;<sup>2</sup> and

**WHEREAS**, paid sick days laws in other areas of the country have been easy to administer and have not adversely impacted job growth;<sup>3</sup> and

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<sup>2</sup> Smith, T., & Kim, J. (2010, June). *Paid Sick Days: Attitudes and Experiences*. National Opinion Research Center at the University of Chicago for the Public Welfare Foundation publication. Retrieved 25 October 2012, from <http://www.publicwelfare.org/resources/DocFiles/psd2010final.pdf>

<sup>3</sup> Drago, R., & Lovell, V. (2011, February). *San Francisco's Paid Sick Leave Ordinance: Outcomes for Employers and Employees*. Institute for Women's Policy Research publication. Retrieved 25 October 2012, from

**WHEREAS**, according to a study by the Institute for Women’s Policy Research, surveys of workers and employers suggest that the San Francisco paid sick leave ordinance is functioning well and most employers reported that profitability did not suffer; and

**WHEREAS**, the Institute for Women’s Policy Research published a report finding that 1.3 million hospital emergency room visits could be prevented in the United States each year by providing paid sick days to workers who currently lack access thereby reducing medical costs by over \$1 billion annually; and

**WHEREAS**, the Economic Policy Institute issued a Policy Memorandum, dated March 31, 2011, that asserts that empirical evidence shows that the costs of a paid sick leave policy for Connecticut employers would be extremely low and beneficial for the health and competitive business environment,

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

**Section 1.** This Article shall be known as the “Earned Paid Sick Time Ordinance.” Article X of Chapter 11A of the Code of Miami-Dade County, Florida, is hereby created to read as follows:<sup>4</sup>

**>>ARTICLE X      EARNED PAID SICK TIME**

**Sec. 11A-80.      Legislative findings and purposes.**

**(a)      The County Commission finds that many workers in**

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<http://www.iwpr.org/publications/pubs/San-Fran-PSD>; Petro, J. (2010, October). *Paid Sick Days Does Not Harm Business Growth or Job Growth*. Drum Major Institute for Public Policy publication. Retrieved 25 October 2012, from [http://paysickdays.nationalpartnership.org/site/DocServer/Petro\\_DMI\\_Paid\\_Sick\\_Leave\\_Does\\_Not\\_Harm\\_2010\\_Unabbr\\_.pdf?docID=7721](http://paysickdays.nationalpartnership.org/site/DocServer/Petro_DMI_Paid_Sick_Leave_Does_Not_Harm_2010_Unabbr_.pdf?docID=7721)

<sup>4</sup> 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.

Miami-Dade County are not entitled to earn any paid sick time. In addition, many workers who do have paid sick time are often disciplined for using it, or cannot use that time to care for sick children, spouses, parents or other close family members. Lower-income workers and workers in public contact industries such as the food service industry are even more likely to be without paid sick time, which creates risks for the public's health when workers cannot afford to lose income or risk their jobs by staying home.

- (b) The County Commission finds that the implementation of a paid sick time standard will benefit employers through increased productivity; will benefit workers and their families by protecting their economic and job security and promoting good health; and will result in reduced health care expenditures and improved public health.
- (c) The County Commission finds that the lack of available paid sick time on an equal basis for men and women workers is important to ensuring equal rights and equal opportunity for men and women in Miami-Dade County because in our society the primary responsibility for family care giving falls on women and that responsibility affects the working lives of women.
- (d) In light of the foregoing, it is hereby declared to be the policy of Miami-Dade County, in the exercise of its police power for the public health and general welfare to ensure that workers in the County have access to paid sick time.

**Sec. 11A-81. Definitions.**

For purposes of this Article, the following definitions apply.

- (a) "Commission" shall mean the Miami-Dade County Commission on Human Rights or its successor.
- (b) "County" shall mean Miami-Dade County.
- (c) "Director" shall mean the Director of the Miami-Dade County Office of Human Rights and Fair Employment Practices or his or her designee.

- (d) “Employee” is any person defined in s. 448.109(1)(a) F.S. who is employed within the geographic boundaries of the County for at least 160 hours within a year including part-time and temporary employees.
- (e) “Employer” is as defined in s.448.109(1)(a) F.S. but does not include: (a) the United States Government; (b) the State of Florida; (c) Miami-Dade County; (d) any municipality within Miami-Dade County; (e) an Indian Tribe; or (f) anyone employing five (5) or less persons working for compensation during a given week. In determining the number of persons performing work for compensation during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity. In situations in which the number of persons who work for compensation per week fluctuates above and below 5 or more per week over the course of a year, an employer is not covered by this ordinance if it maintained 5 or less employees on the payroll during 20 or more calendar workweeks in either the current or the preceding calendar year.
- (f) “Family Member” is defined as:
1. A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis;
  2. A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee’s spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child;
  3. A person to whom the employee is legally married under the laws of Florida;
  4. A grandparent or spouse or domestic partner of a grandparent;
  5. A grandchild;

6. A biological, foster, or adopted sibling or spouse or domestic partner of a biological, foster or adopted sibling;
  7. A domestic partner as defined under Section 11A-71(b); and
  8. Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- (g) “Health care professional” means any person licensed under Florida law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel and persons licensed pursuant to ch. 456, F.S.
- (h) “Paid sick time” shall mean time that is compensated at the same hourly rate and with the same benefits as the employee normally earns from his or her employment and is paid by an employer to an employee for use during an absence due to the purposes described in Section 4 of this Article. In no case shall the hourly wage be less than the full minimum wage provided under ch. 448.110, F.S. For employees whose earnings include tips or commissions (whether base wage plus tips, or commission only or base wage plus commission), the sick time rate of pay shall be calculated as follows:
- (1) For employees with a full quarter of work history or more whose wages have been required in the Employer’s Quarterly Form (UCT-6) filed with the Florida Department of Revenue, the hourly compensation will equal the employee’s total earnings in base wages, tips, and/or commissions for the prior quarter divided by the total hours worked as a tipped or commissioned employee during the prior quarter, as reported in the Employer’s Quarterly Report (Form UCT-6) filed with the Florida Department of Revenue.
  - (2) For employees with less than a full quarter of work history whose wages have not yet been reported to the Florida Department of Revenue in the Employer’s Quarterly Form (UCT-6), the employer



will divide the employee's total earnings in base wages, tips and/or commissions since the employee's date of hire by the total hours worked as a tipped commissioned employee since that date.

- (i) "Retaliatory personnel action" means denial of any right guaranteed under this Article and any, discharge, suspension without pay, demotion or any other adverse employment action against an employee for the exercise of any right guaranteed under this Article. Retaliation shall also include interference with or punishment for participating in any manner in an investigation or proceeding under this Article.
  
- (i) "Small business" is defined as any private individual, firm, partnership, corporation, or association for which fewer than 10 persons but greater than 5 persons are working for compensation during a given week. In determining the number of persons performing work for compensation during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity. In situations in which the number of persons who work for compensation per week fluctuates above and below 10 or more per week over the course of a year, an employer is not considered a small business if it maintained 10 or more employees on the payroll during 20 or more calendar workweeks in either the current or the preceding calendar year.

**Sec. 11A-82. Accrual of paid sick time,**

- (a) For employees working for an employer on or before the operative date of this Article, paid sick time shall begin to accrue as of the operative date of this Article and may be used as accrued. For employees hired by an employer after the operative date of this Article, paid sick time shall begin to accrue at the commencement of employment and shall become available for use 90 days after the commencement of employment with the employer.
  
- (b) All employees shall accrue a minimum of one hour of paid sick time for every 30 hours worked. Employees in small businesses will not accrue more than 40 hours of paid sick

time in a calendar year, unless the employer selects a higher limit. Employees in all other businesses will not accrue more than 72 hours of paid sick time in a calendar year, unless the employer selects a higher limit. Paid sick time shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of paid sick time.

- (c) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of paid sick time accrual unless their normal work week is less than 40 hours, in which case paid sick time accrues based upon that normal work week.
- (d) Accrued paid sick time for employees carries over from year to year (whether calendar year or fiscal year); however, an employee's use of paid sick time under this Article shall not exceed 40 hours in any one year for employees of small businesses and 72 hours in one year for employees in all other businesses unless the employer chooses a higher limit.
- (e) Any employer with a paid leave policy, such as a paid time off policy, that makes available to employees an amount of paid leave sufficient to meet the accrual requirements of this section and that may be used for the same purposes and under the same conditions as paid sick time under this Article, is not required to provide additional paid sick time.
- (f) An employer is not required to provide financial or other reimbursement to an employee upon the employee's termination, resignation, retirement, or other separation from employment, for accrued paid sick time that the employee has not used.
- (g) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all paid sick time accrued at the prior division, entity or location and is entitled to use all paid sick time as provided in this Article. When there is a separation from employment and the employee is rehired within 6 months of separation by the same employer, previously accrued paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled

to use accrued paid sick time and accrue additional sick time at the re-commencement of employment.

- (h) At its discretion, the employer may loan sick time to the employee in advance of accrual by such employee.
- (i) An employer shall not discriminate in the provision of earned sick time benefits against an employee covered by this Article on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, or sexual orientation.

**Sec. 11A-83. Use of paid sick time.**

- (a) Paid sick time shall be provided to an employee by an employer for:
  - (1) An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;
  - (2) Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care;
  - (3) Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease, whether or not the family member has actually contracted the communicable disease.

- (b) Paid sick time shall be provided upon the oral request of an employee. When possible, the request shall include the expected duration of the absence.
- (c) When the use of paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the sick time and shall make a reasonable effort to schedule the use of sick time in a manner that does not unduly disrupt the operations of the employer.
- (d) Accrued sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.
- (e) For sick time of more than 3 consecutive days, an employer may require reasonable documentation that the sick time has been used for a purpose covered by subsection (a). Documentation signed by a health care professional indicating that sick time is necessary shall be considered reasonable documentation. An employer shall not require that the documentation explain the nature of the illness and shall not deny an employee's request for paid sick time because they do not explain the nature of the illness. For any employee who is not offered health insurance by the employer, the employer and the employee shall each pay half the cost of any out-of-pocket expense incurred by the employee in obtaining employer-requested documentation. These expenses are limited to the cost of services provided by health care professionals, the services of health care facilities, testing prescribed by health care professionals and transportation to the location where such services are provided. An employee who has declined to participate in the health insurance program offered by his or her employer shall not be entitled to reimbursement for out-of-pocket expenses.
- (f) An employer may not require, as a condition of an employee's taking paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is taking paid sick time.

**Sec. 11A-84.**                    **Notice and posting.**

- (a) Employers shall give notice that employees are entitled to paid sick time regardless of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, or sexual orientation, the amount of paid sick time available to an employee annually, and the terms of its accrual and use under this Article, that retaliation against employees who request or use sick time is prohibited and that each employee has a right to make a complaint to the Commission if paid sick time as required by this Article is denied by the employer or if employer retaliation occurs against the employee after the employee requests or takes accrued paid sick time.
  
- (b) The Commission shall, by the operative date of this Article, publish and make available to employers, in English, Spanish and Creole, a notice suitable for posting by employers in the workplace informing employees of their rights under this Article.
  
- (c) Every employer shall post in a conspicuous place at any workplace or job site where any employee works the notice required by subsection (b). Every employer shall post this notice in English, Spanish and Creole.

**Sec. 11A-85.**                    **Employer records.**

Employers shall retain records documenting hours worked by employees and paid sick time taken by employees, for a period of five years, and shall allow the Director access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Article. When an issue arises as to an employee's entitlement to paid sick time under this Article, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick time taken by the employee, or does not allow the Director reasonable access to such records, it shall be presumed that the employer has violated this Article, absent clear and convincing evidence otherwise.

**Sec. 11A-86.**                    **Exercise of rights protected; retaliation prohibited.**

- (a) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Article.
- (b) It shall be unlawful for an employer or any other person to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under this Article. Such rights include but are not limited to the right to use paid sick time pursuant to this Article; the right to file a complaint or inform any person about any employer's alleged violation of this Article; the right to cooperate with the Commission in its investigations of alleged violations of this Article; and the right to inform any person of his or her potential rights under this Article.
- (c) It shall be unlawful for an employer to count paid sick time taken under this Article as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.
- (d) Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this Article.
- (e) There shall be a rebuttable presumption of unlawful retaliation under this section whenever an employer takes

adverse action against a person within 60 days of when that person: (1) files a complaint with the Commission alleging a violation of any provision of this section; (2) informs any person with supervisory authority over the complaining employee or official authorized to investigate complaints under this Article about an alleged violation of this Article; (3) cooperates with any person in the investigation or prosecution of any alleged violation of this Article; (4) or opposes any policy, practice, or act that is unlawful under this Article;

**Sec. 11A-87. Implementation and enforcement.**

- (a) **Implementation.** The Director shall be authorized to coordinate implementation and enforcement of this Article and shall promulgate appropriate rules and regulations consistent with this Article for such purposes. Any rules or regulations promulgated by the Director shall have the force and effect of law and may be relied on by employers, employees, and other persons to determine their rights and responsibilities under this Article. Any regulations may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Article, including supplementary procedures for helping to inform employees of their rights under this Article and for monitoring employer compliance with this Article.
- (b) **Complaint and Enforcement.**
- (1) The procedures for filing a complaint under this Article shall be the same as the procedures outlined in Section 11A-28.
- (2) The Director shall conduct investigations and compel enforcement with this Article in the same manner as outlined in Section 11A-28.
- (3) A person claiming to be aggrieved by a violation of this Article may commence a civil action in a court of competent jurisdiction in the same manner as outlined in Section 11A-28.
- (4) In an administrative or civil action brought under this Article, the remedies available are the same as those outlined in Section 11A-28.

- (c) Remedies Cumulative. The remedies, penalties, and procedures provided under this Article are cumulative.

**Sec. 11A-88. Confidentiality and non-disclosure.**

An employer may not require disclosure of details of an employee's or an employee's family member's medical condition as a condition of providing paid sick time under this Article. If an employer possesses health information about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee.

**Sec. 11A-89. Collective bargaining agreements.**

This policy is intended to supplement paid sick leave time benefits to the extent that any collective bargaining agreement provides for less paid sick leave benefits than provided by this ordinance.

**Sec. 11A-90. Public education and outreach.**

The Commission, subject to budgetary appropriations by the Board of County Commissioners, shall develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of paid sick time under this Article. This program shall include the distribution of notices and other written materials in English, Spanish and Creole to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

**Sec. 11A-91. Other legal requirements.**

- (a) This Article provides minimum requirements pertaining to paid sick time and shall not be construed to preempt, limit, diminish or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick time, whether paid or unpaid, or that extends other protections to employees.
- (b) Sick time required under this Article may be used, at the option of the employee, as paid or unpaid family leave



provided under Article V and paid or unpaid domestic leave provided under Article VIII of this Chapter.

**Sec. 11A-92.**            **More generous employer leave policies encouraged.**

- (a) This Article provides minimum requirements pertaining to paid sick time and shall not be construed to prevent employers from adopting or retaining leave policies that are more generous than policies that comply with this Article. Employers are encouraged to provide more generous leave policies than required by this Article.
- (b) Nothing in this Article shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time to an employee than required herein.

**Sec. 11A-93.**            **Operative date.**

This Article shall become operative 90 days after its enactment, provided that in the case of employees covered by a collective bargaining agreement in effect on the date prescribed herein, this Article shall apply on the date of the termination of such agreement.

**Sec. 11A-94.**            **Preemption.**

Nothing in this Article shall be interpreted or applied so as to create any power or duty in conflict with federal or state law.

**Sec. 11A-95.**            **Severability.**

If any section, subsection, sentence, clause, part or provision of this Article, or the application of this Article to any person or circumstance, is held invalid, the remainder of this Article, including the application of such section, subsection, sentence, clause, part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Article are declared severable.<<

**Section 2.**     **Technical Amendment.** Section 11A-1(1) shall be amended by inserting the following language:

*Policy.* It is hereby declared to be the policy of Miami-Dade County, in the exercise of its police power for the public safety, health and general welfare, to eliminate and prevent discrimination in employment, family leave, >>paid sick time<<, 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. It is further hereby declared to be the policy of Miami-Dade County to eliminate and prevent discrimination in housing based on source of income.

**Section 3.**     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.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency:



Prepared by:



Eric Rodriguez

Prime Sponsor:       Commissioner Barbara Jordan