

MEMORANDUM

SPAGO
Agenda Item No. 1G1

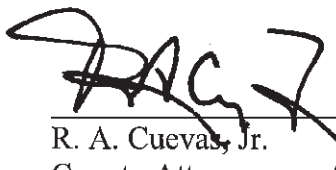
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 9, 2015

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

SUBJECT: Ordinance relating to protection of employees disclosing specified information; amending Chapter 2, Article IV, Division 6 of the Code to expand the methods for making protected disclosures, facilitate disclosure of information to the Inspector General, amend provisions regarding remedies and Commission on Ethics and the Public Trust review process, including timing, provide notice of state law confidentiality protections, and provide for outreach, information and training to County employees

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava.



R. A. Cuevas, Jr.
County Attorney


RAC/smm

Memorandum



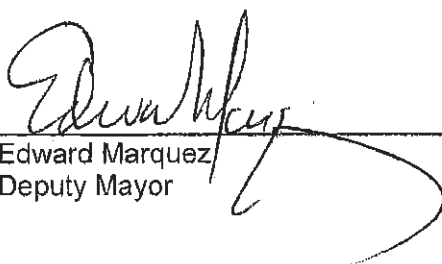
Date:

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez 
Mayor

Subject: Ordinance Relating to Protection of Employees Disclosing Specified Information

The proposed ordinance amends Chapter 2, Article IV, Division 6 of the Code relating to protection of employees disclosing specified information. Implementation of this ordinance will not have a fiscal impact to the County and the costs of any outreach materials and additional administration required under the proposed ordinance will be absorbed using existing staff of the Office of Inspector General.


Edward Marquez
Deputy Mayor

Fis05015



MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: April 21, 2015


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

SUBJECT: Agenda Item No. 4(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 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
Veto _____
Override _____

Agenda Item No. 4(C)
4-21-15

ORDINANCE NO. _____

ORDINANCE RELATING TO PROTECTION OF EMPLOYEES DISCLOSING SPECIFIED INFORMATION; AMENDING CHAPTER 2, ARTICLE IV, DIVISION 6 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO EXPAND THE METHODS FOR MAKING PROTECTED DISCLOSURES, FACILITATE DISCLOSURE OF INFORMATION TO THE INSPECTOR GENERAL, AMEND PROVISIONS REGARDING REMEDIES AND COMMISSION ON ETHICS AND THE PUBLIC TRUST REVIEW PROCESS, INCLUDING TIMING, PROVIDE NOTICE OF STATE LAW CONFIDENTIALITY PROTECTIONS, AND PROVIDE FOR OUTREACH, INFORMATION AND TRAINING TO COUNTY EMPLOYEES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, in 1994, the Board of County Commissioners adopted Ordinance No. 94-107 known as the Employee Protection Ordinance consistent with sections 112.3187 *et seq.* of the Florida Statutes; and

WHEREAS, expanding the means for employees to provide protected disclosures is in the best interest of the County; and

WHEREAS, it is in the best interest of the County and its employees that the avenues for reporting unlawful activity, fraud, misfeasance or malfeasance be easily accessible; and

WHEREAS, it is in the best interest of the County for its employees to be notified that under state law the identity of employees disclosing specified information to authorized local officials is protected; and

WHEREAS, in order to empower employees to take responsibility for an efficient and effective government and be empowered to safely and securely disclose specified activity, the Inspector General shall provide information about this ordinance to County employees,

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

Section 1. Chapter 2, Article IV, Division 6 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

CHAPTER 2. ADMINISTRATION

* * *

ARTICLE IV. PERSONNEL

* * *

DIVISION 6. – PROTECTION OF EMPLOYEES DISCLOSING SPECIFIED INFORMATION

* * *

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 Mayor or such official or officials as 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 Office of the Inspector General<<, the Miami-Dade County Commission on Ethics and Public Trust>>₁<< [[of

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.

~~the Office of Inspector General]] >>or the Mayor or designee<<. Employees who disclose such information to the >>Office of the Inspector General, the<< Miami-Dade County Commission on Ethics and Public Trust>>,<< [[~~or the Office of Inspector General]] >>the Mayor, or Mayor's designee<< shall be entitled to the full protection of this >>division<< [[~~ordinance~~]] and to the remedies and awards it provides.~~~~

>>(c) To facilitate the disclosure of information under this division, information may be submitted to the Inspector General:

1. through a telephone hotline established by the Office of the Inspector General,
2. by email,
3. by written and signed correspondence,
4. through a website established by the Inspector General, or
5. in person to the Inspector General or the Inspector General's staff.

(d) Any information that complies with section 2-56.28.14, that is disclosed to the Mayor, Mayor's designee, or to the Miami-Dade County Commission on Ethics and Public Trust, may, at the discretion of the Mayor, the Mayor's designee or the Miami-Dade County Commission on Ethics and Public Trust, be forwarded to the Office of the Inspector General for investigation. The Inspector General will make a determination whether an investigation by the Inspector General is necessary.<<

Sec. 2-56.28.16. Employees and persons protected.

(1) This division protects employees who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by the County, any state agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act; who refuse to participate in any adverse action prohibited by this division; >>who disclose information to the Office of the Inspector General in

accordance with the provisions of section 2-56.28.15;<< or who are otherwise protected by the State Whistle-blower's Act. The provisions of this division may not be used by employees while they are under the care, custody, or control of the state or county correctional system, or after their release from the care, custody or control of the state or county correctional system, with respect to circumstances that occurred during any period of incarceration.

* * *

Sec. 2-56.28.17. Remedies.

* * *

(4) Investigation by Ethics Commission. In addition to the remedies set forth above.

(a) Any employee protected under this division who alleges retaliation may, >>only after exhausting available administrative remedies: (i) under section 2-47, (ii) this division, or (iii) an applicable collective bargaining agreement,<< [[in lieu of or in addition to seeking the relief set forth above,]] file a written complaint with the Miami-Dade County Ethics Commission alleging a prohibited personnel action, no later than 60 days after [[the prohibited personnel—action]] >>a final written decision regarding an alleged prohibited personnel action has been rendered under the administrative or contractual procedures referenced above. The sole purpose of such complaint is to determine whether, in addition to any findings or determination made in any of the above-referenced administrative or contractual proceedings, there has been a violation of the County Ethics Code set forth in section 2-11.1 of the Code and not to change, rehear or revisit the determination, findings, actions taken or discipline imposed, if any, pursuant to any of the aforementioned administrative or contractual proceedings.<<

- (b) Within ten working days after receiving a complaint under this >>division<< ~~[[section]]~~, the Ethics Commission shall acknowledge receipt of the complaint and provide copies of the complaint ~~[[and any other preliminary information available concerning the disclosure of information under this Section]]~~ to the ~~[[department or]]~~ employee accused of retaliation >>and the Department Director of the department in which such employee is employed<<.
- (c) ~~[[Fact finding]]~~ Upon the filing of a complaint with the Ethics Commission under this >>division<< ~~[[section]]~~, the Ethics Commission shall:
- (i) Conduct a preliminary investigation ~~[[and a fact finding hearing within 60 days regarding the allegation of retaliation]]~~, to the extent necessary, to determine whether there is probable cause to believe that a prohibited personnel action under this >>division<< ~~[[section]]~~, has occurred ~~[[, is occurring, or is to be taken]]~~.
- (ii) Within 90 days after receiving the complaint >>in compliance with subsection (4)(a) herein<<, provide the accused ~~[[department or]]~~ employee >>, the Department Director of the department in which the accused employee is employed<< and the complainant with a >>copy of a probable cause memorandum and conduct a probable cause hearing before the Ethics Commission who shall make a determination on whether there is probable cause to believe retaliation prohibited by this division has occurred. The probable cause memorandum and the final written decision and findings of the administrative or contractual proceedings referenced in subsection (4)(a) herein<< ~~[[fact finding report. The fact finding report]]~~ shall be presumed admissible in any >>Ethics Commission hearing conducted under this division<< ~~[[subsequent or related administrative or judicial review]]~~.

(iii) Based on its ~~[[fact-finding—report]]~~
>>probable cause determination<<,
recommend to the County ~~[[Manager]]~~
>>Mayor<< an appropriate course of action.
>>In response to such a recommendation,
the County Mayor<< ~~[[The Manager]]~~ shall
thereafter >>be required to make a written
determination of the<< ~~[[take]]~~ appropriate
remedial action >>, if any, to be taken<< in
accordance with Section 2-56.28.18.

>>(d) The time limits regarding the actions to be taken by
the Ethics Commission set forth in subsections (b)
and (c) may be extended by the Ethics Commission
for good cause.<<

(5) Any employee found by the Ethics Commission to have
retaliated against another County employee in violation of
this >>division<< ~~[[section]]~~, shall be considered to have
committed a violation of the County's Code of Ethics and
shall be subject to >>the penalties set forth in the County's
Code of Ethics set forth in section 2-11.1 of the Code
and<< disciplinary action up to and including dismissal
from County employment.

* * *

~~[[Sees. 2-56.28.22 — 2-56.28.30. — Reserved.]]~~

>>Sec. 2-56.28.22. Confidentiality of Individuals Disclosing
Information.

The Board of County Commissioners intends for the
protections of state law to be afforded to any individual
who discloses information in compliance with this division
to the local officials set forth in this division. The identity
of such individuals shall be confidential and exempt from
the provisions of the public records laws to the fullest
extent permitted by, and in accordance with, the law
including, but not limited to, the confidentiality
requirements and exemptions set forth in sections 119.0713
and 112.3188 of the Florida Statutes.<<

>>**Sec. 2-56.28.23. Outreach to Employees and Mandatory Training.**

- (a) The Mayor and the Inspector General, or their designees, shall provide training regarding this division to all new County employees hired after the effective date of this Ordinance as part of the initial County orientation. The Mayor and the Inspector General, or their designees, shall also provide training regarding this division to all County employees.
- (b) The Inspector General or his or her designee shall periodically provide information on this division, including but not limited to, the disclosure of information, the methods of disclosing information, and the protections afforded by this division, to all employees of the County and public officials.
- (c) The Office of the Inspector General shall periodically publish to all County employees instructions regarding the methods of disclosing information to the Inspector General, as provided by section 2-56.28.15.
- (d) The Office of the Inspector General shall periodically notify all County employees of the existence of the Inspector General's hotline and its purpose, and provide an address to which written or electronic information may be forwarded to the Office of the Inspector General.
- (e) Notwithstanding subsections (a) through (d) herein, other means of dissemination to ensure awareness of this division may be implemented by the Mayor, the Office of the Inspector General or the Commission on Ethics and Public Trust.<<

>>**Section 2-56.28.24. Coordination with County Attorney's Office.**

In the event the Inspector General believes that civil relief may be available to the County during the course of any investigation under this division, the Inspector General shall so inform the County Attorney. The County Attorney or the County Attorney's staff shall notify the Inspector General regarding any

potential civil relief. The County Attorney and the County Attorney's staff shall maintain the confidentiality to the extent provided by state law of all information as set forth in section 2-56.28.22 of the Code.<<

>>Secs. 2-56.28.25 – 2-56.28.30. Reserved.<<

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:



Prepared by:



Eric A. Rodriguez

Prime Sponsor: Commissioner Daniella Levine Cava