

MEMORANDUM

Agenda Item No. 7(L)

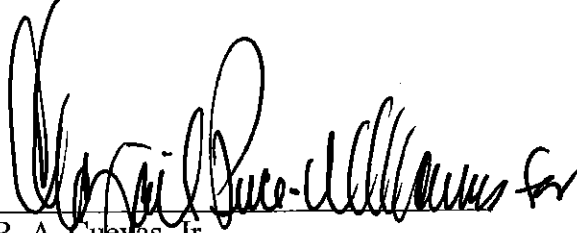
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: (Second Reading 10-6-15)
June 2, 2015

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

SUBJECT: Ordinance relating to Uniform Trade Standards; amending Chapter 8A, Article III of the Code, providing for prohibitions against advertising the use or benefit of goods or services that mislead or deceive the public; modifying provisions relating to deceptive trade practices to include representations that fail to reveal material facts, and non-delivery or delivery of materially different goods or services than those ordered or sold

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Chairman Jean Monestime.



R. A. Cuevas, Jr.
County Attorney

RAC/smm

Memorandum



Date: October 6, 2015

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

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the printed name of the Mayor.

Subject: Ordinance relating to Uniform Trade Standards

The proposed Ordinance related to uniform trade standards amends Chapter 8A, Article III of the Code providing for prohibitions against advertising the use or benefit of goods or services that mislead or deceive the public, and modifies provisions relating to deceptive trade practices to include representations that fail to reveal material facts and non-delivery or delivery of materially different goods or services than those ordered or sold. Implementation of this ordinance will not have a fiscal impact on the County.

A handwritten signature in black ink, appearing to read "Jack Osterholt", written over a horizontal line.

Jack Osterholt
Deputy Mayor

fls06815



MEMORANDUM
(Revised)

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

DATE: October 6, 2015

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

SUBJECT: Agenda Item No. 7(L)

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. 7(L)
10-6-15

ORDINANCE NO. _____

ORDINANCE RELATING TO UNIFORM TRADE STANDARDS; AMENDING CHAPTER 8A, ARTICLE III OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, PROVIDING FOR PROHIBITIONS AGAINST ADVERTISING THE USE OR BENEFIT OF GOODS OR SERVICES THAT MISLEAD OR DECEIVE THE PUBLIC; MODIFYING PROVISIONS RELATING TO DECEPTIVE TRADE PRACTICES TO INCLUDE REPRESENTATIONS THAT FAIL TO REVEAL MATERIAL FACTS, AND NON-DELIVERY OR DELIVERY OF MATERIALLY DIFFERENT GOODS OR SERVICES THAN THOSE ORDERED OR SOLD; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, unfair and deceptive trade practices are generally targeted to disadvantaged or vulnerable populations, within industries that have little or ineffective oversight; and

WHEREAS, the decision to purchase expensive goods and/or services can be a confusing and complicated event with life-long ramifications; and

WHEREAS, the Board finds that promoting a thorough understanding of the benefits, uses and limitations of these types of goods and services through fair and honest disclosures results in transparency, sound decision making and fairness in the marketplace; and

WHEREAS, Miami-Dade County has a long history of ensuring the protection of its residents against dishonest, deceptive and predatory practices in the County by adopting uniform trade standards as far back as 1968; and

WHEREAS, the Board of County Commissioners desires to provide for the public health, safety and welfare of the people of Miami-Dade County by providing enhanced protections to prevent unfair and deceptive trade practices,

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

Section 1. Chapter 8A, Article III of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Chapter 8A. BUSINESS REGULATIONS

* * *
ARTICLE III. UNIFORM TRADE STANDARDS

* * *
Sec. 8A-108. Misleading advertisements prohibited.

- (a) It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or any thing of any nature whatsoever, or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this County, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or by any other manner or means whatever, any assertion, representation or statement of fact, concerning such real or personal property or services, professional or otherwise, or concerning any circumstances or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

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.

- (b) It shall be unlawful by means of exaggerated variations in the comparative size, location or position of letters, figures or other markings or characters on any price tag, sign, posters, notice, display or advertisement or other public representation of any nature whatsoever, to mislead or deceive, or to attempt to mislead or deceive the public, as to the true nature, price, quantity, quality, brand, >>use, benefit<< or character of any goods, wares, merchandise, services, facilities, or accommodations, or as to the nature of, or the reason, if any is offered, for the sale or offering for sale, so being made to the public.

* * *

Sec. 8A-113. Deceptive trade practices.

A person engages in a deceptive trade practice when, in the course of his >>or her<< business, vocation, or occupation, he >>or she<<:

- (a) Passes off goods or services as those of another;
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;
- (d) Uses deceptive representations or designations of geographic origin in connection with goods or services;
- (e) >>Makes<<[[Represents]]>>representations<< that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities >>:(1)<< that they do not have [[or]] >>; (2) that fail to reveal material facts in light of such representations; or (3)<< that a person has a sponsorship, approval, status, affiliation, or connection that he >>or she<< does not have;

- (f) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used of secondhand;
 - (g) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
 - (h) Disparages the goods, services or business of another by false or misleading representation of fact;
 - (i) Advertises goods or services with intent not to sell them as advertised;
 - (j) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
 - (k) Makes false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions
- >>(l) Takes consideration for goods or services without delivering such goods or performing such services, or delivers goods or provides services materially different from those ordered or sold;<<

[[(+)]>>(m)<< Sells, causes to have sold, or promotes the sale of any residential or commercial habitable structure, located in the incorporated or unincorporated areas of Miami-Dade County, the permit for which was applied for after August 24, 1992 and prior to September 1, 1994, without including in the contract for such sale, or in a rider to such contract, and in all pamphlets, fliers, and marketing brochures used to promote the sale of such structures, the following disclosure in not less than ten-point bold-face type:

* * *

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:

APW

Prepared by:

GKS

Gerald K. Sanchez

Prime Sponsor: Chairman Jean Monestime