MEMORANDUM

Agenda Item No. 14(A)(3)

TO:	Honorable Chairman Jean Monestime and Members, Board of County Commissioners	**DATE:**	September 16, 2015
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution approving and authorizing the County Mayor to execute interlocal agreements with municipalities to enforce the applicable provisions of Section 21-81 and 8CC of the Code within their municipal boundaries; authorizing the County Mayor to exercise renewal, termination, and cancellation clauses contained therein

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

R. A. Cuevas, Jr.
County Attorney

RAC/cp

MEMORANDUM

(Revised)

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

DATE: September 16, 2015

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

SUBJECT: Agenda Item No. 14(A)(3)

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. 14(A)(3)
9-16-15

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEES TO EXECUTE INTERLOCAL AGREEMENTS WITH MUNICIPALITIES TO ENFORCE THE APPLICABLE PROVISIONS OF SECTION 21-81 AND 8CC OF THE MIAMI-DADE COUNTY CODE WITHIN THEIR MUNICIPAL BOUNDARIES; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEES TO EXERCISE RENEWAL, TERMINATION, AND CANCELLATION CLAUSES CONTAINED THEREIN

WHEREAS, section 21-81 of the Code of Miami-Dade County, Florida (hereinafter the "Code"), prohibits the commission of all acts defined as misdemeanors under Florida Statutes and declares commission of such acts to also be Code violations; and

WHEREAS, the Board of County Commissioners has amended section 21-81 of the Code to enact monetary civil penalties for certain violations as enumerated in sections 21-81(d)(1) through and including 21-81(d)(7) of the Code, as such civil penalties will act as an additional deterrent to such violations and would provide law enforcement with additional options when encountering a misdemeanant who has committed an enumerated offense; and

WHEREAS, the Board has amended Chapter 8CC of the Code to prescribe a specific monetary civil penalty for a violation of sections 21-81(d)(1) through and including 21-81(d)(7) of the Code; and

WHEREAS, the Board has amended section 8CC-5.1 of the Code to allow a violator of sections 21-81(d)(1) through and including 21-81(d)(7) of the Code who has been served with a civil violation notice imposing a monetary penalty to enter the Miami-Dade County Diversion

Program, which allows violators without the economic means to pay the fine to satisfy the penalty by non-monetary means; and

WHEREAS, section 8CC-11(a) of the Code requires a municipality to enter into an interlocal agreement in order to enforce the provisions of section 8CC within their municipal boundaries; and

WHEREAS, the Board desires to allow the municipalities to enforce the specific provisions of section 8CC that pertain to section 21-81 through the execution of an interlocal agreement with the County in an efficient manner without the need to have each individual agreement between the County and the municipalities ratified by this Board,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board finds it is in the best interest of Miami-Dade County to approve the execution of interlocal agreements as required by section 8CC-11 of the Code between Miami-Dade County and municipalities in order to permit municipal enforcement of the provisions of section 8CC as they pertain to section 21-81of the Code through the County Mayor or the County Mayor's designee in substantially the same from attached hereto and a part hereof, for and on behalf of Miami-Dade County, and to execute any amendments, modifications, and renewals, and to exercise the cancellation and termination provisions contained within on behalf of Miami-Dade County, Florida.

The Prime Sponsor of the foregoing resolution is Commissioner Sally A. Heyman. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman
Esteban L. Bovo, Jr., Vice Chairman

Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 16th day of September, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA

BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Christopher A. Angell

INTERLOCAL AGREEMENT BETWEEN
MIAMI-DADE COUNTY, FLORIDA
AND

_____

FOR THE ENFORCEMENT OF SECTION 8CC OF THE MIAMI-DADE COUNTY CODE AS IT RELATES TO SECTION 21-81 OF THE MIAMI-DADE COUNTY CODE

This Interlocal Agreement ("Agreement") is made and entered this _____ day of _____, _____, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter "COUNTY") and _____, a Florida municipal corporation (hereafter "MUNICIPALITY").

WITNESSETH

WHEREAS, Section 21-81 of the Code of Miami-Dade County ("Code") applies to all municipalities in the County and is enforced, in part, through civil penalties under Section 8CC of the Code; and

WHEREAS, municipalities in the County may enforce the provisions of Section 21-81 of the Code, pursuant to Section 8CC-11 upon the adoption by the County and municipalities of an interlocal agreement which contains (1) the sections of the Code which the municipality is entitled to enforce, (2) the job title of the agents of the municipality authorized to perform the enforcement functions, (3) the amount reimbursable to the County for administrative costs, (4) the amount of revenue reimbursable to the municipality from any fine collected, (5) an agreement to indemnify and hold the County harmless from and against any liability, actions or causes of actions related to the municipality's enforcement, and (6) contain a term not to exceed three (3) years; and

WHEREAS, the parties agree that it is in their mutual best interests and the best interests of the citizens of the COUNTY and the MUNICIPALITY to have the MUNICIPALITY enforce the provisions of Section 21-81 of the Code through Section 8CC,

NOW, THEREFORE, IN CONSIDERATION of the mutual benefits derived here from and in compliance with Section 8CC-11 of the Code, the parties covenant and agree as follows:

I. CODE SECTIONS SUBJECT TO ENFORCEMENT

The MUNICIPALITY is authorized to enforce Section 21-81 of the Code in accordance with the provisions of Section 8CC of the Code, including but not limited to the ability to issue civil violation notices under Section 8CC-10 of the Code for violations of Section 21-81(d)1 through and including 21-81(d)7 of the Code, within its municipal boundaries. Notwithstanding this authorization, nothing in this Agreement shall be construed to limit, supersede, or remove the independent authority of the COUNTY to enforce such provisions.

II. AUTHORIZED AGENTS

All law enforcement officers as defined by Florida State Statute 943.10(1) that are employed by the MUNICIPALITY are authorized by this Agreement to perform the enforcement functions outlined in, and in accordance with, this Agreement.

III. AMOUNT REIMBURSABLE TO MIAMI - DADE COUNTY FOR COSTS RELATED TO THE CONDUCT OF HEARINGS ON APPEALS

The MUNICIPALITY shall reimburse the COUNTY the sum of _____ for the administrative costs relating to the conduct of hearings on appeals from violations as outlined in Section I above and shall also be responsible for reimbursing the County for any attorney's fees and costs, including the costs of transcripts and clerical costs, incurred in such proceedings.

Such funds shall be payable to Miami-Dade County within thirty (30) days of receipt of an invoice for such services.

IV. AMOUNT OF REVENUE REIMBURSABLE TO THE MUNICIPALITY FROM THE FINE COLLECTED

The COUNTY shall reimburse _____ to the MUNICIPALITY from the fine collected from the issuance of a civil violation notice for a violation of Section 21-81 of the Code as set forth in Section 8CC. Should the violator opt to enter the Miami-Dade County Diversion Program as set forth in Implementing Order 2-12, the COUNTY shall keep the entire processing fee paid by the violator.

V. TERM OF AGREEMENT

This Agreement shall be in full force and effect from the date of the final execution by either party and shall continue for three (3) years. At the expiration of the three (3) year period the COUNTY and the MUNICIPALITY may enter a new interlocal agreement as required by section 8CC-11 of the Miami-Dade County Code in order for the MUNICIPALITY to continue its enforcement efforts.

VI. MUNICIPALITY INDEMNIFICATION

Subject to the limitations set forth in Section 768.28, F.S., and all applicable laws, the MUNICIPALITY shall indemnify and hold harmless the COUNTY from and for any losses, claims, causes of action or damages of any nature whatsoever, arising from the act, omission or performance or failure of performance of the MUNICIPALITY or the MUNICIPALITY's agents, contractors, servants and employees hereunder relative to the enforcement of the provisions of Section 21-81 of the Code pursuant to Section 8CC of the Code. The MUNICIPALITY shall defend the COUNTY in any action including any action in the name of the COUNTY.

VII. DEFAULT

A. Without limitation, the failure by the MUNICIPALITY to substantially fulfill any of its material obligations in accordance with this Agreement shall constitute a "Municipal Default". If a Municipal Default should occur, the COUNTY shall have all the following rights and remedies which may be exercised singly or in combination:

1. The right to declare that this Agreement together with all rights granted to the MUNICIPALITY thereunder are terminated, effective upon such date as is designated by the COUNTY. Provided, however, that the COUNTY shall give MUNICIPALITY a period of thirty (30) days after receipt of the written notice from the COUNTY of said default to cure any Municipal Default unless the COUNTY determines, in its sole and absolute discretion, that the nature of the default is such that it cannot be cured in a period of thirty (30) days from the date of the default. If the MUNICIPALITY commences reasonable efforts to cure such default no later than thirty (30) days after such notice, and such efforts are prosecuted to completion and to the COUNTY's reasonable satisfaction, then it shall be deemed that no Municipal Default shall have occurred under the provisions of this paragraph.

2. Any and all rights provided under the laws of the State of Florida.

B. Without limitation, the failure by the COUNTY to substantially fulfill any of its material obligations in accordance with this Agreement shall constitute a "County Default." If a County Default should occur, the MUNICIPALITY shall have all of the following rights and remedies which it may exercise singly or in combination:

1. The right to declare that this Agreement together with all rights granted to the COUNTY thereunder are terminated, effective upon such date as is designated by the MUNICIPALITY. Provided, however, that the MUNICIPALITY shall give the COUNTY a period of thirty (30) days after receipt of written notice from the MUNICIPALITY of said default to cure any County Default unless the MUNICIPALITY determines, in its sole and absolute discretion, that the nature of the default is such that it cannot be cured in a period of thirty (30) days from the date of the default. If the COUNTY commences reasonable efforts to cure such default no later than thirty (30) days after such notice, and such efforts are prosecuted to completion and to the MUNICIPALITY's reasonable satisfaction, then it shall be deemed that no County Default shall have occurred under the provisions of this paragraph.

2. Any and all rights provided under the laws of the State of Florida.

VIII. CANCELLATION

Notwithstanding the above, this agreement may be terminated by either the COUNTY or the MUNICIPALITY upon thirty (30) days written notice.

IX. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The COUNTY and the MUNICIPALITY agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

X. ENTIRETY OF AGREEMENT

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto and their authorized representatives.

XI. HEADINGS

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

XII. RIGHTS OF OTHERS

Nothing in this Agreement expressed or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

XIII. REPRESENTATION OF THE MUNICIPALITY

The MUNICIPALITY represents that: (i) this Agreement has been duly authorized, executed and delivered by the governing body of the MUNICIPALITY or its designee; and (ii) it has the required power and authority to perform this Agreement.

XIV. REPRESENTATION OF COUNTY

The COUNTY represents that: (i) this Agreement has been duly authorized, executed and delivered by the governing body of the COUNTY or its designee; and (ii) the County has the required power and authority to perform this Agreement.

XV. WAIVER

There shall be no waiver of any right related to this Agreement unless in writing signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

XVI. INVALIDITY OF PROVISIONS, SEVERABILITY

Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

XVII. NOTICE

Notices to MUNICIPALITY provided for herein shall be sufficient if sent by Federal Express or certified mail, return receipt requested, postage prepaid, addressed to:

_____
_____
_____
_____

with copy to:

_____ Attorney
_____
_____
_____

and notices to COUNTY, if sent by Federal Express or certified mail, return receipt requested, postage prepaid addressed to:

County Mayor
Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, FL 33128

with copy to:

County Attorney
Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street, 28th Floor
Miami, FL 33128

Or such other respective address as the parties may designate to each other in writing from time to time.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By:_____
DEPUTY CLERK

By:_____
Carlos A. Gimenez
County Mayor

Approved as to form and legal sufficiency:

_____
Christopher A. Angell
Assistant County Attorney

ATTEST:

_____, a Florida Municipal Corporation

By:_____
_____
City Clerk

By:_____
_____
_____

Approved as to form and legal sufficiency:

_____
_____
City Attorney