MEMORANDUM

Agenda Item No. 7(F)

(Second Reading 9-7-16)

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

DATE: June 7, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance pertaining to payment of Living Wages; amending section 2-8.9 of the Code to provide for increased penalties to be paid by contractors and sub-contractors upon failure to pay correct wages

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson, and Co-Sponsors Commissioner Daniella Levine Cava, Commissioner Barbara J. Jordan and Commissioner Dennis C. Moss.

Abigail Price-Williams
County Attorney

APW/smm

Memorandum

MIAMI-DADE COUNTY

Date: September 7, 2016

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

From: Carlos A. Gimenez
Mayor

Subject: Fiscal Impact Statement for Ordinance Pertaining to Payment of Living Wages

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The proposed ordinance amends 2-8.9 of the Code of Miami-Dade County to provide for increased penalties to be paid by contractors and sub-contractors upon failure to pay the correct wages.

The Internal Services Department, Small Business Development Division, is already responsible for assigning goals/measures to County contracts, and, it is expected that this existing staff will be able to manage those contracts meeting the criteria of this proposed ordinance. Increased penalties may have a positive fiscal impact on the County, however, it is difficult to make an estimate at this point.

Edward Marquez
Deputy Mayor

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Memorandum

MIAMI-DADE COUNTY

Date: September 7, 2016

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

From: Carlos A. Gimenez
Mayor

Subject: Social Equity Statement for Ordinance pertaining to Living Wages; amending section 2-8.9 of the Code of Miami-Dade County, Florida to provide for increased penalties to be paid by contractors and sub-contractors upon failure to pay the correct wages

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The proposed Ordinance amends the Living Wages Section 2-8.9 of the Code of Miami-Dade County, Florida to provide for increased penalties to be paid by contractors and sub-contractors upon failure to pay the correct wages.

Increasing the penalties on applicable contracts will provide for stronger accountability to living wage rate during the duration of the contract. In addition, this amendment will assist all parties involved to resolve any issues paying this rate.

Edward Marquez
Deputy Mayor

Attachments

MEMORANDUM

(Revised)

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

DATE: September 7, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(F)

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**

_____ **Statement of social equity 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(F)
9-7-16

ORDINANCE NO. _____

ORDINANCE PERTAINING TO PAYMENT OF LIVING WAGES; AMENDING SECTION 2-8.9 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO PROVIDE FOR INCREASED PENALTIES TO BE PAID BY CONTRACTORS AND SUB-CONTRACTORS UPON FAILURE TO PAY CORRECT WAGES; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

Section 1. Section 2-8.9 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 2-8.9. Living Wage Ordinance for County service contracts and County employees.

* * *

Compliance and Enforcement.

(A) *Service contract to cooperate.* The service contractor shall permit County employees, agents, or representatives to observe work being performed at, in, or on the project or matter for which the service contractor has a contract. The County representatives may examine the books and records of the service contractor relating to employment and payroll to determine if the service contractor is in compliance with the provisions of this Chapter.

(B) *Complaint procedures and sanctions.* An employee who believes that this Chapter applies or applied to him or her and the service contractor is or was not complying with the requirements of this Chapter has a right to complain by filing a written complaint. The County [[~~Manager~~]]>>Mayor<< shall establish by Administrative Order the procedures and requirements for filing a complaint and for the processing and resolution of complaints under this section including the sanctions to be imposed for violations of this section.

[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 County [[~~Manager~~]]>>Mayor<< shall also by Administrative Order establish a procedure applicable to complaints by County employees regarding noncompliance with this section.

(C) *Private right of action against service contractors.* Any covered employee of a service contractor, or any person who was formerly a covered employee of a service contractor, may instead of >>adhering to<< the County administrative procedure set forth in this section but not in addition to such procedure, bring an action by filing suit against the covered employer in any court of competent jurisdiction to enforce the provisions of this Chapter and may be awarded back pay, benefits, attorney's fees, and costs. The applicable statute of limitations for such a claim will be two (2) years as provided in Florida Statutes Section 95.11(4)(c) in an action for payment of wages. The court may also impose sanctions on the employer, including those persons or entities aiding or abetting the employer, to include wage restitution to the affected employee and damages payable to the covered employee in the sum of up to five hundred dollars ($500.00) for each week each employer is found to have violated this Chapter.

(D) *Sanctions against service contractors.* For violations of this Ordinance as determined pursuant to the procedures set forth by Administrative Order, the County may sanction a service contractor for violations of this section by requiring the service contractor to pay wage restitution to the affected employee. The County may also sanction the service contractor for violations in at least one (1) of the following additional ways:

(1) Penalties payable to the County in an amount equal to [[~~10~~]]>>20<<% of the amount of the underpayment of wages and/or benefits for the first instance of underpayment; [[~~20~~]]>>40<<% for the second instance; and for the third and successive instances [[~~30~~]]>>60<<% of the amount of underpayment. A fourth violation shall constitute a default of the contract where the underpayment occurred and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized to defray costs of administering the Living Wage provisions.

(2) The sum of up to five hundred dollars ($500.00) for each week for each covered employee found to have not been paid in accordance with this Chapter[[~~;~~]]>>.<<

(3) Suspend payment or terminate payment under the contract or terminate the contract with the service contractor[[;]]>>.<<

(4) If a service contractor fails to cure a Notice of Violation or pay any sanctions that are assessed by the County, such service contractor and all officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of the non-complying service contractor may be declared by the County to be ineligible for bidding on or otherwise participating in Living Wage contracts and permits until all required payments have been paid in full and regardless of whether such payment has been made may also be declared ineligible for bidding or otherwise participating in Living Wage contracts for a period of up to three (3) years. In addition all covered employers shall be ineligible for Living Wage contracts and permits under this section where any officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of the covered employer were officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of a covered employer who has been declared ineligible under this Chapter[[;]]>>.<<

(5) In addition to any other sanctions provided for herein, for violations other than underpayment of wages and/or benefits, damages payable to the County in the amount of five hundred dollars ($500.00) per week for each week in which the violation remains outstanding.

(6) A service contractor who fails to timely and adequately respond in the manner and within the timeframe set forth in a written request from the County to a notice of noncompliance, or fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by the County after a Compliance Meeting shall be deemed not to have complied with the requirements of this section as stated in the notice or determination of noncompliance and, in the case of underpayment of the Living Wage required, an amount sufficient to pay any underpayment shall be withheld from contract proceeds to include any deposits, and/or bonds and remitted to the employee and the Service Contractor may be fined the applicable penalty for such underpayment as defined herein.

(7) All such sanctions recommended or imposed shall be a matter of public record.

(E) *Interest on Unpaid Sanctions.* All sanctions imposed pursuant to the authority of this Chapter shall bear interest at the same rate as the State of Florida statutory rate for judgments provided by Florida Statutes § 55.03.

(F) *Retaliation and discrimination barred.* An employer shall not discharge, reduce the compensation or otherwise discriminate against any employee for making a complaint to the Living Wage Commission, the applicable department, the County, or otherwise asserting his or her rights under this Chapter, participating in any of its proceedings or using any civil remedies to enforce his or her rights under the Chapter. Allegations of retaliation or discrimination, if found by the County [[~~Manager~~]]>>Mayor<< pursuant to procedures set forth by Administrative Order or by a court of competent jurisdiction under paragraph (C), shall result in an order of restitution and reinstatement of a discharged employee with back pay to the date of the violation or such other relief as deemed appropriate. In addition, the County [[~~Manager~~]]>>Mayor<< or the Court may impose an additional sanction of up to five hundred dollars ($500.00) for each week since the covered employee was discharged as a result of prohibited retaliation under this Chapter.

(G) *Remedies herein non-exclusive.* No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the right under this Chapter in a court of law.

* * *

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: dsh

David Stephen Hope

Prime Sponsor: Commissioner Audrey M. Edmonson
Co-Sponsors: Commissioner Daniella Levine Cava
Commissioner Barbara J. Jordan
Commissioner Dennis C. Moss