

# MEMORANDUM

EPC  
Substitute to  
Agenda Item No. 1G1

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

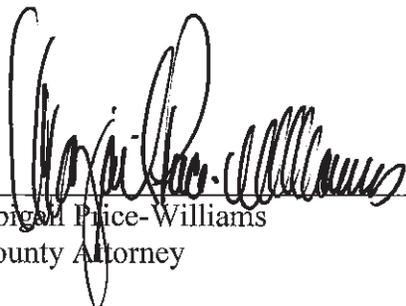
**DATE:** December 15, 2016

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Ordinance establishing a minimum wage for employees of certain County contractors and subcontractors; creating section 2-8.9.1 of the Code; providing for indexing of the minimum wage rate; providing for enforcement and penalties; requiring the Mayor to establish procedures for monitoring compliance

This substitute differs from the original in that it: (1) raises the threshold for applicability to contracts where there is a firm commitment to spend over \$250,000 per year; (2) exempts information technology, financial products, procurement through access to other government contracts, and contracts where state or federal requirements prohibit imposition of local wage rates; (3) creates a phase-in period for the minimum wage requirement commencing with \$10.50 per hour in 2018, rising to \$12.50 by 2019, then \$15.00 by 2020 and in 2021, the minimum wage rate will match the living wage rate required by the Living Wage Ordinance in section 2-8.9 of the County Code; and (4) permits a waiver of the ordinance requirements when competitive bidding is impacted and imposing a reporting requirement for the exercise of the waiver provision.

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

  
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Abigail Price-Williams  
County Attorney

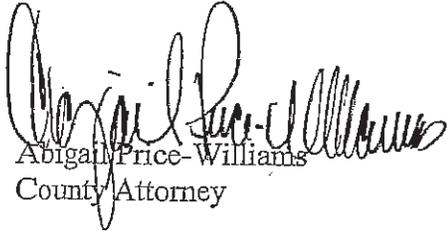
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**MEMORANDUM**  
(Revised)

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

**DATE:** December 6, 2016

**FROM:**   
Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No.

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

Agenda Item No.

Veto \_\_\_\_\_

Override \_\_\_\_\_

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

ORDINANCE ESTABLISHING A MINIMUM WAGE FOR EMPLOYEES OF CERTAIN COUNTY CONTRACTORS AND SUBCONTRACTORS; CREATING SECTION 2-8.9.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING FOR INDEXING OF THE MINIMUM WAGE RATE; PROVIDING FOR ENFORCEMENT AND PENALTIES; REQUIRING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO ESTABLISH PROCEDURES FOR MONITORING COMPLIANCE; PROVIDING FOR DELAYED IMPLEMENTATION; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, in 1999, this Board adopted Ordinance No. 99-44, the Living Wage Ordinance, because the Board recognized that it has a responsibility when spending public funds to set a community standard that permits full-time workers to live above the poverty line; and

**WHEREAS**, in adopting the Living Wage Ordinance, the County found that sub-poverty level wages do not serve the public interest because such wages place an undue burden on taxpayers and the community to subsidize employers paying inadequate wages by providing their employees social services such as health care, housing, nutrition, and energy assistance; and

**WHEREAS**, the Living Wage Ordinance has successfully provided better wages for workers that provide public services in Miami-Dade County which results in a better quality of life for this community as a whole; and

**WHEREAS**, expanding the number of types of County contractors to which a minimum wage applies will further enhance the quality of life in this community and decrease reliance on social services for workers and their families; and

WHEREAS, making these enhancements for the workers delivering goods and services to Miami-Dade County is in the best interest of the public's health, safety and welfare,

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

**Section 1.** Section 2-8.9.1 of the Code of Miami-Dade County, Florida, is hereby created as follows:

**Sec. 2-8.9.1 Minimum Wage for County Contractors**

**(A) Policy Statement**

The County hereby adopts a minimum wage requirement for County contractors which shall hereafter be known as the "Miami-Dade County Minimum Wage Ordinance." The County finds that wages that only meet the minimum amount required by federal and state minimum wage laws are insufficient for many individuals to support themselves or a family in this community. The County finds that payment to County vendors that pay wages that are inadequate for employees to meet their basic needs does not serve the public interest because such wages place an undue burden on taxpayers and the community to subsidize employers who pay inadequate wages by providing their employees social services such as health care, housing, nutrition, and energy assistance. The County finds that the success of the Living Wage Ordinance in combatting inequality in this community warrants the establishment of a minimum wage for employees of County contractors that are not currently covered by the Living Wage Ordinance. The County finds that because County contractors receive payment from the County for goods and services, the County has the authority and responsibility to require compliance with this Minimum Wage Ordinance as a condition of awarding County contracts. Therefore, requiring County contractors to pay all employees the County Minimum Wage rate established by this Ordinance is in the best interest of the public's health, safety and welfare.

**(B) Definitions. As used in this section:**

(1) *County Contractor.* Any person or entity that is awarded and enters into a contract with the County that ~~[[exceeds \$100,000]]<sup>1</sup>~~>>commits the County to paying an amount exceeding \$250,000 annually to the contractor, pursuant to one or more contracts,<< to provides goods and services, except that a contractor shall not be considered a County Contractor for the following goods and services for purposes of this section:

(a) construction of a public improvement;

(b) professional services subject to Section 287.055, Florida Statutes, and Section 2-10.4 of the Code of Miami-Dade County; ~~[[or]]~~

(c) other professional services including but not limited to accounting, >>financial,<< legal, healthcare, consulting and management services>>~~;<<[[or]]~~

>>(d) information and communications technology products and related services including but not limited to software, software licensing and support, hardware and infrastructure; or

(f) intangible assets including but not limited to financial products, investments, and insurance,

The term “commits the County” in this definition refers to the circumstance where the County has issued a work/purchase order or notice to proceed that, either singularly or in combination with other orders or notices, creates a definite payment obligation of the County that exceeds \$250,000 annually. Termination provisions, such as a termination for convenience provision, shall not be considered for purposes of determining whether a contract under this section exceeds the \$250,000 annual County commitment threshold.<<

<sup>1</sup> The differences between the substitute and the original item are indicated as follows: Words double stricken through and/or ~~[[double bracketed]]~~ are deleted, words double underlined and/or >>double arrowed<< are added.

(2) *Qualifying Health Benefits.* Health benefits that meet the requirements set forth in Section 2-8.9 of the County Code.

(3) *Subcontractor* means a person or entity contracted by a County Contractor to perform a portion of a County Contractors' contract with the County.

**(C) A Minimum Wage Requirement.** Commencing January 1, 2018, County Contractor >> s << ~~[[or]]~~ and Subcontractor >> s << shall be required to pay all of its employees a minimum wage >> pursuant to the wage scale set forth in section (D) << ~~[[of no less than fifteen (15) dollars per hour]]~~ as a condition of award of a County contract. Compliance with the minimum wage requirement may be achieved by paying a combination of wages and Qualifying Health Benefits. The minimum wage requirement shall not apply to: (1) recipients of County grants, (2) holders of County permits, concessions, franchises or license agreements, (3) County agreements to purchase, lease and rent real property, ~~[[and]]~~ (4) employees that are covered by the Living Wage Ordinance, Section 2-8.9 of the County Code ~~[[applies]]~~ >>, (5) goods or services procured by accessing other contracts that the County is authorized to access such as the contracts of other federal, state and local governmental units; and (6) where federal or state requirements prohibit the application of local wage rate legislation <<.

**(D) >> Wage Scale and << Indexing.** >> The minimum wage requirement in this section shall originally be set at \$10.50 per hour commencing January 1, 2018. << Commencing January 1, 2019, the minimum wage requirement in this section shall be >> \$12.50 per hour. Commencing January 1, 2020, the minimum wage requirement in this section shall be \$15.00 per hour. Commencing January 1, 2021, the minimum wage requirements in this section shall be << adjusted such that it is the same as the living wage rate required by Section 2-8.9 of the County Code. Thereafter, the minimum wage shall be indexed and adjusted such that the minimum wage required by this section is the same as the living wage rate required by Section 2-8.9 of the County Code.

**(E) Implementation.** A County Contractor shall be required to submit an affidavit under oath or affirmation certifying that it will comply with the requirements of this section during the term of the applicable County contract. Submission of such affidavit to the County shall be >> required at such time as the County issues work orders or a notice to proceed to the contractor that, singularly or

considered together, incurs a payment obligation to the County that exceeds \$250,000 annually which shall be<< a condition of award >>of such work order or notice to proceed<<. The County Mayor or designee shall include language in the specifications of applicable County solicitations for contracts to give effect to the intent of this section and shall implement such procedures to the awarding of County contracts to implement the intent of this section.

>>(F) Waiver. The Mayor or designee may waive the requirements of this section by certifying in writing that application of this section to a specific procurement has or will result in the receipt of an insufficient number of procurement bids or proposals necessary for competitive bidding. Upon execution of such written certification, the Mayor or designee may proceed with the procurement waiving the requirements of this section. The Mayor shall be required to issue a written report to the Board every six months listing the exercise of such written waivers of the requirements of this section.<<

~~[(F)]~~>>(G)<<**Compliance, Enforcement and Penalties.**

(1) The County Mayor or designee shall establish an administrative procedure for monitoring compliance with and enforcement of the requirements of this Section. Such procedure shall at a minimum provide that:

(a) The County Mayor or designee shall designate a unit of the County government to conduct investigations of compliance with the requirements of this Section ("Compliance Unit"). The Compliance Unit shall issue written notices to a contractor or subcontractor when it determines based on such investigation that the contractor or subcontractor has not complied with the requirements of this Section;

(b) The contractor or subcontractor shall respond in writing to the notice of noncompliance;

(c) Based on the response, the Compliance Unit may determine to rescind the notice of noncompliance or to conduct a compliance meeting with the affected contractor or subcontractor at which any additional evidence may be presented;

(d) The Compliance Unit shall make a written compliance determination following any compliance meeting. A determination that the contractor or subcontractor has not complied with the requirements of this section shall state the basis therefore and shall advise the contractor or subcontractor of its right to file a written request with the County Mayor or designee within 30 calendar days to schedule an administrative hearing before a hearing officer to appeal the determination as provided below.

(2) A contractor or subcontractor who fails to respond to a notice of noncompliance, fails to attend a compliance meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by the Compliance Unit 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 non-compliance and, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the employee and the contractor or subcontractor shall be fined the applicable penalty for such underpayment as provided in subsection (4). A contractor or subcontractor who does not make the required payment of the underpaid wages or who does not pay any fine imposed hereunder shall not be deemed responsible to perform subsequent County contracts and shall be ineligible to be awarded such contracts or to be a subcontractor on County contracts for so long as the identified underpayment or any penalties imposed therefor remain outstanding, not to exceed three years unless a debarment imposed pursuant to Section 10-38 of the County Code imposes a longer term.

(3) Upon timely receipt of a request for an administrative hearing before a hearing officer to appeal a determination of non-compliance, the County Mayor or designee shall appoint a hearing officer and fix a time for an administrative hearing thereon. A notice of hearing (together with a copy of the Compliance Unit's determination of non-compliance) shall be served upon the contractor or subcontractor. Upon completion of the hearing, the hearing officer shall submit proposed written findings and recommendations together with a transcript of the hearing to the County Mayor within a reasonable time. The County Mayor or designee shall determine whether the contractor or subcontractor failed to comply with the requirements of this ordinance. If the Mayor's or designee's determination is that the contractor or subcontractor failed to comply, ~~[[and that such failure was limited to isolated instances and was not pervasive,]]~~ the County Mayor or

designee may order that the contract work be suspended or terminated, and that the noncomplying contractor or subcontractor and the principal owners and management thereof be prohibited from bidding on or otherwise participating in County contracts covered by this Section for a period of up to three (3) years.

(4) In the case of underpayment of the minimum wage required by this section, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the affected employees and the contractor or subcontractor shall be fined the penalties provided below. If the Mayor's or designee's determination is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor may, in the case of underpayment of the required minimum wage, order an amount equal to the amount of such underpayment be withheld from the contractor and remitted to the employee, and may also fine the contractor or subcontractor for such noncompliance as follows: for the first underpayment, a penalty in an amount equal to 20% of the amount thereof; for the second determination of underpayment, a penalty in an amount equal to 40% thereof; for the third and successive underpayments, a penalty in an amount equal to 60% thereof. A fourth violation, shall constitute a default of the subject contract 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.

(5) Funds received from payment of penalties imposed hereunder shall be utilized solely to defray the Compliance Unit's costs of administering this section. If the required payment is not made within a reasonable period of time, the noncomplying contractor or subcontractor and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts ~~[[ for the construction, alteration, and/or repair, including painting or decorating of public buildings or public works]]~~ for a period of three (3) years.

**Section 2.** The requirements of this Ordinance shall apply to any contracts entered into, extended by exercise of option to renew or otherwise, amended, or modified on or after January 1, 2018.

**Section 3.** 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 4.** 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 5.** 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:

ER

Eric A. Rodriguez

Prime Sponsor: Chairman Jean Monestime