

# MEMORANDUM

Agenda Item No. 7(F)

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**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

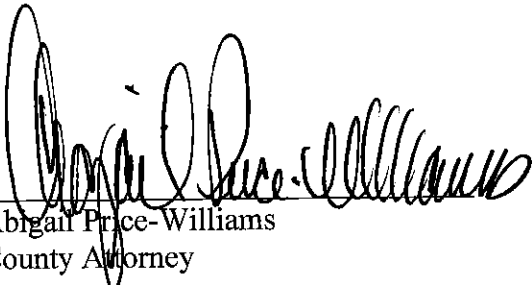
**DATE:** (Second Reading 10-3-17)  
June 6, 2017

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

**SUBJECT:** Ordinance relating to protection of persons disclosing specified information; amending Chapter 2, Article LXXI of the Code; prohibiting certain employers that contract with Miami-Dade County from retaliating against employees disclosing protected information to the County concerning the operation of a County department; preserving existing rights under any Collective Bargaining Agreement or employment contract

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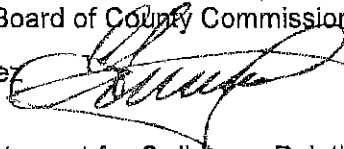
The accompanying ordinance was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Sally A. Heyman, Commissioner Daniella Levine Cava and Commissioner Barbara J. Jordan, and Co-Sponsor Vice Chairwoman Audrey M. Edmonson.

  
Abigail Price-Williams  
County Attorney

APW/lmp

# Memorandum

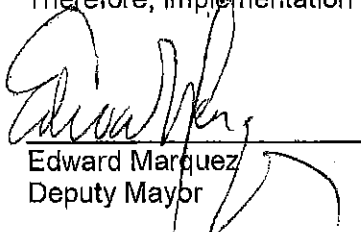


**Date:** October 3, 2017  
**To:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners  
**From:** Carlos A. Gimenez   
Mayor  
**Subject:** Fiscal Impact Statement for Ordinance Relating to Protection of Persons Disclosing  
Specified Information

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The proposed ordinance relating to protection of persons disclosing specified information amends Chapter 2, Article LXXI of the Code of Miami-Dade County (County) prohibits certain employers that contract with the County from retaliating against employees disclosing protected information to the County concerning the operation of a County Department.

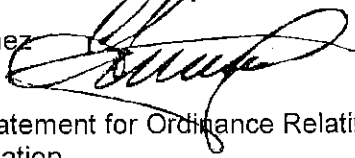
The Office of the Inspector General (OIG) currently provides the means by which any person wishing to disclose information can do so through their telephone hotline, email, website and/or a written correspondence. In addition, various Departments will provide oversight of any sanctions imposed, fines assessed, and/or ensuring that an independent contractor deemed ineligible for bidding on or participating in County contracts and permits is adhered to. Therefore, implementation of this ordinance will not have a fiscal impact to Miami-Dade County.

  
Edward Marquez  
Deputy Mayor

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# Memorandum

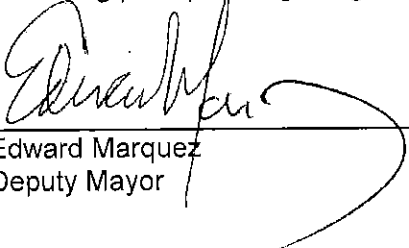


**Date:** October 3, 2017  
**To:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners  
**From:** Carlos A. Gimenez  
Mayor   
**Subject:** Social Equity Statement for Ordinance Relating to Protection of Persons Disclosing  
Specified Information

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The proposed ordinance relating to protection of persons disclosing specified information amends Chapter 2, Article LXXI of the Code of Miami-Dade County (County) prohibits certain employers that contract with the County from retaliating against employees disclosing protected information to the County concerning the operation of a County Department or independent contractor. The proposed ordinance also establishes sanctions for violations.

The prohibition from retaliation affords additional protections for employees of Miami-Dade County contractors and may encourage the communication of information related to allegations of malfeasance by County departments or County contractors. The proposed ordinance may assist investigations conducted by the Office of the Inspector General and will provide the County with opportunities to impose sanctions on County contractors in the event of violations. It is expected that the proposed ordinance, if implemented, will have a positive social impact by promoting principals of good government and transparency.

  
Edward Marquez  
Deputy Mayor

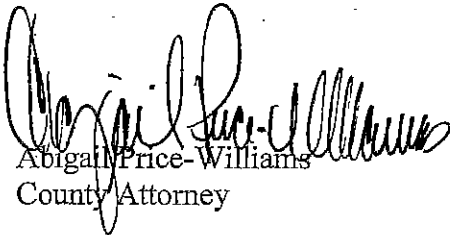


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** October 3, 2017

**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)  
10-3-17

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

ORDINANCE RELATING TO PROTECTION OF PERSONS DISCLOSING SPECIFIED INFORMATION; AMENDING CHAPTER 2, ARTICLE LXXI OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROHIBITING CERTAIN EMPLOYERS THAT CONTRACT WITH MIAMI-DADE COUNTY FROM RETALIATING AGAINST EMPLOYEES DISCLOSING PROTECTED INFORMATION TO THE COUNTY CONCERNING THE OPERATION OF A COUNTY DEPARTMENT; PRESERVING EXISTING RIGHTS UNDER ANY COLLECTIVE BARGAINING AGREEMENT OR EMPLOYMENT CONTRACT; 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, now codified as Chapter 2, Article IV, Division 6 of the Code of Miami-Dade County, which prohibits the County from retaliating against County employees for disclosing specified information concerning unlawful activity, misfeasance or malfeasance by the County or independent contractors; and

**WHEREAS**, in 1996, the Board of County Commissioners adopted Ordinance No. 96-41 known as the Whistle-blower Ordinance, now codified as Chapter 2, Article LXXI of the Code of Miami-Dade County, which currently prohibits the County from retaliating against any person for disclosing specified information concerning unlawful activity, misfeasance or malfeasance by the County or independent contractors; and

**WHEREAS**, the intent of this ordinance is to expand Chapter 2, Article LXXI to prohibit any employer with 10 or more employees that enters into a contract with the County, from retaliating against any employee or other person for disclosing specified information concerning

unlawful activity, misfeasance or malfeasance by employees, agents or independent contractors of County departments,

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

**Section 1.** Chapter 2, Article LXXI, of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:<sup>1</sup>

**CHAPTER 2. ADMINISTRATION**

\* \* \*

**ARTICLE LXXI. - PROTECTION OF PERSONS DISCLOSING SPECIFIED INFORMATION**

\* \* \*

**Sec. 2-967.2. - Definitions.**

As used in this Article:

- (1) County shall include all Miami-Dade County departments, and all political subdivisions and special districts under the County Commission's legislative authority.
- (2) Employee shall mean a person who performs services for, and under the control and direction of, the County >>or employer who enters into a contract with the County<< for wages or other remuneration.
- (3) Independent contractor shall mean a person, other than a federal, state or local government entity, engaged in any business and who enters into a contract with the County.
- (4) Person shall mean any natural person, corporation, firm, joint venture or entity other than a federal, state or local government entity or any employee thereof.

<sup>1</sup> 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.

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- >>(5) Employer shall mean any natural person, corporation, firm, joint venture, partnership, institution, association or entity other than a federal, state or local government entity, engaged in any business who enters into a contract with the County and who employs ten or more persons.
- (6) Retaliatory personnel action shall mean the discharge, suspension, or demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment.<<

**Sec. 2-967.3. - Actions prohibited.**

- (1) No County employee shall take any adverse action that affects the rights or interests of any person in retaliation for the person's disclosure of information under this article.
- >>(2) An employer shall not take any retaliatory personnel action against an employee, or any other adverse action that affects the rights or interests of the employee, because the employee has disclosed or threatened to disclose information pursuant to section 2-967.4 of this article, where the information disclosed or threatened to be disclosed involves alleged violations or acts by an employee, agent, independent contractor, or department of the County.<<

~~[[2]]>>(3)<<The provisions of this article shall not be applicable when a person discloses information known by the person to be false.~~

\* \* \*

**Sec. 2-967.5. - To whom information disclosed.**

- >>(1)<< The information disclosed under this article must be disclosed to the County ~~[[Manager]]~~ >>Mayor<< or such official or officials as he may designate to receive such information on his behalf or >>to the Office of Inspector General.
- (2) To facilitate the disclosure of information under this article, information may be submitted to the Inspector General:
- (a) through a telephone hotline established by the Office of the Inspector General;
  - (b) by email;
  - (c) by written and signed correspondence;
  - (d) through a website established by the Inspector General; or
  - (e) in person to the Inspector General or the Inspector General's staff.
- (3) Any information that complies with section 2-967.4 of this article that is disclosed to the Mayor or Mayor's designee shall timely be forwarded to the Office of the Inspector General for investigation. The Inspector General shall make a determination whether an investigation by the Inspector General is necessary.<<

**Sec. 2-967.6. - Persons protected.**

- (1) This article protects persons 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 article~~[[5]]~~>>; who disclose information to the Office of the Inspector General in accordance with the provisions of Section 2-967.5;<< or who are otherwise protected by the State Whistle-blower's Act. The provisions of this article may not be used by



persons 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.

- (2) No remedy or other protection under this article applies to any person who has committed or intentionally participated in committing a violation or suspected violation for which protection under this article is being sought.
- (3) It shall be an affirmative defense to any complaint brought pursuant to this article that the adverse action was predicated upon grounds other than, and would have been taken absent, the person's exercise of rights protected by this article.

**Sec. 2-967.7. - Procedure where complaint of retaliation >>is against the County, County Employee, or County Independent Contractor<<**

- (1) Any person protected by this article may file a written complaint within sixty (60) days after the action prohibited by this Article with the County ~~[[Manager]]~~ >>Mayor<<. The County ~~[[Manager]]~~ >>Mayor<< shall refer the complaint to the Independent Review Panel. The Independent Review Panel shall conduct a hearing after notice to the complainant, the respondent and the County department, political subdivision, special district or independent contractor involved. Any interested party may procure the attendance of witnesses and the production of records at such hearings in the manner provided by Section 2-50. All hearings requested pursuant to this paragraph shall be commenced insofar as is practicable within sixty (60) days of the County ~~[[Manager's]]~~ >>Mayor's<< receipt of the complaint, except that the County ~~[[Manager]]~~ >>Mayor<< shall have the authority to extend such time for reasonable cause.
- (2) The Independent Review Panel shall transmit its findings of fact, conclusions of law and any recommendation(s) together with the transcript of all evidence taken and all exhibits received by the Independent Review Panel to the County ~~[[Manager]]~~ >>Mayor<< for a final decision. The ~~[[Manager]]~~ >>Mayor<< may sustain, reverse or modify any action recommended by the Independent Review Panel. In

any case in which the Independent Review Panel finds that the person filed a frivolous complaint in bad faith, the Independent Review Panel may direct the person to pay the costs of the hearing, including attorney's fees.

**Sec. 2-967.8. - Relief >>where complaint of retaliation is against the County, County Employee, or County Independent Contractor<<.**

In any case brought under this article in which the County ~~[[Manager]]~~ >>Mayor<< or any other appropriate public authority finds that the person has been subjected to an adverse action in violation of this article, the ~~[[Manager]]~~ >>Mayor<< may:

~~[[a]]~~ >>(1)<< Refer the matter to the appropriate department head for appropriate disciplinary action >>of each County employee involved<<, if any;

~~[[b]]~~ >>(2)<< Compensate the person, if appropriate, for the lost income, benefits or other lost remuneration caused by the adverse action.

>>(3) For violations of this article as determined pursuant to the procedures set forth in section 2-967.7, the County may sanction a County independent contractor for violations of this article in one or more of the following ways:

(a) Require the County independent contractor to compensate the person, or reimburse the County for any amounts paid by the County to compensate the person, for the lost income, benefits or other lost remuneration caused by the adverse action of the County independent contractor.

(b) Debar the County independent contractor in accordance with the debarment procedures of the County.

(c) Suspend payment or terminate payment under the contract or terminate the contract with the County independent contractor.

- (4) If a County independent contractor fails to pay any sanctions that are assessed by the County under this article, such independent contractor and all officers, principals, directors, shareholders owning or controlling 10 percent or more of the stock, partners, qualifiers, divisions or other organizational elements of the non-complying County independent contractor may be declared by the County to be ineligible for bidding on or otherwise participating in County 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 County contracts for a period of up to 3 years. In addition all employers shall be ineligible for County contracts and permits under this article where any officers, principals, directors, shareholders owning or controlling 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 10 percent or more of the stock, partners, qualifiers, divisions or other organizational elements of an employer who has been declared ineligible under this article.
- (5) In addition to any other sanctions provided for herein, damages payable to the County in the amount of \$500.00 for each violation of this article.
- (6) All such sanctions recommended or imposed shall be a matter of public record.
- (7) 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 section 55.03, Florida Statutes.
- (8) No remedy against a County independent contractor, as set forth in this article, is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the right in a court of law under Section 2-967.8.1.<<

>>Sec. 2-967.8.1 – Additional remedy for complaint of retaliatory personnel action against an Employer; Relief

(1) Remedy.

- (a) In addition to the remedies set forth in Section 2-967.8 of this article, an employee who has been the object of a retaliatory personnel action in violation of this article may institute a civil action in a court of competent jurisdiction for relief as set forth in subsection (2) within 2 years after discovering that the alleged retaliatory personnel action was taken, or within 4 years after the personnel action was taken, whichever is earlier.
- (b) Any civil action authorized under this section may be brought in Miami-Dade County only.
- (c) An employee may not recover in any action brought pursuant to this subsection if the retaliatory personnel action was predicated upon a ground other than the employee's exercise of a right protected by this article.

(2) In any action brought pursuant to subsection (1), the court may order relief as follows:

- (a) An injunction restraining continued violation of this article.
- (b) Reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position.
- (c) Reinstatement of full fringe benefits and seniority rights.
- (d) Compensation for lost wages, benefits, and other remuneration.
- (e) Any other compensatory damages allowable at law.

(3) A court may award reasonable attorney's fees, court costs, and expenses to the prevailing party. <<

\* \* \*

**Sec. 2-967.10. - Existing rights.**

This article shall not be construed to diminish the rights, privileges or remedies of any person >>employer or employee<< under any other law or rule >>or under any collective bargaining agreement or employment contract<<.

**>>Sec. 2-967.11. – Confidentiality of Individuals Disclosing Information.**

The Board of County Commissioners intends for the protections of state law to be afforded to any person or employee who discloses information in compliance with this article to the local officials set forth in this article. 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.<<

**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.

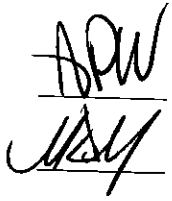
**Section 3.** It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

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**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:

Handwritten signature consisting of the letters 'APW' in a stylized, cursive font, with a horizontal line underneath.

Prepared by:

Marlon D. Moffett

- Co-Prime Sponsors: Commissioner Sally A. Heyman  
Commissioner Daniella Levine Cava  
Commissioner Barbara J. Jordan
- Co-Sponsor: Vice Chairwoman Audrey M. Edmonson