

**BCC Meeting: May 15, 2018
Research Notes**

**Item No. 2A1
File No. 181317**

Researcher: MF Reviewer: TD

ORDINANCE PERTAINING TO LEASES OF COUNTY PROPERTY FOR PRIVATE USE; AMENDING SECTION 2-8.9 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING FOR PAYMENT OF LIVING WAGE TO CERTAIN HOURLY EMPLOYEES OF CERTAIN COUNTY LESSEES; PROVIDING EXCEPTIONS; SUPERSEDING AND REPEALING RESOLUTION NO, R-148-07 [SEE ORIGINAL ITEMS UNDER FILE NOS. 180300, 181054]

ISSUE/REQUESTED ACTION

Whether the Board should approve the proposed ordinance to amend the Living Wage Ordinance for County service contracts to apply living wage requirements to certain hourly employees of certain County lessees.

APPLICABLE LEGISLATION/POLICY

Resolution No. R-148-07, adopted by the Board on February 2, 2007, directs the County Mayor to include a Labor Peace requirement in all requests for proposals, requests for qualifications, bids and contracts for concession opportunities at the Miami International Airport (The proposed ordinance would supersede and repeal Resolution No. R-148-07).

<http://intra/gia/matter.asp?matter=062523&file=true&yearFolder=Y2006>

Miami-Dade County Administrative Order No. 8-4 gives the Board the authority to sell or lease or otherwise dispose of County-owned real property.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/AO8-4.pdf>

Miami-Dade County Administrative Order No. 3-30 requires that all service contractors performing covered services pay employees no less than the applicable hourly living wage rate, with or without benefits.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/AO3-30.pdf>

Miami-Dade County Code, Section 2-8.9 codifies the Living Wage Ordinance for County Service Contracts and County Employees.

<https://www.miamidade.gov/business/library/ordinances/living-wage-code.pdf>

Miami-Dade County Code, Section 2-8.6.5 governs purchases, sales and lease of real property.

[https://library.municode.com/fl/miami -
dade county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.6.5PUSALEREPR](https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.6.5PUSALEREPR)

PROCEDURAL HISTORY

Prime Sponsor: Commissioner Barbara J. Jordan, District 1

The proposed ordinance was adopted on first reading at the Board meeting on February 21, 2018. At that meeting, Commissioner Martinez requested that the item be bifurcated. Commissioners Martinez, Sosa and Diaz voted “no”.

The proposed ordinance was considered at the Government Operations Committee meeting of March 13, 2018.

Commissioner Sosa expressed her concerns with this item, noting the companies would have to pay two different sets of wages: one for the employees working in properties owned by the County, and one for the employees working in other locations. She said she was opposed to dictating to companies what they should pay their employees. She also

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pointed out that the proposed ordinance could have unintended consequences because private companies may be reluctant to rent County-owned property to avoid paying living wages.

Commissioner Martinez said he was opposed to imposing compromises reached with labor unions on private companies.

Assistant County Attorney David Murray noted the Board in 2007 passed a requirement that concessionaires in Aviation Concession Leases have Labor Peace Agreements. He said the intent was to ensure that employees, to the extent that they wished to unionize, did not do so in a manner that was disruptive to the operations of the airport. He explained that when a union sought to represent a concessionaire's workforce, the concessionaire, as a pre-condition to being awarded a concession by the Board, had to enter into a Labor Peace Agreement with that union.

The proposed ordinance was deferred to the next Committee meeting by the Government Operations Committee.

The proposed ordinance was considered at the April 17, 2018 Government Operations Committee meeting.

Assistant County Attorney David Murray read into the record the following proposed amendment: On handwritten page 9, the following exemptions would be added, "Any entity or individual leasing space", "A Public Health Trust property", and "Any non-profit organizations"; and on handwritten page 10, Section 5, dealing with Miami-Dade County Resolution No. R-148-07, would be deleted.

In response to Commissioner Martinez' question as to whether the proposed ordinance would remove the requirement for Labor Peace Agreements, Assistant County Attorney Murray clarified that it did not alter the requirement that concessionaires in Aviation Concession Leases have Labor Peace Agreements; however, it did not expand the requirement beyond the airport.

Responding to Commissioner Martinez' question regarding whether the County had imposed this requirement on private companies in the past, Assistant County Attorney Murray recalled that in 2007 the Board passed a requirement that concessionaires in Aviation Concession Leases have Labor Peace Agreements; however, this requirement solely applied to the airport. He advised that the proposed ordinance, as amended, would not expand this requirement beyond the airport.

The proposed ordinance was forwarded to the BCC with a favorable recommendation, with Committee amendments to (a) create exemptions for lessees at the Public Health Trust and also for lessees which are Community-Based Organizations, and (b) delete all references to Resolution No. R-148-07 (Commissioner Martinez voted "no").

At the May 1, 2018 Board meeting, the proposed ordinance was deferred to the May 15, 2018 BCC meeting, at the request of the Prime Sponsor.

The proposed ordinance was considered at the May 15, 2018 BCC meeting.

Assistant County Attorney David Murray read the following proposed amendment into the record: 1) to add the language "or any contractor or subcontractor of such lessee," immediately following "Services of hourly employees of any lessee," to the first sentence of Section (3); and 2) to add the language "A lessee who is otherwise exempt under this subsection may still be required to provide a living wage to its employees if it engages in activities covered in Sections 2-8.9(F)(1) and 2-8.9(F)(2)" to the end of Section 3.

Pursuant to Commissioner Edmonson's request for clarification regarding the proposed amendment, Assistant County Attorney Murray explained that the first part of the proposed amendment would clarify that if the County were to

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lease a property to a company, and the company sub-contracted employees, the company would still be required to pay a living wage to those employees if they were working on County-owned property. He further explained that the second part of the proposed amendment stated that if the company provided goods or services to the County pursuant to a County contract, or provided gas-related services at the airport, it would still be required to pay a living wage to its employees.

Commissioner Jordan emphasized that the proposed ordinance would not impact existing leases or their renewal.

Assistant County Attorney Murray confirmed that the proposed ordinance would not apply retroactively.

Ms. Lily Bach, Political Director, 32 BJ SEIU, applauded Commissioner Jordan for her efforts to expand the living wage to County lessees. She noted if the proposed ordinance did not pass, as amended, there would be unintended, significantly harmful consequences for working families. She pointed out that without the amendment the proposed ordinance had two shortcomings: first, the proposal would cover lessees, but not their contractors or sub-contractors, which would provide them a loophole to avoid paying the living wage; second, the proposal expressly carved out airlines from its coverage, and unless it was clear that this carve out applied only to this additional sub-section of the living wage ordinance, it might result in excluding airlines from coverage when they performed services for another airline. She noted the amendment's stated goal of using County-owned land to drive prosperity in the community would be undermined. Ms. Bach said she believed that if airline leases were excluded from this section, it should be clear that they were not exempted from their responsibilities to comply with the other living wage sub-section related to paying living wages for performing gas-related services. She stressed that the living wage should apply to all workers operating on County-owned land, not only to some groups of workers.

Responding to Commissioner Sosa's question as to whether the exemptions still applied, Assistant County Attorney Murray confirmed that they were included in the proposed ordinance.

Commissioner Sosa lamented that the proposed ordinance was seeking to impose on the private industry what they should pay their employees. She expressed her concerns with the proposed ordinance, noting the companies would have to pay two different sets of wages: one for the employees working in properties owned by the County, and one for the employees working in other locations. Commissioner Sosa noted the proposed ordinance would hurt the tourism industry, including the airport and the port.

Commissioner Diaz said while he supported the living wage, he did not want to hinder competitiveness. He noted he wanted to be certain that the proposed ordinance would not impact existing leases or their renewal.

In response to Commissioner Martinez' question regarding whether the proposed ordinance would apply to the renewal of leases, Assistant County Attorney Murray stated that this item did not direct County staff to ensure that the lessee was paying a living wage before renewing a lease. He advised that the Board could direct that the payment of living wages be incorporated into all renewals, if it so chose.

Commissioner Martinez pointed out that this item would then leave this question open to the interpretation of a future administration. He said he had always voted for County workers to earn a living wage; however, he did not believe that the County should be dictating to the private sector what they should pay their employees.

Commissioner Heyman noted in the past she supported the living wage items because they pertained to services that came under County control. She said she shared quite a few of her colleagues' concerns; one of her concerns was that the requirement should not be retroactive. She also expressed her concern related to people with disabilities, who may receive higher wages as a result of the proposed ordinance, but who may, as a result no longer qualify to receive disability benefits.

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Assistant County Attorney Murray noted the programs to which Commissioner Heyman was referring were typically federal and State programs for supplemental assistance; and they were structured in such a way that as an employee's wages rose, their benefits were reduced in a commensurate level. He emphasized that the employees would not be made worse off because they earned higher wages, as the programs were designed to incentivize people to work.

Pursuant to Commissioner Monestime's question as to whether the proposed ordinance, even if it were adopted, could be waived if the County needed to enter into a particular contract, Assistant County Attorney Murray advised that in such cases, the Board could pass a subsequent ordinance creating additional exemptions.

Commissioner Monestime noted the last time a similar ordinance was put forth, a businessman told him that his only issue with it was that it was retroactive. He indicated that as the proposed ordinance was prospective, he was in support of the item.

Commissioner Moss recalled that any time the Board had supported these kinds of initiatives, they had done it to raise the standard of living of the residents. He compared San Diego's medium income to Miami's, and pointed out that San Diego's had increased considerably in recent years. Commissioner Moss expressed his concern with how the proposed ordinance would impact the County's competitiveness; however, his over-riding concern was to help the residents increase their quality of life.

Commissioner Suarez said he concurred with Commissioners Monestime and Moss that the County should seek to help its residents to the extent that it could use its assets to do so; and in the case of a monopoly, such as the airport and the seaport there was no concern regarding competitiveness. He pointed out that some cities were requiring that all jobs within their boundaries pay a living wage.

Commissioner Lava lamented that the County had been pre-empted by State law from passing a higher minimum wage; yet it was one of the counties within the country with the lowest prevailing wage rates and one of the highest cost of living. Therefore, she noted, it was incumbent upon the Board to find ways to increase the standard of living of the County's residents. Commissioner Levine Cava said she was dismayed when she learned that the County had exempted the concessionaires at the airport from any wage guarantees because of the Minimum Annual Guarantee. She expressed the belief that the proposed ordinance would help redress that wrong.

Commissioner Jordan pointed out that the federal government dictated to the County every day regarding federal contracts. She stressed that the County was another level of government, and its role was to ensure the welfare of the community members. She acknowledged the need to encourage the private sector to grow, and this was the reason for the legislation that the Board had adopted in favor of local and small businesses. Commissioner Jordan stressed that businesses preferred to be located on County-owned land because it was more profitable for them; and it was unlikely that they would choose to lease elsewhere if the County imposed living wages. She recalled that recently the Board passed an ordinance imposing living wage for construction companies operating on County-owned land. She reiterated that the proposed ordinance was prospective and would not apply retroactively.

The proposed ordinance was adopted by the Board.

The ordinance was vetoed by the Mayor. In his veto message received by the Clerk of the Board on May 23, 2018, the Mayor noted "[w]hile a short-term benefit to our local workforce in terms of increased wages could be realized by enactment of this ordinance, the long-term consequences – particularly relating to the potential loss of jobs and revenue – greatly outweigh any potential short-term gains. Like most large urban governments, the focus of economic development in Miami-Dade County is job creation. With enactment of this ordinance, Miami-Dade County would be at a long-term competitive disadvantage with neighboring counties like Broward and Palm Beach that do not subject

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lessees to the living wage. Implementation of this ordinance may also deter businesses from setting up shop in Miami-Dade County and cause others to relocate operations to more cost-effective locations. Specifically, increasing wages may cause production costs to rise, making Miami-Dade County a less desirable place to do business. Moreover, higher costs may ultimately be passed down to our residents. In closing, this legislation sets a bad precedent, and my Administration and I stand ready to continue to work with the Board as we strive to make the right decisions entrusted to us by the residents of Miami-Dade County.”

FISCAL IMPACT

According to the Fiscal Impact Statement, implementation of this ordinance will have an indeterminate fiscal impact for Miami-Dade County. It will not result in additional staffing. However, there may be an impact in relation to attracting fewer future lessees for County property and a potential decrease in future rental rates.

ANALYSIS

The purpose of this proposed ordinance is to seek the Board’s approval to amend the Living Wage Ordinance to require that certain County properties that are being leased to a lessee provide payment of living wage to certain hourly employees. The existing ordinance covers the following services: County service contracts that involve a total contract value of over \$100,000 per year for food preparation, security services, routine maintenance services, clerical office work, transportation and parking services, etc.; service contractors at Aviation Department facilities, such as ramp service, porter assistance services, janitorial services, in-house cargo handling, etc.

The proposed ordinance would add the following provisions to Subsection (F) regarding services covered by the existing ordinance:

(3) Services Performed by Employees of County Lessees on County Property

Services of hourly employees of any lessee offering goods or services for sale to the public pursuant to any lease of County owned property, but only to the extent such employees are actually employed at the location of such lease. For purposes of this section, an employee shall be considered “actually employed” at such location if that employee spends more than half of their working hours onsite at the location of the lease, or if the employee must physically report to the location of the lease at the beginning or end of the working day or both.

This amendment carves out an exception for the following lease categories:

- *Any airline offering passenger or cargo transportation services;*
- *Any maritime passenger cruise line;*
- *Any maritime cargo line;*
- *Any lease appurtenant to any contract with a contractor providing goods and services to the County;*
- *Any lease to an architect/engineer appurtenant to an ongoing County construction project;*
- *Any lease to a construction contractor pursuant to any ongoing County construction contract;*
- *Any lease to a state or federal entity;*
- *A lessee leasing any property owned or operated by the Public Health Trust;*
- *A Community-Based Organization; or*
- *A lessee who is exempt from this requirement pursuant to federal or Florida Law.*

The proposed ordinance would also supersede and repeal Resolution No. R-148-07, which directs the County Mayor to include a Labor Peace requirement in all requests for proposals, requests for qualifications, bids and contracts for concession opportunities at the Miami International Airport (MIA).

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The Living Wage requirement was established by the Board on May 11, 1999. This requirement is for employees on County service contracts to allow individuals to support themselves and their families above the poverty line and with dignity. The County believes that employees making the State minimum wage of \$8.25 per hour are more likely to have financial difficulties and make use of governmental services. Therefore, County property should be used to promote business activities that drive broad-based prosperity throughout all communities in the County.

The Living Wage applies to contracts valued greater than \$100,000 per year for the following services:

- Food preparation and/ distribution;
- Security services;
- Routine maintenance service such as custodial, cleaning, refuse removal, repair, refinishing and recycling;
- Clerical or non-supervisory work;
- Transportation and parking services including airport and seaport services;
- Printing and reproduction service; and,
- Landscaping, lawn, and/ agricultural services.

The current living wage for County contracts for covered services entered into before October 1, 2016 is \$13.20 per hour with qualifying health benefits valued at least \$1.91 per hour, otherwise \$15.11 per hour. There was an increase of 2.85 percent compared to the FY 2016/2017 rate.

Living wage for contracts for covered services entered into, extended (by exercise of option to renew or otherwise), amended, or modified on or after October 1, 2016, and all service contractors operating under permits for the Aviation Department is \$12.99 per hour with qualifying health benefits valued at least \$3.16 per hour, otherwise \$16.15 per hour. There was an increase of 4.06 percent compared to the FY 2016/2017 rate.

According to the Social Equity Statement, the proposed ordinance has a direct social impact, as applying the applicable Living Wage rate could benefit eligible employees by providing them with increased wages/benefits. However, such benefit to the employees could impact their employers who will be required to comply with an increased amount.