

MEMORANDUM

Agenda Item No. 11(A)(9)

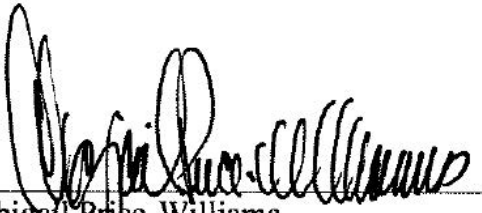
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: August 31, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution directing the County Mayor to ensure that certain documents executed in conjunction with the receipt of funding or other incentives through the County's affordable housing programs include a provision that makes it a violation and breach of such documents if fund recipients engage in constructive evictions, such as illegal lockouts and utility shutoffs

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


Abigail Price-Williams
County Attorney

APW/uw



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: August 31, 2020

FROM: 
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County Attorney

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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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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. 11(A)(9)
8-31-20

RESOLUTION NO. _____

RESOLUTION DIRECTING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO ENSURE THAT CERTAIN DOCUMENTS EXECUTED IN CONJUNCTION WITH THE RECEIPT OF FUNDING OR OTHER INCENTIVES THROUGH THE COUNTY'S AFFORDABLE HOUSING PROGRAMS INCLUDE A PROVISION THAT MAKES IT A VIOLATION AND BREACH OF SUCH DOCUMENTS IF FUND RECIPIENTS ENGAGE IN CONSTRUCTIVE EVICTIONS, SUCH AS ILLEGAL LOCKOUTS AND UTILITY SHUTOFFS

WHEREAS, coronavirus disease 2019 ("COVID-19") is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, on March 1, 2020, the Governor of Florida issued an executive order directing the State Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19 in Florida; and

WHEREAS, also on March 1, 2020, the State Surgeon General declared that a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS, on March 9, 2020, the Governor issued Executive Order 20-52 declaring a state of emergency for the entire State of Florida as a result of COVID-19; and

WHEREAS, on March 12, 2020, the County Mayor declared a state of local emergency for all of Miami-Dade County; and

WHEREAS, these orders have been extended and remain in place; and

WHEREAS, in Resolution No. R-1253-19, this Board directed the County Mayor or the County Mayor's designee to take all necessary and appropriate steps to ensure that neither Miami-

Dade Public Housing and Community Development Department nor the Miami-Dade Police Department (“MDPD”) take actions that would result in the eviction of residents of public housing or other affordable housing; and

WHEREAS, in conjunction with the County Mayor’s declaration of emergency, MDPD announced that officers would not assist with evictions during the pendency of the emergency and that MDPD was temporarily suspending all eviction-related activities until further notice, including assisting landlords in removing tenants or serving court papers; and

WHEREAS, on April 2, 2020, the Governor issued Executive Order 20-94, which, in part, suspended and tolled “any statute providing for an eviction cause of action under Florida law solely as it relates to non-payment of rent by residential tenants due to the COVID-19 emergency for 45 days from the date of the executive order, including any extensions”; and

WHEREAS, on May 14, 2020, the Governor issued Executive Order 20-121, which extended Executive Order 20-94 until June 2, 2020; on June 1, 2020, the Governor issued Executive Order No. 20-137, which further extended Executive Order No. 20-94 until July 1, 2020; and on June 30, 2020, the Governor issued Executive Order 20-159, which further extended Executive Order 20-94 until August 1, 2020; and

WHEREAS, the Chief Justice of the Florida Supreme Court and the Chief Judge of the Eleventh Judicial Circuit of Florida also adopted administrative orders that automatically delayed or stayed the issuances of writs of possession associated with residential eviction actions at the time the Governor and the County Mayor issued their declarations of emergency; and

WHEREAS, on May 12, 2020, the Chief Judge of the Eleventh Judicial Circuit of Florida, in an effort to comply with the requirements of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) issued another administrative order extending the time for evictions of residents who reside in dwelling units covered by the CARES Act, including, but not limited to public housing, until August 23, 2020; and

WHEREAS, on June 17, 2020, the federal government announced that it will extend until August 31, 2020 the moratorium on evictions and foreclosures of persons from Federal Housing Administration-insured single family properties, which ceases evictions, halts new foreclosure actions and suspends foreclosure actions currently in process for such units, excluding legally vacant or abandoned properties; and

WHEREAS, as a result of these declarations of emergency and mandatory closures of non-essential businesses in Miami-Dade County, thousands of workers in Miami-Dade County and throughout this State have been laid off, furloughed, or left with significantly-reduced work hours; and

WHEREAS, many of Florida’s residents and families are struggling to make ends meet, and are unable to pay for basic necessities such as rent and food; and

WHEREAS, notwithstanding the extraordinary steps taken by the federal, state and local governments, including the courts, to protect renters from eviction during the declarations of emergency, there have been reports of landlords taking matters into their own hands to forcibly evict tenants; and

WHEREAS, the Florida Legislature enacted the Florida Residential Landlord and Tenant Act, as codified in chapter 83, part II, Florida Statutes (the “Landlord Tenant Act”); and

WHEREAS, the Landlord Tenant Act provides certain protections for tenants, and prohibits certain activities by landlords to force tenants out of their dwelling unit without first complying with the eviction process set forth in the Landlord Tenant Act; and

WHEREAS, specifically, section 83.67 of the Landlord Tenant Act prohibits, among other things, a landlord from (i) terminating or interrupting any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord; (ii) preventing a tenant from gaining reasonable access to their dwelling unit by any means, including, but not limited to, changing the locks or using any bootlock or similar device; (iii) removing the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; or (iv) removing a tenant's personal property from their dwelling unit unless such action is taken after surrender, abandonment, recovery of possession of the dwelling unit due to the death of the last remaining tenant or a lawful eviction; and

WHEREAS, section 83.67 further provides that a landlord who violates the Landlord Tenant Act shall be liable to their tenant for actual and consequential damages or three months' rent, whichever is greater, and costs, including attorney's fees, and further provides that subsequent or repeated violations that are not contemporaneous with the initial violation shall be subject to separate awards of damages; and

WHEREAS, in order to enforce the provisions of section 83.67, a tenant would need to seek redress in court; and

WHEREAS, because such constructive evictions are considered civil matters, oftentimes, law enforcement personnel are not able to assist the tenant, or cite or impose a criminal penalty on a landlord who violates the law; and

WHEREAS, tenants facing constructive evictions often do not have the time nor financial means to challenge such illegal acts in court, and they are forced to endure unsafe and unsanitary conditions, even homelessness, while attempting to resolve the matter through the judicial system; and

WHEREAS, the County relies heavily on its partnerships with the private sector to acquire, construct or rehabilitate affordable housing developments through the County's affordable housing programs, such as the Miami-Dade Infill Housing Initiative Program, Documentary Stamps Surtax, State Housing Initiatives Partnership, HOME Investment Partnership, Community Development Block Grant and the Building Better Communities General Obligation Bond programs ("affordable housing programs"); and

WHEREAS, the purpose of the affordable housing programs is not only to increase the supply of affordable housing in the County and to ensure that qualifying households have decent, safe and sanitary housing in which to live without the threat that they may be evicted by means other than through the courts; and

WHEREAS, through the affordable housing programs, recipients receive loans, grants or other incentives through the affordable housing programs that are approved by this Board; and

WHEREAS, as a condition of receiving a loan, grant or other incentives through one or more of the affordable housing programs, recipients, who acquire, construct or rehabilitate affordable rental housing developments, are required to execute and record documents, which include, but are not limited to, loan documents, funding agreements, grant agreements, ground leases, deeds, covenants, or rental regulatory agreements ("governing documents"), that require the such housing developments, among other things, to remain affordable for a period of time; and

WHEREAS, the governing documents also require recipients to comply with all applicable laws pertaining to the affordable housing programs as well as other state, federal and local laws; and

WHEREAS, one of the many laws with which recipients who develop affordable rental housing must comply is the Landlord Tenant Act, inclusive of section 83.67 of such act; and

WHEREAS, this Board believes that the COVID-19 pandemic has highlighted the need for additional Board policies to ensure that those tenants who are housed in affordable rental developments that are funded or incentivized through one or more of the affordable housing programs are not subjected to prohibited activities, such as constructive evictions,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board incorporates and approves the foregoing recitals as if fully set forth herein.

Section 2. For purposes of this resolution:

- a. The term “County’s affordable housing programs” shall mean all County affordable housing programs, including, but not be limited to, the Miami-Dade Infill Housing Initiative Program, Documentary Stamp Surtax, State Housing Initiatives Partnership, HOME Investment Partnership, Community Development Block Grant and the Building Better Communities General Obligation Bond programs; and

- b. The term “affordable housing documents” shall mean documents executed in conjunction with the County’s affordable housing programs including, but not be limited to, loan documents, funding agreements, grant agreements, ground leases, deeds, covenants, or rental regulatory agreements.

Section 3. This Board directs the County Mayor or the County Mayor’s designee to include the following provision, as generally stated below in at least one of the affordable housing documents executed as a condition of receiving funds or other incentives through one or more of the affordable housing programs:

[Insert Name or Title of Recipient Here] acknowledges that it has received County funds or other incentives that are being used for the acquisition, rehabilitation, or construction of affordable rental housing. Therefore, [Insert Name or Title of Recipient Here], as a condition of receiving County funds or other incentives, agrees to comply with all applicable state, federal and local laws, including but not limited to, the Florida Residential Landlord and Tenant Act, as codified in chapter 83, part II, Florida Statutes (“Landlord Tenant Act”). In the event [Insert Name or Title of Recipient Here] is found by the County, in its sole discretion, to have violated section 83.67 of the Landlord Tenant Act, by engaging in any prohibited activities as set forth therein, including, but not limited to, (i) terminating or interrupting any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, [Insert Name or Title of Recipient Here]; (ii) preventing a tenant from gaining reasonable access to their dwelling unit by any means, including, but not limited to, changing the locks or using any bootlock or similar device; (iii) removing the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; or (iv) removing a tenant’s personal property from their dwelling unit unless such action is taken after surrender, abandonment, recovery of possession of the dwelling unit due to the death of the last remaining tenant or a lawful eviction, [Insert Name or Title of Recipient Here] shall be deemed to have violated the terms of the Loan Documents and be in breach of same.

The Prime Sponsor of the foregoing resolution is Commissioner Jean Monestime. 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:

Audrey M. Edmonson, Chairwoman

Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.

Jose "Pepe" Diaz

Eileen Higgins

Joe A. Martinez

Dennis C. Moss

Xavier L. Suarez

Daniella Levine Cava

Sally A. Heyman

Barbara J. Jordan

Jean Monestime

Sen. Javier D. Souto

The Chairperson thereupon declared this resolution duly passed and adopted this 31st day of August, 2020. 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.



Terrence A. Smith