

MEMORANDUM

Agenda Item No. 7(C)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners


DATE: (Second Reading 11-2-21)

June 2, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to the bid protest process; amending section 2-8.4 of the Code to: (1) codify County procedures for selection, term, qualifications, selection criteria, attendance requirements, removal and vacancies of hearing examiners for bid protest hearings; and (2) require the County Mayor to publish upcoming or existing hearing examiner panel vacancies

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Senator René García.


Geri Bonzon-Keenan
County Attorney

GBK/smm

Memorandum



Date: November 2, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Fiscal Impact Statement for Ordinance Relating to Bid Protest Process Amend Sec. 2-8.4

The proposed legislation contained within File No. 211324 will have a fiscal impact upon the Clerk's office that cannot be fully determined at this time. The legislation will require staff to take on administrative responsibilities beyond current duties, that may call for additional technology tool(s) to manage and process the work that is being researched. The administrative duties may be absorbed by existing staff within the Clerk of the Board Division; however, the cost of the required technology tool(s) will need to be further investigated and researched along with the cost of advertisement based on the frequency of postings (as applicable).

A handwritten signature in blue ink that reads "Edward Marquez".

Edward Marquez
Chief Financial Officer

Memorandum



Date: November 2, 2021

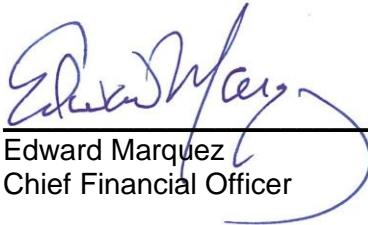
To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor *Daniella Levine Cava*

Subject: Social Equity Impact Statement for Ordinance Relating to Amending Section 2-8.4 of the Miami-Dade County Code

The proposed ordinance seeks to amend Section 2-8.4 of the Code to 1) codify County procedures for selection, term, qualifications, selection criteria, attendance requirements, removal and vacancies of Hearing examiners for bid protest hearings; and 2) require the County Mayor or Mayor's designee to publish upcoming or existing hearing examiner panel vacancies, providing severability, inclusion in the Code, and an effective date.

The implementation of this ordinance will improve the existing process of the selection, appointment, retention or removal of Hearing examiners. It stands to benefit and support the County's social equity policy direction, as well as our decision-making, planning, operations and services, to advance equity and social justice within a County government that is open and accessible to all citizens.


Edward Marquez
Chief Financial Officer



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: November 2, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 7(C)

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. 7(C)
11-2-21

ORDINANCE NO. _____

ORDINANCE RELATING TO THE BID PROTEST PROCESS; AMENDING SECTION 2-8.4 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO: (1) CODIFY COUNTY PROCEDURES FOR SELECTION, TERM, QUALIFICATIONS, SELECTION CRITERIA, ATTENDANCE REQUIREMENTS, REMOVAL AND VACANCIES OF HEARING EXAMINERS FOR BID PROTEST HEARINGS; AND (2) REQUIRE THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO PUBLISH UPCOMING OR EXISTING HEARING EXAMINER PANEL VACANCIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, section 2-8.4 of the Code of Miami-Dade County creates a bid protest procedure to hear administrative complaints regarding most competitive processes utilized by the County to purchase goods, supplies or services; and

WHEREAS, the purpose of a bid protest is to allow a neutral hearing examiner to hear evidence and argument and determine whether a procurement recommendation is free from any fraudulent, arbitrary, illegal, or dishonest conduct; and

WHEREAS, upon hearing a bid protest, the hearing examiner provides a report and recommendation to the Board setting forth the hearing examiner's findings of facts and conclusions of law; and

WHEREAS, section 2-8.4 provides that hearing examiners are to be selected from a panel of retired judges who have served ten years or more as Circuit Judges in the Eleventh Judicial Circuit in and for Miami-Dade County and that they may be selected "from alternate sources where the County Attorney recommends in writing that such action is necessary to achieve greater diversity;" and

WHEREAS, on July 11, 1995, the then-County Attorney and the Clerk of the Board presented a memorandum to this Board recommending that hearing examiners be selected from alternate sources and setting forth a procedure for the selection and utilization of hearing examiners; and

WHEREAS, this Board desires to codify these long-standing procedures for the selection and utilization of hearing examiners and to also require the County Mayor or Mayor's designee to publicize vacancies on the panel of hearing examiners so as to encourage attorneys in good standing who meet the minimum requirements to apply and be considered for appointment as a hearing examiner,

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

Section 1. Section 2-8.4 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-8.4. Protest Procedures.

This section shall govern any protest made by a participant in any competitive process utilized for selection of a person or other entity to construct any public improvement, to provide any supplies, materials or services (including professional or management services other than professional services whose acquisition procedure is governed by the Consultant's Competitive Negotiation Act, F.S. Section 287.055 et seq.), or to lease any county property.

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 foregoing notwithstanding the protest procedures contained in this section shall not apply to contracts and purchases which the County Mayor has the delegated authority to award under Section 2-8.1(b) of this Code, and protests thereon shall be governed by procedures established by implementing order approved by the Board of County Commissioners.

A protest hereunder may not challenge the relative weight of the evaluation criteria or the formula specified for assigning points therefor contained in bid, request for proposals ("RFP") or request for qualifications ("RFQ") specifications which have been approved by the Commission. A protest hereunder may not challenge any recommendation to reject all proposals received for a solicitation.

* * *

(f) Hearing examiners shall be selected ~~>>~~and appointed as follows:

(1) Panel. A~~<<~~ ~~[[from a]]~~ panel ~~>>~~of 10 hearing examiners (the "Panel") shall be selected from among and comprised~~<<~~ of retired judges who have served ten (10) or more years as Circuit Judges in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida ~~>>~~and other members of the Florida Bar who meet the minimum requirements for selection set forth below~~<<~~. ~~>>~~The number of~~<<~~ Hearing examiners may be ~~[[selected from alternate sources where]]~~ ~~>>~~increased where~~<<~~ the County Attorney ~~>>~~or the Clerk of the Board finds and~~<<~~ recommends in writing that such action is necessary to ~~[[achieve greater diversity]]~~ ~~>>~~handle the existing case load.

(2) Appointment and Term. The Clerk of the Board and the County Attorney shall jointly select and appoint the hearing examiners to serve on the Panel. Each hearing examiner on the Panel shall serve for a term of two years, unless the term is terminated sooner as provided below. Upon expiration of a term, a hearing examiner shall be eligible for reappointment in accordance with the applicable selection criteria.

- (3) Minimum requirements. Retired judges who have served ten years or more as Circuit Judges in the Eleventh Judicial Circuit in and for Miami-Dade County may be selected as hearing examiners. Any other person who desires to serve must be an elector of the State of Florida, reside in Miami-Dade County, and be a current member in good standing of the Florida Bar for at least ten continuous years immediately preceding one's appointment and term.
- (4) Selection Criteria. Selection of hearing examiners shall be made with consideration of the following selection criteria:
- i. Hearing examiners should represent the community at large and reflect the racial, gender and ethnic make-up of the community.
 - ii. The selection and appointment of hearing examiners shall avoid the appearance of impropriety or bias. Accordingly, lawyers who, individually or as members of law firms, have a substantial involvement, directly or indirectly, in matters involving the County, will not be selected.
 - iii. Hearing examiners shall have demonstrated professional competence and the highest levels of integrity and ethical conduct.
 - iv. To achieve greater diversity in the persons serving as hearing examiners, prior service as a hearing examiner under this section of the Code will be disfavored in the selection process for a vacancy following the expiration or termination of a prior term.
- (5) Utilization and Attendance. The Clerk of the Board shall designate the hearing examiner to be utilized for any particular hearing by blind rotation from the among the Panel members.

A hearing examiner shall be automatically removed from the Panel if, during any year: (1) he or she is unavailable to serve as a hearing examiner at the request of the Clerk on three consecutive occasions; or (2) he or she is unable to serve on five occasions during his/her term.

- (6) *Removal and vacancies.* A hearing examiner may be removed from the Panel by the County Attorney and Clerk of the Board jointly for dereliction of duty, repeated inability to meet the applicable time frames of this section, failure to maintain active Florida Bar membership, the discovery of a material omission, misstatement or misrepresentation with regards to the qualifications of the applicant to serve as hearing examiner or a material change with respect to those qualifications. No less than 60 days prior to the expiration of the term of any hearing examiner on the Panel or immediately upon the occurrence of any vacancy on the Panel, the County Mayor or Mayor's designee shall post prominently on the County's website and publish for no less than once a week for two weeks in a newspaper of general circulation in the County, the fact that there will be an upcoming or pending vacancy on the Panel of hearing examiners along with the minimum requirements for hearing examiners, information on how to apply and deadline by when to apply. The Clerk of the Board and the County Attorney shall report to the Board on the selection of any hearing examiners to the Panel along with detailed information on how each of the hearing examiners on the Panel satisfy the minimum requirements and selection criteria, including but not limited to, their respective race, gender, and ethnicity to ensure that they are representative of the community at large<<.

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:

Monica Rizo Perez
Eduardo W. Gonzalez

Prime Sponsor: Senator René García

GKS for GBK
MRP