

MEMORANDUM

Agenda Item No. 8(F)(3)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: October 3, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving
Implementing Order No.
3-30 entitled "Living Wage
Requirement for County Service
Contracts" and rescinding
Administrative Order No.
3-30 entitled "Living Wages
Requirement for County Service
Contracts"

The accompanying resolution was prepared by the Internal Services Department and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.



Geri Bonzon-Keenan
County Attorney

GBK/uw

MDC001

Memorandum



Date: October 3, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava *Daniella Levine Cava*
Mayor

Subject: Resolution approving Implementing Order No. 3-30: Living Wage Requirement for County Service Contracts and rescinding Administrative Order No. 3-30: Living Wage Requirement for County Service Contracts

Executive Summary

The purpose of this item is to obtain approval from the Board of County Commissioners (Board) to rescind Administrative Order No. 3-30 (A.O. 3-30): Living Wage Requirement for County Service Contracts and approve Implementing Order No. 3-30 (I.O. 3-30): Living Wage Requirement for County Service Contracts. The I.O. establishes the administrative procedure for the application and enforcement of the Living Wage to covered service contracts and concessionaires at Miami International Airport.

Miami-Dade County (County) ensures that all service contractors performing covered services pay employees no less than the applicable hourly living wage rate in contract bids, with or without health benefits, as specified in accordance with Section 2-8.9 of the Code of the County. Specifically, the Living Wage requirements have benefited workers on contracts for food preparation, security services, routine maintenance, clerical services, transportation and parking services, printing and reproduction services, landscape, lawn and agricultural services and healthcare services.

Recommendation

It is recommended that the Board rescind A.O. 3-30 and approve I.O. 3-30. The I.O. updates the A.O. with previous amendments to Section 2-8.9 of the County Code (the Code) governing Living Wage requirements for County Service Contracts. This legislation protects workers on covered service contracts to live above the poverty line and support themselves and their families with dignity.

Background

Section 2-8.9, Living Wage Ordinance for County Service Contracts and County employees was enacted via Ordinance No. 99-44 in 1999. A.O. 3-30 outlining the implementation of the Living Wage was adopted by the Board on July 25, 2000. A.O. 3-30 outlined the responsibilities of the Contracting Officer to include the Living Wage requirements and rates in contract bids and specifications; the responsibilities of the Bidders and Awardees to inform the workers of the wages and benefits that apply and provide payroll information to the County to verify the Living Wage was paid; and the responsibilities of the Compliance Officer to monitor compliance with the Living Wage and administer the investigation of complaints and assessment of remedies and sanctions for con-compliance.

Since the implementation of A.O. 3-30, the Board has approved several amendments to the Code. As such, the A.O. was updated and is being presented to the Board for approval as I.O. 3-30. The changes include:

- Added Miami International Airport concessionaires and their subcontractors as covered employers.

- Increased penalties to be paid by contractors upon failure to pay the correct wages.
- Added a definition for Health Benefit Plan, refined health benefit requirements and strengthened penalties for non-compliance.
- Required debarment to be initiated for service contractor with a fourth underpayment violation in a three-year period.
- Required interest be paid on unpaid sanctions for violations and clarified that contractors were required to pay the Living Wage rate applicable at the time covered services are performed and adjusted each fiscal year.
- Updated the wage and health benefit rates by utilizing the consumer price index for medical costs when adjusting compensation for health benefits.
- Required contractors utilize the County's web-based system for monthly payroll submittal.
- Added Healthcare services performed by health care professionals and healthcare-related professionals (e.g., registered nurse, certified nursing assistant, nutritionist, medical doctor, social worker, or home care aide), including but not limited to substance abuse treatment, elderly transitional living, counseling, physician assistance, or social work. Service contracts that are awarded by the Public Health Trust for the healthcare services described in this subparagraph are specifically excluded from the requirements of the Living Wage.

Scope

The scope of this I.O. is countywide.

Delegation of Authority

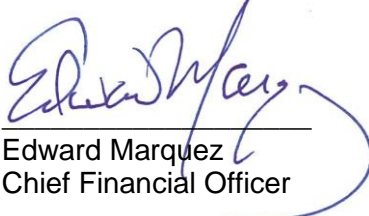
This I.O. does not provide any additional delegated authority beyond that which was already approved in the Code.

Fiscal Impact/Funding Source

Although, by adding these additional services to this ordinance will not have a direct fiscal impact to the County as the proposed changes will not require additional staffing resources nor generate additional operational expenses, there will be a fiscal impact as vendors will likely pass this expense to the County by requesting reimbursement for the yearly cost increase to the Living Wage. The specific fiscal impact of this ordinance amendment is difficult to determine at this time and will vary with each contract depending on the increase to the Living Wage.

Track Record/Monitor

Small Business Development, a Division of the Internal Services Department and the Public Health Trust are responsible for the implementation and enforcement of the Living Wage.



Edward Marquez
Chief Financial Officer

Implementing Order



Implementing Order No.: IO 3-30

Title: LIVING WAGE REQUIREMENT FOR COUNTY SERVICE CONTRACTS

Ordered:

Effective:

AUTHORITY:

The Miami Dade-County Home Rule Amendment and Charter, including, Sections 1.01, 2.02(A), 5.01 and 5.03; Section 2-8.9 of the Code of Miami-Dade County.

SUPERSEDES:

This Implementing Order supersedes Administrative Order 3-30 adopted July 25, 2000, and effective August 4, 2000.

POLICY:

It is the policy of Miami-Dade County that all service contractors performing covered services pay employees providing the covered services no less than the applicable hourly living wage rate, with or without health benefits, as specified in accordance with Section 2-8.9 of the Code of Miami-Dade County.

PURPOSE:

This Implementing_Order implements, the Living Wage Ordinances for County Service Contracts codified at Section 2-8.9 of the County Code ("LWO), and establishes an administrative procedure for the filing, processing and resolution of complaints regarding underpayment of required hourly wages and if applicable health benefits and remedies for non-compliance with the LWO. The Strategic Purchasing Division of the Internal Services Department (ISD) or successor department and the Public Health Trust (PHT) are responsible for ensuring that the living wage requirements are included in all applicable contracts. The Small Business Development Division (SBD) of ISD and the PHT are designated as the Compliance Officers and are responsible for implementing and enforcing this Implementing Order.

EXCEPTION:

This Implementing Order does not apply to contracts for covered services awarded by the County that involve a total contract value of one hundred thousand dollars (\$100,000) per year or less; however, the Ordinance does apply to all contracts for services previously performed by County employees and solicited to be performed by a service contractor. Such services shall be covered regardless of the dollar value of the contract.

SECTION I – DEFINITIONS

The following definitions, as well as additional terms necessary for the understanding of this Implementing Order, shall apply:

- A. *Administrative hearing officer* means a person designated by the County Clerk or designee to hold administrative hearings on complaints of practices prohibited by the LWO and this Implementing Order.
- B. *Applicable department* means the County or Public Health Trust department using the service contract.
- C. *Complaint* means any charge/allegation presented to the Compliance Officer alleging a practice prohibited by the LWO and this Implementing Order.
- D. *Compliance officer* means the County Mayor or Public Health Trust staff designated to review compliance with the LWO and this Implementing Order.
- E. *Concessionaire* means an entity that is authorized by contract, permit, lease, or other legal instrument supported by mutual consideration to offer goods, food, beverages, or services for sale to ticketed passengers inside Miami International Airport concourses or terminals.
- F. *Contract* means an agreement covered by the LWO and this Implementing Order involving or approved by the County or Public Health Trust.
- G. *Contracting officer* means the County or Public Health Trust staff responsible for issuing County service contracts.
- G. *County* means the government of Miami-Dade County or the Public Health Trust.
- H. *Covered employee* means anyone employed by any service contractor, as further defined in the LWO and this Implementing Order, either full or part time, as an employee with or without benefits that is involved in providing covered services pursuant to the service contractor's contract with the County.
- I. *Covered employer* means any and all service contractors and subcontractors of service contractors providing covered services.
- J. *Covered services* are services purchased by the County that are subject to the requirements of the Living Wage Ordinance which are one of the following:
 - 1. County Service Contracts - Contracts awarded by the County that involve a total contract value of over \$100,000 per year for the following services:
 - i. food preparation and/or distribution;
 - ii. security services;

- iii. routine maintenance services such as custodial, cleaning, refuse removal, repair, refinishing and recycling;
 - iv. clerical or other non-supervisory office work, whether temporary or permanent;
 - v. transportation and parking services including airport and seaport services;
 - vi. printing and reproduction services;
 - vii. landscaping, lawn and/or agricultural services and,
 - viii. Healthcare services performed by health care professionals and healthcare-related professionals (e.g., registered nurse, certified nursing assistant, nutritionist, medical doctor, social worker, or home care aide), including but not limited to substance abuse treatment, elderly transitional living, counseling, physician assistance, or social work. Service contracts that are awarded by the Public Health Trust for the healthcare services described in this subparagraph are specifically excluded from the requirements of this LWO.
2. Concessionaires at Miami International Airport - All services of all employees employed at Miami-International Airport by a concessionaire, and all services of all subcontractors of such concessionaire providing services at Miami International Airport. Notwithstanding the preceding, the LWO does not apply to employees of any airline or any entity that is exempt from the requirements of the LWO pursuant to state or federal law. A concessionaire who is otherwise exempt under the LWO may still be required to provide a living wage as defined in the LWO to its employees if it engages in Covered Services as defined in the LWO and this Implementing Order.
 3. Services Performed by County Employees - Should any services that are being performed by County employees at the time Ordinance 99-44 was enacted be solicited in the future by the County to be performed by a service contractor, such services shall be covered subject to the LWO and this Implementing Order regardless of the value of the contract and language requiring same shall be inserted into any implementing legislation.
- L. *Debar* means to exclude a service contractor, its individual officers, its principal shareholders, its qualifying agent or its affiliated businesses from County contracting and subcontracting for a specific period of time pursuant to Section 10-38 of the Code of Miami-Dade County.
- M. *Living Wage* means the basic hourly rate of pay and health benefits required by the LWO to be in effect for the fiscal year in which the work is performed. All service contractors performing covered service shall pay to all of its employees providing covered services, the current Living Wage rate, applicable to the time when the covered service is performed as that rate is adjusted each fiscal year in the manner provided for by the LWO and herein for the adjustment of the Living Wage. An employee of a Concessionaire who receives some portion of their wages in the form

of tips or gratuities may be paid a wage less than the Living Wage, so long as the combination of direct wages paid to such employee plus tips or gratuities equals or exceeds the Living Wage. For purposes of evaluating the wage paid to tipped employees, the terms employer, employee, direct wage, tips and gratuity shall have the same meaning as in the Federal Fair Labor Standards Act and its implementing regulations.

- N. *Living Wage Commission* means a fifteen-person commission established by the County Commission for the purpose of reviewing the effectiveness of the LWO, reviewing certifications submitted by covered employers, reviewing quarterly reports on complaints filed by employees and making recommendations to the County Mayor and Commission.
- O. *Project manager* means the person assigned under a contract, usually a department director of the using agency or his/her designee, who has primary responsibility to manage the contract and enforce contract requirements.
- P. *Service contractor* is any individual, business entity, corporation (whether for profit or not-for-profit), partnership, limited liability company, joint venture, or similar business that is conducting business in Miami-Dade County or any immediately adjoining county and meets the following criteria:
 - 1. the service contractor is paid in whole or in part from one (1) or more of the County's general fund, capital projects funds, special revenue funds, or any other funds either directly or indirectly, for contracted covered service whether by competitive bid process, informal bids, requests for proposals, some form of solicitation, negotiation, or agreement, or any other decision to enter into a contract; or
 - 2. the service contractor is a concessionaire at Miami International Airport.

SECTION II - RESPONSIBILITY OF THE COMPLIANCE OFFICER

The compliance officer shall, in cooperation with other agencies of the County which are affected by the provisions of Section 2-8.9 of the Code of Miami-Dade County and this Implementing Order, be jointly responsible for implementing the requirements of the LWO. Primary responsibilities of the compliance officer include the following:

- A. Prepare, update and disseminate materials for supplementing the bid specifications (including wages and benefits notice) for inclusion with applicable bid specifications and contract documents;
- B. Provide an overview of the monitoring process;

- C. Provide insight and guidance to the contracting officer, project manager and applicable departments on administration of living wage requirements for covered contracts;
- D. Perform periodic examinations of covered employer's payroll and employment activity records; and
- E. Administer investigation of complaints and assessment of remedies.

Performing additional duties and tasks as necessary to assure the proper management of this program, coordinate with the Office of the County Mayor and with other County offices, departments and agencies including the Public Health Trust.

SECTION III - RESPONSIBILITY OF CONTRACTING OFFICER

The contracting officer for each agency of County government and the Public Health Trust issuing service contracts subject to Section 2-8.9 of the Code, and this Implementing Order, and in cooperation with the compliance officer, shall:

- A. Insert the statement that compliance with the LWO as it may be amended from time to time and this Implementing Order as it may be amended from time to time is a requirement in all advertised bids, requests for proposals or quotations, contracts for covered services (whether advertised or informally solicited). The LWO requirements shall be required in the procurement specifications and contract language for all County service contracts for covered services. The procurement specifications and contract language for applicable contracts shall include a requirement that Service Contractors agree to produce all documents and records relating to payroll and compliance with the Code upon request from the Applicable Department, Compliance Officer or as otherwise provided by this Implementing Order.
- B. Insert the living wage and health benefits rate specifications required by the LWO in all advertised requests for bids, requests for proposals or quotations and contracts for covered services (whether advertised or informally solicited). The specifications for such contracts shall:
 - 1. Include the applicable hourly wage rate in dollars and cents for covered employees.
 - 2. Mandate the service contractor to whom the contract is awarded, and any subcontractor to that contractor, pay to all its employees providing covered services not less than the current hourly living wage rate applicable to the time when the covered services is performed as that rate is adjusted each fiscal year.

3. Provide that the covered employer may fulfill the obligation to pay such specified minimum hourly wage rate by payment of wages and contributions to a health benefit plans for employees and, if applicable, their dependents, or payments of wages plus the minimum hourly cash equivalent of health benefits consistent with the requirements of the LWO and this Implementing Order. Such payment obligations must be made not less than bi-weekly, and without subsequent deduction or rebate on any account (except as such payroll deductions as are directed or permitted by law or by a collective bargaining agreement). The employer shall pay employees wage rates in accordance with federal and all other applicable laws such as overtime and similar wage laws.
4. Provide that for a covered employer to comply with the LWO by choosing to pay the lower wage scale when a covered employer also provides a Health Benefit Plan, such Health Benefit Plan shall consist of payment of \$3.59 per hour per employee commencing On October 1, 2021, of Fiscal Year 2021 to 2022 and for subsequent years the amount shall be adjusted by the percentage change in the Consumer Price Index for medical for the Miami-Ft. Lauderdale area published by the United States Department of Labor.

The minimum amount of payment by a Service Contractor for the provision of a Health Benefit Plan on a per-hour basis will be calculated based on a maximum of a 40-hour work week. Overtime hours will not require additional payments towards the provision of a Health Benefit Plan. If the Service Contractor pays less than the required amount for providing a Health Benefit Plan, then the Service Contractor may comply with the LWO by paying the covered employee the difference between the premium it pays for the Health Benefit Plan of the Covered Employee and the minimum amount required by the LWO for a qualifying Health Benefit Plan. The Service Contractor may require that all employees enroll in a Health Benefit Plan offered by the Service Contractor, provided that the employee is not required to pay a premium contribution for employee-only coverage. Proof of the provision of a Health Benefit Plan must be submitted to the County to qualify to pay the applicable wage rate for employees with a qualifying Health Benefit Plan. A Health Benefit Plan for purposes of complying with the LWO shall qualify if it includes the following general categories and the items and services covered within the categories:

- a. Ambulatory patient services.
- b. Emergency services.
- c. Hospitalization.
- d. Maternity and newborn care.
- e. Mental health and substance use disorder services, including behavioral health treatment.
- f. Prescription drugs.
- g. Rehabilitative and habilitative services and devices.
- h. Laboratory services.

- i. Preventive and wellness services and chronic disease management.
- j. Pediatric services, including oral and vision care.

To the extent a Covered Employer seeks to pay the lower Living Wage rate for employers providing a qualifying Health Benefit Plan during the initial eligibility period applicable to new employees, the Living Wage requirement may be complied with as follows during the eligibility period:

- (a) Provided the Covered Employer will be providing a qualifying Health Benefit Plan to a new employee upon the completion of such employee's eligibility period required under the Covered Employer's Health Benefit Plan and the Covered Employer has taken the necessary steps to effectuate coverage for such employee, a Covered Employer may only qualify to pay the Living Wage rate applicable to employees with a Health Benefit Plan for a term not to exceed the first ninety (90) days of the new initial employee's eligibility period, said term commencing on the employee's date of hire.
 - (b) If the Covered Employee is not provided with a qualifying Health Benefit Plan within nine (90) days of initial hire, then the Covered Employer commencing on the ninety-first (91st) day of the new employee's initial eligibility period, must commence to pay the applicable Living Wage rate for Covered Employees without a Health Benefit Plan and must retroactively pay the Covered Employee the difference between the two Living Wage rates for the term of the eligibility period.
- 5. Provide that the covered employers found in violation of the requirements of the LWO or this Implementing Order shall be subject to the sanctions contained in the LWO and Section X of this Implementing Order.
 - 6. Provide that the covered employer shall post a copy of the Living Wage rate notice issued by the County in a visible place on the site where such contract work is being performed and shall be supplied to the employee within a reasonable time after a request to do so.
 - 7. Provide that the County may withhold from the covered employer accrued payments as may be considered necessary to pay employees of the covered employer for the performance of the contract work, the difference between the hourly living wage rate plus, if applicable, health benefits required to be paid by the covered employer to the employees on the contract and the amounts received by such employee and, where violations have been found and upheld, the covered employer or their agents shall not be entitled to refunds of the amounts withheld in the event the covered employer has failed to properly reimburse employees.
 - 8. Require the covered employer to keep, produce upon request, and allow access to, for a period of three (3) years from the expiration, suspension or

termination date of the contract subject to this Implementing Order, accurate written records signed under oath as true and correct showing:

- a. the name, address, social security number, job title, and classification of each covered employee performing covered services on a contract;
 - b. the number of hours worked each day by each covered employee;
 - c. For each covered employee, the gross wages earned and deductions made; annual wages paid; a copy of the social security returns and evidence of payment thereof; a record of health benefit payments, including contributions to approved plans; and,
 - a. any other data or information the Living Wage Commission or the County should require.
9. Require that a covered employer submit by the 10th of each month to the County (or if by request within the requested time frame), certified payroll showing the employer's payroll records for each Covered Employee working on the contract for covered services for the previous month via the County's web-based system. Upon request by the County, the covered employer shall produce for inspection and copying its payroll records for any or all of its covered employees for the prior three-year period.
10. Require that all covered employers file with the Compliance officer, every six (6) months, reports of employment activities to be made publicly available, including race and gender of employees hired or terminated; zip codes of employees hired or terminated; and wage rates of employees hired or terminated.
11. Provide that no covered employer may terminate, reduce the compensation, or otherwise discriminate against an employee performing covered services on a contract and/or retaliate because the employee filed a complaint alleging a practice prohibited by the LWO, this Implementing Order or because there is any enforcement action taken against a service contractor.

SECTION IV - RESPONSIBILITY OF PROJECT MANAGER

- A. The project manager shall, in coordination with the Compliance Officer, ensure compliance with the LWO and this Implementing Order by a covered employer and at a minimum:
 1. Assure that covered employers have provided the required fair wage affidavit certifications with every invoice or requisition for payment and have posted the required wage and complaint information at the job site.

2. Forward complaints to the appropriate Compliance Officer for investigation.
3. Require that covered employer submit by the 10th of each month, to the County (or if by request within the expected time frame), a complete certified payroll showing the employer's payroll records for each covered employee working on the contract for covered services for the previous month via the County's web-based system.
4. Require that covered employer file with the Compliance Officer no less frequently than every six months, reports of employment activities to be made publicly available, including: race, gender, wage rates, and employees hired and terminated.

SECTION V - RESPONSIBILITY OF BIDDER OR PROPOSER

Respondents to requests for bids or requests for proposals on service contracts subject to the requirements of the LWO and this Implementing Order, shall provide the living wage affidavit with bids or proposals.

SECTION VI - RESPONSIBILITY OF SERVICE CONTRACTOR

The service contractor and any subcontractor(s) to the service contractor on a covered service contract is subject to the requirements of the Code, and this Implementing Order shall comply with the specifications included in Section III of this Implementing Order and made part of any contract. The contractor must insert these specifications into any subcontracts and also a clause reminding their subcontractors to include these paragraphs in any lower tier subcontract. The service contractor will be responsible for compliance by all subcontractors. In the event of non-payment for underpayment of the required wages, the prime contractor shall be liable to the underpaid employees of the subcontractor for the amount of each underpayment.

The service contractor shall permit County employees, agents, or representatives to observe work being performed at, in, or on the project or matter for which the service contractor has a contract. The County representatives may examine the books and records of the service contractor relating to employment and payroll to determine if the service contractor is in compliance with the provisions of the LWO.

An employee who believes that the LWO applies or applied to him or her and the service contractor is or was not complying with the requirements of this Implementing Order has a right to complain by filing a complaint with the Compliance Officer.

SECTION VII – PROCEDURES FOR DETERMINING LIVING WAGE RATES

The compliance officer will annually index the living wage rate for inflation as defined by the Consumer Price Index figures provided for the calendar year ended December 31 calculated by the U.S. Department of Commerce as applied to the Miami-Dade County. The cost for a qualifying health benefit plan shall be adjusted based on the consumer price index for medical care for the Miami-Ft. Lauderdale area and that indexed cost shall be added to the existing Living Wage rate when a qualifying Health Benefit Plan is provided to determine the newly adjusted Living Wage rate without qualifying health benefits.—Copies of the revised living wage rates shall be distributed to County departments and the Public Health Trust.

SECTION VIII- PROCEDURES FOR NOTIFICATION AND DOCUMENTS

The contracting officer responsible for the service contracts shall:

- A. Send copy of advertisement for bids to the compliance officer when the project is to be advertised;
- B. Notify the compliance officer of scheduled pre-bid or pre-work conferences;
- C. Notify the compliance officer when the contracts have been awarded; and,
- D. Provide the compliance officer with notices to proceed.

SECTION IX - PROCEDURES FOR COMPLIANCE MONITORING AND INVESTIGATING COMPLAINTS OF PRACTICES PROHIBITED BY THIS IMPLEMENTING ORDER

The compliance officer will administer the compliance monitoring process. This procedure shall include the following steps:

- A. Compliance officer shall interview workers providing covered services and review payroll information submitted by the covered employer;
- B. Compliance officer shall investigate non-compliance findings and complaints received, request and review supporting material and conduct investigation(s);
- C. If discrepancies and/or underpayments are identified, Compliance officer shall prepare a wage analysis and issue a Notice of Violation to covered employer and require corrective action. Sanctions contained in the LWO and Section X of this Implementing Order will be applied and included in the Notice of Violation;
- D. Compliance officer shall maintain a file of complaints and any resolution thereof;

- E. Compliance officer may sanction covered employers found to be in violation of the requirements of the LWO and/or this Implementing Order as specified in the LWO and/or Section X of this Implementing Order;
- F. Covered employers shall be allowed ten (10) days to file a written request for appeal to the compliance officer;
- G. Any covered employee of a service contractor, or any person who was formerly a covered employee of a service contractor, may instead of adhering to the County administrative procedure set forth in this Implementing Order but not in addition to such procedure, bring an action by filing suit against the covered employer in any court of competent jurisdiction to enforce the provisions of the LWO.

SECTION X – SANCTIONS

Covered employers found to be in violation of the requirements of the LWO or this Implementing Order shall be required to pay wage restitution to the affected employee. The Compliance Officer may also sanction the service contractor for violations in at least one of the following additional ways:

- A. Penalties payable to the County in an amount equal to 20 percent of the amount of the underpayment of wages and/or benefits for the first instance of underpayment; 40 percent for the second instance; and for the third and successive instances 60 percent of the amount of underpayment. A fourth underpayment within a three-year period shall subject the service contractor to debarment to be initiated by SBD in accordance with the debarment procedures of the County. A fourth underpayment violation shall also constitute a default of the contract where the underpayment occurred and shall be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized to defray SBD's costs of administering the Living Wage provisions. If the required payment is not made within 30 days of the (i) date by which a request for administrative appeal of a notice of violation was due and either not filed or not filed timely, or (ii) administrative hearing of final resolution of any appeal therefrom, the noncomplying contractor or subcontractor and the principal owner(s) thereof shall be prohibited from bidding on or otherwise participating in County contracts for a period not to exceed three years.
- B. The sum of up to five hundred dollars (\$500.00) for each week for each covered employee found to have not been paid in accordance with this Chapter.
- C. Suspend payment or terminate payment under the contract or terminate the contract with the service contractor.

- D. If a service contractor fails to cure a Notice of Violation or pay any sanctions that are assessed by the County, such service contractor and all officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of the non-complying service contractor may be declared by the County to be ineligible for bidding on or otherwise participating in Living Wage contracts and permits until all required payments have been paid in full and regardless of whether such payment has been made and may also be declared ineligible for bidding or otherwise participating in Living Wage contracts for a period of up to three (3) years. In addition all covered employers shall be ineligible for Living Wage contracts and permits under this section where any officers, principals, directors, shareholders owning or controlling ten (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 ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of a covered employer who has been declared ineligible under the LWO.
- E. In addition to any other sanctions provided for herein, for violations other than underpayment of wages and/or benefits, damages payable to the County in the amount of five hundred dollars (\$500.00) per week for each week in which the violation remains outstanding.
- F. The service contractor who fails to timely and adequately respond in the manner and within the timeframe set forth in a written request from the County to a notice of violation, or fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by the County, shall be deemed not to have complied with the requirements of the LWO or this Implementing Order as stated in the notice or determination of noncompliance and, in the case of underpayment of the Living Wage required, an amount sufficient to pay any underpayment shall be withheld from contract proceeds to include any deposits, and/or bonds and remitted to the employee and the Service Contractor may be fined the applicable penalty for such underpayment as defined in the LWO or Section X of this Implementing Order.
- G. All such sanctions recommended or imposed shall be a matter of public record.
- H. All unpaid 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 Florida Statutes Section 55.03.
- I. An employer shall not discharge, reduce the compensation or otherwise discriminate against any employee for making a complaint to the Living Wage Commission, the applicable department, the County, or otherwise asserting his or her rights under the LWO, participating in any of its proceedings or using any civil remedies to enforce his or her rights under the LWO. Allegations of retaliation or discrimination, if found by the County Mayor pursuant to procedures set forth by

this Implementing Order or by a court of competent jurisdiction, shall result in an order of restitution and reinstatement of a discharged employee with pay to the date of the violation or such other relief as deemed appropriate. In addition, the County Mayor or the Court may impose an additional sanction of up to five hundred dollars (\$500.00) for each week since the covered employee was discharged as a result of prohibited retaliation under the LWO.

SECTION XI - PROCEDURES FOR APPEAL THROUGH ADMINISTRATIVE HEARING OFFICER PROCESS

The procedure for appeals shall include the following steps:

- A. Appeals of findings of violation and penalties imposed by the compliance officer shall be scheduled to be heard by an administrative hearing officer. Upon the receipt of a written appeal, the compliance officer shall notify the County Clerk in writing and the County Clerk shall appoint an administrative hearing officer pursuant to Section 8CC-2 of the Code of Miami-Dade County, as amended, and set a time for an administrative hearing. Failure to appeal within the specified time shall be considered a waiver of the appeal process provided for in Section IX.

If a party is found to have violated the Living Wage Ordinance, the hearing officer shall order such party to pay the County for the hearing costs including the hearing officer's fee.

- B. Notification of hearing date shall be served by the compliance officer upon the covered employer against whom the complaint is made within ten (10) working days of the appointment of the administrative hearing officer. Such notice shall be by certified mail, return receipt requested. Such notice shall include:
 - 1. A copy of the written complaint, including reasons and causes for the proposed administrative hearing, outlining alleged prohibited practices upon which it is based;
 - 2. The penalties sought to be assessed;
 - 3. That an administrative hearing shall be conducted before an administrative hearing officer on a date and time not to exceed thirty (30) business days after service of the notice. The notice shall also advise the covered employer that they may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them; and,
 - 4. A description of the effect of the issuance of the notice of the proposed administrative hearing and the potential effect(s) of this administrative hearing.

- C. The compliance officer or his/her designee shall, with the assistance of the project manager, present evidence and arguments to the administrative hearing officer.
- D. No later than seven (7) days prior to the scheduled hearing date, the service contractor must furnish the compliance officer a list of the defenses the service contractor intends to present at the administrative hearing. If the service contractor fails to submit the list, in writing, at least seven (7) days prior to the administrative hearing or fails to seek an extension of time within which to do so, the service contractor shall be deemed to have waived the opportunity to be heard at the administrative hearing. The administrative hearing officer shall have the right to grant or deny an extension of time, and the decision may only be reviewed upon an abuse of discretion.
- E. Hearsay evidence shall be admissible at the administrative hearing but shall not form the sole basis for finding a violation of the LWO or this Implementing Order. The administrative hearing shall be transcribed, taped or otherwise recorded, at the election of the Administrative Hearing Officer and at the expense of the County. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party. The costs of such transcription may be assessed by the Hearing Officer against a service contractor that has been found to violate LWO or this Implementing Order.

SECTION XII - QUALIFICATIONS OF HEARING OFFICERS

Appointments shall be made by the County Clerk or his/her designee pursuant to Section 8CC-2 of the Code of Miami-Dade County, as amended, upon timely receipt of a request for an administrative hearing. Such hearing officers may be paid a fee for their services but shall not be deemed County officers or employees.

SECTION XIII - ADMINISTRATIVE REMEDIES

The County Mayor or his/her designee may administer the sanctions found in the LWO or Section X of this Implementing Order to covered employers-following an administrative hearing. This procedure shall include the following steps:

- A. Upon completion of the administrative hearing, the Administrative Hearing Officer shall submit written findings and recommendations together with a transcript or recording and exhibits of the administrative hearing, to the County Mayor or his/her designee within thirty (30) days of the receipt of the transcript or recording.
- B. If the County Mayor or his/her designee determines a covered employer failed to comply with the provisions of the LWO or this Implementing, the non-complying covered employer and the principal owners and/or qualifying agent thereof may in addition to any sanction imposed pursuant to the LWO or Section X of this Implementing Order be prohibited from bidding on or otherwise participating in

County contracts for a specified period of time pursuant to Section 10-38 of the Code of Miami-Dade County.

- C. If the County Mayor or his/her designee determines a covered employer failed to comply with the provisions of the LWO or this Implementing Order a third time, the noncomplying covered employer's service contract with the County may be terminated.

SECTION XIII – LIVING WAGE COMMISSION

The County Commission shall establish a fifteen-person commission entitled the “Living Wage Commission” the purpose of which shall be to review the effectiveness of sections 2-8.9 and 2-8.11 of the Code of Miami-Dade County, and recommending changes, review certifications submitted by covered employers to the County to include reviewing complaints filed by employees and making recommendations to the Applicable Department, County Mayor and County Commission. SBD will provide staff to support the activities of the Living Wage Commission which shall meet not less than quarterly and in special sessions as required.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.


County Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: October 3, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(F)(3)

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. 8(F)(3)
10-3-23

RESOLUTION NO. _____

RESOLUTION APPROVING IMPLEMENTING ORDER NO. 3-30 ENTITLED "LIVING WAGE REQUIREMENT FOR COUNTY SERVICE CONTRACTS" AND RESCINDING ADMINISTRATIVE ORDER NO. 3-30 ENTITLED "LIVING WAGES REQUIREMENT FOR COUNTY SERVICE CONTRACTS"

WHEREAS, in 1999, this Board adopted Ordinance 99-44, creating the Living Wage Ordinance for County service contracts and County employees ("Living Wage Ordinance"), which is codified as section 2-8.9 of the Code of Miami-Dade County, recognizing 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 purpose 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, since the Living Wage Ordinance was first adopted, this Board has continuously worked to strengthen the provisions therein to provide more robust protections for covered workers; and

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves Implementing Order No. 3-30 entitled “Living Wage Requirement for County Service Contracts,” in substantially the form attached to the accompanying memorandum and incorporated herein, and rescinds Administrative Order No. 3-30.

The foregoing resolution 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:

Oliver G. Gilbert, III, Chairman	
Anthony Rodríguez, Vice Chairman	
Marleine Bastien	Juan Carlos Bermudez
Kevin Marino Cabrera	Sen. René García
Roberto J. Gonzalez	Keon Hardemon
Danielle Cohen Higgins	Eileen Higgins
Kionne L. McGhee	Raquel A. Regalado
Micky Steinberg	

The Chairperson thereupon declared this resolution duly passed and adopted this 3rd day of October, 2023. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in blue ink, appearing to be 'MSY', written over a horizontal line.

Marlon D. Moffett