

MEMORANDUM

Agenda Item No. 11(A) (2)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: February 19, 2008

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution directing Mayor
to require mandatory
collection of contract penalties
in contracts which stipulate
damages for non-performance

Resolution No. R-173-08

The accompanying resolution was prepared and placed on the agenda at the request of Commissioner Carlos A. Gimenez.



R. A. Cuevas, Jr.
County Attorney

RAC/bw



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: February 19, 2008

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 11(A)(2)

Please note any items checked.

- "4-Day Rule" ("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
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor

Agenda Item No. 11(A) (2)

Veto _____

02-19-08

Override _____

RESOLUTION NO. R-173-08

RESOLUTION DIRECTING THE COUNTY MAYOR TO REQUIRE MANDATORY COLLECTION OF LIQUIDATED DAMAGES IN ALL CONTRACTS WHICH STIPULATE LIQUIDATED DAMAGES FOR NON-PERFORMANCE EXCEPT WHERE WAIVER OF LIQUIDATED DAMAGES HAS BEEN AUTHORIZED BY ORDINANCE

WHEREAS, entities under contract to provide goods or services to the County are expected to provide the contractual level of service established in the contract; and

WHEREAS, certain County contracts allow the County to collect stipulated liquidated damages from the contracting party in the event of contractual non-performance; and

WHEREAS, the language of many County contracts makes collection of these liquidated damages discretionary on the part of County staff; and

WHEREAS, if the County does not collect the liquidated damages, the County may not have received the level of service it expected from the contract; and

WHEREAS, collection of such liquidated damages should be mandatory in nature to avoid inconsistent results, except in certain unique circumstances; and

WHEREAS, consistent collection of such liquidated damages would encourage entities to abide by the terms of their contracts with the County,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the County Mayor is hereby directed to include language requiring that the imposition and collection of liquidated damages shall be mandatory in all contracts in which liquidated damages for contractual

violations exist. The County Mayor can waive collection of such liquidated damages if in the best interests of the County and with the prior consent of the Board of County Commissioners made in accordance with the provisions of this resolution. When the Board of County Commissioners is requested to waive liquidated damages, the Mayor shall inform the Board of the contract requirement violated; the justification for the waiver; of any previous waivers under any contract between the County and the contractor; and a statement of whether future waivers under the contract are anticipated. The Mayor shall provide a report to the Board of County Commissioners on a quarterly basis on all liquidated damages collected. Where the County Manager or County Mayor has been delegated power by ordinance to waive the collection of liquidated damages or to extend contract time, this resolution shall not be applicable

The foregoing resolution was sponsored by Commissioner Carlos A. Gimenez and offered by Commissioner **Jose "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	aye		
Barbara J. Jordan, Vice-Chairwoman	aye		
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Joe A. Martinez	aye	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

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The Chairperson thereupon declared the resolution duly passed and adopted this 19th day of February, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK



By: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

David M. Murray