

MEMORANDUM

Agenda Item No. 7(A)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

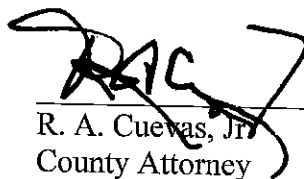
DATE: (Second Reading 10-20-15)
June 30, 2015

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

SUBJECT: Ordinance relating to protection of employees disclosing specified information; amending Chapter 2, Article IV, Division 6 of the Code to expand the methods for making protected disclosures and facilitate disclosure of information to the Inspector General; amending provisions regarding remedies and the review process of the Commission on Ethics and Public Trust; providing for investigations by the Inspector General and notice of state law confidentiality protections and consequences of providing false information pursuant to this section; amending provisions regarding investigations and determinations by the Ethics Commission; providing for outreach, information and training for County employees; deleting awards program remedies

Ordinance No. 15-120

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava and Co-Sponsors Commissioner Sally A. Heyman and Commissioner Juan C. Zapata.


R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum



Date: October 20, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

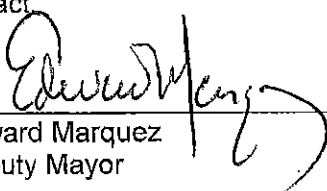
Subject: Fiscal Impact of Ordinance Relating to Employee Protection

The proposed ordinance relates to the protection of employees disclosing specified information by amending Chapter 2, Article IV, Division 6 of the Miami-Dade County Code. More specifically, this ordinance expands the methods for making protected disclosures and facilitating disclosure of information to the Inspector General and amends provisions regarding remedies and the review process of the Commission on Ethics and Public Trust, and the provisions regarding investigations and determinations by the Ethics Commission. In addition, it provides for outreach, information, and training for County employees and for investigations by the Inspector General, including noticing of state law confidentiality protections and consequences of providing false information, as well as deleting awards program remedies.

The new training on the Honor Code that is required may take place within the existing ethics training programs. Ethics training, which is mandatory for all County employees, will include information specifically referenced in this ordinance to ensure that all employees under the Mayor's purview are educated on the provisions of the ordinance once implemented, resulting in no fiscal impact to the County's administrative budgets.

Most of the enforcement issues will affect employees under the Mayor's purview and would be handled by the administration, not through the Commission on Ethics. The only enforcement issues with which the Commission on Ethics would be involved would concern elected officials or employees not under the Mayor's authority, which are relatively few in number and may be covered by the existing Commission on Ethics Enforcement Unit. The requests for opinions that are anticipated may also be handled with existing Commission on Ethics legal staff.

In addition, this ordinance would require the Office of Inspector General to conduct outreach and training to new County employees and may be accomplished through incorporation into the new County employees orientation program at no additional cost to the County. Training will be provided by existing Office of Inspector General legal staff. The requirements that the Office of Inspector General disseminate instructions to existing County employees regarding the methods of disclosing information, and the protections afforded by the County Code may be accomplished through existing Office of Inspector General staff resources and operating funds. Brochures, handouts, and other promotional materials would be produced in-house and may be disseminated electronically to all County employees. Printed materials may be disseminated at County training classes and Office of Inspector General posters may be displayed at County facilities, including employee break rooms. Production costs for printed materials would be absorbed within the Office of Inspector General's operating budget. Therefore, it is anticipated that the implementation of this ordinance would have no additional fiscal impact.


Edward Marquez
Deputy Mayor




MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: October 20, 2015

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

SUBJECT: Agenda Item No. 7(A)

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
- 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 _____, 3/5's _____, unanimous _____) 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(A)
10-20-15

ORDINANCE NO. 15-120

ORDINANCE RELATING TO PROTECTION OF EMPLOYEES DISCLOSING SPECIFIED INFORMATION; AMENDING CHAPTER 2, ARTICLE IV, DIVISION 6 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, TO EXPAND THE METHODS FOR MAKING PROTECTED DISCLOSURES AND FACILITATE DISCLOSURE OF INFORMATION TO THE INSPECTOR GENERAL; AMENDING PROVISIONS REGARDING REMEDIES AND THE REVIEW PROCESS OF THE COMMISSION ON ETHICS AND PUBLIC TRUST; PROVIDING FOR INVESTIGATIONS BY THE INSPECTOR GENERAL AND NOTICE OF STATE LAW CONFIDENTIALITY PROTECTIONS AND CONSEQUENCES OF PROVIDING FALSE INFORMATION PURSUANT TO THIS SECTION; AMENDING PROVISIONS REGARDING INVESTIGATIONS AND DETERMINATIONS BY THE ETHICS COMMISSION; PROVIDING FOR OUTREACH, INFORMATION AND TRAINING FOR COUNTY EMPLOYEES; DELETING AWARDS PROGRAM REMEDIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, in 1994, the Board of County Commissioners adopted Ordinance No. 94-107 known as the Employee Protection Ordinance consistent with sections 112.3187 *et seq.* of the Florida Statutes; and

WHEREAS, expanding the means for employees to provide protected disclosures is in the best interest of the County; and

WHEREAS, it is in the best interest of the County and its employees that the avenues for reporting unlawful activity, fraud, misfeasance or malfeasance be easily accessible; and

WHEREAS, it is in the best interest of the County for its employees to be notified that under state law the identity of employees disclosing specified information to authorized local officials is protected; and

WHEREAS, in order to empower employees to take responsibility for an efficient and effective government and be empowered to safely and securely disclose specified activity, the Inspector General shall provide information about this ordinance to County employees,

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

Section 1. Chapter 2, Article IV, Division 6 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

CHAPTER 2. ADMINISTRATION

* * *

ARTICLE IV. PERSONNEL

* * *

DIVISION 6. – PROTECTION OF EMPLOYEES DISCLOSING SPECIFIED INFORMATION

* * *

Sec. 2-56.28.15. To whom information disclosed.

(a) ~~[[Except as set forth in Subsection (b) hereof, t]]~~>>T<<he information disclosed under this division must be disclosed to the Office of Inspector General, the County Mayor or such official or officials as the Mayor may designate to receive such information on his behalf >>or the Miami-Dade County Commission on Ethics and Public Trust<<.

~~[[b) Employees with information, as defined in Section 2-56.28.14, concerning the Miami-Dade Aviation Department shall disclose such information directly to the Miami-Dade County Commission on Ethics and Public Trust or the~~

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.

~~Office of Inspector General. Employees who disclose such information to the Miami-Dade County Commission on Ethics and Public Trust or the Office of Inspector General shall be entitled to the full protection of this ordinance and to the remedies and awards it provides.]]~~

>>(b) To facilitate the disclosure of information under this division, information may be submitted to the Inspector General:

1. through a telephone hotline established by the Office of the Inspector General;
2. by email;
3. by written and signed correspondence;
4. through a website established by the Inspector General; or
5. in person to the Inspector General or the Inspector General's staff.

(c) Any information that complies with section 2-56.28.14, that is disclosed to the Mayor, Mayor's designee, or to the Miami-Dade County Commission on Ethics and Public Trust, may, at the discretion of the Mayor, the Mayor's designee or the Miami-Dade County Commission on Ethics and Public Trust, be forwarded to the Office of the Inspector General for investigation. The Inspector General shall make a determination whether an investigation by the Inspector General is necessary.<<

Sec. 2-56.28.16. Employees and persons protected.

- (1) This division protects employees who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by the County, any state agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act; who refuse to participate in any adverse action prohibited by this division; >>who disclose information to the Office of the Inspector General in accordance with the provisions of section 2-56.28.15;<< or who are otherwise protected by the State Whistle-blower's Act. The provisions of this division may not be used by employees while they are under the care,

custody, or control of the state or county correctional system, or after their release from the care, custody or control of the state or county correctional system, with respect to circumstances that occurred during any period of incarceration.

- (2) No remedy or other protection under this division applies to any person who has committed or intentionally participated in committing a violation or suspected violation for which protection under this division is being sought.
- (3) >> An employee who provides false information pursuant to this section may be investigated and prosecuted pursuant to Florida Statutes, including but not limited to, Florida Statute Sections 837.06, False Official Statements; 838.022, Official Misconduct; 837.05, False Reports.<<

>>(4)<<It shall be an affirmative defense to any complaint brought pursuant to this division that the adverse action was predicated upon grounds other than, and would have been taken absent, the employee's exercise of rights protected by this division.

Sec. 2-56.28.17. Remedies.

* * *

- (4) *Investigation by Ethics Commission.* In addition to the remedies set forth above[[]]>>:<<

- (a) Any employee protected under this division who alleges retaliation may, >>only after exhausting available administrative remedies (i) under section 2-47, (ii) this division, or (iii) an applicable collective bargaining agreement,<< ~~[[in lieu of or in addition to seeking the relief set forth above,]]~~ file a written complaint with the Miami-Dade County Ethics Commission alleging a prohibited personnel action, no later than 60 days after ~~[[the prohibited personnel action]]~~ >>a final written decision regarding an alleged prohibited personnel action has been rendered under the administrative or contractual procedures referenced above. The sole purpose of such complaint is to determine whether, in addition to any findings or determination made in

any of the above-referenced administrative or contractual proceedings, there has been a violation of this division and not to change, rehear or revisit the determination, findings, actions taken or discipline imposed, if any, pursuant to any of the aforementioned administrative or contractual proceedings.<<

(b) Within ten working days after receiving a complaint under this >>division<< ~~[[section]]~~, the Ethics Commission shall acknowledge receipt of the complaint and provide copies of the complaint ~~[[and any other preliminary information available concerning the disclosure of information under this Section]]~~ to the ~~[[department or]]~~ employee accused of retaliation >>and the Department Director of the department in which such employee is employed<<.

(c) ~~[[Fact-finding-]]~~ Upon the filing of a complaint with the Ethics Commission under this >>division<< ~~[[section]]~~, the Ethics Commission shall:

(i) Conduct a preliminary investigation ~~[[and a fact-finding hearing within 60 days regarding the allegation of retaliation]]~~, to the extent necessary, to determine whether there is probable cause to believe that a prohibited personnel action under this >>division<< ~~[[Section]]~~, has occurred ~~[[, is occurring, or is to be taken]]~~.

(ii) Within 90 days after receiving the complaint >>in compliance with subsection (4)(a) herein<<, provide the accused ~~[[department or]]~~ employee >>, the Department Director of the department in which the accused employee is employed<< and the complainant with a >>copy of a probable cause memorandum and conduct a probable cause hearing before the Ethics Commission which shall make a determination as to whether there is probable cause to believe retaliation prohibited by this division has occurred. The probable cause memorandum and the final written decision and findings of

the administrative or contractual proceedings referenced in subsection (4)(a) herein<< ~~[[fact-finding report. The fact-finding report]]~~ shall be presumed admissible in any >>Ethics Commission hearing conducted under this division<< ~~[[subsequent or related administrative or judicial review]]~~.

(iii) Based on its ~~[[fact-finding report]]~~ >>probable cause determination<<, recommend to the County ~~[[Manager]]~~ >>Mayor<< an appropriate course of action. >>In response to such a recommendation, the County Mayor<< ~~[[The Manager]]~~ shall thereafter >>be required to make a written determination of the<< ~~[[take]]~~ appropriate remedial action >>, if any, to be taken<< in accordance with Section 2-56.28.18.

>>(d) The time limits regarding the actions to be taken by the Ethics Commission set forth in subsections (b) and (c) may be extended by the Ethics Commission for good cause.<<

(5) Any employee found by the Ethics Commission to have retaliated against another County employee in violation of this >>division<< ~~[[section]]~~, shall be considered to have committed a violation of the County's Code of Ethics and shall be subject to >>the penalties set forth in the County's Code of Ethics set forth in section 2-11.1 of the Code and<< disciplinary action up to and including dismissal from County employment.

* * *

~~[[Sec. 2-56.28.19. Reporting employee's award program.~~

~~Employees who report information pursuant to this division which results in the County's recovery of public funds shall be eligible to apply for an award of up to ten (10) percent of the net amount recovered or one hundred thousand dollars (\$100,000.00), whichever is less. The precise amount of any such award shall be set by the County Mayor or Mayor's designee in accordance with the~~

~~following procedure: The Mayor or Mayor's designee shall select for each application a panel of three (3) County administrators who shall conduct an informal hearing for the purpose of recommending to the County Mayor or Mayor's designee whether an award should be granted and the amount of any such award. The panel's recommendation shall include consideration of:~~

~~The significance of the information revealed to improving the efficiency of the County;~~

~~(1) The likelihood that the County would have learned of the information if the employee had not reported it; and~~

~~(2) If the information was reported by more than one employee, whether and how it should be apportioned.~~

~~The panel's written recommendation shall be submitted to the Mayor or Mayor's designee whose decision as to whether an award should be granted and the amount thereof shall be final.]]~~

>>Sec. 2-56.28.19. Reserved.<<

* * *

[[~~Secs. 2-56.28.22 — 2-56.28.30. — Reserved.~~]]

>>Sec. 2-56.28.22. Confidentiality of Individuals Disclosing Information.

The Board of County Commissioners intends for the protections of state law to be afforded to any individual who discloses information in compliance with this division to the local officials set forth in this division. The identity of such individuals shall be confidential and exempt from the provisions of the public records laws to the fullest extent permitted by, and in accordance with the law including, but not limited to, the confidentiality requirements and exemptions set forth in sections 119.0713 and 112.3188 of the Florida Statutes.<<

>>Sec. 2-56.28.23. Outreach to Employees and Mandatory Training.

- (a) The Mayor and the Inspector General, or their designees, shall provide training regarding this division to all new County employees hired after the effective date of this Ordinance as part of the initial County orientation. The Mayor and the Inspector General, or their designees, shall also provide training regarding this division to all County employees.
- (b) The Inspector General or his or her designee shall periodically provide information on this division including, but not limited to, the disclosure of information, the methods of disclosing information, and the protections afforded by this division, to all employees of the County and public officials.
- (c) The Office of the Inspector General shall periodically publish to all County employees instructions regarding the methods of disclosing information to the Inspector General, as provided by section 2-56.28.15.
- (d) The Office of the Inspector General shall periodically notify all County employees of the existence of the Inspector General's hotline and its purpose, and provide an address to which written or electronic information may be forwarded to the Office of the Inspector General.
- (e) Notwithstanding subsections (a) through (d) herein, other means of dissemination to ensure awareness of this division may be implemented by the Mayor, the Office of the Inspector General or the Commission on Ethics and Public Trust.<<

>>Section 2-56.28.24. Coordination with County Attorney's Office.

In the event the Inspector General believes that civil relief may be available to the County during the course of any investigation under this division, the Inspector General shall so inform the County Attorney. The County Attorney or the County Attorney's staff shall notify the Inspector General regarding any potential civil relief. The County Attorney and the County Attorney's staff shall maintain the confidentiality to the extent provided by state law of all information as set forth in section 2-56.28.22 of the Code.<<

>>Secs. 2-56.28.25 – 2-56.28.30. Reserved.<<

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.

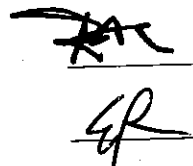
Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED: October 20, 2015

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Eric A. Rodriguez



Prime Sponsor: Commissioner Daniella Levine Cava
Co-Sponsors: Commissioner Sally A. Heyman
Commissioner Juan C. Zapata