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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(9)

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

DATE: February 2, 2016

FROM: Abigail Price-Williams County Attorney

SUBJECT: Resolution authorizing the County Mayor to execute interlocal agreements with universities, colleges, and district school boards, and their respective police departments; approving terms that allow for such entities to issue civil citations for certain misdemeanors pursuant to Section 8CC and Section 21-81 of the Code; authorizing the County Mayor to execute any renewals, and to exercise the cancellation and termination provisions contained therein

Resolution No. R-136-16

A substitute was presented and forwarded to the BCC with a favorable recommendation at the 1-13-16 Metropolitan Services Committee. The substitute differs from the original item that the form interlocal agreement attached thereto provides that Miami-Dade County shall be reimbursed for all administrative costs relating to the conduct of hearings on appeal and Participating Entities shall be reimbursed in the amount of the fines collected minus administrative costs.

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.

Abigail Price-Williams
County Attorney

APW/lmp

MEMORANDUM

(Revised)

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

DATE: February 2, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(A)(9)

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 ____, 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. 11(A)(9)
2-2-16

RESOLUTION NO. R-136-16

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE INTERLOCAL AGREEMENTS WITH UNIVERSITIES, COLLEGES, AND DISTRICT SCHOOL BOARDS, AND THEIR RESPECTIVE POLICE DEPARTMENTS; APPROVING TERMS THAT ALLOW FOR SUCH ENTITIES TO ISSUE CIVIL CITATIONS FOR CERTAIN MISDEMEANORS PURSUANT TO SECTION 8CC AND SECTION 21-81 OF THE MIAMI-DADE COUNTY CODE; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE ANY RENEWALS, AND TO EXERCISE THE CANCELLATION AND TERMINATION PROVISIONS CONTAINED THEREIN

WHEREAS, Section 21-81 of the Code of Miami-Dade County, Florida (the "Code"), prohibits the commission of all acts defined as misdemeanors under Florida Statutes and declares that commission of such acts are also Code violations; and

WHEREAS, on June 30, 2015, this Board enacted Ordinance No. 15-47, which amended Section 21-81 to provide for monetary civil penalties for violations of certain misdemeanors, such as littering, illegal use of dairy cases, retail theft of shopping carts and possession of 20 grams or less of cannabis, as such civil penalties will act as an additional deterrent to such violations and would provide law enforcement with additional options when encountering a misdemeanant who has committed an enumerated offense; and

WHEREAS, Ordinance No. 15-47 also amended Section 8CC-5.1 of the Code to allow a person who violates such misdemeanors to enter the Miami-Dade County Diversion Program, which allows violators without the economic means to pay the fine to satisfy the penalty by non-monetary means; and

WHEREAS, on September 16, 2015, this Board enacted Resolution No. R-786-15, which approved terms of a standard form interlocal agreement between Miami-Dade County and municipalities to enforce county monetary civil code penalties in lieu of criminal penalties within their respective jurisdictions; and

WHEREAS, Section 8CC-11 of the Code expressly authorizes the County to enter into such interlocal agreements with municipalities for code enforcement; and

WHEREAS, this Board now desires to allow universities, colleges and the Miami-Dade County Public Schools and their respective law enforcement agencies to enforce the specific provisions of Section 8CC that pertain to Section 21-81 through the execution of interlocal agreements between the County and universities, colleges and Miami-Dade County district school boards; and

WHEREAS, in order to enter such interlocal agreements, it is necessary to amend Section 8CC to authorize the County to enter such agreements for code enforcement with universities, colleges and the Miami-Dade County Public Schools and their respective law enforcement agencies; and

WHEREAS, a companion ordinance to this item is also before this Board for consideration which would amend Section 8CC as described in the preceding paragraph; and

WHEREAS, this Board authorizes and approves the execution of interlocal agreements between the County and universities, colleges and Miami-Dade County district school boards that allow for the enforcement of provisions of Section 8CC, providing for civil monetary and non-monetary penalties, that pertain to Section 21-81, upon the effective date of the companion ordinance to this item,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the County Mayor or the County Mayor's designee, upon the effective date of the companion ordinance to this item amending Section 8CC of the Code, to execute interlocal agreements, in substantially the form attached hereto, on behalf of Miami-Dade County, between Miami-Dade County and any and all universities, colleges, and district school boards, and their respective police departments, within Miami-Dade County, and approves terms that allow for such entities to issue civil citations for certain misdemeanors pursuant to Section 8CC and Section 21-81 of the Code, and authorizes the County Mayor or County Mayor's designee to execute any renewals, and to exercise the cancellation and termination provisions contained therein.

The Prime Sponsor of the foregoing resolution is Commissioner Sally A. Heyman. It was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **José "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman **aye**
Esteban L. Bovo, Jr., Vice Chairman **aye**

Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**absent**
Sen. Javier D. Souto	**absent**	Xavier L. Suarez	**aye**
Juan C. Zapata	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of February, 2016. 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: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MP

Matthew Papkin

INTERLOCAL AGREEMENT BETWEEN
MIAMI-DADE COUNTY, FLORIDA
AND

_____

FOR THE ENFORCEMENT OF SECTION 8CC OF THE MIAMI-DADE COUNTY CODE AS IT RELATES TO SECTION 21-81 OF THE MIAMI-DADE COUNTY CODE

This Interlocal Agreement ("Agreement") is made and entered this _____ day of _____, _____, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter "COUNTY") and _____ (hereafter "PARTICIPATING ENTITY").

WITNESSETH

WHEREAS, Section 21-81 of the Code of Miami-Dade County (hereinafter the "Code") applies countywide and is enforced, in part, through civil penalties under Section 8CC of the Code; and

WHEREAS, the PARTICIPATING ENTITY may enforce within its lawful jurisdiction within the County the provisions of Section 8CC as they relate to Section 21-81 upon the execution and adoption of an interlocal agreement by the COUNTY and THE PARTICIPATING ENTITY which contains the sections of the Code which the PARTICIPATING ENTITY is entitled to enforce, the job title of the agents of the PARTICIPATING ENTITY authorized to perform the enforcement functions, the amount reimbursable to the COUNTY for administrative costs, the amount of revenue reimbursable to the PARTICIPATING ENTITY from any fine collected, an agreement to indemnify and hold the COUNTY harmless from and against any liability or actions or causes of actions related to the PARTICIPATING ENTITY's enforcement, and a defined term of years for which the agreement would be in effect; and

WHEREAS, the parties agree that it is in their mutual best interests and the best interests of the PARTICIPATING ENTITY and of the citizens of the COUNTY to have the PARTICIPATING ENTITY enforce the provisions of Section 21-81 of the Code through Section 8CC,

NOW, THEREFORE, IN CONSIDERATION of the mutual benefits derived here from the parties covenant and agree as follows:

I. CODE SECTIONS SUBJECT TO ENFORCEMENT

The PARTICIPATING ENTITY is authorized to enforce Section 21-81 of the Code in accordance with the provisions of Section 8CC of the Code, including but not limited to the ability to issue civil violation notices under Section 8CC-10 of the Code for violations of Section 21-81(d)(1) through and including 21-81(d)(7) of the Code, within the PARTICIPATING ENTITY's jurisdiction. Notwithstanding this authorization, nothing in this Agreement shall be construed to limit, supersede, or remove the independent authority of the COUNTY to enforce such provisions.

II. AUTHORIZED AGENTS

All law enforcement officers as defined by Florida Statutes Section 943.10(1) that are employed by the PARTICIPATING ENTITY are authorized by this Agreement to perform the enforcement functions outlined in and in accordance with this Agreement.

III. AMOUNT REIMBURSABLE TO MIAMI - DADE COUNTY FOR COSTS RELATED TO THE CONDUCT OF HEARINGS ON APPEALS

The PARTICIPATING ENTITY shall reimburse the COUNTY [[~~the sum of _____~~]][1] for the administrative costs relating to the conduct of hearings on appeals from violations as outlined in Section I above and shall also be responsible for reimbursing the COUNTY for any attorney's fees and costs, including the costs of transcripts and clerical costs, incurred in such proceedings. Such funds shall be payable to the Miami-Dade Police Department within thirty (30) days of receipt of an invoice for such services. In addition, the PARTICIPATING ENTITY shall bear all costs relating to any subsequent appeal to the Circuit Court of the Eleventh Judicial Circuit and/or any higher court of the Hearing Officer's decision and shall be solely responsible for representing the PARTICIPATING ENTITY in any such proceedings.

IV. AMOUNT OF REVENUE REIMBURSABLE TO THE PARTICIPATING ENTITY FROM THE FINE COLLECTED

>>Subject to applicable state law,<< The >>CLERK OF COURTS<< [[~~COUNTY~~]] shall reimburse >>on a quarterly basis<< [[_____]] to the PARTICIPATING ENTITY [[~~from~~]] the fine>>s<< collected [[~~pursuant to~~]] >>from<< the issuance of [[~~a~~]] civil violation notice>>s<< for [[~~a~~]] violation>>s<< of Section 21-81 of the Code as set forth in Section 8CC. >>Prior to the reimbursement, the CLERK OF COURTS will deduct 17% - 20% from the fines collected for administrative costs of processing the civil violation notices.<< Should the violator opt to enter the Miami-Dade County Diversion Program as set forth in Implementing Order 2-12, the COUNTY shall keep the entire processing fee paid by the violator.

V. TERM OF AGREEMENT

This Agreement shall be in full force and effect from the date of the final execution by either party and shall continue for three (3) years. At the expiration of the three (3) year period,

[1] The differences between the substitute and the original item are indicated as follows: Words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or

the COUNTY and the PARTICIPATING ENTITY may enter a new interlocal agreement as required by section 8CC-11 of the Miami-Dade County Code in order for the PARTICIPATING ENTITY to continue its enforcement efforts.

VI. PARTICIPATING ENTITY INDEMNIFICATION OF THE COUNTY

Subject to the limitations set forth in Section 768.28, Fla. Stat., and all applicable laws, the PARTICIPATING ENTITY shall indemnify and hold harmless the COUNTY from and for any losses, claims, causes of action or damages of any nature whatsoever, arising from the act, omission or performance or failure of performance of the PARTICIPATING ENTITY or the PARTICIPATING ENTITY's agents, contractors, servants and employees hereunder relative to the enforcement of the provisions of Section 21-81 of the Code pursuant to Section 8CC of the Code. The PARTICIPATING ENTITY shall defend the COUNTY in any action including any action in the name of the COUNTY.

VII. DEFAULT

A. Without limitation, the failure by the PARTICIPATING ENTITY to substantially fulfill any of its material obligations in accordance with this Agreement shall constitute a "Participating Entity Default." If a Participating Entity Default should occur, the COUNTY shall have all the following rights and remedies which may be exercised singly or in combination:

1. The right to declare that this Agreement together with all rights granted to the PARTICIPATING ENTITY thereunder are terminated, effective upon such date as is designated by the COUNTY. Provided, however, that the COUNTY shall give the PARTICIPATING ENTITY a period of thirty (30) days after receipt of

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>>double arrowed<< are added.

the written notice from the COUNTY of said default to cure any Participating Entity Default unless the COUNTY determines, in its sole and absolute discretion, that the nature of the default is such that it cannot be cured in a period of thirty (30) days from the date of the default. If the PARTICIPATING ENTITY commences reasonable efforts to cure such default no later than thirty (30) days after such notice, and such efforts are prosecuted to completion and to the COUNTY's reasonable satisfaction, then it shall be deemed that no Participating Entity Default shall have occurred under the provisions of this paragraph.

2. Any and all rights provided under the laws of the State of Florida.

B. Without limitation, the failure by the COUNTY to substantially fulfill any of its material obligations in accordance with this Agreement shall constitute a "County Default." If a County Default should occur, the PARTICIPATING ENTITY shall have all of the following rights and remedies which it may exercise singly or in combination:

1. The right to declare that this Agreement together with all rights granted to the COUNTY thereunder are terminated, effective upon such date as is designated by the PARTICIPATING ENTITY. Provided, however, that the PARTICIPATING ENTITY shall give the COUNTY a period of thirty (30) days after receipt of written notice from the PARTICIPATING ENTITY of said default to cure any County Default unless the PARTICIPATING ENTITY determines, in its sole and absolute discretion, that the nature of the default is such that it cannot be cured in a period of thirty (30) days from the date of the default. If the COUNTY commences reasonable efforts to cure such default no later than thirty (30) days after such notice, and such efforts are prosecuted to completion and to the

PARTICIPATING ENTITY's reasonable satisfaction, then it shall be deemed that no County Default shall have occurred under the provisions of this paragraph.

2. Any and all rights provided under the laws of the State of Florida.

VIII. CANCELLATION

Notwithstanding the above, this agreement may be terminated by either the COUNTY or the PARTICIPATING ENTITY upon thirty (30) days written notice.

IX. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The COUNTY and the PARTICIPATING ENTITY agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

X. ENTIRETY OF AGREEMENT

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and

that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto and their authorized representatives.

XI. HEADINGS

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

XII. RIGHTS OF OTHERS

Nothing in this Agreement expressed or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

XIII. REPRESENTATION OF THE ENFORCEMENT ENTITY

The PARTICIPATING ENTITY represents that: (i) this Agreement has been duly authorized, executed and delivered by the governing body of the PARTICIPATING ENTITY or its designee; and (ii) it has the required power and authority to perform this Agreement.

XIV. REPRESENTATION OF COUNTY

The COUNTY represents that: (i) this Agreement has been duly authorized, executed and delivered by the governing body of the COUNTY or its designee; and (ii) the COUNTY has the required power and authority to perform this Agreement.

XV. WAIVER

There shall be no waiver of any right related to this Agreement unless in writing signed by the party waiving such right. No delay or failure to exercise a right under this Agreement

shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

XVI. INVALIDITY OF PROVISIONS, SEVERABILITY

Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

XVII. NOTICE

Notices to the PARTICIPATING ENTITY provided for herein shall be sufficient if sent by Federal Express or certified mail, return receipt requested, postage prepaid, addressed to:

_____
_____
_____
_____

with copy to:

_____ Attorney
_____
_____
_____

and notices to COUNTY, if sent by Federal Express or certified mail, return receipt requested, postage prepaid addressed to:

County Mayor
Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, FL 33128

with copy to:

County Attorney
Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street, 28th Floor
Miami, FL 33128

Or such other respective address as the parties may designate to each other in writing from time to time.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

HARVEY RUVIN, CLERK

By:_____
DEPUTY CLERK

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

By:_____
Carlos A. Gimenez
County Mayor

Approved as to form and legal
sufficiency:

_____

Assistant County Attorney

ATTEST:

_____, a Florida Municipal Corporation

By:_____

City Clerk

By:_____

Approved as to form and legal sufficiency:

_____

Attorney