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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 7(G)

(Second Reading 9-7-16)

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

DATE: June 7, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance pertaining to payment of Responsible Wages; amending section 2-11.16 of the Code to provide for increased penalties to be paid by contractors and sub-contractors upon failure pay correct wages, and private right of action by employees

Ordinance No. 16-88

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson, and Co-Sponsors Commissioner Daniella Levine Cava, Commissioner Barbara J. Jordan and Commissioner Dennis C. Moss.

Abigail Price-Williams
County Attorney

APW/smm

Memorandum

MIAMI-DADE COUNTY

Date: September 7, 2016

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

From: Carlos A. Gimenez
Mayor

Subject: Fiscal Impact Statement for Ordinance Pertaining to Payment of Responsible Wages

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The proposed ordinance amends 2-11.16 of the Code of Miami-Dade County to provide for increased penalties to be paid by contractors and sub-contractors upon failure to pay the correct wages.

The Internal Services Department, Small Business Development Division, is already responsible for assigning goals/measures to County contracts, and, it is expected that this existing staff will be able to manage those contracts meeting the criteria of this proposed ordinance. Increased penalties may have a positive fiscal impact on the County, however, it is difficult to make an estimate at this point.

Edward Marquez
Deputy Mayor

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Memorandum

MIAMI-DADE COUNTY

Date: September 7, 2016

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

From: Carlos A. Gimenez
Mayor

Subject: Social Equity Statement for Ordinance pertaining to Responsible Wages; amending section 2-11.16 of the Code of Miami-Dade County, Florida to provide for increased penalties to be paid by contractors and sub-contractors upon failure to pay the correct wages

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The proposed Ordinance amends the Responsible Wages Section 2-11.16 of the Code of Miami-Dade County, Florida to provide for increased penalties to be paid by contractors and sub-contractors upon failure to pay the correct wages.

Increasing the penalties on applicable contracts will provide for stronger accountability to responsible wage rate during the duration of the contract. In addition, this amendment will assist all parties involved to resolve any issues paying this rate.

Edward Marquez
Deputy Mayor

Attachments

MEMORANDUM

(Revised)

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

DATE: September 7, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(G)

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. 7(G)
9-7-16

ORDINANCE NO. 16-88

ORDINANCE PERTAINING TO PAYMENT OF RESPONSIBLE WAGES; AMENDING SECTION 2-11.16 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO PROVIDE FOR INCREASED PENALTIES TO BE PAID BY CONTRACTORS AND SUB-CONTRACTORS UPON FAILURE TO PAY CORRECT WAGES, AND PRIVATE RIGHT OF ACTION BY EMPLOYEES; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

Section 1. Section 2-11.16 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 2-11.16. County construction contracts.

(a) In addition to the other elements of the term "responsible bidder' in law or in the discretion of the Board of Commissioners of Miami-Dade County, as applies to competitively bid County contracts in excess of one hundred thousand dollars ($100,000.00) for the construction, alteration, and/or repair, including painting or decorating, of public buildings or public works, shall mean a bidder who provides documented proof in its bid that the various classes of laborers and mechanics will be paid no less than the specified overall hourly rates as set forth in the contract specifications. All leases and contracts entered into after the effective date of this ordinance which provide for privately funded construction, alteration or repair of buildings or improvements located on County-owned land shall require laborers and mechanics performing such work be paid no less than the overall hourly rates required on competitively bid County construction contracts under this Section unless

[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.

specifically exempted below. Fees for monitoring compliance with this Section shall be charged as provided in the most current County-wide Budget as follows: for County construction contracts, the [[~~Department of~~]]>>Small<< Business Development shall charge the using department therefor; for leases and contracts which provide for privately funded construction, alteration or repair of buildings or improvements on County owned land, the party contracting with the County shall be charged therefor.

* * *

(d) The County [[~~Manager~~]]>>Mayor<< shall establish an administrative procedure for monitoring compliance with and enforcement of the requirements of this Section. Such procedure shall provide that:

(i) [[~~D~~]]>>S<<BD may conduct investigations of compliance with the requirements of this Section and issue written notices to a contractor (or subcontractor under the contractor) when it determines based on such investigation that the contractor (or subcontractor) has not complied herewith;

* * *

>>iv<< Upon timely receipt of a request for an administrative hearing before a hearing officer to appeal a determination of non-compliance, the County Mayor shall appoint a hearing officer and fix a time for an administrative hearing thereon. A notice of hearing (together with a copy of [[~~D~~]]>>S<<BD's determination of non-compliance) shall be served upon the contractor (or subcontractor). Upon completion of the hearing, the hearing officer shall submit proposed written findings and recommendations together with a transcript of the hearing to the County Mayor within a reasonable time. The County Mayor shall determine whether the contractor (or subcontractor) failed to comply with the requirements of this ordinance. If the Mayor determination is that the contractor (or subcontractor) failed to comply, and that such failure was pervasive, the Mayor may order that the contract work be suspended or terminated, and that the noncomplying contractor (or subcontractor) and the principal owners thereof be prohibited from bidding on or otherwise participating in County contracts for the construction, alteration and/or repair, including painting or decorating of public buildings or public works for a period of up to three (3) years. In addition, in

the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the affected employees and the contractor or subcontractor shall be fined the penalties provided below. If the Mayor's determination is that the contractor (or subcontractor) failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor may, in the case of underpayment of the required overall per hour rate, order an amount equal to the amount of such underpayment be withheld from the contractor and remitted to the employee, and may also fine the contractor or subcontractor for such noncompliance as follows: for the first underpayment, a penalty in an amount equal to [[~~10~~]]>>20<<% of the amount thereof; for the second underpayment, a penalty in an amount equal to [[~~20~~]]>>40<<% thereof; for the third and successive underpayments, a penalty in an amount equal to [[~~30~~]]>>60<<% thereof. A fourth violation, shall constitute a default of the subject contract and may 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 solely to defray [[~~D~~]]>>S<<BD's costs of administering this ordinance. If the required payment is not made within a reasonable period of time, the noncomplying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts for the construction, alteration, and/or repair, including painting or decorating of public buildings or public works for a period of three (3) years.

* * *

>>(k) Any employee of a contractor or subcontractor who performed work on a contract subject to this section, may instead of adhering to the County administrative procedure set forth in this section but not in addition to such procedure, bring an action by filing suit against the contractor or subcontractor in any court of competent jurisdiction to enforce the provisions of this Chapter and may be awarded back pay, benefits, attorney's fees, costs. The applicable statute of limitations of such a claim will be two (2) years as provided in Florida Statutes Section 95.11(4)(c) in an action for payment of wages. The court may also impose sanctions on the employer, including those persons or entities aiding or abetting the employer, to include wage restitution to the affected employee

and damages payable to the covered employee in the sum of up to five hundred dollars ($500.00) for each week each employer is found to have violated this Chapter.<<

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: September 7, 2016

Approved by County Attorney as
to form and legal sufficiency: GPA for

Prepared by: dsh

David Stephen Hope

Prime Sponsor: Commissioner Audrey M. Edmonson
Co-Sponsors: Commissioner Daniella Levine Cava
Commissioner Barbara J. Jordan
Commissioner Dennis C. Moss