OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Amended
Agenda Item No. 7(A)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: September 21, 2010

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

SUBJECT: Ordinance amending Sections of the Code to include additional penalties and creating Section 8CC-5.1 of the Code

Ordinance No. 10-52

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

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: September 21, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Ordinance Providing Civil Remedies for Other Selected Ordinances and Establishing a Diversion Program

---

The proposed ordinance provides civil remedies as an alternative for violations of selected ordinances under Section 8-CC of the Miami-Dade County Code, and a diversion program as an alternative for those who violate the selected ordinances. This ordinance is expected to have a positive fiscal impact on the County. The Miami-Dade Police Department will enforce these ordinances and administer the diversion program.

In a Manager's Report submitted to the Health, Public Safety and Intergovernmental Committee on December 10th, 2009, it was estimated that simply decriminalizing selected County ordinances would result in recurring, annual net savings and additional revenue of approximately $750,000 for Miami-Dade County. In response to the committee's directive, staff refined its recommendation regarding the diversion program and revised its revenue, savings and cost assumptions accordingly. Most notable are changes resulting from reduced costs associated with prosecution and defense fees, and filing fees. Since law enforcement officers would now have the discretion to enforce violations to the selected ordinances as misdemeanors or civil violations, the County would continue to pay prosecution and defense fees to the State Attorney and Public Defender. The filing fees currently paid to the Clerk of Courts have no direct budgetary impact. It is now estimated that the civil enforcement initiatives and diversion program will have a net positive fiscal impact of $344,000 per year for Miami-Dade County. Below is a summary of those revisions:

Summary of Revisions: 12-10-09 to Proposed Ordinance		
Items Updated and/or Revised	**Dec. 10th, 2009**	**Proposed Ordinance**
Revenue and Savings		
Revenue from fines (at a 50% collection rate) and diversion program fees	$ 541,000	$ 748,000
Reduction in the cost of Inmate meals	$ 15,000	$ 12,000
Elimination of prosecution and defense fees	$ 167,000	$ -
Reduction in criminal filing fees	$ 137,000	$ -
Costs		
Clerk of Courts' share of fines revenue	$ (108,000)	$ (116,000)
Diversion Program cost	$ -	$ (300,000)
Total Net Savings	**$ 752,000**	**$ 344,000**

Alina T. Hudak
Assistant County Manager

Fls06810

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: September 21,2010

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

SUBJECT: Amended 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 Manager'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 _____

Amended
Agenda Item No. 7(A)
9-21-10

ORDINANCE NO. **10-52**

ORDINANCE AMENDING SECTIONS 7-3, 8A-172, 8A-276(B), 8CC(10), 21-28, 21-31.2(B)(1) AND (2), 21-31.4(B), 26-1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; INCLUDING ADDITIONAL PENALTIES; CREATING SECTION 8CC-5.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; 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. Chapter 7 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 7-3. Swimming or fishing from road bridges.

* * *

(e) Violations of this section may be punished by [[~~a fine not to exceed two hundred dollars ($200.00) or imprisonment not to exceed thirty (30) days in the County Jail, or by both such fine and imprisonment, in the discretion of the court of appropriate jurisdiction.~~]]

>>(1) a fine not to exceed two hundred dollars ($200.00);

(2) imprisonment in the county jail for a period not to exceed thirty (30) days;

(3) both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

[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.

(4) fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

(5) completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.<<

Section 2. Chapter 8A of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8A-172. Doing business without local business tax receipt.

>>It shall be unlawful and a violation of this section for<<[[A]]>>a<<ny person [[~~who shall~~]] >>to <<carry on or conduct any business or profession for which a receipt is required without first obtaining such receipt>>. Any person convicted of a violation of this section shall be punished by (i) a fine not to exceed double the amount required for such receipt; (ii) imprisonment in the county jail for a period not to exceed sixty (60) days; (iii) both such fine and imprisonment in the discretion of the court having jurisdiction over the cause; (iv) fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or (v) completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.<<[[~~shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than double the amount required for such receipt or imprisonment not exceeding six (6) months.~~]]

Section 3. Chapter 8A of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8A-276. Requirements.

* * *

(c) *Violations.* Any person convicted of

>>(1) A<<[[a]] violation of this section shall be punished by

>>a.<<not more than thirty (30) days imprisonment>>;<<[[~~, or by~~]]

>>b.<<a fine >>of <<not more than two hundred fifty dollars ($250.00)>>;<< [[~~or~~]]

>>c. both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;<<[[~~both.~~]]

>>d. fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

e. completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

(2)<< [[~~Any person convicted of a~~]]>>A<< second violation of this section shall be punished by

>>a.<<not more than thirty (30) days imprisonment>>;<<[[~~, or by~~]]

>>b.<<a fine not more than five hundred dollars ($500.00)>>;

c. both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

d. fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

e. completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

(3)<< [[~~or both.~~]]Any subsequent violations of this section shall be punished by

>>a.<<not more than thirty (30) days imprisonment>>;<<[[~~,~~]]

>>b.<<[[~~or by~~]]a fine not more than one thousand dollars ($1,000.00)>>;

c. both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

d. fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

e. completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.<<[[~~or both.~~]]

* * *

Section 4. Chapter 8CC of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8CC-10. Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

* * *

Code Section	*Description of Violation*	*Civil Penalty*
	* * *	
2-8.1	Disclosing false information	$ 500.00
	* * *	
>>7-3<<	>>Swimming or fishing from prohibited road bridges - First Offense<<	>>$ 25.00<<

Code Section	*Description of Violation*	*Civil Penalty*
	>>Swimming or fishing from prohibited road bridges - Second and Subsequent Offenses<<	>>$ 100.00<<
* * *		
>>8A-172<<	>>Doing business without local business tax receipt<<	>>$100.00<<
* * *		
>>8A-276(b)<<	>>Failure to display commercial vehicle markings<<	>>$200.00<<
* * *		
>>21.31.2(b)(1) & (2)<<	>>Alcohol possession or consumption near a store<<	>>$100.00<<
* * *		
>>21.31.4(B)<<	>>Obstructing traffic or aggressively begging<<	>>$100.00<<

Section 5. Chapter 21 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 21-28. Noises; unnecessary and excessive prohibited.

It shall be unlawful for any person to make, continue, or cause to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise.>> Any person violating any of the provisions of this section shall be punished by (i) a fine not to exceed five hundred dollars ($500.00); (ii) imprisonment in the county jail for a period not to exceed sixty (60) days; (iii) both such fine and imprisonment in the discretion of the court having jurisdiction over the cause; (iv) fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or (v) completion of the Miami-Dade County Diversion Program, pursuant to

Implementing Order of the Board of County Commissioners.<<
The following acts, among others, are declared to be unreasonably loud, excessive, unnecessary or unusual noises in violation of this section, but this enumeration shall not be deemed to be exclusive, namely:

* * *

Section 6. Chapter 21 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 21-31.2. Consumption or possession of alcohol in open containers near store selling alcoholic beverages, religious property, and other locations. Signs required in such stores.

* * *

(b) *Public nuisance; unlawful acts.*

(1) It is a public nuisance and shall be unlawful and in violation of this section for any person to consume any alcoholic beverage while within one hundred (100) feet of any package store or food store selling alcoholic beverages, property regularly used for religious purposes, community center, senior citizens' center, day care center, funeral home, or school.

(2) It is a public nuisance and shall be unlawful and in violation of this section for any person to possess an open container of alcoholic beverages while stopping, standing, or remaining within one hundred (100) feet of any package store or food store selling alcoholic beverages, property regularly used for religious purposes, community center, senior citizens' center, day care center, funeral home, or school.

>>(c) Any person violating any of the provisions of sections 21-31.2(b)(1) or 21-31.2(b)(2) shall be punished by

(1) a fine not to exceed five hundred dollars ($500.00);

(2) imprisonment in the county jail for a period not to exceed sixty (60) days;

(3) both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

(4) fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

(5) completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.<<

Section 7. Chapter 21 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 21-31.4. Aggressive or obstructive panhandling prohibited.

* * *

(D) *Penalties.* >>Any person convicted of

(1) A violation of this section shall be punished by

a. not more than thirty (30) days imprisonment;

b. a fine of not more than one hundred dollars ($100.00);

c. both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

d. fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

e. completion of the Miami-Dade County Diversion Program, pursuant to

Implementing Order of the Board of County Commissioners.

(2) A second or subsequent violation of this section shall be punished by

a. not more than sixty (60) days imprisonment;

b. a fine not more than two hundred dollars ($200.00);

c. both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

d. fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

e. completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.<<[[~~The first violation of this provision shall be punishable by not more than a fine of one hundred dollars ($100.00) and thirty (30) days incarceration; second and subsequent violations shall be punishable by not more than a fine of two hundred dollars ($200.00) and sixty (60) days incarceration.~~]]

* * *

Section 8. Chapter 26 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 26-1. Rules and regulations adopted.

>>Any person violating any of the rules and regulations provided in this section shall be punished by (i) a fine not to exceed five hundred dollars ($500.00); (ii) imprisonment in the county jail for a period not to exceed sixty (60) days; (iii) both such fine and imprisonment in the discretion of the court having jurisdiction over the cause; (iv) fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or (v) completion of the Miami-Dade

County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.<<

* * *

Section 9. Section 8CC-5.1 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

Sec. 8CC-5.1. Miami-Dade County Diversion Program.

Notwithstanding the provisions of 8CC-5, a violator who has been served with a civil violation notice may enter the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners, provided the civil violation notice is issued for the violation of an ordinance listed in the table below, which may be amended from time to time.

The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

Code Section	***Description of Violation***
7-3	Swimming or fishing from prohibited road bridges
8A-172	Conducting business without a local business tax receipt
8A-276(b)	Failure to display commercial vehicle markings
21-28	Producing loud or excessive noise
21-31.2(b)(1) & (2)	Alcohol possession or consumption near a store
21-31.4(B)	Obstructing traffic or aggressively begging
26-1	Parks violations

Code Section	*Description of Violation*
[[~~30-468~~	~~Towing, Manifest / Trip Records violations~~
~~30-469~~	~~Towing Safety Standards violations~~]]

Section 10. 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 11. 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 12. 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 21, 2010

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Ben Simon

Prime Sponsor: Commissioner Sally A. Heyman