

# MEMORANDUM

Agenda Item No. 7(D)

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**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners


**DATE:** (Second Reading: 3-7-23)  
January 17, 2023

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Ordinance pertaining to payment of responsible wages on qualifying County construction contracts; amending section 2-11.16; providing a method to index wages for trade classifications in the absence of a local area collective bargaining agreement or nondiscriminatory negotiated contract between organizations that represent employees and contractors; requiring no less than bi-weekly payments to employees; providing for penalty for certain continuing violations

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The accompanying ordinance was prepared by the Internal Services Department and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.


  
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Geri Bonzon-Keenan  
County Attorney

GBK/gh

MDC001

**Date:** March 7, 2023

**To:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**From:** Daniella Levine Cava  
Mayor 

**Subject:** Ordinance Amending Section 2-11.16 of the Code of Miami-Dade County, Florida to Provide a Method to Index Wages for Trade Classifications in the Absence of a Local Area Collective Bargaining Agreement or Nondiscriminatory Negotiated Contract between Organizations that Represent Employees and Contractors

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### **Summary**

The proposed amendment to Section 2-11.16 of the Code of Miami-Dade County, Florida (the Code), will eliminate fluctuations in wage rates in the Responsible Wages and Benefits schedule from one year to the next by adjusting the wage rate to the Consumer Price Index (CPI) when a union agreement is not available for a trade classification.

The Responsible Wages and Benefits due to workers on County construction contracts is enforced by Small Business Development (SBD), a division of the Internal Services Department (ISD). Pursuant to the Code, the wage schedule for each trade is updated annually with the rates included in local union contracts effective January 1st of each year. If there is no agreement in effect for a particular trade, the Code requires the federal Davis Bacon Act wage for that classification be used if available and, if none is available, only the State of Florida minimum wage applies. For some classifications the Davis-Bacon wage rate is lower than the union rate, for others it is higher. However, not all trade classifications are included in the Davis-Bacon schedules. As a result, wage rates can drastically fluctuate from one year to the next affecting the compensation to workers performing the work on the contract, and the contractors required to budget for and pay the Responsible Wages and Benefits.

The wage schedule published in 2022 included two such fluctuations. The Bricklayers hourly wage for tile finishers and cement masons increased an average of 211 percent from \$13.76 (tile finishers)/\$18.01(cement masons) to \$32.06, and the glaziers reduced 68 percent from \$34.16 per hour to \$11 per hour.

### **Recommendation**

It is recommended that the Board of County Commissioners (Board) adopt the attached ordinance amending Section 2-11.16 of the Code, pertaining to the payment of responsible wages and benefits for County construction contracts, to require that when there is no collective bargaining agreement in place at the time of the annual wage update, the wage and benefits rates are indexed to inflation in accordance with the CPI calculated by the United States Department of Commerce as applied to the County of Miami-Dade, and the health rate adjusted by the CPI for medical care for the Miami-Ft. Lauderdale area published by the United States Department of Labor. The CPI adjustment shall be limited to the lesser of CPI or five percent. These overall per hour rates will continue to be indexed to CPI each year unless a negotiated contract in effect as of January 1st of the subsequent year is presented.

Additionally, to ensure consistency with the language in Section 2-8.9 of the Code, pertaining to the payment living wages for County service contracts and County employees, it is recommended that Section 2-11.16 of the Code also be amended: (i) to require that contractors pay employees no less than bi-weekly; and (ii) for violations other than underpayment of wages and/or benefits, damages

payable to the County in the amount of five hundred dollars (\$500.00) per week for each week in which the violation remains outstanding.

**Scope**

The impact of this agenda item is countywide.

**Delegation of Authority**

There is no delegated authority for this item.

**Fiscal Impact/Funding Source**

The implementation of this ordinance will have a fiscal impact to Miami-Dade County as vendors will likely pass this expense to the County by including these costs in the contracts. The specific fiscal impact of this ordinance amendment is difficult to determine at this time and will vary with each contract depending on the value of the contract. It's also important to note, the implementation of this ordinance will not require additional staffing resources or operating expenses.

**Social Equity**

The implementation of the proposed ordinance will provide a social benefit by ensuring that the wages paid to workers on County construction contracts remain steady and keep pace with inflation in the absence of a collective bargaining agreement and are paid no less than bi-weekly.

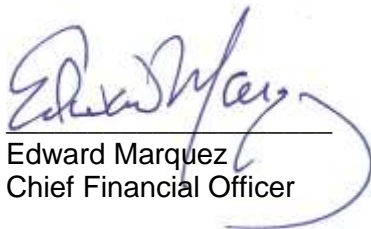
**Track Record/Monitor**

Gary T. Hartfield, Division Director of Small Business Development, a Division of the Internal Services Department, will monitor the implementation of this amendment.

**Background**

Section 2-11.16, Responsible Wages and Benefits for County Construction Contracts, enacted in 1977, requires the wage rates paid to workers be those included in local area collective bargaining agreements between contractors and organizations which represent employees (Unions). In 2002, the Commission amended the Code to require the wage schedule be updated annually and that employees be paid the wages in effect at the time the work is performed.

SBD annually updates the County's wage schedule annually by contacting the local unions to request the wages in their agreements with local firms in effect for January 1st of the following year. If there is no local union agreement for a specific trade, the Code dictates the wage rate in the Federal Davis-Bacon wage schedule is used for that classification. For some classifications the Davis-Bacon wage rate is lower than the union rate, for others it is higher. Additionally, not all classifications are included in the Davis-Bacon schedules. As a result, wage rates can drastically fluctuate from one year to the next affecting the workers performing the work on the contract and prompting change order requests from contractors when rates increase.



Edward Marquez  
Chief Financial Officer



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**DATE:** March 7, 2023

**FROM:**   
Gen Bonzon-Keenan  
County Attorney

**SUBJECT:** Agenda Item No. 7(D)

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 present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_ ) 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(D)  
3-7-23

ORDINANCE NO. \_\_\_\_\_

ORDINANCE PERTAINING TO PAYMENT OF RESPONSIBLE WAGES ON QUALIFYING COUNTY CONSTRUCTION CONTRACTS; AMENDING SECTION 2-11.16 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING A METHOD TO INDEX WAGES FOR TRADE CLASSIFICATIONS IN THE ABSENCE OF A LOCAL AREA COLLECTIVE BARGAINING AGREEMENT OR NONDISCRIMINATORY NEGOTIATED CONTRACT BETWEEN ORGANIZATIONS THAT REPRESENT EMPLOYEES AND CONTRACTORS; REQUIRING NO LESS THAN BI-WEEKLY PAYMENTS TO EMPLOYEES; PROVIDING FOR PENALTY FOR CERTAIN CONTINUING VIOLATIONS; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, this Board desires to accomplish the purposes set forth in the accompanying memorandum, a copy of which is incorporated herein by reference; and

**WHEREAS**, the County will benefit from a method to index wages in the absence of a collective bargaining agreement, to eliminate fluctuations in responsible wage rates required to be paid on qualifying County construction contracts,

**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:<sup>1</sup>

**Sec. 2-11.16. County construction contracts.**

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<sup>1</sup> 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.

\* \* \*

- (b) The specifications for each competitively bid County contract 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 specify an initial overall per hour rate to be paid to each craft or type of employee necessary to perform the contract work as listed in local area nondiscriminatory negotiated contracts (hereinafter referred to for purposes of this subsection (b) as "negotiated contracts") between organizations which represent employees and contractors. In ascertaining the initial overall per hour rate to be paid, the minimum standard shall be the combined overall dollar value on an hourly basis of the wages (paid as set forth below) and of the hospitalization, medical, pension and life insurance benefits (paid as set forth below) for such craft or type of employee under negotiated contracts in effect as of January 1st of the calendar year in which said proposal bid is expected to be advertised, or, in the case of a lease or contract providing for privately funded construction on County-owned land subject to this Section, under the negotiated contracts in effect as of January 1st of the calendar year in which said proposed lease or contract is expected to be executed. Thereafter, the specifications shall provide that the overall per hour rate to be paid for work performed under the contract during each subsequent calendar year shall be the overall per hour rate in effect as of January 1st, of the year in which the work is performed. >>Absent a negotiated contract in effect as of January 1st of the calendar year in which (X) said proposal bid is expected to be advertised, (Y) said proposal lease or contract is expected to be executed, or (Z) the work is performed, as applicable, between organizations which represent employers and contractors, then the overall per hour rates in effect in the last and most recent negotiated contract will be used to calculate the rates for the annual update, and the wage and pension rates will be indexed to inflation as defined by the Consumer Price Index ("CPI") calculated by the United States Department of Commerce as applied to the County of Miami-Dade and the health rate adjusted by the percentage change in CPI for medical care for the Miami-Ft. Lauderdale area published by the United States Department of Labor. Such CPI adjustment shall be limited to the lesser of CPI or 5 percent. These overall per hour rates will continue to be indexed to CPI each year unless a negotiated contract in effect as of January 1st of the subsequent year is presented.<< If a particular craft or type of employee is not listed in such negotiated contracts, in ascertaining the initial overall per hour rate to be paid those employees, the minimum standard shall be the combined overall dollar value on an hourly basis of the "basic hourly rate of pay" (as defined in 29 CFR 5.24) (paid as set forth below) and of the fringe benefits payments (paid as set forth below) for hospitalization, medical pension and life insurance benefits for such craft or

type of employee under the Secretary of Labor's wage determination (made pursuant to the provisions of the Davis-Bacon Act) in effect for Miami-Dade County, Florida, as of the end of the calendar year in which the proposed bid is expected to be advertised. The foregoing and the provisions of Section 2-11.16(e) notwithstanding, where not otherwise precluded by state or federal law, the overall per hour rate shall be the higher rate under this Section 2-11.16 or the rate of wages to be paid under the requirements of the Davis-Bacon Act; provided, further, that the overall per hour rate shall not be the higher rate if the federal government requires the County as a condition of receiving federal funds for a project to pay no more than the wages as determined by the U.S. Department of Labor under the Davis-Bacon Act on project contracts. The specifications for such contracts shall:

\* \* \*

>>(viii) Require that every employee be paid not less than bi-weekly, and without subsequent deduction or rebate on any account (except as such payroll deductions are directed or permitted by law or by a collective bargaining agreement). The employer shall pay employees wage rates in accordance with federal and all other applicable laws such as overtime and similar wage laws. <<

\* \* \*

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

\* \* \*

(vii) Administrative Penalties. The County Mayor or designee may impose, notwithstanding any other provision of this section, one or more of the following penalties for violation of or noncompliance with this section or its implementing or administrative orders, or proposals and competitive selection documents. If the County Mayor or designee's determination is that the contractor (or subcontractor) failed to comply, and that such failure was pervasive, the County Mayor or designee 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 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 or designee'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 or designee 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 20% of the amount thereof; for the second underpayment, a penalty in an amount equal to 40% thereof; for the third and successive underpayments, a penalty in an amount equal to 60% thereof. A fourth underpayment within a three year period shall subject the contractor to debarment to be initiated by SBD in accordance with the debarment procedures of the County. A fourth underpayment violation shall also constitute a default of the subject contract and shall be cause for suspension or termination in accordance with the contract's terms. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering the County's responsible wages and benefits requirements. If the required payment is not made within 30 days of the (i) date by which a request for administrative appeal of a notice of violation was due and either not filed or not filed timely, or (ii) administrative hearing or final resolution of any appeal therefrom, the noncomplying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts for a period not to exceed three (3) years. >>In addition to any other sanctions provided for herein, for violations other than underpayment of wages and/or benefits, damages payable to the County in the amount of five hundred dollars (\$500.00) per week for each week in which the violation remains outstanding.<<

\* \* \*

**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:

Approved by County Attorney as  
to form and legal sufficiency:

EWJ for  
dsh

Prepared by:

David Stephen Hope