

MEMORANDUM

Agenda Item No. 7(B)

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

DATE: November 7, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance creating a heat standard for outdoor workers; creating chapter 22A and amending section 8CC-10 of the Code; providing intent, purpose, and definitions; establishing procedures for implementation; providing for County enforcement; requiring certain employers to have an approved mandatory heat exposure safety program; requiring access to drinking water; requiring shaded recovery periods; providing for multilingual notice of employee rights; establishing penalties for violations of chapter; requiring reports; amending section 10-38; providing for debarment of contractors that violate heat standard for outdoor workers

A substitute was presented and forwarded to the BCC with a favorable recommendation at the September 11, 2023 Community Health Committee.

This substitute item differs from the original item as follows:

1. In Section 2 of the ordinance, this substitute:
 - a. Revises Sections 22A-3 and 22A-4 to provide that all employers, including contractors and subcontractors, are only responsible for their own direct employees and independent contractors, and are not responsible for the employees of their contractors or subcontractors;
 - b. Removes all references to the “heat index” in Sections 22A-4, 22A-7 and 22A-9, and changes the thresholds triggering certain requirements to a temperature of 95 degrees Fahrenheit.
 - c. Revises Section 22A-6, and 22A-11 to limit an employer’s penalties to one violation per jobsite, per day, for the violations listed in subsections 22A-6(1)-(6);
 - d. Revises Section 22A-7 to remove the requirement for employers to remind employees to consume drinking water, and to require employers to provide employees with access to a sufficient amount of drinking water as needed;
 - e. Revises Section 22A-7 to provide that an employer’s obligation to provide a 10-minute shaded recovery period is triggered upon the request of the employee, and may not be denied; and
 - f. Revises Section 22A-7 to reduce the time period from 14 days to 7 working days, for employers to closely observe employees newly assigned or reassigned to work in an outdoor environment.
2. In Section 3 of the ordinance, this substitute revises the amendment to Section 8CC-10 to provide a warning for the first offense of each violation, and to lower the penalties for certain second, third, and subsequent violations.
3. This substitute adds a new Section 6 to the ordinance, which delegates authority to the County Mayor to propose Implementing Orders and other procedures necessary to carry out the requirements of the ordinance.
4. In Section 9 of the ordinance, this substitute delays the implementation of the ordinance, including the enforcement provisions, until 180 days after its adoption.
5. This substitute makes conforming changes throughout.

Rule 5.06(i) of the Board’s Rules of Procedure provides that differences between an original item and a substitute item should be uniquely identified in the substitute by double underlining and double strike-through, or where such approach would not clearly show the difference or are not practical, by providing footnotes or comments on the item. Based on rule 5.06(i), the preceding comprehensive description of differences between the original item and the substitute is provided in lieu of double underlining and double strike through.

The accompanying ordinance was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Marleine Bastien and Commissioner Kionne L. McGhee.


Geri Bonzon-Keenan
County Attorney

GBK/uw

MDC001

Memorandum



Date: November 7, 2023

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

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Fiscal Impact Statement for Substitute Ordinance Relating to Outdoor Worker Protections

The proposed ordinance creates a heat standard (as defined in Chapter 22A, Miami-Dade County Code) for outdoor workers that entails an educational campaign including a County website page, investigating complaints that violate the heat standard, initiating inspections and compliance review with employers, enforcing provisions within the heat standard, reporting and other administrative functions that include coordinating Chapter 22A provisions with other governmental agencies. Enforcement provisions of the heat standard or any labor safety standard are not currently performed by the County. A new office would need to be funded and established as the the County currently does not have job functions that include enforcement or proactive inspections related to labor safety practices. It is estimated that this will take 18 months to both fund and establish the enforcement component of this ordinance. The Administration has capacity and job functions that can be augmented to ensure the implementation of the education and outreach provisions under the proposed ordinance as written (i.e. going into effect in May 2024). That being said, we believe that we would not be able to begin enforcement until May 2025 for the reasons stipulated above.

The implementation of the proposed ordinance to protect outdoor workers in Miami-Dade County from heat related illnesses and injuries will have a fiscal impact to Miami-Dade County. However, at this time it is not possible to provide the fiscal impact as the Administration would need to evaluate which existing resources could be augmented to accommodate this function and the additional staff and outreach costs needed to fulfill the requirements.

A handwritten signature in blue ink that reads "Jimmy Morales".

Jimmy Morales
Chief Operations Officer

Memorandum



Date: November 7, 2023

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

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Social Equity Statement for Substitute Ordinance Relating to Outdoor Worker Protections

The proposed substitute ordinance creates a Heat Standard for Outdoor Workers to protect and safeguard the health and lives of outdoor workers in Miami- Dade County from heat-related illnesses and death. The ordinance seeks to address the fact that Miami-Dade County is experiencing a significant increase in the number of days with extreme heat every year, and the lack of sufficient local, state, or federal standards for outdoor workers makes them uniquely and disproportionately vulnerable to suffering heat-related illnesses and death in their workplaces.

The substitute Outdoor Worker Protections ordinance seeks to ensure that workers and employers are informed and trained about heat-related risks and how to prevent those risks and that employers provide workers with access to water and shaded or cooled rest breaks. As proposed, this ordinance covers employers and workers within the construction and agricultural industries. While these industries have higher rates of heat related illnesses and injuries nationwide, making this heat standard applicable to all workers exposed to environmental heat would assure that a greater number of employees would be protected and that these standards would not unequally affect just construction and agriculture industries. As amended, the substitute ordinance now includes farm labor contractors which is an important correction to ensure that those hiring and directly supervising outdoor farm workers are responsible for following the ordinance. The substitute also provides significantly more time for education and outreach to employers and now includes a warning to violators prior to issuing any civil penalties. This will better allow for the education of employers and promote compliance with the ordinance without resorting to financial penalties as a first step.

While Occupational Safety and Health Administration (OSHA) provides guidelines on heat protections, there are no specific heat protection requirements under OSHA nor under Florida state law. OSHA does conduct limited heat safety inspections in Miami-Dade (4 in total for FY21-22 and 11 YTD in FY22-23) and without heat safety rules, is very limited in its authority to enforce heat safety.

The changed threshold for heat protection from a heat index of 90°F to a dry bulb fixed temperature of 95°F would effectively serve to limit the total number of days where worker protections would be in effect. With an average relative humidity of around 72% in the summer months, 95°F would equate to a heat index of 120°F. The National Weather Service uses the heat index or “feels like” temperature because it combines temperature and humidity to provide a better indicator for elevated risks of heat stress. OSHA issued guidance using the Heat Index (<https://www.nalc.org/workplace-issues/body/OSHA-All-in-One-Heat-Guide.pdf>). OSHA guidance states that water should be available when the heat index reaches 91°F. At 91°F - 103°F, frequent scheduled shaded breaks should begin. At a heat index of 103°F -114°F employers should consider adjusting work schedules and workloads, monitor and enforce breaks. At a heat index of 115°F or more work should be stopped and rescheduled. Based on information provided by

the National Weather Service, Miami-Dade County reached a dry bulb temperature of 95°F approximately 15-20 days in West Miami-Dade, 7-10 days over most of metro Miami-Dade, and approximately 3-5 days along Biscayne Bay and the Beaches.

It is anticipated that the additional protections and trainings required by the proposed substitute ordinance will help to reduce harmful health and economic impacts associated with extreme heat exposure for those working directly in the construction and agriculture industries. The substitute provides a more reasonable timeline for implementation and allows for a longer period for providing education, training, and the development of Best Management Practices within the affected industries and should provide a positive social equity impact for outdoor workers in those industries.



Jimmy Morales
Chief Operations Officer



MEMORANDUM
(Revised)

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

DATE: November 7, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 7(B)

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(B)
11-7-23

ORDINANCE NO. _____

ORDINANCE CREATING A HEAT STANDARD FOR OUTDOOR WORKERS; CREATING CHAPTER 22A AND AMENDING SECTION 8CC-10 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING INTENT, PURPOSE, AND DEFINITIONS; ESTABLISHING PROCEDURES FOR IMPLEMENTATION; PROVIDING FOR COUNTY ENFORCEMENT; REQUIRING CERTAIN EMPLOYERS TO HAVE AN APPROVED MANDATORY HEAT EXPOSURE SAFETY PROGRAM; REQUIRING ACCESS TO DRINKING WATER; REQUIRING SHADED RECOVERY PERIODS; PROVIDING FOR MULTILINGUAL NOTICE OF EMPLOYEE RIGHTS; ESTABLISHING PENALTIES FOR VIOLATIONS OF CHAPTER; REQUIRING REPORTS; AMENDING SECTION 10-38; PROVIDING FOR DEBARMENT OF CONTRACTORS THAT VIOLATE HEAT STANDARD FOR OUTDOOR WORKERS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Miami-Dade County has an estimated 327,321 outdoor workers, including many thousands who labor in agriculture and construction; and

WHEREAS, Miami-Dade County is experiencing a significant increase in the number of extreme heat days every year, which is estimated to reach 134 days by the middle of the century; and

WHEREAS, a recent study published by scientists at the University of Miami Rosenstiel School of Marine, Atmospheric, and Earth Science (the “Rosenstiel School”) and Florida International University found that residents and visitors in Miami-Dade County may experience temperatures that are 6 degrees Fahrenheit higher on average than NOAA National Weather Service’s official reported values, for example because of humidity; and

WHEREAS, according to data from the U.S. National Centers for Environmental Protection, July 4, 2023, was the hottest day ever on Earth since at least 1979, when records on global temperature began; and

WHEREAS, research from the Rosenstiel School shows that 2023 has been Miami's hottest year on record, with 15 daily peak temperature records being broken, and the National Weather Service has issued numerous heat advisories for South Florida; and

WHEREAS, extreme heat is the largest cause of weather-related deaths in the United States and has caused more deaths than hurricanes, tornadoes, and floods, combined; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) reports that Florida leads the country in heat-related hospitalizations, including more than 6,800 in 2019; and

WHEREAS, studies show that at temperatures exceeding 80 degrees Fahrenheit, outdoor workers are disproportionately at risk of suffering heat-related illnesses, including heat exhaustion, heat stroke, rhabdomyolysis, heat syncope, acute and chronic kidney disease, and death; and

WHEREAS, studies show that outdoor workers, including agricultural workers, are up to 35 times more likely to die of heat exposure than the general population; and

WHEREAS, outdoor workers in Miami-Dade County currently lack federal, state, or local heat standards to guarantee basic life-saving protections, including access to heat illness education, access to shaded recovery periods, and first aid and emergency response procedures; and

WHEREAS, a report by WeCount!, a private non-profit membership organization, found that 51 percent of agricultural workers surveyed in South Miami-Dade were not allowed to rest in the shade, 15 percent reported no easy access to safe drinking water, and 69 percent had experienced signs and symptoms of heat-related illness; and

WHEREAS, an enforceable heat standard can prevent unnecessary deaths and hospitalizations, minimize labor shortages and productivity declines caused by sick workers, and ensure the continued operation and sustainability of supply chains critical to our local economy; and

WHEREAS, a number of responsible employers in Florida are already implementing heat standards for outdoor workers, including shaded recovery periods; and

WHEREAS, Miami-Dade County has taken recent steps to lead on the issue of extreme heat, including appointing the world's first-ever Chief Heat Officer, establishing a Climate Heat and Health Taskforce with community input, and declaring the first Annual Heat Season in 2022; and

WHEREAS, Miami-Dade County's Chief Heat Officer, the County's Climate Heat and Health Taskforce, and the 2022 Extreme Heat Action Plan have recommended adoption of a countywide Heat Standard for Outdoor Workers in Miami-Dade County; and

WHEREAS, Miami-Dade County has an interest in safeguarding the health and safety of outdoor workers and the residents, employers, and industries that depend on this workforce; and

WHEREAS, this Board wishes to adopt a Heat Standard for Outdoor Workers to address a serious public health concern and to avoid the health and economic impact of inaction; and

WHEREAS, the County seeks to solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only; and

WHEREAS, the County does not wish to do business with contractors that repeatedly violate the Heat Standard for Outdoor Workers; and

WHEREAS, section 10-38 of the Miami-Dade County Code, which concerns debarment of contractors from County work, lays out procedures for preventing individuals or entities from contracting or subcontracting with the County for a reasonable, specified period of time; and

WHEREAS, the serious nature of debarment and suspension requires that such sanctions be imposed only in the public interest for the County’s protection and not for the purpose of punishment; and

WHEREAS, this Board believes that contractors that repeatedly violate the Heat Standard for Outdoor Workers demonstrate a lack of business integrity and honesty, which seriously impacts said contractors’ responsibility; and

WHEREAS, this Board believes it is in the public interest of the County to ensure that individuals or companies that repeatedly violate the Heat Standard for Outdoor Workers should be prohibited from receiving County business,

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

Section 1. The foregoing recitals are incorporated in this ordinance and are approved.

Section 2. Chapter 22A of the Code of Miami-Dade County, Florida, is hereby created to read as follows:¹

>>Chapter 22A - HEAT STANDARD FOR OUTDOOR WORKERS

Sec. 22A-1. Short Title.

This chapter shall be known as the “Heat Standard for Outdoor Workers.”

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.

Sec. 22A-2. Legislative Intent and Purpose.

- (A) It is the intent of the Board of County Commissioners, in accordance with the Home Rule Amendment and Charter and its authority to exercise its police powers for the public safety, health, and general welfare, to create a Heat Standard for Outdoor Workers to protect and safeguard the health and lives of outdoor workers in Miami- Dade County from heat-related illnesses and death.
- (1) This Board finds that Miami-Dade County is experiencing a significant increase in the number of days with extreme heat every year, and the lack of sufficient local, state, or federal standards for outdoor workers makes them uniquely and disproportionately vulnerable to suffering heat-related illnesses and death in their workplaces.
- (2) This Board further finds that protecting outdoor workers in industries like agriculture and construction from heat-related illnesses and death is fundamental to the health, safety, and welfare of the entire community.
- (B) The purpose of this chapter is to address a serious public health concern in Miami-Dade County and take measures to protect the outdoor workforce, which also benefits the residents, employers, and industries that depend on outdoor workers.
- (C) It is acknowledged that the Occupational Safety and Health Administration (OSHA) has published an advanced notice of proposed rulemaking to address heat injury and illness prevention in outdoor and indoor work settings. It is further acknowledged that, if OSHA ultimately adopts such a rule, then enforcement of this chapter may be preempted by federal law.

Sec. 22A-3. Applicability in the incorporated and unincorporated areas; exceptions.

- (A) This chapter applies to employers that meet all of the following:
- (1) The employer meets one of the following:
- (a) The employer employs at least five employees who are engaged in agriculture or construction jobs or a combination thereof in Miami-Dade County; or

- (b) The employer is responsible for a site in Miami-Dade County at which five or more employees are engaged in agriculture or construction jobs or a combination thereof.
 - (2) One or more of the employees works more than 50 percent of his or her time in an outdoor environment, as defined in section 22A-4(10).
 - (B) Notwithstanding any provision of this chapter to the contrary, none of the following shall be considered employers or have any obligations under this chapter:
 - (1) Single family or duplex property owners or tenants who hire individuals or business entities to do work on a property that they either own or rent.
 - (2) Homeowner or residential condominium associations, or other homeowner associations, that hire individuals or business entities to perform work in an outdoor environment that is located on the common areas of the residential property.
 - (3) Where compliance would be prohibited by federal or State law or regulations.
 - (C) The provisions of this chapter are for the protection of outdoor workers, and the protections and rights contained herein shall not be deemed to apply to an employee who is required to work in an outdoor environment for fewer than 15 minutes per hour, on average, for every hour in the employee's entire workday, regardless of whether such employee works for an employer subject to this chapter.
 - (D) This chapter is supplemental to all related industry-specific standards. When the requirements of this chapter offer greater protection than related industry-specific standards, an employer shall comply with the requirements of this chapter.
 - (E) This chapter shall apply in both the incorporated and unincorporated areas.
 - (1) This chapter shall be enforced by Miami-Dade County, except in municipalities that adopt their own regulations as provided below.
 - (2) Each municipality may adopt and enforce its own regulations with respect to heat protections for outdoor worker, whether more or less stringent than the provisions of this chapter, provided, however, that such municipal regulations at least provide for

(i) access to drinking water, (ii) access to shaded recovery periods; and (iii) the provision of first aid or emergency response to workers who report or exhibit signs of heat illness. A municipality that adopts its own regulations with respect to heat protections for outdoor workers shall file the applicable legislation with the Miami-Dade County Clerk of the Board, but the enforceability of such municipal legislation shall not be contingent upon such filing.

Sec. 22A-4. Definitions.

The following words and phrases, as used in this chapter, shall have the following meanings:

- (1) “Acclimatization” means temporary adaptation of the body to work in the heat that occurs gradually when a person is exposed to heat. Acclimatization peaks in most people within four to fourteen days of regular work for at least two hours per day in the heat.
- (2) “Department” means the Miami-Dade County department, division, office, or particular County staff that may be designated by the County Mayor to administer the provisions of this chapter.
- (3) “Director” means the primary official that has been delegated responsibility to administer the Department. Except where expressly provided or where context dictates otherwise, the term "Director" includes the Director's designee.
- (4) “Drinking water” means cool (66°F–77°F) or cold (35°F–65°F) potable water that is suitable for human consumption and is maintained in safe and sanitary conditions to prevent contamination and illnesses where such is not supplied through plumbed fixtures or otherwise continuously supplied. The term also includes commercially available electrolyte-replenishing beverages that do not contain caffeine.
- (5) “Employee” means a person engaged in an agriculture or construction job or a combination thereof in Miami-Dade County who performs services for and under the control and

direction of an employer for wages or other remuneration. The term includes an independent contractor and a farm labor contractor, as defined in section 450.28, Florida Statutes.

- (6) “Employer” means any private individual, firm, partnership, institution, association, corporation, business trust, or any person or groups of persons that employs individuals who are engaged in agriculture or construction jobs or a combination thereof in Miami-Dade County.
 - (a) The term “employer” includes general contractors and subcontractors.
 - (b) Notwithstanding anything stated to the contrary, the term “employer” shall not include: any person or entity that is not subject to this chapter, as provided in Section 22A-3; or a farm labor contractor, as defined in section 450.28, Florida Statutes.

- (7) “Environmental risk factors for heat illness” means working conditions that create the possibility of heat illness, including air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat from sources such as the ground, air movement, workload severity and duration, and protective clothing and equipment worn by an employee.

- (8) “Heat illness” means any medical condition caused by high temperatures and humidity, including but not limited to heat cramps, heat exhaustion, heat syncope (fainting), and heat stroke. For the purpose of this subsection, a serious heat-related illness event shall include any form of heat illness, including heat exhaustion or heat stroke, that requires immediate emergency medical attention.

- (9) “Hours worked” means the time during which an employee is subject to the control of an employer and includes all the time the employee is required to work, including all time during which an employee is suffered or permitted to work.

- (10) “Outdoor environment” means a location where work activities are conducted outside. The term also includes locations such as sheds, tents, greenhouses, or other structures where work activities are conducted inside but the temperature is not managed by devices that reduce heat exposure and aid in cooling, such as air conditioning systems.

- (11) “Personal risk factors for heat illness” means factors specific to an individual, including but not limited to age, health, pregnancy, degree of acclimatization, water, alcohol, or caffeine consumption, use of prescription medications, or other physiological responses to heat.
- (12) “Recovery period” means a cool-down period to reduce heat exposure and aid in cooling down the human body and avoiding the signs or symptoms of heat illness.
- (13) “Shade” means an area that is not in direct sunlight. Shade may be provided by any natural or artificial means, such as a tree, tarp, tent, canopy, or other similar structure.
- (14) “Supervisor” means any individual or group of individuals within an employer’s organization who has the authority to direct and control the work performance of an affected employee or who has managerial authority to take corrective action regarding the violation of any law, rule, or regulation of which an employee complains.

Sec. 22A-5. Departmental duties and authority.

- (A) The provisions of the Miami-Dade County Heat Standard for Outdoor Workers shall be monitored and enforced by the Department.
- (B) For purposes of this chapter, the duties, functions, powers, and responsibilities of the Department shall include:
 - (1) Publishing multilingual information and educational materials related to this chapter in English, Spanish, and Haitian Creole, including but not limited to, maintaining an updated County website page and publicizing for employers and employees a copy of approved templates of heat exposure safety programs, notices of rights, and other chapter requirements.
 - (2) Receiving, initiating, investigating, inspecting, mediating, and issuing prompt determinations on complaints received under this chapter from employees allegedly aggrieved by a violation of this chapter, or any entity or organization a member of which is allegedly aggrieved by a violation of this chapter.

- (3) Initiating and conducting affirmative inspections, investigations, interviews, or ongoing monitoring, or any combination thereof, of employers to ensure full compliance with this chapter.
- (4) Enforcing the provisions of this chapter and any rules and regulations promulgated thereunder, including but not limited to: issuing orders to enforce the requirements of this chapter; imposing civil penalties; enforcing notice and training requirements; and enforcing consent agreements as provided in this section.
- (5) Coordinating with and referring matters and complaints under this chapter to federal, state, and local governmental agencies, when appropriate, to address workplace issues.
- (6) Developing guidance documents and other resources to facilitate and encourage employer compliance with this chapter.
- (7) Consulting with, and serving as a government liaison to, labor, community, and professional entities and organizations representing employees and employers.
- (8) Advising the County Mayor on workplace health and safety policy matters, including but not limited to extreme heat and other workplace hazards.
- (9) Performing such other administrative duties related to the Miami-Dade County Heat Standard for Outdoor Workers as may be assigned by the County Mayor; and
- (10) Publishing acclimatization best practices to assist employers in implementing acclimatization programs under this chapter.

(C) The Department shall develop a Notice of Employee Rights that can be downloaded or printed for distribution by employers to comply with section 22A-10. Such Notice shall be in plain language and translated into English, Spanish, and Haitian Creole, and shall provide the following:

- (1) Existing heat-related rights that may be applicable to employees under federal, state, and local laws, including but not limited to the Heat Standard for Outdoor Workers set forth in this chapter and rights provided by the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.).
- (2) Contact information for filing complaints under federal, state, and local laws.

- (3) A web address, accessible in English, Spanish, and Haitian Creole, with links to federal, state, and local government agencies that may have jurisdiction over certain workplace-related issues related to this chapter.
 - (4) A printed name and signature block for the employee.
- (D) The Department may, in the Director's discretion, terminate an investigation or an action commenced to enforce the provisions of this chapter upon execution of a written consent agreement between the Department and the persons or entities who are the subjects of the investigation or action.
- (1) The consent agreement shall provide written assurance of voluntary compliance with all the applicable provisions of this chapter by said subjects.
 - (2) In addition, the consent agreement may provide the following: remedial or corrective action; monitoring, as would be required pursuant to section 22A-11 for determinations of repeat violations; compensatory damages; punitive damages; civil penalties; and recovery of costs and expenses of the County for investigation, enforcement, testing, monitoring, and litigation, including attorneys' fees.
 - (3) An executed written consent agreement shall neither be evidence of a prior violation of this chapter nor shall such agreement be deemed to impose any limitation upon any investigation or action by the Department in the enforcement of this chapter.
 - (4) The consent agreement shall not constitute a waiver of or limitation upon the enforcement of any federal, State, or local laws or ordinances.
 - (5) Executed written consent agreements are hereby deemed to be lawful orders of the Department.
 - (6) Each violation of any of the terms and conditions of an executed written consent agreement shall constitute a separate offense under this chapter by the person who executed the consent agreement, their respective officers, directors, agents, servants, employees and attorneys; and by those persons in active concert or participation with any of the foregoing persons and who receive actual notice of the consent agreement.

- (7) Each day during any portion of which each such violation occurs constitutes a separate offense under this chapter.

Sec. 22A-6. Violations of Chapter.

It shall be a violation of this chapter for any employer to:

- (1) Fail to timely provide to each employee the Notice of Employee Rights as set forth in section 22A-10.
- (2) Fail to have posted, at all times, the Notice of Employee Rights as set forth in section 22A-10.
- (3) Fail to maintain or furnish a mandatory heat exposure program as set forth in section 22A-7.
- (4) Fail to implement any requirement of a heat exposure safety program as set forth in section 22A-7.
- (5) Fail to provide employees on the employer's jobsite with access to drinking water as set forth in section 22A-8.
- (6) Fail to provide employees on the employer's jobsite with access to a shaded recovery period as set forth in sections 22A-7 and 22A-9.
- (7) Fail to take a first aid measure or emergency response for an employee reporting or exhibiting signs of heat illness.
- (8) Retaliate against, intimidate, threaten, harass, or discriminate in any manner against a current or former employee or any other person or entity for exercising any right protected under this chapter, assisting or supporting any employee, person, or entity in doing so, or informing any employee, person, or entity about such right.
 - (a) Rights protected under this chapter include, but are not limited to: requesting a copy of required notices and programs; presenting a formal or informal complaint to a supervisor; contacting or filing a complaint with the Department; and testifying, assisting, or participating in an investigation, interview, inspection, conciliation, or other action by the department under this chapter.
 - (b) The determination of whether an employer has engaged in retaliation under this chapter shall be made in accordance with Florida law.

- (9) Fail to comply with or satisfy any terms, conditions, or obligations of a consent agreement entered into pursuant to section 22A-5 or other lawful order of the Department..
- (10) Aid, abet, incite, compel, or coerce any person or entity to engage in any practice prohibited by this chapter.
- (11) Obstruct or prevent any person or entity from complying with this chapter.

Sec. 22A-7. Mandatory Heat Exposure Safety Program.

- (A) An employer shall establish, implement, and maintain an outdoor heat exposure safety program that complies with the this section.
- (B) This outdoor heat exposure safety program shall be in writing in English, Spanish, and Haitian Creole, and shall be made available at the worksite to employees, and upon request, shall be provided to the Department.
- (C) At a minimum, an employer's program shall:
 - (1) Train and inform supervisors and employees about heat illness, the environmental and personal risk factors for heat illness, how to protect themselves and co-workers, how to recognize signs and symptoms of heat illness in themselves and coworkers, and appropriate first-aid measures that can be used before medical attention arrives in the event of a serious heat- related illness event.
 - (2) Provide a list of preventive measures, first-aid techniques, and best practices to prevent and address heat illness. This includes, but is not limited to, loosening clothing, loosening or removing heat-retaining protective clothing and equipment, accessing shade, engaging in a cool-down period, applying cool (66°F–77°F) or cold (35°F–65°F) water to the body, and consuming drinking water.
 - (3) Implement the following mandatory high-heat procedures when the outdoor temperature equals or exceeds 95 degrees Fahrenheit:
 - (a) Ensure that each employee has access to an effective means of communication (by voice, radio, or cellular phone or other electronic device) to immediately report signs or symptoms of heat illness to an employer,

- manager, supervisor, contractor, or, when necessary, emergency medical services provider.
- (b) Observe employees for alertness and signs or symptoms of heat illness, by implementing at least one of the following: observation by a supervisor or supervisor's designee of 20 or fewer employees, or a mandatory buddy system among employees. Alternative means, that are equivalent or more effective means of observation, may be included if such alternative means have been approved in writing by the Department.
- (c) Designate one or more employees on each worksite to be responsible to call for emergency medical services, while also allowing other non-designated employees to call for emergency services when no designated employee is available on the worksite.
- (d) Provide a sufficient amount of drinking water, in accordance with the following:
- (i) Drinking water shall be made available throughout the workday at locations that are quickly and easily accessible from each employees' work area.
- (ii) Employers shall allow employees to consume drinking water throughout the workday as needed.
- (iii) Drinking water shall be provided in safe and sanitary conditions, in sufficient amounts to be frequently refilled throughout the day as needed, and be free of charge to all employees working in an outdoor environment.
- (e) Institute pre-shift meetings before the commencement of work to review the high-heat procedures with all employees, encourage employees to drink sufficient amounts of drinking water, and remind employees of their right to a shaded recovery period.
- (f) Ensure that employees are informed of their right to take, upon request, an uninterrupted 10-minute recovery period every two hours

that the employee is working in an outdoor environment, regardless of the overall length of an employee's shift, in accordance with the following:

- (i) The employer shall provide access to shade for every 10-minute recovery period requested by the employee.
 - (ii) The recovery period may be concurrent with a meal or rest period required by policy, rule, or law, if the timing of the employee's recovery period coincides with the required meal or rest period.
- (g) Timely respond to signs and symptoms of possible heat illness, including but not limited to providing first aid and emergency medical services.
- (i) If a supervisor observes, or any employee reports, any sign or symptom of heat illness in any employee, the supervisor shall take immediate action commensurate with the severity of the illness.
 - (ii) If the signs or symptoms are indicators of severe heat illness (including, but not limited to, decreased level of consciousness, staggering, vomiting, disorientation, irrational behavior, very high body temperatures, or convulsions), the employer or supervisor must implement appropriate emergency response procedures, including contacting emergency medical services and, if necessary, transporting employees to a place where they can be reached by an emergency medical provider.
 - (iii) An employee exhibiting signs or symptoms of heat illness shall not be left alone or sent home without being provided first aid or emergency medical services, or both, in accordance with the employer's procedures.

- (h) Implement effective acclimatization practices to promote the physiological adaptations of employees newly assigned or reassigned to work in an outdoor environment, and any employees working in an outdoor environment during a heat wave.
 - (i) Each employee newly assigned or reassigned to work in an outdoor environment shall be closely observed by a supervisor or designee (which may not be delegated to a coworker or buddy) for the first 7 working days of assignment or reassignment.
 - (ii) For purposes of this paragraph, “heat wave” means any day for which the predicted high temperature is at least 95 degrees Fahrenheit and at least ten degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

Sec. 22A-8. Access to Drinking Water.

- (A) An employer shall ensure that a sufficient quantity of drinking water is at all times readily accessible and free of charge to employees who work in an outdoor environment.
- (B) Such drinking water shall be located as close as practicable to the areas where employees work, taking into account the size of the workplace and the walking distance to and from water stations.
- (C) If drinking water is not plumbed or otherwise continuously supplied:
 - (1) An employer must supply a sufficient quantity of drinking water at the beginning of the workday to provide each employee with at least one quart of drinking water per hour for every hour in the employee’s entire workday.
 - (2) It is provided, however, that an employer may supply a smaller quantity of drinking water at the beginning of the workday if the employer has adequate procedures in place to guarantee the employee access to at least one quart of drinking water per hour for every hour in the employee’s entire workday.

Sec. 22A-9. Access to Shaded Recovery Periods.

- (A) When the outdoor temperature equals or exceeds 95 degrees Fahrenheit:
- (1) The employer must maintain one or more areas with shade that are open to the air or offer ventilation or cooling at all times in the area where employees are working.
 - (2) The amount of shade present must be able to accommodate the total number of employees participating in a recovery period at one time without the employees having to be in physical contact with each other.
- (B) An employee who exhibits mild to moderate signs or symptoms of heat illness shall be relieved from duty, provided with access to shade for at least 15 minutes or until such signs or symptoms of heat illness have abated, whichever is greater, and monitored to determine whether any medical attention is necessary.
- (1) If such signs or symptoms do not abate within a reasonable time, an employer shall seek medical attention in a timely manner for the employee.
 - (2) If an employee exhibits signs or symptoms of a serious heat-related illness event, an employer must seek medical attention immediately for the employee and provide first-aid measures.
- (C) If an employer can demonstrate that it is unsafe or not feasible to provide an area with shade, the employer may provide alternative cooling measures, as long as the employer can demonstrate that such measures are at least as effective as an area with shade in reducing heat exposure and illness for their employees.

Sec. 22A-10. Notice of Employee Rights.

- (A) An employer shall provide to each employee, no later than 10 days after the commencement of employment, the Notice of Employee Rights published by the Department.
- (B) The employee shall review, acknowledge, sign, and date the Notice of Employee Rights, have it signed by a witness, and return the signed Notice of Employee Rights to the employer within seven days of receipt. The employer shall provide a signed copy for the employee's records.

- (C) The employer shall maintain, in legible condition, the Notice of Employee Rights in the employee's file for at least 60 days after the end of an employee's employment.
- (D) Upon request, the employer shall furnish physical or electronic signed copies of the Notice of Employee Rights for each employee to the Department.
- (E) At all times, an employer shall also have posted a legible copy of the Notice of Employee Rights in a conspicuous place or places where notices to employees are customarily posted. The Notice of Employee Rights shall be posted in English, Spanish, and Haitian Creole.
- (F) If the employee does not timely sign the Notice of Employee Rights, the employer shall document all attempts to acquire the employee's signature in the employee's file. It is provided, however, that an employee's failure to sign the Notice of Employee Rights shall not be construed as a waiver of any rights or remedies granted to the employee pursuant to this chapter.

Sec. 22A-11. Enforcement, Monitoring, and Penalties.

- (A) Any person or entity violating a provision of this chapter shall be subject to the penalties and remedies provided in this section, section 1-5, and chapter 8CC.
- (B) Each violation of subsections 22A-6(7) – (11) of this chapter shall constitute a separate offense for each employee or person harmed by the violation. However, an employer who violates subsections 22A-6(1) – (6), shall be charged with no more than one violation per jobsite for each day, or portion thereof, that a violation exists, regardless of the number of employees working on that jobsite at the time of the violation.
- (C) Whenever a violation of this chapter occurs or exists, or has occurred or existed, the employer shall be strictly liable for the civil penalties imposed, regardless of fault and regardless of knowledge of the violation. This provision shall be liberally construed and applied to protect the public health, safety, and welfare and to accomplish the purposes of this chapter.

(D) The remedies imposed under these enforcement procedures shall not preclude any other remedies available to employees at law or in equity.

(E) Use of Civil Penalties. Any civil penalties collected by Miami-Dade County for violations of this chapter shall be retained by Miami-Dade County and used only for purposes related to the goals of this chapter, including, but not limited to, enforcement of this chapter, outreach, education, and training.

(F) Responsible County Contracting.

(1) Debarment. A County vendor or contractor (including a lessee of County property or a permittee to conduct private business on County property) may be subject to debarment pursuant to section 10-38 for violations of this chapter.

(2) Responsible bidder.

(a) The following shall be presumed not to be responsible to procure or receive any County contract award, lease of County property, or concession or permit to conduct business on County property:

(i) A person or entity that has admitted to or been adjudicated guilty of:

A. a violation of subsections (8)-(11) of section 22A-6; or

B. five or more violations of subsections (1)-(7) of section 22A-6 within a five-year period.

(ii) A person or entity that has civil penalties, administrative costs of hearing, investigative, enforcement, testing, or monitoring costs, or liens that are unpaid for more than 12 months for more than one violation of this chapter.

(iii) An officer, principal, director, partner, manager, division, shareholder (other than of a publicly traded corporation), or other organizational element of an entity that is subject to subparagraphs (i) or (ii) above.

- (iv) An entity that has an officer, principal, director, partner, manager, division, shareholder (other than of a publicly traded corporation), or other organizational element that is subject to subparagraphs (i) or (ii) above.
 - (b) The County shall provide notice and an opportunity to rebut the presumption set forth in this subsection to the affected person or entity prior to taking any final action to award a contract, lease, concession, or permit for which the affected person or entity has submitted a bid, proposal, or other instrument.
 - (c) Notwithstanding anything herein to the contrary, nothing in this subsection shall preclude the Board of County Commissioners from considering an affected person or entity to be responsible or to otherwise award such firm a contract, lease, concession, or permit.
- (G) Public Database.
 - (1) The Department shall create and maintain on the County's website a publicly accessible database of employers in Miami-Dade who meet one or more of the following:
 - (a) The employer has admitted to or been adjudicated guilty of a violation of this chapter and has penalties that remain unpaid three months after coming due.
 - (b) The employer has been debarred pursuant to section 10-38.
 - (c) The employer is subject to an active monitoring agreement pursuant to this section.
 - (2) An employer may be removed from the public database if the Department determines that the penalties have been paid, the debarment period has ended, or the monitoring agreement has been terminated, as applicable.
- (H) Private Right of Action – Retaliation. No later than two years after the alleged violation, an employee may file a civil action in a court of competent jurisdiction against an employer, supervisor, or other person or entity for engaging

in retaliation in violation of this chapter. In any such private action, upon a determination that a violation of this chapter has occurred, relief may include an order prohibiting the unlawful practice and providing affirmative relief from the effects of the practice, including, and if available under applicable law, equitable relief, declaratory or injunctive relief, compensatory damages, punitive damages, reasonable attorney’s fees, interests, costs, and other available relief as the court may deem just and proper.<<

Section 3. Section 8CC-10 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.

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 sections of this code, except to the extent that different types of violations of the same section may carry different civil penalties. For each section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this chapter, regardless of whether all activities proscribed or required within that particular section are described in the “Description of Violation” column. To determine the exact nature of any activity proscribed or required by this >>code<<, the relevant section must be examined.

Code Section	Description of Violation	Civil Penalty
* * *		
>> <u>22A-6</u>	<u>Failure to timely provide to an employee with Notice of Employee Rights.</u> <u>First violation:</u> <u>Second violation within five years, or first violation after five years:</u>	 <u>Warning</u> <u>\$500.00</u>

	<u>Third or subsequent violation within five years:</u>	<u>\$1,000.00</u>
	<u>Failure to have posted the Notice of Employee Rights.</u> <u>First violation:</u> <u>Second violation within five years, or first violation after five years:</u> <u>Third or subsequent violation within five years:</u>	<u>Warning</u> <u>\$500.00</u> <u>\$1,000.00</u>
	<u>Failure to maintain and furnish a mandatory heat exposure program.</u> <u>First violation:</u> <u>Second violation within five years:</u> <u>Third or subsequent violation within five years:</u>	<u>Warning</u> <u>\$500.00</u> <u>\$1,000.00</u>
	<u>Failure to implement a requirement of a heat exposure safety program.</u> <u>First violation:</u> <u>Second violation within five years:</u> <u>Third or subsequent violation within five years:</u>	<u>Warning</u> <u>\$500.00</u> <u>\$1,000.00</u>
	<u>Failure to provide an employee with access to drinking water.</u> <u>First violation:</u> <u>Second violation within five years:</u> <u>Third or subsequent violation within five years:</u>	<u>Warning</u> <u>\$500.00</u> <u>\$1,000.00</u>
	<u>Failure to provide an employee with access to a shaded recovery period for the requisite time.</u> <u>First violation:</u>	<u>Warning</u>

	<p><u>Second violation within five years:</u></p>	<p><u>\$500.00</u></p>
	<p><u>Third or subsequent violation within five years:</u></p>	<p><u>\$1,000.00</u></p>
	<p><u>Failure to timely take first aid measure or emergency response for an employee reporting or exhibiting sign of heat illness.</u></p>	
	<p><u>First violation:</u></p>	<p><u>Warning</u></p>
	<p><u>Second violation within five years:</u></p>	<p><u>\$500.00</u></p>
	<p><u>Third or subsequent violation within five years:</u></p>	<p><u>\$1,000.00</u></p>
	<p><u>Retaliating against, coercing, intimidating, threatening, harassing, or discriminating against employee or other person or entity for exercising rights under chapter 22A.</u></p>	
	<p><u>First violation:</u></p>	<p><u>Warning</u></p>
	<p><u>Second violation within five years:</u></p>	<p><u>\$1,000.00</u></p>
	<p><u>Third or subsequent violation within five years:</u></p>	<p><u>\$2,000.00</u></p>
	<p><u>Failure to timely comply with or satisfy term, condition, or obligation of a consent agreement or other lawful order of the department.</u></p>	
	<p><u>First violation:</u></p>	<p><u>Warning</u></p>
	<p><u>Second violation within five years:</u></p>	<p><u>\$1,000.00</u></p>
	<p><u>Third or subsequent violation within five years:</u></p>	<p><u>\$2,000.00</u></p>
	<p><u>Aiding, abetting, inciting, compelling, or coercing a person or entity to engage in practice prohibited by chapter 22A.</u></p>	
	<p><u>First violation:</u></p>	<p><u>Warning</u></p>
	<p><u>Second violation within five years:</u></p>	<p><u>\$1,000.00</u></p>

	<u>Third or subsequent violation within five years:</u>	<u>\$2,000.00</u>
	<u>Obstructing or preventing a person or entity from comply with chapter 22A.</u>	
	<u>First violation:</u>	<u>Warning</u>
	<u>Second violation within five years:</u>	<u>\$1,000.00</u>
	<u>Third or subsequent violation within five years:</u>	<u>\$2,000.00<<</u>
	* * *	

Section 4. Section 10-38 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 10-38. Debarment of contractors from County work.

* * *

(h) *Causes for debarment:*

(1) The Debarment Committee may debar a contractor for a conviction or civil judgment:

* * *

(v) Which makes the County the prevailing party in a legal proceeding, and a court determines that the lawsuit between the contractor and the County was frivolous or filed in bad faith; ~~[[ø€]]~~

(vi) for negligence or a violation of section 556.106, Florida Statutes, or its successor statute, in connection with damage to a County underground facility, as defined in section 556.102(16), Florida Statutes>>; or

(vii) for more than one violation of subsections (4)-(11) of section 22A-6 within a five-year period<<.

- (2) The Debarment Committee may debar a contractor, based upon a preponderance of the evidence, for:

* * *

>>(v) One of more of the following related to the requirements of chapter 22A:

- a. Having civil penalties, administrative costs of hearing, investigative, enforcement, testing, or monitoring costs, or liens that are unpaid for more than 12 months for more than one civil violation.
- b. A violation of subsections (8)-(11) of section 22A-6.
- c. Five or more violations of subsections (1)-(7) of section 22A-6 within a five-year period.<<

* * *

Section 5. *Reports.*

- A. The County Mayor or County Mayor's designee shall prepare a written report for this Board outlining which County department, office, or other County staff will be administering the provisions of this ordinance, and this report shall be placed on an agenda of the full Board without committee review, pursuant to Rule 5.06(j), within 30 days of the effective date of this ordinance.
- B. In addition, on an annual basis, the County Mayor or County Mayor's designee shall prepare a written report for this Board related to the enforcement of this ordinance, including, but not limited, the approximate number of complaints filed with the Department, the typical results of such complaints, and any

recommendations to this Board related to such enforcement. This report shall be placed on an agenda of the full Board without committee review, pursuant to Rule 5.06(j), on an annual basis.

- C. The requirements of this section may be modified by resolution of the Board of County Commissioners.

Section 6. The County Mayor or Mayor's designee shall have full authority to propose Implementing Orders and other procedures necessary to carry out the requirements of this ordinance.

Section 7. 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 8. 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 9. This ordinance shall become effective 180 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:

GKS for GBK

Prepared by:

MSY

Marlon D. Moffett
Abbie Schwaderer-Raurell
Dennis A. Kerbel

Co-Prime Sponsors: Commissioner Marleine Bastien
Commissioner Kionne L. McGhee