

MEMORANDUM

Agenda Item No. 7(E)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: (Second Reading: 7-8-21)
April 20, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to the Conflict of Interest and Code of Ethics Ordinance; amending section 2-11.1 of the Code; prohibiting competitive selection committee members, and their immediate family members, from soliciting or accepting gifts from proposers to a procurement; prohibiting such proposers from offering or giving gifts or offers of employment to competitive selection committee members and their immediate family members; prohibiting service on competitive selection committees by persons who have received gifts from proposers within a certain time period; providing penalty of removal from competitive selection committees for violations; providing definition

Ordinance No. 21-62

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa and Co-Sponsor Senator Javier D. Souto.


Geri Bonzon-Keenan
County Attorney

GBK/smm

Memorandum



Date: July 8, 2021

To: Honorable Chairman Jose "Pepe" Diaz
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 Ordinance Relating to Conflict of Interest

The implementation of this ordinance will not have a fiscal impact to Miami-Dade County. The Ordinance expands the gift prohibitions in the Ethics Code and creates new restrictions on procurement selection committee members and their immediate family. Any increased enforcement activity should be minor and can be absorbed with current staffing.

A handwritten signature in blue ink that reads "Edward Marquez".

Edward Marquez
Chief Financial Officer

Memorandum



Date: July 8, 2021

To: Honorable Chairman Jose "Pepe" Diaz
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 Proposed Ordinance Amending Section 2-11.1 of the Code of Miami-Dade County, titled the "Conflict of Interest and Code of Ethics Ordinance"

The proposed ordinance seeks to amend Section 2-11.1 of the Code prohibiting competitive selection committee members, and their immediate family members, from soliciting or accepting gifts from proposers to a procurement; prohibiting such proposers from offering or giving gifts or offers of employment to competitive selection committee members and their immediate family members; prohibiting service on competitive selection committees by persons who have received gifts from proposers within a certain time period; and providing penalty of removal from competitive selection committees for violations.

The passage of this ordinance will have a positive impact on the vendor community, as it sends a strong message to the vendors about the County's integrity in the procurement process. The results of this ordinance could increase confidence in the County's procurement process and will further enforce the award of contracts based on each vendor's merit without the potential for improper outside influence or favoritism.

A handwritten signature in black ink that reads "Edward Marquez".
Edward Marquez
Chief Financial Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: July 8, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 7(E)

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(E)
7-8-21

ORDINANCE NO. 21-62

ORDINANCE RELATING TO THE CONFLICT OF INTEREST AND CODE OF ETHICS ORDINANCE; AMENDING SECTION 2-11.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROHIBITING COMPETITIVE SELECTION COMMITTEE MEMBERS, AND THEIR IMMEDIATE FAMILY MEMBERS, FROM SOLICITING OR ACCEPTING GIFTS FROM PROPOSERS TO A PROCUREMENT; PROHIBITING SUCH PROPOSERS FROM OFFERING OR GIVING GIFTS OR OFFERS OF EMPLOYMENT TO COMPETITIVE SELECTION COMMITTEE MEMBERS AND THEIR IMMEDIATE FAMILY MEMBERS; PROHIBITING SERVICE ON COMPETITIVE SELECTION COMMITTEES BY PERSONS WHO HAVE RECEIVED GIFTS FROM PROPOSERS WITHIN A CERTAIN TIME PERIOD; PROVIDING PENALTY OF REMOVAL FROM COMPETITIVE SELECTION COMMITTEES FOR VIOLATIONS; PROVIDING DEFINITION; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Miami-Dade County routinely utilizes competitive selection committees to evaluate proposals and responses to County procurements for goods and services and to recommend a vendor for award of County contracts; and

WHEREAS, County competitive selection committees can be comprised of County employees and as well as members of the public and private sectors with particular expertise in the subject matter being solicited by the County; and

WHEREAS, members of competitive selection committees are entrusted with the responsibility of fairly evaluating vendor responses and proposals on each vendor's merit without the potential for improper outside influence or favoritism; and

WHEREAS, gifts of any value from a vendor to a member of the competitive selection committee creates an undue influence that can undermine the ability of a competitive selection committee to fairly evaluate County procurements; and

WHEREAS, such gifts can also erode public confidence in the County's fair and equitable procurement practices; and

WHEREAS, the County's Conflict of Interest and Code of Ethics Ordinance generally provides for limits and reporting requirements for gifts to County employees and individuals; and

WHEREAS, this Board believes that prohibiting gifts of any value from a proposer or respondent to a member of the competitive selection committee will help ensure the fair and equitable evaluation of County procurements and the public's confidence in the County's procurement practices,

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

Section 1. Section 2-11.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-11.1. - Conflict of Interest and Code of Ethics Ordinance.

* * *

(e) Gifts.

- (1) *Definition.* The term "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single

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.

sitting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.

(2) *Exceptions.* The provisions of subsection (e)(1) shall not apply to:

- a. Political contributions specifically authorized by State law;
- b. Gifts from relatives or members of one's household;
- c. Awards for professional or civic achievement;
- d. Material such as books, reports, periodicals or pamphlets which are solely informational or of an advertising nature;
- e. Gifts solicited by County employees or departmental personnel on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business;
- f. Gifts solicited by Commissioners on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business;
- g. Gifts solicited by Commissioners, or their staff members, on behalf of any nonprofit organization for use solely by that organization where neither the Commissioner, nor his or her staff receives any compensation as a result of the solicitation. As used in this subsection, a "nonprofit organization" shall mean any entity described in section 501(c)(3) of the Internal Revenue Code (the "Code") that is tax exempt under section 501(a) of the Code. As used in this subsection, "compensation" means any money, gift, favor, political contribution, thing of value or other financial benefit.

(3) *Prohibitions.*

- >>a. General prohibition on solicitation and giving of gifts.<< A person described in subsection (b)(1) through (6) shall neither solicit nor demand any gift.

It is also unlawful for any person or entity to offer, give or agree to give to any person included in the term defined in subsection (b)(1) through (6) or for any person included in the term defined in subsection (b)(1) through (6) to accept or agree to accept from another person or entity, any gift for or because of:

>>i.<<[[a:]] An official public action taken, or to be taken, or which could be taken;

>>ii.<<[[b:]] A legal duty performed or to be performed, or which could be performed; or

>>iii.<<[[c:]] A legal duty violated or to be violated, or which could be violated by any person included in the term defined in subsection (b)(1).

>>b. Prohibition on gifts and offers on employment to members of competitive selection committees. In addition to any other prohibition contained in this section, any person, or their immediate family members, appointed to serve on a competitive selection committee for a procurement shall not accept, solicit, or demand any gift of any value from any proposer to such procurement. Proposers to a procurement shall not offer, give, or agree to give any gift of any value or offer future employment to any member of the competitive selection committee for such procurement or to their immediate family members. Any person who has accepted a gift of any value from a proposer to a procurement in the two years preceding the issuance of the solicitation for such procurement shall not be appointed to the competitive selection committee for such procurement; and, if appointed, shall, in addition to any other penalty provided for in this section, be immediately removed from such competitive selection committee. For purposes of this subsection, the term “proposer” shall mean any person, firm or corporation that submits a response or proposal to a solicitation, including any owners, principals, corporate officers, managers, employees, agents, and lobbyists of such person, firm, or corporation and their immediate family members.<<

- (4) *Disclosure.* Any person included in the term defined in subsection (b)(1) through (6) shall disclose as provided herein any gift, or series of gifts from any one person or entity, having a value in excess of one hundred dollars (\$100.00). Said disclosure shall be made by filing a copy of the disclosure form required by Chapter 112, Florida Statutes, for "local officers" with the Clerk of the Board of County Commissioner simultaneously with the filing of the form with the Secretary of State.

* * *

- (y) *Powers and jurisdiction of Ethics Commission.* The Ethics Commission shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance. Jurisdiction of the Ethics Commission shall automatically extend to Commissioners, the Mayor, autonomous personnel, quasi-judicial personnel, departmental personnel, employees, contract staff, advisory personnel, immediate family, lobbyists as defined in subsections (b) and (s) who are required to comply with the Conflict of Interest and Code of Ethics Ordinance; >>proposers as defined in subsection (e) that are required to comply with the Conflict of Interest and Code of Ethics Ordinance;<< and any other person required to comply with the Conflict of Interest and Code of Ethics Ordinance including, but not limited to, contractors, consultants and vendors. In the event that the Ethics Commission does not assume jurisdiction as provided in the preceding sentence, the Ethics Commission may refer the complaint to the State Attorney for appropriate action. Notwithstanding the foregoing, the Ethics Commission shall not have jurisdiction to consider an alleged violation of subsection (c) if the requirements of subsection (c) have been waived for a particular transaction as provided therein.

* * *

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:

July 8, 2021

Approved by County Attorney as
to form and legal sufficiency:

GKS for GBK

Prepared by:

OR

Oren Rosenthal

Prime Sponsor: Commissioner Rebeca Sosa

Co-Sponsor: Senator Javier D. Souto