



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

Legislative Analysis

Budget, Planning & Sustainability
Committee

October 27, 2009
2:00 P.M.
Commission Chamber

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Commission Auditor
111 NW First Street, Suite 1030
Miami, Florida 33128
305-375-4354

**Miami-Dade County Board of County Commissioners
Office of the Commission Auditor**

**Legislative Notes
Budget, Planning & Sustainability Committee
Meeting Agenda**

October 27, 2009

Written analyses and notes for the below listed items are attached for your consideration:

Item Number(s)

2C	2E
2F	2G
3R	3U
3W	3X
4H & 4I	4L
4O	

If you require further analysis of these or any other agenda items, please contact Guillermo Cuadra, Chief Legislative Analyst, at (305) 375-5469.

Acknowledgements--Analyses prepared by:
Elizabeth N. Owens, Legislative Analyst
Lauren Young-Allen, Legislative Analyst

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 2(C)
File Number: 092132
Committee(s) of Reference: Budget Planning and Sustainability Committee
Date of Analysis: October 22, 2009
Type of Item: Zoning Code Amendment
Prime Sponsor: Commissioner Sally A. Heyman

Summary

This ordinance amends §33-247, Uses Permitted BU-1A District, and §8A-161.1, Motor Vehicle Repair Ordinance, of the Code of Miami-Dade County (Code), allowing automobile new parts and equipment sales facilities to provide certain ancillary services and exempting certain providers of minimal automobile maintenance repairs from the application of the Motor Vehicle Repair Ordinance.

Background and Relevant Legislation

Section 33-247 of the Code regulates the uses in the BU-1A (General Business District), including but not limited to businesses that sell automobile new parts and equipment. Currently, these businesses are not permitted to conduct repair work of any type on the premises unless approved after a public hearing.

In addition, the Motor Vehicle Repair Ordinance, §8A-161 of the Code, regulates motor vehicle repair shops and repair work and presently requires that all persons operating a motor vehicle repair shop or performing repair work register with Miami-Dade County.

Other Florida Jurisdictions

A cursory review of the Zoning Code for Broward, Palm Beach, and Orange County found that although all three counties address retail sales, they do not address incidental services at automobile new parts and equipment sale facilities.

For example, in Orange County, the focus is on the principal use of the land which in this case would be an Auto Parts retail store. If the facility is located in C-1 and the ancillary services become the dominant use on the site then code enforcement will cite the facility and the property will need a more intense

commercial district zoning designation (like C-2 or C-3). It comes down to the zoning manager's determination as to the principle use of the site. For example, Pep Boys is required to be in a C-2 or C-3 because they perform heavy auto repair services (bays, lifts, brakes, alternators, etc.) Whereas, checking batteries and changing wipers is considered a courtesy for customers but if major repairs occur in the parking lot, then the facility is contacted and advised that they are not permitted to perform major services in a parking lot.

Policy Change and Implication

This ordinance amends the Code to allow a facility that sells new automobile parts and equipment to perform minimal automobile maintenance repairs in that facility's on-site designated parking area, providing that the following provisions and conditions are satisfied:

- The provisions of §33-251.2, Enclosed Uses, that all uses will be conducted within completely enclosed buildings and all materials and products will be stored within the building or within an area completely enclosed;
- Repairs are performed free of charge;
- Repairs take no more than a total of twenty (20) minutes to perform;
- Repairs do not include changing of mechanical fluids and/or their filters;
- The repairs are performed by an employee of the facility; and
- All residual, discarded, or waste products are disposed of or stored by the facility immediately after the completion of the repairs.

Prepared by: Elizabeth N. Owens

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 2(E) and 2(E) Supplement
File Number: 092117 and 092833
Committee(s) of Reference: Budget Planning and Sustainability Committee
Date of Analysis: October 22, 2009
Type of Item: Zoning Code Amendment
Prime Sponsor: Senator Javier D. Souto

Summary

This ordinance amends §33-151.13 of the Code of Miami-Dade County (Code), permitting the use of horses with therapy in conjunction with certain private schools.

In addition, the County Manager's Supplemental Report is requesting that all parcels located within the ten (10) day travel line in any of the County's well fields be exempt from the proposed amendments to the Code.

Background and Relevant Legislation

Currently the Code does not address the use of horses with therapy in conjunction with certain private schools.

Section 24-43 of the Code, Protection of Public Potable Water Supply Wells, safeguards the public health, safety and welfare by providing scientifically established standards for land uses within the cones of influence thereby protecting public potable water supply wells from contamination.

On December 2, 2008, the Board of County Commissioners (BCC) approved Resolution No. R-1319-08, authorizing a lease agreement between the County and Creative Children Therapy, Inc., a Florida Not-for-Profit Corporation located at 8000 S. W. 123 Avenue. This lease agreement prohibited the use of Hippotherapy at this location. Furthermore, this property is located within the 10 days well field protection area of the South West well field. In a revised letter of interpretation dated April 30, 2008, the Department of Environmental Resources Management (DERM) determined that horse stables on this property could not be administratively approved because it could generate potentially infectious waste or similar materials that could be discharged into the South West well field.

Other Florida Jurisdictions

In addition, a cursory review of the Zoning Code for Broward, Palm Beach and Orange County found that their Zoning Code does not address private schools that use horses for therapeutic purposes.

Policy Change and Implication

This ordinance amends §33-151.13, Zoning District Requirements, of the Code to allow the following:

- Horses to be used to provide therapy as part of the curriculum of private schools primarily dedicated to the education of developmentally disabled children;
- This use has to be in conjunction with school use that has been approved in the EU-1 (single-family, one-acre estate), EU-2 (single-family five-acre estate), GU (interim) and AU (agricultural) zoning districts; and
- The number of horses and the location of the accessory structures(s) to house them will comply with the underlying zoning district regulations.

Comments

On July 21, 2009, the School Board of Sarasota County entered into an agreement with InStride Therapy, Inc. to provide Hippotherapy Services for eligible exceptional students. According to the American Hippotherapy Association, Inc., Hippotherapy is a physical occupational and speech therapy treatment strategy that utilizes equine movements to improve neurological function and sensory processing.

According to the article, *Horses Help Disabled Learn Motor Skills*, about 30,000 people participate in the more than 600 accredited therapeutic riding programs in North America. The therapy works because as a horse walks, its gait causes the rider to react with movements at the trunk and hip. These movements are very similar to the natural strides of humans (The Associated Press, July 16, 2001).

NARHA, the North America Riding for the Handicapped Association, lists 41 Handicapped and Therapeutic Riding Centers throughout Florida.

Prepared by: Elizabeth N. Owens

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 2(F)
File Number: 092097
Committee(s) of Reference: Budget Planning and Sustainability Committee
Date of Analysis: October 13, 2009
Type of Item: Zoning Code Amendment
Prime Sponsor: Senator Javier D. Souto

Summary

This ordinance amends §33-20 of the Code of Miami-Dade County (Code) to exempt personal watercrafts from the requirement of being stored behind the front lateral line of homes in some zoning districts.

This ordinance differs from the original that went before the July 14, 2009, Budget Planning and Sustainability Committee, in that it does the following:

- **Requires that any personal watercraft that is exempt from the requirement to be behind the front building line of a residence;**
- **Requires that the front and back of the watercraft is secured to a trailer;**
- **Allows no more than two watercrafts before the front building line of any residence;**
- **Mandates that the watercraft and trailer(s) will be maintained in good condition so as not to be an eyesore; and**
- **Provides that the watercraft and its trailer(s) will be no closer than ten (10) feet from the sidewalk or public right of way.**

Background and Relevant Legislation

Currently, the Code does not provide a specified definition of personal watercraft. Section 33-20 of the Code states that a boat, defined in subsection (h) as every description of watercraft or airboat used or capable of being used as means of transportation on water, may be stored or temporarily parked in the RU (residential), EU (single family estate), AU (agricultural), and GU (interim) zoning districts.

In addition, the Code mandates that the vehicle is to be stored in the rear of the front building line or temporarily parked in front of the front building line or in front of the side street building line for no more than 2 hours in any 24-hour period, while hitched to an operable motor vehicle.

Policy Change and Implication

This ordinance exempts personal watercraft vehicles from the requirement of being stored behind the front lateral line of homes in some zoning districts and allows for the previously specified requirements as noted under the summary section.

Other Florida Jurisdictions

A cursory review of the Zoning Code for Broward, Palm Beach, and Orange County found that storage of watercraft vehicles are addressed differently by each county.

Broward County

Section 39.275 of the Broward County Zoning Code allows licensed recreational vehicles and boats to be parked or stored in all residential zoning districts subject to the following:

- All boats, except canoes and boats less than twelve (12) feet in length, must be on a currently licensed boat trailer;
- Not more than one (1) boat and one (1) recreational vehicle may be parked or stored outside of a carport or fully enclosed building;
- No recreational vehicle or boat shall be parked or stored in a location which causes the recreational vehicle or boat to encroach onto a street or in any location which visually obstructs vehicle egress from contiguous properties.

Palm Beach County

Palm Beach County's Code Enforcement Citation System, Article II, does not allow for recreational vehicles to be parked within the front yard or other area between the structure and the street for more than two hours within any 24-hour period. Furthermore, storage of more than one boat, recreational vehicle or trailer on property within a residential district of a residential property is prohibited.

Orange County

Sections 38-77 and 38-79 of the Orange County Zoning Code address the storage of recreational vehicles and boats. Recreational vehicles are allowed to be parked in the front of the residence (behind the front yard setback) subject to the length of the vehicle, size of the lot or parcel, and that it is on approved surface, asphalt, gravel, pavers, or concrete.

Prepared by: Elizabeth N. Owens

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 2G
File Number: 091641
Committee(s) of Reference: Budget, Planning & Sustainability
Date of Analysis: September 3, 2009
Type of Item: Annexation Application; Pinecrest Village
Sponsor/ Requester: Office of Strategic Business Management
District: 7

Summary

This item is an annexation application submitted by the Village of Pinecrest which is seeking permission to expand its boundary lines by annexing 20 acres (or 0.03 square miles) of land bounded on the south by the Snapper Creek Canal, on the east by SW 67th Avenue (Ludlam Road) and on the west by South Dixie Highway (US1). The annexation area is fully developed and is contiguous to the northernmost boundary of the Village.

The Administration recommends denial of the application based on the findings and recommendations of the Planning Advisory Board which cites the annexation criteria set forth in Chapter 20 of the County Code. In general, the Administration bases its recommendation on “concerns of eroding the County’s tax base, dividing the Dadeland Regional Activity Center, creation of an enclave and the cherry picking of commercial areas.” Among the specific reasons cited for denial, the Administration notes the following:

- The proposed annexation may result in a net revenue loss to the USMA budget of approximately \$77,000
- The annexation would divide the Glenvar Heights Census Designated Place, which is a historically recognized community
- The annexation would result in the creation of an unincorporated enclave
- The Snapper Creek Canal would act as a major barrier between the proposed annexation area and the Village of Pinecrest
- The compact urban form called for under the County’s Master Plan of the annexation renders the proposed area less compatible with the low density and intensity of the land use and zoning that prevail in the Village of Pinecrest given its mostly suburban nature
- The annexation would split the County’s designated Downtown Kendall Metropolitan Urban Center District and on the east side of US 1 the Dadeland Regional Activity Center

- The school attendance boundaries for the Village of Pinecrest's are not the same as the proposed annexation area.

Background and Relevant Legislation

Based on prior Board of County Commissioners' (BCC) deliberations, analyzing the appropriateness of a petition for boundary change, the BCC has considered, in general, the fiscal impact, growth management and service related impact of annexation. "Staff Reports for the Proposed Annexation," drafted by the Administration's staff, have served as a guideline. In this case, the staff report discloses the following information regarding the impact of the proposed annexation on County-provided services. The report reports: (1) there are no capital and infrastructure requirements, (2) there is no impact on the delivery of fire services or response time, (3) the Village of Pinecrest will provide police services, resulting in only a negligible reduction in County police services, (4) the annexation will have no impact on Water & Sewer's ability to provide services to the remaining USMA area, (5) there is no immediate impact on the County's waste collection services, (6) the proposed area is within the County's water service area and existing water mains serve the area, (7) the proposed area is within the County's sewer service area, (8) DERM will continue to oversee and regulate stormwater runoff and residential flooding, (9) there are no parks within the proposed annexation area and therefore there is no impact to the Park & Recreation Department.

The above-listed factors suggest that the proposed annexation is compatible with existing land uses and the county's regulatory authority, even though the annexation application received a negative recommendation from the Planning Advisory Board.

Policy Change and Implication

Pursuant to Article 1, §20-7(B) of the County Code, "the County Commission, in the exercise of its discretion, may deny the requested boundary change." Accordingly, if the BCC elects to deny the annexation application, this would not constitute a change in policy.

However, a denial based on "cherry picking" lucrative commercial areas to annex is discretionary criteria for denial, above the existing prescribed criteria only requiring the boundaries to be logical, provide for a cohesive and inclusive municipal community, and be consistent with the Comprehensive Development Master. (See Staff Report @ handwritten pp. 12-14, ¶ 1(b), 1(d), (6)).

Budgetary Impact

The Administration reports that if the annexation application is approved, the annexation may result in a net revenue loss to the USMA budget of approximately \$77,000 since the revenues attributable to the proposed annexed area will be retained by the Village of Pinecrest.

BCC Action

This item has been deferred twice; once at the direction of the Committee, and subsequently at the request of the Administration.

Prepared By: Lauren Young-Allen

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 3(R)

File Number: 092252 and 092547 (Substitute)

Committee(s) of Reference: Budget, Planning & Sustainability

Date of Analysis: September 3, 2009

Type of Item: Directive to Explore the Feasibility of Establishing a County-operated Bank

Sponsor: Commissioner Bruno A. Barreiro

Summary

This resolution directs the Mayor to explore the feasibility of establishing a County-owned and operated credit union or bank which will serve as the County's depository institution.

Background

Presently, the County deposits portions of its revenues derived from taxes and special assessments in designated, interest-bearing, depository banks which is later transferred to the operating budget funds. While all interest accrued from money deposited in these banks is deemed County income, the banks are entitled to charge for commissions and fees which are extracted from portions of the interest earned from investments of the public funds. This resolution would enable the County to retain the interest accrued from the deposits of the County's budget which totaled approximately \$7.5 billion for FY 2009.

A survey of other jurisdictions discloses that the state of North Dakota established a state-owned and operated bank known as Bank of North Dakota. Its primary deposit base is the State of North Dakota. Thus, all state funds and funds of state institutions are deposited with Bank of North Dakota, as required by North Dakota's law. Deposits are also accepted from private citizens and the federal government. To date, the Bank operates with more than \$160 million in capital. (Source: Bank of North Dakota's website - <http://www.banknd.nd.gov>).

Relevant Legislation

Article I, §1.01 (A)(10) of the Charter empowers the County to levy and collect taxes and special assessments, borrow and expend money and issue bonds and other obligations of indebtedness. To accomplish these functions, the Charter also confers the implicit authority to use any means necessary to carryout the express powers.

Policy Change and Implication

In forming and managing a bank, a County created-bank would be subject to a number of federal regulatory requirements and state conditions and limitations imposed under the state banking code which regulates capital adequacy, asset quality, management, earnings, and liquidity. (Source: <http://www.flofr.com/banking/howtoorg.htm>; Florida Office of Financial Regulation's Division of Financial Institutions (Guide to Organizing a New State Bank in FL)). Therefore, creating a county-operated bank raises new cost, service, and policy implications such as organizing expenses; earning prospects; the experience and competence of management; lending practices; and cash reserve requirements which may constitute a percentage of the deposits.

Budgetary Impact

Conducting a feasibility study will have minimal fiscal impact on staff man-hours.

Prepared by: Lauren Young-Allen

**MIAMI-DADE COUNTY
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Legislative Notes

Agenda Item: 3U

File Number: 092382

Committee(s) of Reference: Budget, Planning & Sustainability

Date of Analysis: September 3, 2009

Type of Item: Directive to Study which Projects & Programs Are or Should Be Eligible for CDBG Funds

Sponsor: Commissioner Carlos A. Gimenez

Summary

This resolution directs the County Mayor to conduct a study of all County programs and projects currently receiving General Funds which are eligible to receive Community Development Block Grants (CDBG funds); and to report his findings to the Board of County Commissioners (BCC) within 60 days of the resolution's effective date.

Background and Relevant Legislation

For purposes of addressing the County's current budgetary shortfall, this resolution advocates a thorough assessment of all General Fund spending programs and policies across the board to identify which County projects, meeting CDBG criteria, should be funded by CDBG funds, and which General Fund money, allocated towards CDBG-eligible projects, should be recaptured and re-allocated to other County projects and programs.

Under the Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) program, the federal government provides annual grants directly to qualifying cities and counties to carryout a wide range of community development activities directed toward providing decent housing, economic development, improved community facilities and public services that benefit low and moderate-income persons. Recipients of CDBG grant funds have broad discretion in determining their spending priorities, provided funded activities address the grant program's objectives. (Source: HUD'S Office of Community Planning & Development).

The County, as a recipient of CDBG funds, has the flexibility to identify and define how such grant funds will be used to address local needs based on fiscal feasibility. Accordingly, the Mayor is directed to review the use of CDBG funds and to assess which General Fund funds are currently allocated towards CDBG-eligible projects which could be recaptured to offset revenue reductions.

Policy Change and Implication

If approved, the proposed resolution would require the Administration to conduct a feasibility study of all County programs and projects currently receiving General Funds which are eligible to receive CDBG funds and to provide BCC with a list within 60 days.

Once this list is provided, the BCC may require Administration to establish and submit for approval a spending and reallocation plan which targets and segregates CDBG-eligible General Fund programs and projects. This may entail the following:

- An adjustment of General Fund funding priorities, and
- A new assessment of community needs, and fiscal capacity to meet those needs.

As proposed, the directive requires no changes to be made to the agencies or departments responsible for administering or overseeing CDBG allocations or program management procedures.

Budgetary Impact

Cost savings attributable to recapturing General Funds allocated to CDBG-eligible projects have not been quantified.

Prepared by: Lauren Young-Allen

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 3W

File Number: 092665

Committee(s) of Reference: Budget, Planning & Sustainability

Date of Analysis: October 9, 2009

Type of Item: Directive to Include Debt Service Schedules in Legislation; Establishing A Written Policy for Refunding Debt

Sponsor: Commissioner Carlos A. Gimenez

Summary

This proposed resolution directs the County Mayor to: (1) include 1 or more projected debt service schedules in legislation which authorizes the issuance of bonds or execution of loans, and (2) to incorporate a formal policy which governs refunding outstanding debt obligations and requires certain financial disclosures related to refunded bonds as prescribed by the Board of County Commissioners (BCC) in the proposed resolution.

Specifics

The proposed resolution specifically directs the Mayor to present with any and all legislation, which authorizes the issuance of bonds or the execution of loans, the following information:

- the interest rates calculated at current prevailing market rates,
- the estimated annual debt service schedule listing interest and principal payments,
- the annual debt service on outstanding debt obligations that have a prior lien on the revenues pledged, and the projected debt service on the combined debt services reflecting the prior existing lien and the new lien.

The Mayor is also directed to adopt the following policy which will govern the terms and conditions for refunding longterm debt:

- Debt issued for purposes of refunding capital projects shall only be issued if the present value savings to be achieved (during periods of lowered interest rates) are 5% or more of the original issue, and the final maturity date is no longer than the maturity of the debt obligation to be refunded;

- If the present value savings is less than 5% and the maturity is greater than the maturity on the debt obligation to be refunded, the savings requirement may be waived, but only after the BCC finds that a compelling financial policy objective would be achieved, such as eliminating restrictive bond covenants or providing additional financial flexibility.
- All refunding debt legislation shall include an economic analysis report which sets forth:
 - the present value savings or present value losses that may result from refunding,
 - a comparison of the annual debt service on the refunded debt obligations versus the estimated existing debt service,
 - the cost of issuing a refunding debt obligation, and
 - the estimated final maturity to determine savings or losses.
- Every legislative caption regarding refunding debt obligations shall include:
 - net present value savings or net present value losses,
 - the cost of issuance, and
 - final maturity date.

Background and Relevant Legislation

In prior legislative sessions in which bonds, notes, loans and other debt obligation instruments were before the BCC for consideration, several Commissioners expressed reservations about authorizing their issuance in light of the reporting and accounting practices of the Administration that did not provide timely or materially pertinent information on the County's longterm debt, raising the question of whether the County could support current projects well into the future.

Under current financial reporting practices, reporting standards have not required the disclosure of amortization schedules listing interest and principal payments, deferred payments, debt market conditions, yields, net savings or losses or costs of refunding, maturity dates, and other particulars on debt structure. Under the proposed resolution, the BCC will have the ability to better assess the overall financial performance and financial conditions of longterm obligations, and address certain financial assumptions.

Policy Change and Implication

If approved, this directive requires the implementation of additional prescribed policies governing all forms of debt obligations. Therefore, the directive constitutes new policy, in part. Presently, Finance Department staff does provide the BCC the true interest cost (i.e. the actual interest costs compounded semi-annually) and the "delegation parameters" of the interest costs (i.e., the highest variable rate) as one of the financial components for calculating the estimated average annual debt service payment. Also, in some instances, Finance staff has provided the full debt service schedule spanning the term of the debt through the maturity date. However, if approved, the proposed resolution requires full disclosure by the Administration of the periodic payments necessary to pay the interest and principal over the term of the debt, and other financial details which will enable the BCC to track longterm financial commitments of budgeted projects.

In addition, if the directive is approved, the Administration would also be required to establish debt levels or debt limits by adhering to new parameters governing the refinancing of outstanding debt; in addition to fully disclosing, in an economic analysis report, the details of savings, losses, cost of issuance

and maturity dates of refinanced debt portfolios in general. Under current practices, there are no expenditure ceiling criteria or requirements for disseminating financial projections, rates, charges and overall financing plans to the BCC before issuance.

Budgetary Impact

Implementation of the proposed resolution may require the County to incur minimal additional costs as to staff man-hours. Generally, implementation may minimize net cost of debt issuance or maximize resources available for long term capital needs.

Prepared by: Lauren Young-Allen

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
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Legislative Notes

Agenda Item: 3X

File Number: 091933

Committee(s) of Reference: Budget, Planning & Sustainability

Date of Analysis: September 3, 2009

Type of Item: Directive to Consider Adding 2 Pay Steps to the Pay Range for Each Classification

Sponsor: Commissioner Barbara J. Jordan

Summary

This resolution directs the County Mayor to propose in collective bargaining negotiations the addition of 2 pay steps to the beginning of the pay range for each County classification; and to negotiate a 5% cap on individual salary increases based on merit raises and cost of living raises combined.

Background and Relevant Legislation

To address shortfalls in the FY2010 budget, members of the BCC have previously proposed reviewing the pay scales of County employees to determine if Miami-Dade employees are being paid reasonable salaries which are commensurate with their private and public sector counterparts. Most County employees' pay is governed by a countywide employment classification scheme which consists of pay steps, cost of living allowances (COLAs) and merit bonuses.

This resolution directs the Mayor to make administrative changes to the pay-setting process which would be more aligned with the pay schedules and pay practices of other government employers, and private sector employers. By virtue of the County's policy to align all non-union pay with collective bargaining salary concessions, the Mayor is directed to negotiate during the collective bargaining negotiation process additional pay steps at the beginning of the pay scale, and to cap at 5% salary increases.

Policy Change and Implication

If adopted, this resolution would alter the County's employment and compensation policies. It would compel the County to hire new employees at the first step of the personnel pay scale or at lower pay schedules. It would also cap merit pay based on job performance to 2% of the employee's salary, if presumably the cost of living index (based on inflation) remains constant at 3%.

Budgetary Impact

Not determinative at this time.

Committee Action

This resolution was initially introduced at the 7/14/2009 Budget, Planning & Sustainability Committee meeting. However the item failed in committee due to a failure to obtain a second.

Prepared by: Lauren Young-Allen

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
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Legislative Notes

Agenda Item(s):	4(H) and 4(I)
File Number(s):	092698 and 092699
Committee(s) of Reference:	Budget, Planning & Sustainability
Date of Analysis:	October 9, 2009
Type of Item:	Intergovernmental Agreement Delegating Permitting Authority to the County
Sponsor/ Requester:	DERM
Commission District:	Countywide

Summary

Under Agenda Items 4(H) and 4(I), the Department of Environmental Resources Management (DERM) is seeking authorization to execute:

- (1) an intergovernmental agreement with the Florida Department of Environmental Protection which will delegate to DERM the authority to administer the state's Environmental Resource Permitting program within the County; and
- (2) an intergovernmental agreement with the South Florida Water Management District also for purposes of delegating to DERM the authority to administer the state's Environmental Resource Permitting program within the County .

The term of both agreements is 10 years.

Background and Relevant Legislation

In accordance with statutory law, the Florida Department of Environmental Protection agency may delegate to local governments, such as the County, the authority to administer the Environmental Resource Permitting program, a program which: (1) oversees the management of wetlands (such as dredging and filling in wetlands), and (2) regulates the quality of surface water by regulating activities which alter the flow of surface water or activities that generate stormwater runoff from upland construction.

Local governments are delegated the responsibility of processing permit applications, and the authority to apply state criteria for approving or denying a permit application. (Source: www.dep.state.fl.us)

In a report issued by the Florida Department of Environmental Protection, the Department defined the purpose and scope of the Environmental Resource Permitting program as follows.

An environmental resource permit (ERP) program regulates virtually all alterations to the landscape, including all tidal and freshwater wetlands and other surface waters (including isolated wetlands) and uplands. The ERP addresses dredging and filling in wetlands and other surface waters, as well as stormwater runoff quality (i.e. stormwater treatment) and quantity (i.e. stormwater attenuation and flooding of other properties) including that resulting from alterations of uplands. This program regulates everything from construction of single family residences in wetlands, convenience stores in the uplands, dredging and filling for any purpose in wetlands and other surface waters (including maintenance dredging), construction of roads located in uplands and wetlands, and agricultural alterations that impede or divert the flow of surface waters. Issuance of the ERP also constitutes a water quality certification or waiver thereto under section 401 of the Clean Water Act, 33 U.S.C. 1341. In addition, issuance of an ERP in coastal counties constitutes a finding of consistency under Florida Coastal Zone Management Program under Section 307 (Coastal Zone Management Act). The ERP program is implemented jointly by the Department of Environmental Protection and the four water management districts, in accordance with an operating agreement that identifies the respective division of responsibilities.

(“Summary of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida,” October 1, 2007.)

In this instance, Miami-Dade County will assume responsibility for implementing the Environmental Resource Permitting program within the geographical boundaries of the County.

Policy Change and Implication

In 1999, the BCC approved the execution of a delegation agreement with the Florida Department of Environmental Protection under the recommendation of the County’s Brownfields Task Force. (R-1355-99). The Brownfields Delegation Agreement conferred upon Miami-Dade County the authority to execute Brownfields Site Rehabilitation Agreements with eligible persons seeking to clean up and rehabilitate properties located in the designated brownfield areas within the County’s boundaries. Therefore, Items 4(I) and 4(H) are consistent with prior BCC policy.

Budgetary Impact

The Administration reports that collected permit fees, otherwise due the state, will cover the administrative costs incurred by DERM in administering the permitting program. A review of both agreements does disclose that the County may retain 100% of the permit application fees obtained from the delegated program permits. (See Sections 24, entitled Permit Application & Fees, of both Agreements).

Prepared by: Lauren Young-Allen

**MIAMI-DADE COUNTY
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Legislative Notes

Agenda Item: 092676
File Number: 4(L) Substitute
Committee(s) of Reference: Budget, Planning and Sustainability
Date of Analysis: October 22, 2009
Type of Item: Competitive Contract Package

Summary

This Competitive Contracts Package includes a total of eleven (11) procurement actions.

This substitute item differs from the original in that it eliminates a page that was inadvertently added in Item 2.1, amends the funding source for Public Works in Item 3.2, deletes Item 3.6, and corrects a scrivener's error in Item 4.2.

Policy Change and Implication / Budgetary Impact

• **Two (2) Competitive Contracts:**

Item 1.1 – Lift Station Pump Out and Maintenance

This contract is to purchase maintenance, repair, cleaning, and pump-out services for lift stations for various County departments. This contract is for a one-year term in the amount of \$1,588,000 with four, one-year options-to-renew (OTR) in the amount of \$1,588,000 for a cumulative total of \$7,940,000.

Questions / Comments

- This contract consolidates three contracts with a total allocation of \$1,382,975. Which contracts make up this item?
- Who are the previous vendors for those three contracts?
- What was the previous terms, amounts, and per year allocation for each of the three contracts?

Item No.	Contract Term & Amount	Amount per year	Previous Contract Term & Amount	Previous Contract Amount per year
1.1	\$1,588,000 for 1 years	\$1,588,000	This contract consolidates three contracts with a total allocation of \$1,382,975.	unknown

Item 1.2 – Armored Trucks

This contract is to provide armored trucks for the Miami-Dade Transit (MDT) Department. This contract is for a one-year term in the amount of \$466,471. There are no OTRs under this contract. In addition, according to the Manager’s memo, there is no prior contract to compare this contract. This contract is to replace four (4) armored trucks that have over 200,000 miles.

Questions / Comments

- Why not utilized the Armored Car Services contract for this item?
- How much will insurance and liability cost for operating these trucks? Is this included under the scope of the contract?
- How much does it cost to staff the drivers to operate these armored trucks and is the cost included in the contract?
- When and how did MDT purchase the 4 current trucks that have over 200,000 miles? Who was the vendor?
- What other contracts does the County have with Atlantic Ford Truck Sales, Inc.?
- Are PTP funds utilized in this allocation?

Item No.	Contract Term & Amount	Amount per year	Previous Contract Term & Amount	Previous Contract Amount per year
1.2	\$466,471 for 1 year.	\$466,471	None.	None.

• **Two (2) Bid Rejections**

Item 2.1 – Microfiltration / Ultrafiltration Membrane System

This item rejects all bids received in response to a solicitation to establish microfiltration / ultrafiltration membrane system for the Miami-Dade Water and Sewer Department (WASD). On July 16, 2009, the County Attorney’s Office (CAO) determined that all of the bids were non-responsive and could not be accepted. WASD staff has decided to acquire the microfiltration membrane system as part of the main construction contract for the plant and facility.

Item 2.2 – Dual Fuel Engine and Pump Assembly

This item rejects all bids received in response to a solicitation to establish a contract to purchase a dual fuel engine and pump assembly for WASD AT THE Alexander Orr, Jr. Water Treatment Plant. On July 16, 2009, the County Attorney’s Office (CAO) determined that all of the bids were non-responsive and could

not be accepted. WASD is considering several additional options to acquire this equipment including re-issuing the solicitation as a Request for Proposal, a Bid Waiver, or for purchase of a standard diesel-powered or natural gas-powered engine and pump assembly.

- **Five (5) Contract Modifications:**

Item No.	Contract Title and Modification Reason	Initial Contract Term & Amount	Modified / Extended Term	Increased Allocation	Record of Vendors' Performance
3.1	<p>Fire Extinguishers</p> <p><u>Reason:</u> Additional spending authority to provide MDT an allocation funded by MDT Operating Funds to purchase and service fire extinguishers.</p>	\$143,000/ 1 year	No change.	\$30,000	No Compliance / Performance Issues reported for the four (4) vendors.
3.2	<p>Uniforms for Various County Departments</p> <p><u>Reason:</u> Additional spending authority to provide MDT an allocation funded by MDT Operating Fund to purchase embroidered windbreakers and jackets.</p> <p>Questions / Comments</p> <ul style="list-style-type: none"> • If this item is to utilize unallocated funds and MDT was not a part of the original allocation, why is the funding source listed as MDT Operating Funds? Will MDT Operating funds be used to reimburse the allotment? • There is a current contract for MDT uniforms (8302-4/12). Why not extend this contract? • The unallocated amount is not specified in the contract, what is the funding source of these funds? • Does this contract include 	\$382,000 / 1 year	No change.	\$22,000 This amount does not increase the total contract amount because it is covered under unallocated funds.	No Compliance / Performance Issues reported for the three (3) vendors.

	embroidered windbreakers and jackets? <ul style="list-style-type: none"> PTP funds are utilized as part of MDT's Operating Funds. 				
3.3	Psychological Testing Services <u>Reason:</u> Additional time to allow the Miami-Dade Police and Corrections and Rehabilitation Departments to purchase psychological testing.	\$448,000 / 18 months	6 months	No change.	No Compliance / Performance Issues reported for this firm.
3.4	Fence Materials <u>Reason:</u> Additional spending authority to provide MDT an allocation funded by MDT Operating Funds to purchase fencing materials. Comment PTP funds are utilized as part of MDT's Operating Funds.	\$585,000 / 5 years	No change.	\$165,000	No Compliance / Performance Issues reported for the three (3) firms.
3.5	Polymeric Flocculants <u>Reason:</u> Additional spending authority for WASD to purchase polymeric flocculants used in the wastewater treatment process.	\$1,216,000 / 1 year	No change.	\$495,000	No Compliance / Performance Issues reported for this vendor.

- **Two (2) Purchases Made Under Competitively Awarded Contract of Other Governmental Entity:**

Item No.	Contract Title and Modification Reason	Initial Contract Term & Amount	Modified / Extended Term	Increased Allocation	Record of Vendors' Performance
4.1	Laboratory Safety Supplies and Equipment <u>Reason:</u> Modification of this contract to provide additional spending authority for MDPD and Miami-Dade Fire Rescue departments to purchase laboratory and safety supplies and equipment.	\$3,971,000 / 5 years	No change.	\$1,179,000	No Compliance / Performance Issues reported for this firm.
4.2	Tires <u>Reason:</u> For various county departments to access a competitive contract established by the State of Florida for the purchase of tires.	\$7,474,000 / 27 months	n/a	n/a	No Compliance / Performance Issues reported for these firms.

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**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 4(O)
File Number: 092799
Committee(s) of Reference: Budget, Planning & Sustainability
Date of Analysis: October 23, 2009
Type of Item: Resolution; Posting Additional Collateral to Secure a Leveraged Lease
Sponsor/ Requester: Finance

Summary

Under the proposed resolution, the Finance Department is seeking authorization to post to a third party escrow account or trust account up to \$10 million from the Emergency Contingency Reserve and from other funds within the General Fund for purposes of providing additional collateral to secure a Lease/Leaseback Transaction.

In addition, under the proposed resolution, authorization is sought, at some future date following the initial posting of the additional collateral, to negotiate for the substitution of a letter of credit or similar credit instrument to replace the additional collateral.

Background and Relevant Legislation

In December 1998, the County entered into a Leveraged Lease arrangement (a/ka/ Equity Payment Undertaking Agreement or Equity Guaranteed Investment Contract) with Dana Commercial Credit Corporation and AMBAC Assurance Corporation, a subsidiary of AMBAC Financial Group, Inc. Under Leveraged Lease transactions, the County as a tax-exempt owner or acquirer of a particular capital asset has the option to sell or assign the tax benefits of ownership to a third party (referred to as an equity investor) while retaining ownership of and title to the asset. In exchange for receiving the future depreciation tax benefits associated with the asset, the third party equity investor leases the asset back to the County at a lease rate which is lower than the debt rate which would have applied to the purchase of the asset. Under such leaseback transactions, the County may negotiate an early buyout option which permits the County to terminate the leaseback arrangement on a pre-set date.

In this instance, the County has leveraged the Stephen P. Clark Center building as the underlying asset of the lease/leaseback transaction, and has sold or assign the tax benefits to Dana Commercial Credit Corporation. Dana Commercial sold its equity interest to Rabo Bank (a Dutch bank). AMBAC Assurance Corporation, (a financial guarantee insurance company) is the County's financial guarantor,

guaranteeing the County's financial obligations associated with the transaction such as termination payment obligations, early buyout options, and lender loan payments.

Since the inception of the transaction, the financial strength of AMBAC has steadily declined. In 2009, Moody's Investors Services, Inc. (Moody's) and Standard & Poor's Rating Services (S&P) have significantly downgraded AMBAC's financial strength to a "negative outlook" rating, placing AMBAC at a significant risk of bankruptcy and exposing the County to financial liability. Under the lease/leaseback contract, in the event AMBAC declares bankruptcy, Rabo Bank is entitled to declare the County in technical default and demand termination payments.

To avoid the potential of termination sanctions, the Administration has conducted negotiations with Rabo Bank. In May 2009, the County proposed 8 terms and conditions which are detailed in the legislation. The proposal essentially requires the County to post additional collateral to a third party trust account in amount not to exceed \$10 million. The proposal also requires Rabo Bank to waive provisions governing default arising out of the County's failure to replace AMBAC as the surety. After protracted negotiations, Rabo Bank has recently agreed to accept the terms of the proposal. Now pending before the Board of County Commissioners (BCC) are the specifics of the proposal, a request for authorization to execute the provisions of the proposal, and authorization to enter into any ancillary agreements to facilitate and complete the agreement.

Policy Change and Implication

The BCC has authorized previous lease-leaseback transactions, i.e. leveraged lease transactions, and similar financial transactions. In 2001, under Resolution R-1135-01, the BCC authorized lease and leaseback arrangements regarding Metrorail cars, Metrorail maintenance facilities and parking garages. However, based on a cursory review of the County's legislative database, there are no instances in which the BCC has authorized the pending proposed arrangement in which the County is posting additional collateral to secure the leveraged lease over and above the original indemnification terms governing losses resulting from County action, defaults of other parties, or a casualty loss of the asset. Therefore, the proposed transaction may constitute new policy.

Budgetary Impact

The Administration notes that by depositing up to \$10 million into a trust account, the County will avoid the risk of paying \$52 million as a termination payment, which is the equivalent present day value of the leveraged lease arrangement. However, the proposal to pay a maximum of \$10 million as additional collateral is unbudgeted and may reduce the emergency contingency reserve to or below the threshold minimal recommended by industry standards. In addition, the sizeable payment to Rabo Bank, as collateral for the tax benefit that may be lost in the event of early termination, exceeds the upfront fee of \$3.2 million paid by the original investing bank (Dana Commercial) for entering into the transaction. Therefore, the proposal offsets any gains achieved.

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