



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

**Legislative Analysis**

**Recreation, Culture & Tourism Committee**

May 11, 2009

2:00 PM

Commission Chamber

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

**Legislative Analysis  
Recreation, Culture and Tourism  
Meeting Agenda**

**May 11, 2009**

Written analyses for the below listed items are attached for your consideration in this Legislative Analysis.

**Item Number(s)**

4(A)
4(B)

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:  
Mia Marin, Legislative Analyst



**Agenda Item: 4(A) and 4(B)**

**File Number: 091215 and 091227**

**Committee(s) of Reference: Recreation, Culture and Tourism**

**Date of Analysis: May 7, 2009**

**Type of Item: Retroactive Waiver of the Art in Public Places Program**

**Background and Relevant Legislation**

The Art in Public Places (APP) Program Appropriation, Implementation and Fund Transfer Procedures are defined under Ordinance 94-12 and Administrative Order 3-11 (AO 3-11). Ordinance 94-12 provides for creation of the APP program, its appropriation and waiver requirements. The ordinance also establishes an APP Trust. AO 3-11 defines the program implementation and funds transfer procedure.

Waiver requirements under 94-12 may be approved by the Board of County Commissioners (BCC) when it appears that the construction project covered is not appropriate for application of the APP requirements. Appropriation requirements include the following:

- construction of new governmental buildings only (building must be habitable and no renovations);
- appropriation value is not less than one and one-half percent (1 ½ %) of the construction cost;
- remainder of appropriation funds can be used for program administrative costs, insurance costs for the repair and maintenance of any works of art acquired, or to supplement other appropriations for the acquisition of works of art, or to place works of art in or near governmental facilities which have been already constructed.

AO 3-11 defines the APP program implementation and funds transfer procedure to include the following components:

- Allow for a review committee, to review new capital projects and their eligibility for the contribution to the APP program;
- Recommendations to the BCC for a waiver if a facility does not conform to the definition of "new governmental building";
- Waivers must be secured prior to the award of the construction contract;

- All contract award recommendations submitted for approval by the BCC must include a line item “Art in Public Places Contribution”;
- Upon award of a construction contract by the BCC, the Finance Department will transfer by journal entry the APP funds to the Art in Public Places Trust Fund (APPTF) and these transfers must occur prior to the execution of the contract by the County Manager;
- Projects constructed by Departments require the Department Director for the agency executing the construction project responsible for the transfer of the APP funds;
- The County’s internal Auditing staff will randomly check those agencies which engage in in-house construction projects to ensure compliance; and
- Allow for a professional advisory committee to be responsible for recommending new selections of art to the full APP Trust.

In FY 2007-08, APP was transferred to the Department of Cultural Affairs (CA). During that same year, an audit report on APP (APP Audit Report) issued by the Audit and Management Services Department in February 2008 revealed that the current procedures for APP appropriation were not in place to ensure timely identification of all eligible construction projects subject to the APP Ordinance (94-12).

**The APP Audit Report revealed various projects where the APP appropriation was omitted including: Overtown Transit Project, WASD Douglas Road Administrative Headquarters Facility and MDAD Central Collection Parking Plaza.**

**Currently, CA and the Office of Capital Improvements (OCI) are working together to compile a list identifying any outstanding GOB projects (where applicable) omitting this APP appropriation.**

**At the April 13, 2009, Recreation, Culture and Tourism Committee (RCT) meeting, a commissioner-sponsored item requesting a waiver of the APP requirement for a City of Hialeah Multipurpose Facility was introduced and subsequently withdrawn from the agenda. Several members of this Committee expressed concern that granting such a waiver would set a bad precedent and may adversely affect the APP program.**

**According to CA, the APP waiver introduced to the RCT Committee on April 13, 2009 was for a future project whose funds have not yet been expended and therefore different from the current retroactive APP waivers where the funds have already been expended.**

#### **Policy Change and Implication**

On February 4, 2009, the APP Review Committee reviewed the waiver of APP for Overtown Transit Village Buildings I and II and City of Sunny Isles and recommends to the BCC a onetime waiver of the APP allocation since the funds for these capital projects are fully expended and/or committed.

According CA, the current process for ensuring the APP appropriation and compliance involves the OCI to require all County capital projects to have an APP line item in their budgets and the tri-coordination of the OCI, CA and the respective municipal project manager or department project manager throughout the duration of the construction project.

**Budgetary Impact**

Approval of the two waivers totals \$1,456,185 in eligible APP appropriation (\$1,353,000 for Overtown and \$103,185 for the City of Sunny Isles).

**Prepared By: Mia B. Marin**