# Memorandum

MIAMI-DADE COUNTY

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| **Date:** | May 4, 2010 |
| **To:** | Honorable Chairman Dennis C. Moss<br>and Members, Board of County Commissioners |
| **From:** | George M. Burgess<br>County Manager |
| **Subject:** | Waiver of Art In Public Places Requirements:<br>City of Miami Beach GOB Projects<br>*Beach Front Restrooms*<br>*Fire Station #4* |

Agenda Item No. 9(A)(6)

**Recommendation**

It is recommended that the Board of County Commissioners retroactively waive the underpayment of allocations for the Art in Public Places (APP) requirement for the City of Miami Beach GOB projects, Beach Front Restrooms and Fire Station #4. This recommendation also requires a waiver of Administrative Order 3-11, governing the process for requesting waivers of the APP requirement.

**Scope**

The impact of this agenda item is specific only to these projects and is a one-time request.

**Fiscal Impact/Funding Source**

Sec. 2-11.15 of the Miami-Dade County Code requires the allocation of not less than one and one-half percent (1½%) of the construction cost of new governmental buildings for works of art. It is estimated that the APP allocations for the the Beach Front Restrooms and Fire Station #4 projects were under-calculated by $8,051 for the Beach Front Restrooms and $19,437 for Fire Station #4. It is important to note that the City allocated $24,134 in APP funds for the Beach Front Restrooms (versus $32,185 required by County Code) and $25,138 for Fire Station #4 (versus $44,575 required by County Code). The capital funds for these projects have been spent and/or are committed for the design and construction of the buildings.

**Track Record/Monitor**

The City of Miami Beach is properly implementing the APP requirements for all of their existing and upcoming GOB-funded projects in addition to implementing measures that go above and beyond the requirements of Section 2-11.15 of the County Code. The City of Miami Beach has a long track record of incorporating public art into its capital projects through its municipal public art program. In fact, the City's estimated APP funding for the City of Miami Beach GOB projects exceeds the County's requirements by $945,778.

**Background**

It is important to note that the under-calculation of the public art allocations for the City of Miami Beach GOB projects, Beach Front Restrooms and Fire Station #4 was an inadvertent oversight. The City of Miami Beach has a long track record of incorporating public art into its capital projects through its municipal public art program.

As detailed in the September 2, 2008 memorandum issued by the County Manager, the charge of the APP Review Committee is to review and make recommendations regarding projects that have been completed or are underway and have not complied or fully complied with the Art in Public Places requirements as set forth in Section 2-11.15 of the County Code.

New government building projects undertaken by municipalities that are funded partially or in whole by Building Better Communities General Obligation Bond (GOB) funds are covered by the APP requirements. Section 2-11.15 of the County Code states (emphasis added):

> "Appropriation for construction to include amount for works of art. Miami-Dade County and each municipality in Miami-Dade County shall provide for the acquisition of works of art equivalent in value to not less than one and one-half (1 1/2) percent of the construction cost of new governmental buildings..."

Consequently, the City of Miami Beach's Beach Front Restrooms and Fire Station #4 projects, which received GOB funding, are eligible for the APP requirement. The City of Miami Beach has acknowledged that due to a mutual and inadvertent oversight, the APP contributions for the Beach Front Restrooms and Fire Station #4 projects were under-calculated by $8,051 for the Beach Front Restrooms and $19,437 for Fire Station #4. It is important to note that the City allocated $24,134 in APP funds for the Beach Front Restrooms (versus $32,185 required by County Code) and $25,138 for Fire Station #4 (versus $44,575 required by County Code). At this time, the Beach Front Restrooms and Fire Station #4 projects are complete and funds for these capital projects are fully expended and/or committed and not available for the balance of the required APP allocation. Consequently, the City of Miami Beach is making a request for a retroactive waiver of the underpayment of APP allocations for these projects.

Pursuant to Administrative Order 3-11, the County Manager can appoint an APP Review Committee to consider issues related to the APP program. On September 2, 2008, the Committee was activated to review and make recommendations regarding projects that have been completed or are underway and have not complied or fully complied with the APP requirements as set forth in Section 2-11.15 of the County Code. The following individuals were appointed to serve on the APP Review Committee:

> Alex Muñoz, Review Committee Chairperson, Office of the County Executive
> Johnny Martinez, Office of Capital Improvements
> Deborah Mastin, Office of the County Attorney
> Charles Parkinson, Office of Strategic Business Management
> Michael Spring, Department of Cultural Affairs
> Suzanne Torriente, Office of the County Executive
>
> As an additional member, a representative from the Department or Municipality affected by an item before the Review Committee serves on the Review Committee for the deliberation regarding that particular item.
>
> In addition, the Chair of the Art in Public Places Trust, or the Chair's designee from the Art in Public Places Trust, serves as a non-voting, ex officio member of the Review Committee.

The APP Review Committee and its guidelines for reviewing requests for waivers of the APP requirements are established by Administrative Order 3-11, which states

> "If the facility does not conform to the definition of 'new governmental building' a waiver will be recommended to the Board of County Commissioners. Only the BCC is authorized to grant waivers. Waivers must be secured prior to the award of the construction contract."

As new government buildings, the Beach Front Restrooms and Fire Station #4 projects are eligible for the APP requirement. Given that the Beach Front Restrooms and Fire Station #4 projects do comply with the definition of "new governmental buildings" and did not request the waiver prior to the award of construction contracts for these projects, a waiver of Administrative Order 3-11 also is required.

It should be emphasized that at the onset of these projects, the City of Miami Beach independently set aside APP funding for the Beach Front Restrooms and Fire Station #4 projects based on the City's existing public art ordinance. Given the APP requirement was not calculated based on the County's APP requirements, a waiver is required. Attached to this memorandum is a spreadsheet detailing the Art in Public Places funding comparison of Miami-Dade County requirements and the City of Miami Beach actual allocations. As detailed in the attachment, the City of Miami Beach is properly implementing the APP requirements for all of its existing and upcoming GOB-funded projects in addition to implementing measures that go above and beyond the requirements of Section 2-11.15 of the County Code. The City of Miami Beach has a long track record of incorporating public art into its capital projects through its municipal public art program. In fact, the City's estimated APP funding for the City of Miami Beach GOB projects exceeds the County's requirements by $945,778.

The Department of Cultural Affairs is working cooperatively with the Office of Capital Improvements to identify and establish early working relationships with municipalities receiving GOB funds for APP-eligible projects. The Department has conducted workshops for these municipalities on the APP program, highlighting the APP requirements and working implementation procedures.

On February 25, 2010, the APP Review Committee recommended the waiver of Administrative Order 3-11 and the waiver of the Art in Public Places requirement for the City of Miami Beach GOB projects, Beach Front Restrooms and Fire Station #4. On March 9, 2010, the Art in Public Places Trust also approved these recommendations. Both the APP Review Committee and the APP Trust emphasized the importance of considering these to be a one-time waivers based on the specific circumstances associated with the under-calculation of the APP allocations for these projects.

Assistant County Manager

| Art in Public Places Ordinance Funding Comparison Miami-Dade County & City of Miami Beach | | |
|---|---|---|
| **City of Miami Beach GOB Projects** | **Estimated Funding Based on Miami-Dade County APP Ordinance** | **Estimated Funding Based on City of Miami Beach APP Ordinance** |
| Beach Front Restrooms | $ 32,185 | $ 24,134 |
| Fire Station #2 ** | $ 95,334 | $ 141,149 |
| Fire Station #4 | $ 44,575 | $ 25,138 |
| Flamingo Park * | $ 45,000 | $ 120,151 |
| Lummus Park 10th St. Auditorium | $ 104,279 | $ 115,547 |
| Scott Rakow Youth Center | $ 94,239 | $ 103,282 |
| South Pointe Park | $ 63,000 | $ 333,393 |
| Convention Center Improvements | Pending | Pending |
| 41st St. Phase II Bridge Repair/Restoration | $ - | $ - |
| Band Shell Park | $ - | $ 19,500 |
| Flagler Monument Restoration/Moument Island | $ - | $ 11,710 |
| Historic Old City Hall | $ - | $ 55,500 |
| Normandy Shores Golf Course | $ - | $ 104,921 |
| South Shore Community Center*** | $ - | $ 22,965 |
| **Subtotal** | **$ 478,612** | **$ 1,077,390** |
| **Additional Funding So. Pointe Park APP** | | |
| Capital Budget South Pointe Capital Fund | | $ 135,000 |
| South Pointe Contingency Capital Budget | | $ 212,000 |
| **Total** | **$ 478,612** | **$ 1,424,390** |
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| | | |

* Please note Construction has not started, using Construction estimates.

** Please note the County amount is the Bid amount of building B plus the Design fees, the CMB amounts reflect construction amounts in building B and an estimate in building A.

*** Please note A & E is not a line item because for this project the design and project management was done by City Staff (in house job).

# MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: May 4, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 9(A)(6)

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

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____ ) to approve

_____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

5

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(6)
5-4-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING APPROVAL OF A RETROACTIVE WAIVER OF THE ART IN PUBLIC PLACES (APP) REQUIREMENT FOR THE CITY OF MIAMI BEACH GOB PROJECTS, BEACH FRONT RESTROOMS AND FIRE STATION #4, AND A WAIVER OF ADMINISTRATIVE ORDER 3-11, GOVERNING THE PROCESS FOR REQUESTING WAIVERS OF THE APP REQUIREMENT

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

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA,** that this Board approves the retroactive waiver of the Art in Public Places (APP) requirement for the City of Miami Beach GOB projects, Beach Front Restrooms and Fire Station #4 and approves the waiver of Administrative Order 3-11, governing the process for requesting waivers of the Art in Public Places requirement.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro
Carlos A. Gimenez
Barbara J. Jordan
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Joe A. Martinez
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of May, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. DBM

Deborah Bovarnick Mastin

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

Legislative Notes

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|---|---|
| **Agenda Item:** | **9(A)3, 9(A)4, 9(A)5 and 9(A)6** |
| **File Number:** | **100836, 100837, 100838 and 100840** |
| **Committee(s) of Reference:** | **Board of County Commissioners** |
| **Date of Analysis:** | **April 20, 2010** |
| **Type of Item:** | **Retroactive Waiver of the Art in Public Places Program** |

**Summary**

The following resolutions authorize retroactive waivers of the Art in Public Places Program for the following projects:

- City of Hialeah Projects (Walker Park and West Okeechobee;
- Villa Aurora Housing Development;
- Village of Palmetto Bay Projects (Palmetto Bay Park, Coral Reef Park, Ludovici aka Bayfront Park, and Palmetto Bay Library); and
- City of Miami Beach Projects (Beachfront Restrooms and Fire Station #4).

**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). 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.

On July 17, 2008, the BCC approved R-860-08, requiring the County Mayor or designee to study the APP program and provide a subsequent report. The County Manager responded on September 4, 2008, with a status report that included background of the APP Program, APP's program direction, APP's accomplishments under the new leadership of the CA Department, APP project qualifications/expenses, assessment of current APP program conditions, accountability and sustainability of APP program.

In early 2009, CA and the Office of Capital Improvements (OCI) collaboratively compiled a list identifying any outstanding GOB projects (where applicable) omitting this APP appropriation.

The items (4F, 4G, 4H and 4I) on the April 12, 2010, Recreation, Culture and Tourism Committee agenda are the direct result of the collaborative effort with OCI to review the list of General Obligation Bonds (GOB) and Safe Neighborhood Parks (SNP) funded projects for compliance with the APP program requirements.

**Policy Change and Implication**

On February 25, 2010, the APP Review Committee recommended waiver of APP requirement for the above-mentioned projects included in the RCT agenda. On March 9, 2010, the Art in Public Places Trust also approved these recommendations. The APP Review Committee and the APP Trust consider these one-time waivers based on the specific circumstances associated with the under calculation of APP allocations for these projects.

According the CA, since assuming responsibility for the APP program several measures have been incorporated to ensure that all current and future capital projects that are APP eligible comply with the APP program requirements.

The measures implemented by CA (in cooperation with OCI and the Office of Strategic Business and Management) to ensure APP program compliance include the following:

- Workshops with County departments throughout the year;
- Creation of a system to ensure that the APP allocation is calculated and planned at the outset of all eligible capital projects resulting in a budget line item built into the capital budgets; and
- APP program Training Sessions for Municipalities.

**Budgetary Impact**

The table below reflects the fiscal impact for each project to include the amount of APP allocation that was not included initially, the amount that is being recaptured and remediated for future projects.

| Project | Original APP Amount | New APP Amount |
|---|---|---|
| Walker Park & West Okeechobee | $67,530 + $367,500=**$435,030** | **$448,000** |
| Villa Aurora Housing Development | **$164,000** | **Work in Progress** |
| Village of Palmetto Bay Projects | $14,125 + $1,469 + $446 + $46,835=**$62,875** | **Work in Progress** |
| City of Miami Beach Projects | $8,051 + $19,437=**$27,488** | Exceed County APP requirements by **$945,778** |

**Prepared By: Mia B. Marin**