# Memorandum

MIAMI-DADE COUNTY

**DATE:** September 10, 2010

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

Agenda Item No. 8(I)(1)(B)

**FROM:** George M. Burgess
County Manager

**SUBJECT:** Creating Implementing Order 2-12 for the Miami-Dade County Diversion Program

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**Recommendation**
It is recommended that the Board of County Commissioners (BCC) approve creating Implementing Order 2-12 relative to the Miami-Dade County Diversion Program.

**Scope**
The resolution authorizes creating the Miami-Dade County Diversion Program Implementing Order.

**Fiscal Impact/Funding Source**
It is anticipated that the revenue generated from fees and fines will more than offset any associated costs of the Diversion Program, and will result in a positive fiscal impact of $344,000 per year for Miami-Dade County.

**Track Record/Monitor**
The Miami-Dade Diversion Program will be implemented and administered by the MDPD.

**Background**
On June 20, 2009, the Board of County Commissioners passed resolution R-868-09 directing the Mayor or designee to study whether cost savings can be achieved through de-criminalizing select Miami-Dade County ordinance violations. Staff conducted an evaluation and issued a report of findings to the BCC which included the following two recommendations: (1) create a Miami-Dade County Diversion Program; and (2) add certain Miami-Dade Code violations to Section 8-CC of the Miami-Dade County Code.

The purpose of the Diversion Program is to seek compliance with Miami-Dade County Code violations, improve the quality of life in Miami-Dade County through community service hours, reduce the demands on the criminal justice and civil administrative hearing systems, and give violators options to resolve their ordinance violations.

Alina T. Hudak
Assistant County Manager

cmo18410

**I.O. No.:** 2-12
**Ordered:**
**Effective:**

MIAMI-DADE COUNTY
IMPLEMENTING ORDER

# MIAMI-DADE COUNTY DIVERSION PROGRAM

**AUTHORITY:**
Section 1.01, 2.02 and 5.03(D) of the Miami-Dade County Home Rule Amendment and Charter.

**POLICY:**
On June 20, 2009, the Board of County Commissioners (Board) passed Resolution R-868-09 directing the Mayor or designee to study whether cost savings can be achieved through de-criminalizing select Miami-Dade County ordinance violations. The resulting Diversion Program is based on findings included in the report requested by the Board.

**PURPOSE:**
To seek compliance with Miami-Dade County Code violations, improve the quality of life in Miami-Dade County through community service hours, reduce the demands on the criminal justice and civil administrative hearing systems, and give violators penalty options to resolve their ordinance violations.

**SCOPE:**
The Miami-Dade County Police Department (MDPD) will implement and administer the Miami-Dade County Diversion Program (Diversion Program) as outlined in this Implementing Order (IO). The Diversion Program was established by County Ordinance.

**ELIGIBILITY:**
When a violator is arrested or given a Civil Violation Notice (8-CC) for one of the Miami-Dade County Code violations listed below, he/she is eligible and may elect to voluntarily participate in the Diversion Program:

| | |
|---|---|
| 7-3 | Swimming or fishing from prohibited road bridges |
| 8A-172 | Conducting business without a local business tax receipt |
| 8A-276(b) | Failure to display commercial vehicle markings |
| 21-28.1 | Producing loud or excessive noise |
| 21.31.2(b)(1) | Consumption of alcohol in open containers near store |
| 21.31.2(b)(2) | Possession of alcohol in open containers near store |
| 21.31.4(B) | Obstructing traffic or aggressively begging |
| 26-1 | Park violations |

This list of violations may be amended as appropriate to include additional Miami-Dade County Code violations eligible for the Diversion Program.

Violators can only participate in the Diversion Program a maximum of three times, regardless of the type of violation. Once the violator is no longer eligible, he/she must proceed with their case in the criminal or civil administrative hearing systems.

**PROCEDURE:**

Civil Violations:

Presently, pursuant to Miami-Dade County Code Section 8CC-5, when someone is issued a Civil Violation Notice, he/she must either pay the civil penalty or request an administrative hearing within twenty (20) days from the date of the violation. The Diversion Program gives the violator further alternatives. If a violation is listed in the Eligibility section, the violator may elect to enter the Diversion Program and select from options including paying a fee, completing community service hours, or a combination thereof, instead of requesting an administrative hearing or paying a civil penalty.

Criminal Violations:

Pursuant to the Florida Rules of Criminal Procedure, when someone is arrested for an ordinance violation, he/she is entitled to a first appearance, arraignment and trial. Usually, the violator must wait until his/her case is set for arraignment, which can take from three to five weeks from the date of the arrest. Also, in some instances, the violator may qualify for a private diversion program; however, usually diversion programs are for first time offenders.

Anyone arrested or given a Notice to Appear for one of the Miami-Dade County Code violations listed above in the Eligibility section can voluntarily participate in the Miami-Dade County Diversion program, regardless of his/her criminal past.

**DIVERSION PROGRAM – VIOLATOR OPTIONS:**

When a civil or criminal violator registers for the Diversion Program he/she has the following options, which must be completed within 30 days from the issuance of the violation notice:

**For Civil Violations:**

**OPTION 1 (Processing fee and complete community hours)**

1) Pay $50 processing fee; and

2) Complete one day of community service for every $100 of civil fines owed. ($100 fine = 1 day; $200 fine = 2 days; $300 fine = 3 days, etc.) One day of community service = 8 hours.

**OPTION 2 (Community service in lieu of any payment)**

1) For Civil fines of $100 - complete 2 days of community service;
   For Civil fines of $200 - complete 3 days of community service;
   For Civil fines of $300 - complete 4 days of community service;
   For Civil fines of $400 - complete 5 days of community service;
   For Civil fines of $500 - complete 6 days of community service;

Once all of the above conditions are satisfied, a Certificate of Completion will be sent to the Clerk of the Court (Clerk) advising that the violator has complied and requesting that the civil case be closed. If the conditions of the Diversion Program are not satisfied by the violator

within thirty days of the violation, the Clerk will be notified and asked to proceed with the civil collection process pursuant to Miami-Dade County Code Section 8CC-7, *Recovery of Unpaid Civil Penalties, etc.*

**For Criminal Violators – for all violations EXCEPT 8A-276(b), Failure to Display Commercial Vehicle Markings:**

**OPTION 3 (Processing fee and complete community hours)**

1) Pay a $50 processing fee; and

2) Complete one day of community service for first time enrollment in the Diversion Program; two days of community service for the second enrollment; or three days of community service for the third enrollment.

**OPTION 4 (Community service in lieu of any payment)**

1) Complete two days of community service for first time enrollment in the Diversion Program; three days of community service for the second enrollment; or four days of community service for the third enrollment.

**OPTION 5 (No community service hours)**

1) Pay a $50 processing fee and a $100 community service fee ($150 total) for the first time enrollment in the Diversion Program; pay a $50 processing fee and a $200 community service fee ($250 total) for the second enrollment; or pay a $50 processing fee and a $300 community service fee ($350 total) for the third enrollment.

**Options for violations of 8A-276(b), Failure to Display Commercial Vehicle Markings:**

**OPTION 6 (Processing fee and complete community hours)**

1) Pay a $50 processing fee; and

2) Complete two days of community service for first time enrollment; three days of community service for the second enrollment; or four days of community service for the third enrollment in the Diversion Program; and

3) Unless the vehicle has been sold, or another documented reason is provided, the violator must also ensure that affixed to the vehicle (that was driven at the time of arrest) is signage permanently marked on both sides in letters and numerals not less than three inches in height, with the name, address and telephone number of the owner thereof. Additionally, ensure that the numbers of all occupational and business licenses issued to the owner are similarly displayed. Upon correction of the violation, the vehicle or a photograph thereof shall be brought to the staff at the Diversion Program.

**OPTION 7 (Community service in lieu of any payment)**

1) Complete three days of community service for the first time enrollment; four days of community service for the second enrollment; or five days of community service for the third enrollment; and

2) Unless the vehicle has been sold, or another documented reason is provided, the violator must also ensure that affixed to the vehicle (that was driven at the time of arrest) is signage permanently marked on both sides in letters and numerals not less than three inches in height, with the name, address and telephone number of the owner thereof. Additionally, ensure that the numbers of all occupational and business licenses issued to the owner are similarly displayed. Upon correction of the violation, the vehicle or a photograph thereof shall be brought to the staff at the Diversion Program.

**OPTION 8 (No community service hours)**

1) Pay a $50 processing fee and a $200 community service fee ($250 total) for the first time enrollment; pay a $50 processing fee and a $300 community service fee ($350 total) for the second enrollment; or pay a $50 processing fee and a $400 community service fee ($450 total) for the third enrollment; and

2) Unless the vehicle has been sold, or another documented reason is provided, the violator must also ensure that affixed to the vehicle (that was driven at the time of arrest) is signage permanently marked on both sides in letters and numerals not less than three inches in height, with the name, address and telephone number of the owner thereof. Additionally, ensure that the numbers of all occupational and business licenses issued to the owner are similarly displayed. Upon correction of the violation, the vehicle or a photograph thereof shall be brought to the staff at the Diversion Program.

For criminal violations, once all of the above conditions are satisfied, a Certificate of Completion will be sent to the Miami-Dade Office of the State Attorney, County Court Division, for approval. The Certificate and the Arrest Form will then be given to the Clerk who will open and close the case in the Criminal Justice Information System (CIJIS) as a "Nolle Pros – PTD," or use any other entry that the Clerk deems appropriate. If the conditions of the Diversion Program are not satisfied by the violator within thirty days of the violation, the Arrest Form will be forwarded to the Clerk, who will be asked to proceed as quickly as possible with the arrest charges as outlined in the Florida Rules of Criminal Procedure.

**ADDITIONAL REQUIREMENTS FOR BOTH 8-CC AND CRIMINAL VIOLATIONS OF 8A-172**

If the violator has been charged with violating Section 8A-172, *Conducting Business Without a Local Business Tax receipt,* the violator must also obtain a business license from the Miami-Dade County Local Business Tax Section and present the license or receipt to the staff at the Diversion Program, unless the violator provides written documentation to the contrary.

**REGISTRATION BY MAIL**

Criminal violators have the option of performing community service hours or converting their hours into a monetary amount. If the violator chooses to pay a fee in lieu of completing community service hours, the conditions of the Diversion Program can be completed by registering by mail and submitting payment via a money-order payable to the Miami-Dade County Diversion Program. The police case number and the date of arrest should be noted on the money-order. To complete the conditions of the program by mail, the violator shall:

1) Complete and sign the registration form; and

2) Send a money-order for the amount owed:

3) Send the form and money-order with the amount owed to:

Miami-Dade Police Department
Community and Intergovernmental Affairs Bureau
18805 NW 27th Avenue
Miami Gardens, FL 33056

Attn: Miami-Dade County Diversion Program

*If the violator was cited for 8A-276(b), *Failure to display commercial vehicle markings*, please refer to the *Criminal Violation* section listed above for the appropriate amortization amounts. In addition, for 8A-276(b), the violator must also submit a clear photograph, or a copy thereof, illustrating that the vehicle that was cited is presently in code compliance or provide written documentation explaining why the vehicle has not been brought into compliance.

**NOTE:** If the violator was cited for a violation of 8A-172, *Conducting Business Without a Local Business Tax Receipt*, a copy of the business license or receipt thereof or written documentation explaining why the license has not been obtained must also be mailed together with the registration form and money-order.

Upon review of the submission as required above, the Diversion Program reserves the right to reject incomplete or noncompliant registrations.

**HARDSHIPS**
Upon written request, a Diversion Program supervisor may waive conditions or grant violators additional time to complete the conditions of the program on an individual basis. A hardship may be granted for several reasons such as, but not limited to, unforeseen emergencies, inclement weather, staffing, etc.

**OTHER POLICE AGENCIES**
MDPD will be the lead law enforcement agency referring violators to the Diversion Program. However, other police departments may wish to send violators whom they cite or arrest for county ordinance violations to the Diversion Program as well. In that event, such other police departments and/or municipalities and/or government entities must enter into agreements with Miami-Dade County outlining the terms and conditions that must be met for violators referred from their police agency.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County.

County Manager

Approved by the County Attorney as
to form and legal sufficiency

# MEMORANDUM

**(Revised)**

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

**DATE:** September 10, 2010

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

**SUBJECT:** Agenda Item No. 8(I)(1)(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**

_____ **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**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(I)(1)(B)
9-10-10

RESOLUTION NO. _____

RESOLUTION CREATING IMPLEMENTING ORDER 2-12 RELATING TO THE MIAMI-DADE COUNTY DIVERSION PROGRAM

**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 hereby approves the creation of Implementing Order 2-12 relating to the Miami-Dade County Diversion Program, in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or the Mayor's designee to exercise any and all rights conferred therein.

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

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of September, 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. _____

Ben Simon