

MEMORANDUM

EDTC
Agenda Item No. 2F

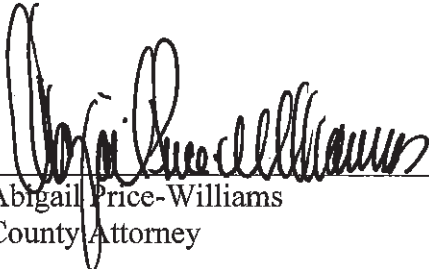
TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: June 15, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution relating to Lease and Concession Agreements at Miami International Airport; establishing the policy of the County with respect to claims by Concessionaires; directing the County Mayor to include language in Lease and Concession Agreements informing Concessionaires of the County's policy; directing the County Mayor to utilize the Office of the Inspector General and the Audit and Management Services Department to determine the validity of Concessionaire claims; and directing the County Mayor to minimize impacts to airport Concessionaires, where possible, arising out of airport construction

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.



Abigail Price-Williams
County Attorney

APW/smm



MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: July 6, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 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

Agenda Item No.

Veto _____

7-6-17

Override _____

RESOLUTION NO. _____

RESOLUTION RELATING TO LEASE AND CONCESSION AGREEMENTS AT MIAMI INTERNATIONAL AIRPORT; ESTABLISHING THE POLICY OF THE COUNTY WITH RESPECT TO CLAIMS BY CONCESSIONAIRES; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO INCLUDE LANGUAGE IN LEASE AND CONCESSION AGREEMENTS INFORMING CONCESSIONAIRES OF THE COUNTY'S POLICY; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO UTILIZE THE OFFICE OF THE INSPECTOR GENERAL AND THE AUDIT AND MANAGEMENT SERVICES DEPARTMENT TO DETERMINE THE VALIDITY OF CONCESSIONAIRE CLAIMS; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO MINIMIZE IMPACTS TO AIRPORT CONCESSIONAIRES, WHERE POSSIBLE, ARISING OUT OF AIRPORT CONSTRUCTION

WHEREAS, Miami International Airport (MIA) supports nearly one in every four jobs in Miami-Dade County; and

WHEREAS, MIA is entirely self-sustaining, generating its own revenues through leases, concessions, and through payments by airlines; and

WHEREAS, passenger traffic at MIA is substantially in excess of what it was projected to be in 2007, as the past decade has seen unprecedented growth in passenger volumes at MIA; and

WHEREAS, for many of these passengers, MIA is their first experience with the County's diverse culture and people, and is critical to shaping their perception; and

WHEREAS, the concessions program at MIA generates more revenue per passenger than all but one other United States airport, and has been successful at driving revenues to MIA so that airline costs can be kept down; and

WHEREAS, the vast majority of these concessions were awarded following a robust competitive process, on the recommendation of Miami-Dade Aviation Department's (MDAD) professional procurement staff; and

WHEREAS, these competitive procurements resulted in concession program that is award winning, and which provides numerous diverse shopping and dining options to travelers, including numerous locally branded and owned options; and

WHEREAS, despite record passenger numbers, industry leading sales per passenger, and high customer satisfaction, existing concessionaires at MIA are now asserting that they are or have suffered business losses which entitle them to compensation, and have demanded additional concessions locations, extended lease terms, and/or reductions in payments to MDAD as a result of, variously, MDAD construction, changes in airline operations or locations, or changes in general local business conditions; and

WHEREAS, these concessions are private companies, who knowingly and willingly choose to operate at MIA; and

WHEREAS, private companies are always exposed to business risks from adjacent third-party construction, changes in market conditions, or changes in customer tastes; and

WHEREAS, the County does not insure private companies against business losses, or guarantee that private companies will realize any level of profit; and

WHEREAS, a reduction in revenues paid by concessionaires means that the airlines making use of MIA must make up for those lost revenues via additional payments to MDAD; and

WHEREAS, concession space at MIA is a rare commodity that should be allocated to those firms who demonstrate their entitlement through their success in an open, competitive process; and

WHEREAS, extending lease terms, or giving new concession locations to existing vendors without a competitive process eliminates opportunities for new entrants, including local companies, to compete for airport concession locations; and

WHEREAS, it is the firm belief that competitive processes best ensure that the concession program at MIA remains of the highest quality, and provides the best financial return to the MDAD, and that it is not the role of government to hand-pick the winners and losers of the MIA concession program,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. It is established as the policy of this Board that the County should not provide relief to concessionaires at MIA, such as additional concession locations, extended term, or reductions in payments to the County. Where concessions cannot or will not abide by the terms of their agreements, the County should terminate such agreements, for either cause or convenience, and engage in a competitive process to select a replacement concessionaire. The Board reaffirms its policy that concession locations and payments are to be awarded via competitive processes, and that firms which win such processes should be expected to abide by the terms of those agreements.

Section 2. The County Mayor and County Mayor's designee shall not settle or resolve any claim by any concessionaire by providing a concessionaire new locations, extending the term of the concession, or reducing the payment obligations of that concessionaire without the prior consent of this Board, which consent shall only be granted via two-thirds vote of the members of this Board. This directive supersedes any prior grant of authority to the County Mayor with respect to the settlement or resolution of concessionaire claims at MIA in any prior Resolution of this Board. Nothing herein shall limit the ability of the County Mayor or County Mayor's designee to resolve any claim via the issuance of rental credits to a concessionaire in accordance with section 2-286.1 of the Miami-Dade County Code.

Section 3. The County Mayor or County Mayor's designee shall, prior to seeking this Board's consent to the settlement or resolution of any claim by a concessionaire, refer such claim to the Office of the Inspector General and also the Audit and Management Services Department. Any concessionaire seeking relief shall be required to certify their claim pursuant to Section 21-255 of the Miami-Dade County Code, as may be amended from time to time, and shall be required to cooperate in any audit or financial review by producing all financial records and supporting documentation which, in the sole judgement of the reviewing agencies, OIG and AMS, are needed to assess the validity of the claim. The County Mayor or County Mayor's designee shall attach the results of such referral to all items presented to this Board seeking this Board's consent to a settlement or resolution of such claims. Such item shall additionally contain specific findings of fact by the County Mayor or County Mayor's designee as to why such settlement or resolution is necessary, and why termination of the concession and reprocurement is not an appropriate alternative.

Section 4. The County Mayor or County Mayor's designee is directed to work with the County Attorney's Office to develop any contract language as may be needed to effectuate the terms of this resolution, and shall include such language in all future concession agreements.

Section 5. The County Mayor or County Mayor's designee is directed to minimize disruptions, where possible, to concessionaires which may occur as a result of construction at MIA. The County Mayor or County Mayor's designee is directed to work with the County Attorney's Office to develop language for concession agreements which provides a mechanism for issuance of rental credits to such concessionaire if construction materially impacts the business of such concessionaire. Such language must also at the same time, however, recognize that concessionaires working in a dynamic airport environment will always be subject to disruptions and disturbances by airport construction, changing passenger volumes, changing airline schedules and destinations, and other factors, and that concessionaires who voluntarily chose to work in the Airport must bear the business risk associated with such issues.

Section 6. Nothing herein shall limit the power of this Board of County Commissioners to alter or amend any concession agreement in any manner, in the discretion of the Board. Nothing herein shall limit the discretion of the Board of County Commissioners in determining the circumstances in which settlement or resolution of a claim by a Concessionaire is appropriate, or to settle or resolve any Concessionaire claim, including settlements or resolutions which provide new concession locations, extend term, or waive or alter the payment obligations of an agreement.

Section 7. The provisions of this Resolution may be waived by majority vote of the Board of County Commissioners.

The Prime Sponsor of the foregoing resolution is Commissioner Rebeca Sosa. It 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:

Esteban L. Bovo, Jr., Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of July, 2017. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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.



David M. Murray

