

# Memorandum



**DATE:** May 4, 2010

**Agenda Item No.**  
12B3

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

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

A handwritten signature in black ink, appearing to read "G. Burgess".

**SUBJECT:** Follow up Report on the Reclassification of Certain County Ordinances

On December 10<sup>th</sup>, 2009 staff presented their preliminary findings and recommendations regarding the reclassification of certain county ordinances to the Health, Public Safety and Intergovernmental Committee. That report is attached to this memorandum for your reference as Attachment A. The committee directed staff to work with the County Attorney to resolve any remaining legal issues and to develop recommendations that would identify "specific ordinances to be reclassified".

In discussions with the County Attorney, staff learned that adding the ordinances under consideration to Section 8-CC of the Miami-Dade County Code would give law enforcement officers the discretion to enforce these ordinances either as misdemeanors or civil infractions. This discretion will enable police officers to respond effectively to ordinance violations without compromising their law enforcement capability.

Under this scenario, an officer may either arrest an individual who violates one of the ordinances under consideration or issue that person an 8-CC ticket. Whether the individual is arrested or issued an 8CC ticket, he or she may choose to participate in the Diversion Program in lieu of entering the criminal justice system (if arrested) or pay a fine (if issued an 8-CC ticket).

Staff also discovered that the following ordinances currently under consideration are already listed under Section 8-CC:

- 26-1 – Parks Violations
- 30-468 – Towing, Manifest/Trip Records Violations
- 30-469 – Violations of towing safety standards
- 21-28 – Producing loud or excessive noise

It is recommended that a small number of ordinances be added to Section 8-CC. The ordinances selected by staff for inclusion under Section 8-CC, along with the ordinances already listed under this section of the code (above), accounted for 89% of the violations during 2008. If the diversion program proves to be successful, additional ordinances could be added to Section 8-CC at a later date. The following ordinances are recommended for inclusion in Section 8-CC of the Miami-Dade County Code:

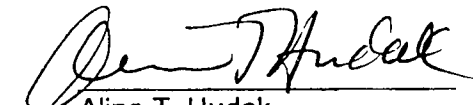
- 21-31.2(B)(1&2) – Alcohol consumption/possession near a store
- 8A-276(B) – Failure to display commercial vehicle markings
- 8A-172 – Conducting business without a license
- 21-31.4(B) – Aggressive Panhandling
- 7-3 – Swimming or fishing from prohibited roads or bridges

In addition, it is recommended that the Miami-Dade Police Department (MDPD) implement the Diversion Pilot Program (as described in Attachment A) for a twelve month period. During that time, the MDPD will be responsible for administering the program and will also be the lead law enforcement agency that will be referring violators to the program. MDPD will implement new procedures regarding

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and Members, Board of County Commissioners  
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the handling of ordinance arrests and will also be training officers on how to apply civil citations. Specifically, MDPD officers will be trained to issue civil citations for Miami-Dade County Code violations when they come in contact with first time offenders. By doing so, the officer can avoid giving the violator a criminal and/or arrest record for a violation of a County ordinance if they do not have a criminal past.

Attachment



Alina T. Hudak  
Assistant County Manager

# Memorandum

MIAMI-DADE  
COUNTY

Date: December 10, 2009

HPSI

Agenda Item No. 7A

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

From: George M. Burgess  
County Manager

Subject: Preliminary Study on the Decriminalization of Certain County Ordinances

On June 30<sup>th</sup>, 2009 the Board of County Commissioners (Board) passed resolution R-868-09 directing staff to evaluate the impact(s) of "decriminalizing" selected County ordinances. The resolution specifically directed staff to study whether cost savings could be achieved by eliminating the possibility of jail time from certain county ordinance violations that would not significantly affect public safety. Staff initially determined that decriminalizing the ordinances would have financial and operational impacts within:

- The Miami-Dade Police Department (MDPD)
- The Miami-Dade Corrections and Rehabilitation Department (MDCR)
- The 11<sup>th</sup> Judicial Circuit
- The Clerk of Courts
- The Administrative Office of the Courts
- The State Attorney's Office
- The Public Defender's Office

The project team that was assembled to conduct this analysis includes representatives from MDPD, MDCR and the Office of Strategic Business Management (OSBM). Members of this team worked with key individuals from each of the organizations listed above to evaluate the fiscal and operational impacts, as well as the policy implications of decriminalizing the ordinances under consideration.

## Background

For purposes of this review, the project team used arrest data from 2008. During that time, the 11<sup>th</sup> Judicial Circuit processed a total of 13,691 cases associated with these ordinances. Individuals arrested for violating one of these ordinances, are either booked at one of two County booking facilities, or issued a Promise to Appear (PTA) in Court. Individuals are either arrested for violations only of the ordinances under consideration, or for violations of those ordinances, along with other charges. Table 1 (below) is a breakdown of the 2008 caseload within those parameters:

Table 1 - 2008 Caseload Breakdown

|                                                   | Total Annual Caseload | Bookings | PTA (Promise To Appear) |
|---------------------------------------------------|-----------------------|----------|-------------------------|
| Violations only of County Ordinances              | 6451                  | 911      | 5540                    |
| Violations of County Ordinances and other charges | 7240                  | 1331     | 5909                    |
| Totals                                            | 13691                 | 2242     | 11449                   |

MDCR and the 11<sup>th</sup> Judicial Circuit process cases involving violations of these ordinances for MDPD, as well as all municipal police departments throughout Miami-Dade County. Table 2 is a summary breakdown of the 2008 caseload by police agency:

**Table 2 - Breakdown of 2008 Caseload by Police Agency:**

|                |       |
|----------------|-------|
| MDPD:          | 9,600 |
| Miami:         | 2,800 |
| Miami Beach:   | 500   |
| Miami Gardens: | 150   |
| Doral:         | 100   |
| Hialeah:       | 90    |
| Others:        | 451   |

Table 3 (below) is a summary breakdown of the 2008 caseload by County ordinance violation(s):

**Table 3 - Breakdown of 2008 Caseload by (Top Five) Ordinance Violations:**

|                                                       |       |
|-------------------------------------------------------|-------|
| Alcohol Consumption w/in 100 ft. of designated areas: | 4,551 |
| Commercial Vehicle Markings:                          | 3,353 |
| Doing Business w/o a License:                         | 1,140 |
| Aggressive Panhandling:                               | 1,062 |
| Remaining in parks after they have closed:            | 1,038 |
| Others:                                               | 2,547 |

*\*Attachment one (1) lists the ordinances under consideration, along with the estimated number of violations of each ordinance during 2008.*

#### **Current System**

Under the current system, the County pays a filing fee of \$10 per case to the Clerk of Courts (Clerk) for processing violations of these ordinances. Based on the 2008 caseload, the County paid approximately \$136,900 to the Clerk for those services. Under separate contracts, the County also pays annual fees of \$139,000 to the State Attorney's Office to prosecute these cases, and \$28,000 to the Public Defender's Office to defend them. The County's total annual out of pocket costs during 2008 were approximately \$303,900.

During 2008, of the 13,691 cases, 382 individuals were actually convicted of crimes for their ordinance violations, and an additional 110 individuals were sent to diversion programs. This represents 3.6% of the total caseload. The remaining 13,199 cases (96.4%) were dismissed either by the State Attorney or the Court.

#### **Decriminalizing Ordinances Under Consideration**

The savings and costs associated with decriminalizing all the ordinances under consideration have been analyzed to include time savings and operational efficiencies in several areas. For each case, law enforcement officers would return to service approximately one hour sooner because they would no longer have to process individuals through our booking facilities. In cases where individuals are issued PTA's, law enforcement officers would save approximately 30 minutes per case in processing time. In addition, MDCR would no longer house these individuals in County jail facilities, which would eliminate

approximately 3,400 "incarceration days" per year and would eliminate the need to feed these inmates. Furthermore, approximately 6,450 fewer cases would be processed in the 11<sup>th</sup> Judicial Circuit, producing time savings for the court system as well as the Clerk. The County would also collect revenue from fines for violations of the newly defined civil infractions. The total estimated annual savings and revenue are approximately \$860,040.

The costs associated with decriminalizing all the ordinances under consideration include 20% of the revenue from fines that the Clerk would require to pay hearing officers who would adjudicate approximately 30% of the cases. There would also be a one-time fixed cost to set up a room to conduct hearings for these cases. Excluding the one-time fixed cost, it is estimated that decriminalizing all ordinances under consideration would result in a recurring annual net savings of approximately \$751,840.

### **Recommendation**

In examining the policy considerations, it became clear that some of these ordinances deal with quality of life, as opposed to life safety issues. The 11<sup>th</sup> Judicial Circuit expressed a concern that people should not be treated as criminals for violations of certain ordinances under consideration, and both judicial and administrative personnel support the decriminalization of these ordinances. However, the law enforcement community, expressed concern about losing these ordinances as a law enforcement tool. Therefore, staff would like the opportunity to further examine those minor offenses that could be decriminalized while also establishing a Pre-Arrestment Diversion Pilot Program to mitigate those ordinances that would potentially remain criminal offenses. A combination of decriminalization and establishing a Diversion Pilot Program will assist in serving both goals as individuals who violate these ordinances would not be treated as criminals, police officers' ability to enforce the law would not be compromised, time savings and operational efficiencies will be achieved for the court system and the Clerk as well as law enforcement.

### **How Would the Pre-Arrestment Diversion Pilot Program Work?**

Under the current system, regardless of whether an individual is arrested or issued a PTA, that individual is ordered to appear in court within approximately 30 days. As a result, all the agencies that participate in the current system would incur costs as described in the previous section of this report.

The goals of the diversion program would be to:

- Achieve compliance with the ordinances,
- Avoid costs associated with the current system,
- Relieve jail and courtroom overcrowding, and
- No longer treat individuals who violate these ordinances as criminals.

When an individual is arrested for a violation of one of the selected ordinances that are remaining criminal, he/she would be offered the alternative of participating in the Diversion Pilot Program. If he or she chooses to do so, the standard procedure would be for that individual to pay a \$50 processing fee, and perform 10 hours of community service under the supervision of MDPD's existing Community Service Unit. This unit currently administers a community service program for individuals who violate various State laws and other County ordinances. If the individual chooses not to perform community service hours, he or she could opt to pay a maximum fee of \$150. Alternatively, if the individual chooses not to pay any processing fees, he or she could opt to perform a maximum of 30 community

service hours. These community service hours could be performed at County landfills, parks, beaches, bus ways, the Animal Services Shelter and at MDPD stations and substations.

The proposed amount for fees was designed to be consistent with the severity of the infractions. As a point of comparison, the Advocate Program, which administers pre-trial diversion services for those who have been arrested for crimes like battery, petty theft and disorderly conduct, charges a processing fee of \$240. Staff believes that the violations of the ordinances under consideration are not as serious as those administered by the Advocate Program.

Once the individual has completed the requirements of the diversion program, the Community Service Unit would contact the State Attorney, the Clerk, and the court to formally request that the charges be dropped and the case closed. If the individual chooses not to participate in the diversion program, he or she would still have the option to go to court.

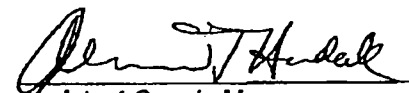
The assumptions for the pilot program are that 80% of the violators would participate in the diversion program, that the prosecution and defense fees paid by the County to the State Attorney and Public Defender would remain unchanged, and that the processing fee paid by the County to the Clerk would also remain unchanged. Below are two scenarios that represent minimum and maximum net revenue streams for the County, after paying the State Attorney, the Public Defender and the Clerk:

- If 80% of the violators were to pay the minimum processing fee of \$50 and perform 10 hours of community service, the annual net revenue to the County would be approximately **\$243,700**
- If 80% of the violators were to pay the maximum processing fee of \$150 and not perform any community service, the annual net revenue to the County would be approximately **\$1,339,000**

### Conclusion

The recommended combination of decriminalization and a Pre-Trial Diversion Pilot Program is an appropriate solution for violations of the ordinances under consideration as it will not compromise police officers' ability to enforce the law and will result in efficiencies in various public safety areas. Staff's initial review also indicates that a combination of both will produce a positive net revenue stream for the County.

If the Diversion Pilot Program is implemented, it is possible that MDPD's Community Services Unit may need additional resources to manage the additional caseload. Those resources could be funded from the revenue generated by the Diversion Pilot Program. In addition, there is a potential cost associated with decriminalization that the Clerk would incur in order to adjudicate cases. Those resources could be funded with the revenue generated from fines. Therefore, it is recommended that staff further analyze those minor offenses that could be decriminalized while introducing the Diversion Program as a six to nine month pilot project. During this period, staff would monitor and evaluate the actual caseload and revenue stream, and determine whether or not there is sufficient revenue to fund the ongoing resource requirements to administer the program.

  
Assistant County Manager

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## Attachment 1 - Selected County Ordinances Under Consideration for Decriminalization

| Ordinances                                                                                                           | Estimated Number of Violations During 2008 |
|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| Section 21-17: Doing business with a local business                                                                  | 17                                         |
| Section 21-21: Solicitation of drinks in alcoholic beverage establishments                                           | 476                                        |
| Section 21-27.1 and .2: Selling, serving or vending merchandise in public rights of way near schools or public parks | 11                                         |
| Section 21-28: Making unnecessary and excessive noise                                                                | 186                                        |
| Section 21-28.1: Conducting open-air concerts, musical broadcasts, etc.                                              | 11                                         |
| Section 21-29.1: Advertising by private businesses on public property                                                | 147                                        |
| Section 21-31: Consumption of alcoholic beverage in open container near designated locations                         | 155                                        |
| Section 21-33: Carcass or obstructive parking                                                                        | 105                                        |
| Section 21-36.1: Automobile window washing on street corners                                                         | 381                                        |
| Section 21-49: Loitering for the purpose of obtaining temporary employment                                           | 257                                        |
| Section 26-1: Remaining in parks after they have closed                                                              | 103                                        |
| Section 26A-2: Creating a sanitary nuisance                                                                          | 207                                        |
| Section 30-468: Recovering, removing, towing or storing vehicles without a manifest or trip record                   | 393                                        |
| Section 30-469: Violating safety standards of vehicles used for towing                                               | 306                                        |
| Section 30-475: Using a vehicle to commercial purpose without appropriate licensing as a commercial vehicle          | 353                                        |
| Section 7-3: Swimming or fishing from designated road bridges                                                        | 172                                        |
| <b>Total</b>                                                                                                         | <b>13,691</b>                              |