



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

Infrastructure and Capital Improvements (ICI)
Committee Meeting

December 10, 2019
2:00 P.M.
Commission Chambers

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**ICI Committee Meeting:
December 10, 2019
Research Notes**

Item No. 1G2

File No. 192368 and 192921 (Substitute)

Researcher: MF Reviewer: PGE

ORDINANCE RELATING TO VACATION RENTALS; AMENDING SECTION 33-28 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REVISING REQUIREMENTS RELATING TO THE RESPONSIBILITIES AND DUTIES OF PEER-TO-PEER OR PLATFORM ENTITIES (“PLATFORMS”); SPECIFYING THE MANNER IN WHICH PLATFORMS MUST PROVIDE NOTICE OF REQUIREMENTS TO PERSONS OR ENTITIES OFFERING VACATION RENTALS; REQUIRING PLATFORMS TO PROVIDE CERTAIN INFORMATION TO PLATFORM USERS; SPECIFYING THE MANNER IN WHICH PLATFORMS MAY COMPLY WITH REQUIREMENT RELATING TO SUBLETTING; CLARIFYING THAT REQUIREMENT TO ALLOW COUNTY INSPECTION OF PLATFORM RECORDS AND INFORMATION IS SUBJECT TO ADMINISTRATIVE SUBPOENA OR OTHER LEGAL PROCESS; REQUIRING PLATFORMS TO PROVIDE THE COUNTY WITH PERIODIC REPORTS; REQUIRING PLATFORMS TO ENTER INTO CERTAIN AGREEMENTS TO ADDRESS LISTINGS FOR VACATION RENTALS WITH REPEAT VIOLATIONS AND TO ENCOURAGE USER COMPLIANCE WITH COUNTY REGULATIONS; DELETING REQUIREMENT THAT PLATFORMS ONLY FACILITATE TRANSACTIONS FOR VACATION RENTALS WITH A VALID CERTIFICATE OF USE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

ISSUE/REQUESTED ACTION

Whether the Board should authorize amending the County’s Vacation Rentals Ordinance (Section 33-28 of the County Code) to: (1) specify the manner in which platforms must provide notice of requirements for persons offering vacation rentals; (2) require certain information of users; (3) specify subletting compliance; (4) clarify inspection of records and legal processes; (5) address repeat violations; (6) encourage user compliance; and (7) delete requirement that platforms only facilitate transactions for vacation rentals with a valid Certificate of Use.

PROCEDURAL HISTORY

Prime Sponsor: Commissioner Sally A. Heyman, District 4

Department/Requester: None

This item was deferred at the ICI Committee meeting of November 13, 2019. Commissioner Heyman requested the deferral citing a request from the Hotel Association, which had not had an opportunity to engage its membership in the subject matter. Ms. Heyman pointed out that the Hotel Association was a partner in the initial drafting of the 2017 vacation rental ordinance. Prior to this, this item was adopted on first reading at the BCC meeting of October 3, 2019.

ANALYSIS

The purpose of this item is for the Board to amend the County’s Vacation Rentals Ordinance, codified as Section 33-28 of the County Code, to revise the requirements relating to the responsibilities and duties of peer-to-peer platform entities. More specifically, the amendment accomplishes the following:

- Specifying way platforms must provide notice of requirements for persons offering vacation rentals;
- Requiring certain information of users;
- Specifying subletting compliance;
- Clarifying inspection of records and legal processes;
- Addressing repeat violations;
- Encouraging user compliance; and
- Deleting requirement that facilitates vacation rentals with only a valid Certificate of Use.

**ICI Committee Meeting:
December 10, 2019
Research Notes**

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The Substitute Item (File No. 192921) materially differs from the original item in that the items listed below were listed as separate requirements rather than part of the safe-harbor to the payment processing provision.

- It retains the existing Code provision prohibiting peer-to-peer or platform entities from providing processing services, or otherwise facilitating payment, for vacation rentals that do not have a valid Certificate of Use (CU);
- It modifies the existing safe-harbor to this requirement so that a peer-to-peer or platform entity shall not be held liable for providing payment processing services where it: informs responsible parties of the County's CU requirement and takes specific steps to facilitate compliance with that requirement; provides the County with periodic reports relating to vacation rental listings; and enters into an agreement with the County to provide a means for addressing repeat violators and facilitates compliance with the County's CU requirement.

The County's Vacation Rentals Ordinance No. 17-78 was adopted by the Board on October 17, 2017 and only applies to the unincorporated areas of the County. Under the ordinance, a vacation rental is defined as: any dwelling unit or residence, including but not limited to, any unit or group of units in a condominium, cooperative, or apartment building, that is rented in whole or in part to a transient occupant for a period of less than 30 days or one calendar month, whichever is less, or whichever is advertised or held out to the public as a place that may be rented to a transient occupant, but shall not include a hotel, motel, or bed and breakfast as defined in the Code.

A peer-to-peer platform is defined as: any person, service, business, company, marketplace, or other entity that, for a fee or other consideration, provides property owners and responsible parties a platform or means to offer vacation rentals to transient occupants whether through the Internet or other means. A responsible party is defined as: the person or entity authorized by the property owner to obtain a Certificate of Use for a vacation rental, and who will be 1) responsible for ensuring compliance with all regulations related to vacation rentals; and 2) available to respond 24 hours per day, 7 days per week to any issue that arises relating to the vacation rental.

According to the item's Fiscal Impact Statement, the proposed amendment will not have a fiscal impact as implementation will not require additional staffing resources and any enforcement of the ordinance would be absorbed as part of ongoing monitoring.

The requirements for operating a vacation rental as set forth on RER's website are:

- Vacation rentals must be licensed by the State of Florida;
- Responsible parties must obtain a Certificate of Use (prior to listing and advertising the property on any peer-to-peer platform); the cost is \$36.70 per certificate, at which point an inspection is required with a total cost of \$136.17;
- A new CU must be obtained annually; and
- If a property does not pass inspection, or has pending fines or liens for violations, a CU will not be issued.

The key operational ramifications for peer-to-peer platforms under the amendment are as follows:

- *As part of its vacation rental listing registration process, inform the responsible party that a Certificate of Use must be obtained before offering a vacation rental in the County; include a link to the County webpage where a Certificate of Use may be applied for and obtained; provided a dedicated field to enable the responsible party to*

**ICI Committee Meeting:
December 10, 2019
Research Notes**

Item No. 1G2

File No. 192368 and 192921 (Substitute)

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input the Certificate of Use (CU) number before such party completes registration and lists a vacation rental on the platform;

- *A peer-to-peer entity shall comply with administrative subpoenas or other appropriate legal process from the County seeking information relating to persons or entities listing or offering vacation rentals on its service or platform;*
- *Provides the Department, on a monthly basis, a report disclosing for each vacation rental listing the information entered by the responsible party in the CU dedicated field, or whether the responsible party left that field blank; the total number of vacation rental listings on the service or platform during the prior month; and the total number of nights that vacation rentals listed on the service or platform were rented during the prior month;*
- *Enter into an agreement with the Department that provides for: 1) addressing listings for properties with three or more fully adjudicated violations committed within a consecutive 12-month period to ensure that any such listings do not operate as vacation rentals unless and the requirements of paragraph (6) of subsection (C) and paragraph (2) of subsection (E) have been complied with; and*
- *Facilitating responsible party compliance with the Certificate of Use requirement.*

OCA performed research on legislation and processes adopted by neighboring jurisdictions regarding vacation rentals. Below is a synopsis of best practices for vacation rentals from municipalities in Miami-Dade and Broward Counties.

Jurisdiction	Governance
City of Miami Beach	Approved vacation/short-term rentals are required to obtain proper authorization and zoning approvals as well as Business Tax Receipt to operate. The City has a search feature on its website whereby users can look up legal rental units licenses and address information. https://secure.miamibeachfl.gov/ShortTermRentalLicenses/
City of North Miami Beach	The City requires a short-term rental registration application and hosts are required to register the property with the City's Code Compliance Division to offer short-term rentals. There is a one-time \$100 application fee. Short-term vacation rentals are allowed in single-family and multi-family residential districts. https://www.citynmb.com/Search?searchPhrase=vacation%20rental
Town of Bay Harbor Islands	The Town requires vacation rental registration and issuance of a Business Tax Receipt, as well as proof that notice has been provided to and written consent has been given by a condo, cooperative or management of a complex. https://www.bayharborislands-fl.gov/business-tax-receipts
City of Fort Lauderdale	The City has a Vacation Rental Registration Program that regulates vacation rentals. The City's compliance division ensures the rental operators are current with the state and tax licenses and that each vacation rental meets minimum housing and life safety standards. The City's website offers features to register and renew registration of properties and provides enforcement information listing properties that have been discovered as operating illegally as well as those that have Certificates of Compliance.

**ICI Committee Meeting:
December 10, 2019
Research Notes**

Item No. 1G2

File No. 192368 and 192921 (Substitute)

Researcher: MF

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	https://www.fortlauderdale.gov/departments/sustainable-development/community-enhancement-and-compliance/vacation-rental-program
City of Hollywood	The City requires a Vacation Rental License only for properties zoned RS (Single-Family Residential District) and RM (Multiple Family Residential District); there is an initial application fee of \$500 and a renewal fee of \$350. The units are required to undergo City inspection prior to the issuance of the license. https://www.hollywoodfl.org/946/Vacation-Rental-License
City of Pompano Beach	The City requires operators to obtain an annual permit by obtaining a license as a Transient Public Lodging Establishment with Florida's DBPR. Also required are the following: a certificate of registration with the state Department of Revenue, and Broward County and City of Pompano Beach Business Tax Receipts. Once approved, several city inspectors from various departments visit the premises. http://pompanobeachfl.gov/pages/task_force

ADDITIONAL INFORMATION

Vacation rentals in South Florida have been the subject of legal challenges. The City of Miami Beach passed an ordinance banning short-term rentals, which a Miami-Dade County court struck down, citing a conflict with state law. The ban was deemed "illegal and unenforceable" after Miami Beach imposed hefty fines for illegal rentals, ranging from \$20,000 for the first violation to \$40,000 for the second, \$60,000 for the third, \$80,000 for the fourth and \$100,000 for each violation thereafter. The court ruled that the city's fines were in direct conflict with the state, which caps fines at \$1,000 per day for the first infraction and \$5,000 per day for repeat violations.

<https://www.remiamibeach.com/citywide/the-court-decision-on-miami-beachs-short-term-rental-ban-what-it-means-and-what-it-doesnt/>

The County's Department of Regulatory and Economic Resources (RER) has a webpage on Short-Term Vacation Rentals.

<https://www.miamidade.gov/building/standards/residential-short-term-vacation-rentals.asp>

APPLICABLE LEGISLATION/POLICY

Florida Statute Section 509.242, regulates public lodging establishments, and defines vacation rentals as: any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0500-0599/0509/Sections/0509.242.html

Ordinance No. 17-78, adopted October 17, 2017, regulates vacation rentals, creating Section 33-28 of the Code, requiring a Certificate of Use and establishing zoning regulations for vacation rentals in the unincorporated area; providing requirements for issuance of Certificate of Use and renewal; providing vacation rental standards and duties of peer-to-peer or platform entities and responsible parties; requiring a bond under certain circumstances; requiring vacation rentals to comply with certain existing code provisions and imposing certain additional code requirements including requirements related to maximum occupancy, signs, noise, parking and pets; prohibiting a sexual predator or offender from occupying a vacation rental under certain circumstances; amending Section 8CC; providing for enforcement by civil penalties.

<http://www.miamidade.gov/govaction/matter.asp?matter=172425&file=false&fileAnalysis=false&yearFolder=Y2017>

**ICI Committee Meeting:
December 10, 2019
Research Notes**

Item No. 1G2

File No. 192368 and 192921 (Substitute)

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Section 33-28 of the Miami-Dade County Code (Vacation Rentals), provides regulations pertaining to vacation rentals to preserve the quiet nature and atmosphere of residential areas and to ensure to the County's residents the tranquility and peaceful enjoyment of their neighborhoods.

<https://library.municode.com/fl/miami> -

[_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH33ZO_ARTIINGE_S33-28VARE](https://library.municode.com/fl/miami-dade-county/codes/code_of_ordinances?nodeId=PTIICOOR_CH33ZO_ARTIINGE_S33-28VARE)

**ICI Committee Meeting:
December 10, 2019
Research Notes**

**Item No. 3C
File No. 192801**

Researcher: IL Reviewer: TD

RESOLUTION AUTHORIZING DESIGNATED PURCHASE PURSUANT TO SECTION 2-8.1(B)(3) OF THE COUNTY CODE BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT; AUTHORIZING AWARD OF CONTRACT NO. FB-01285 FOR THE PURCHASE OF BULK INDUSTRIAL CRUDE SOLAR SALT IN AN AMOUNT NOT TO EXCEED \$3,770,000.00 FOR A FIVE YEAR TERM FOR THE MIAMI-DADE WATER AND SEWER DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38

ISSUE/REQUESTED ACTION

Whether the Board should approve a designated purchase of FB-01285 to Morton Salt, Inc., (Morton) in an amount not to exceed \$3,770,000 for a five year term, for the purchase of bulk industrial crude solar salt for the Internal Services Department (ISD) on behalf of the Miami-Dade Water and Sewer Department (WASD).

PROCEDURAL HISTORY

Prime Sponsor: None

Department/Requester: Internal Services Department



There is no procedural history for this item.

ANALYSIS

The purpose of this item is to approve a designated purchase to Morton Salt, Inc., in the amount of \$3,770,000 for a five-year term, for the purchase of bulk industrial crude solar salt for WASD. The industrial crude solar salt is utilized to produce an onsite generation of sodium hypochlorite, a type of bleach, used to disinfect sewage in the County's wastewater treatment plants.

The current contract, FB-00083 awarded under Resolution No. R-805-14 and valued at \$4,275,000, for a five-year term, expiring on March 5, 2020. The fiscal impact for the proposed contract is \$3,770,000 for a five-year term. The annual allocation of the new contract is \$101,000 less than the current contract.

Below is a comparison table between the current contract and the proposed contract delineating and comparing the total price and the annual rate of expense.

FB-00083 (Five Year Term) Current	FB-01285 (Five Year Term) Proposed	Variance
\$4,275,000	\$3,770,000	\$505,000 
\$855,000 (Annual)	\$754,000	\$329,518 

ISD opened the bid solicitation on July 23, 2019, with one vendor responding. The incumbent Morton Salt Inc. was the sole respondent. ISD notified 1,985 vendors and conducted market research prior to the solicitation. Additionally, ISD sent out a follow-up survey to nine vendors that viewed the solicitation. However, no responsive bids were received aside from Morton Salt Inc.

**ICI Committee Meeting:
December 10, 2019
Research Notes**

**Item No. 3C
File No. 192801**

Researcher: IL Reviewer: TD

The County Attorney's Office deemed Morton Salt Inc.'s submission non-responsive due to Morton's position of taking exceptions to delivery time and pricing. The County Attorney's Office recommended that the County either re-solicit the procurement, or treat the purchase as a non-competitive bid waiver or designated purchase. Pursuant to Implementing Order 2-13, the administration furnished a copy of the County Attorney's opinion related to the non-responsive classification.

Morton was the only bidder, and as a result the County pursued the purchase via a non-competitive designated purchase. Furthermore, ISD negotiated the exceptions taken by Morton and agreed to change the delivery time from two days to five days. This deviation is not expected to impact operations for the Water and Sewer Department. Morton took another exception to the bid stating that the price would only be honored until June 30, 2020 (within seven months) and pricing shall be re-negotiated on a yearly basis. At the negotiation, ISD was able to secure a firm price for a full year from the execution of the contract, and subsequent year price increases were limited at no more than three percent.

Morton Salt Inc. has been the awarded vendor for this type of service from November 12, 2012 under Contract No. 9627-0/14. Morton is the sole provider of bulk industrial crude solar salt to Miami-Dade County.

The table below summarizes OCA's due diligence review of the awarded vendor under the emergency purchase.

Awarded Firms	Sunbiz	Tax Collector	Florida DBPR	Westlaw
Morton Salt, Inc.	Foreign Profit Corporation Principal Address 444 West Lake Street Suite 3000, Chicago, IL Date Filed: August 4, 2010	Nothing Found	Nothing Found	No relevant cases found.

OCA reviewed the solicitation timeline of this replacement contract. Pursuant to Resolution No. R-718-17, the administration is directed to commence planning for re-procurement no later than 18 months PRIOR to the expiration of the current contract. The solicitation opened eight months prior to the expiration. OCA cannot verify any planning prior to that date.

As of December 6, 2019, the Blanket Purchase Order (BPO) in BTS for the current Contract (FB-00083) shows an allocated amount of \$4,275,000. Of the allocated amount, a total of \$3,605,000 has been released, leaving a balance of \$670,000.

**ICI Committee Meeting:
December 10, 2019
Research Notes**

**Item No. 3C
File No. 192801**

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Pursuant to Resolution No. R-716-12, on December 3, 2019, a search was conducted on the Business Management Workforce System for the Contract's Commodity Codes – 19036 (Chemicals Bulk), 19085 (Sodium Phosphates), 775 (Salt), 77563 (Salt Evaporated), 885 (Water and Wastewater Treating Chemicals), 88570 (Hardness Control Chemicals) - yielded 7 local small business enterprise firms of which Morton Salt Inc., was not one of the listed SBE firms.

- Allied Paper Co, DBA Allied Paper & Chemical Co.
- Green-Energy-Products.com, LLC
- Pancar Industrial Supply Corporation
- Per Car Inc., DBA National Sunshine Auto Parts
- Pro-Grounds Products, Inc.,
- Stein Paint Company
- The Tools Man, Inc., DBA The Tools Man Industry Supply

ADDITIONAL INFORMATION:

OCA conducted a web search on other potential companies that offer wastewater technologies and found the Thatcher Group, Inc.

<http://tchem.com/home/industrial-chemical-solutions-nalco-univar/water-treatment-solutions-chemicals/wastewater-technologies/>

APPLICABLE LEGISLATION/POLICY

Section 2-8.1 of the County Code (Contracts and Purchases Generally) applies to all contracts for public improvements and purchases of all supplies, materials, and services other than professional services and (1) requires formal sealed bids for purchases over \$250,000; (2) describes the circumstances under which non-competitive purchases may be approved; (3) establishes requirements for legacy purchases, designated purchases, and single-vehicle leases; and (4) provides that procurement procedures shall be established by I.O. and approved by the Board.

https://library.municode.com/fl/miami-dade-county/codes/code_of_ordinances?nodeId=PTIIICOR_CH2AD_ARTIINGE_S2-8.1COPUGE

Resolution No. R-187-12, adopted February 21, 2012, directed the County Mayor to include due diligence information in memoranda recommending certain contract awards.

<http://www.miamidade.gov/govaction/matter.asp?matter=120287&file=true&fileAnalysis=false&yearFolder=Y2012>

Resolution No. R-716-12, adopted September 4, 2012, requires identification of small business enterprise firms in any procurement item submitted for Board approval.

<http://intra/gia/matter.asp?matter=121265&file=true&yearFolder=Y2012>

Resolution No. R-805-14, adopted September 16, 2014, authorizes a contract award to Morton Salt, Inc, in the amount of \$4,275,000 for a five-year term.

<http://intra/gia/matter.asp?matter=141772&file=true&yearFolder=Y2014>

Resolution No. R-718-17, adopted July 6, 2017, Directs the Mayor to commence planning for re-procurement no later than 18 months PRIOR to the expiration of contracts and Lists of Prequalified Vendors for the purchase of goods and/or services; and directs the Mayor or their designee, on a quarterly basis to identify in writing to the Office of Commission Auditor those contracts and prequalified vendor lists that are set to expire no later than 18 months prior to expiration.

<http://intra/gia/matter.asp?matter=171632&file=true&yearFolder=Y2017>

**ICI Committee Meeting:
December 10, 2019
Research Notes**

**Item No. 3C
File No. 192801**

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Implementing Order 2-13 sets forth the County's guidelines and procedures regarding legal opinions with respect to the competitive processes. Notwithstanding any contrary provision of any other Administrative Order or Implementing Order, it is the policy of the Board that the procedures expressed in this Implementing Order shall be applicable to and shall govern administrative requests for and opinions rendered by the County Attorney's Office in connection with any competitive process of the County, its agencies and administrative boards, including the Public Health Trust. The opinions covered shall include any relating to the responsiveness of any bidder or proposer where the determination may affect the outcome of the solicitation. This Implementing Order is directory in nature only, designed to guide the administration and the County Attorney's Office in the rendering of such opinions, and is not intended to create any rights for any participant in a bid contest or other proceeding.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO2-13.pdf>

Implementing Order 3-38 sets forth the County's policies and procedures for the procurement of goods and services. The I.O. references the obligations and responsibilities of the Internal Services Department; the authority to award; and the requirements for access contracts, emergency purchases, bid waivers, confirmation purchases and sole sources.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-38.pdf>