

ORDINANCE NO. 2012-3768

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 90 OF THE MIAMI BEACH CITY CODE, ENTITLED "SOLID WASTE," BY AMENDING THE DEFINITIONS IN ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 90-2, ENTITLED "DEFINITIONS"; BY AMENDING ARTICLE II, ENTITLED "ADMINISTRATION" BY AMENDING THE PENALTIES FOR SOLID WASTE VIOLATIONS AND TO PROVIDE PROVISIONS AND PENALTIES RELATIVE TO RECYCLING FOR MULTIFAMILY RESIDENCES AND COMMERCIAL ESTABLISHMENTS; BY CREATING ARTICLE V, TO BE ENTITLED "CITYWIDE RECYCLING PROGRAM FOR MULTIFAMILY RESIDENCES AND COMMERCIAL ESTABLISHMENTS," TO PROVIDE PROVISIONS FOR RECYCLING REQUIREMENTS AND ENFORCEMENT, A PUBLIC EDUCATION PROGRAM, A WARNING PERIOD, AN ENFORCEMENT DATE, REQUIREMENTS FOR RECYCLING CONTRACTORS, PENALTIES, AND SPECIAL MASTER APPEAL PROCEDURES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the recycling of recyclable materials is in the best interest of the environment, City residents, and in maintaining the City's prominence as a world class resort destination; and

WHEREAS, by managing solid waste and conserving material resources through reduction, reuse, and recycling, the City will help minimize impacts to the quality and safety of the local environment, reduce costs of waste disposal, and decrease the carbon footprint associated with the production use, and disposal of materials; and

WHEREAS, the City seeks to establish a Citywide Recycling Program for multifamily residences and commercial establishments that provides standards that are equivalent to or exceed the minimum recycling requirements of Miami-Dade County; and

WHEREAS, pursuant to Sections 15-2.2 through 15-2.4 of the Miami-Dade County Code, the City and Miami-Dade County have agreed that the following Citywide Recycling Program meets the minimum standards set forth in section 15-2.5 of the Miami-Dade County Code and, in conjunction with the passage of this Ordinance, the City and Miami-Dade County will enter into a Memorandum of Understanding so that the City may implement said Program.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Article I, entitled "In General," of Chapter 90 of the Miami Beach City Code, entitled "Solid Waste," is hereby amended as follows:

CHAPTER 90

SOLID WASTE

* * *

ARTICLE I. IN GENERAL

Sec. 90-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Commercial establishment means an establishment dealing in an exchange of goods or services for money or barter. For purposes of this chapter, the term shall include churches, synagogues and schools.

* * *

Multifamily residence means a building occupied or intended to be occupied by two (2) or more families living separately, with separate kitchens in each unit.

* * *

Offense means a notice of violation that has not been appealed timely or a finding of a violation by a special master following the appeal of a violation.

* * *

Premises means real property and includes any buildings or structures thereon.

* * *

Recyclable materials means those materials capable of being recycled and which would otherwise be processed or disposed of as solid waste. Any recyclable material mixed with solid waste shall be considered to be solid waste.

Recycling means any process by which recyclable materials are collected, separated, or processed to be reused or returned to use in the form of raw materials or products.

Recycling container means a container approved by the city manager for collection of recyclable material by a recycling contractor.

Recycling contractor means a private contractor licensed by the city and state who collects recyclable materials and transports same to a state or county-licensed recycling facility for processing. Recycling contractors must provide their customers with a separate recycling container for recyclable materials.

Single-stream recycling means a process by which certain recyclable materials are mixed together instead of being sorted into separate recycling containers in the collection process.

SECTION 2. That Article II, entitled "Administration," of Chapter 90 of the Miami Beach City Code entitled "Solid Waste," is hereby amended as follows:

CHAPTER 90

SOLID WASTE

* * *

ARTICLE II. ADMINISTRATION

Sec. 90-36. Enforcement of chapter; notice of violation.

(a) The city manager is hereby authorized and directed to enforce all the provisions of this chapter regulating and governing the accumulation, collection, and disposal of solid waste. The city manager shall have the power to delegate duties to employees working under his authority (including, without limitation, the city's public works director) in the enforcement of the provisions of this chapter.

(b) Upon presentation of proper credentials, an inspector designated by the city manager may enter any building, structure, lot or other premises for the purpose of inspection, or to prevent violations of this chapter.

(c) The existence of solid waste shall be prima facie evidence that the same was created or placed there by the occupant of the dwelling or commercial establishment; or the owner; or the operator or manager. The existence of the same garbage inside the same garbage containers for four (4) consecutive days upon premises serviced by a private waste contractor shall be prima facie evidence of a violation of this chapter by the contractor. For purposes of this section premises serviced by a private waste contractor shall not include accounts that have been discontinued by the contractor when notice of discontinued service has been mailed to the owner, occupant; or operator or manager, as well as to the city, prior to the accumulation of the garbage.

(d) Whenever a designated city inspector observes a violation (or violations) of this chapter regarding solid waste or an accumulation of solid waste that creates a health hazard, environmental hazard, or nuisance, the inspector shall order the violation(s) to be corrected within a specified period of time by serving a written notice of violation(s) upon the person causing, or responsible for, such violation and/or health hazard, environmental hazard, or nuisance. Such person shall immediately cease or abate the violation(s).

(e) ~~A~~ The notice of violation shall be served personally or by certified mail upon the property owner or upon the person(s) in lawful possession of the premises, and/or upon the waste contractor servicing the premises. If the person addressed with such notice cannot be found by the city after making reasonable good faith effort, such notice shall be sent by certified mail to the last known address of such person, and a copy of the notice shall be posted in a conspicuous place on the premises. Such notice shall be deemed the equivalent of personal service.

(f) The notice shall specify any fine(s) that may be due in connection with the violation(s), the time specified by the inspector to correct the violations, and the procedure for timely payment or appeal of the fine(s).

(g) If the inspector determines that the conditions constitute an immediate threat to the health, safety or welfare of the public, he/she may order the immediate correction of the

violation(s) at the expense of the occupant; owner; or operator or manager and the city shall have the right to recover such expenses as provided in section 90- ~~436~~ 37.

(h) The enforcement of the recycling requirements for the citywide recycling program for multifamily residences and commercial establishments provided for in Article V of this chapter, and the penalties for violations of Article V, are provided in sections 90-345 through 90-347 of this chapter.

Sec. 90-37. Removal of waste by city; penalties for violations.

If the person served with a notice of violation pursuant to section 90-36 does not correct the violation within the specified time, the city manager may do the following:

(1) For violations involving failure to remove solid waste, the city manager may cause the waste to be removed from the premises and charge the actual costs to the owner; occupant; or operator or manager, on a force account basis. Any fine due pursuant to section 90-39 or 90-40 shall also be charged to the owner; occupant; or operator or manager. Failure to pay such costs and fines or to appeal pursuant to section 90-38 within fifteen (15) days of receipt of the notice shall result in the imposition of a lien upon the property, in the amount of such costs and fines. Such liens shall be treated as special assessment liens against the subject real property and, until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved. Such liens shall be enforced by any of the methods provided in Ch. 86, Florida Statutes; or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions of Ch. 173; Florida Statutes; or the collection and enforcement or payment thereof may be accomplished by any other method authorized by law. The owner; occupant; or operator or manager shall pay all costs of collection, including reasonable attorneys fees incurred in the collection of fines, and other charges, penalties, and liens imposed by virtue of this chapter.

(2) For violations of this chapter for which no fine is specified in sections 90-39 and 90-40, the city attorney may prosecute the violators pursuant to section 1-14. Fines for such offenses shall be as follows:

- a. First offense, \$350.00.
- b. Second offense, \$500.00.
- c. Third offense, \$1,000.00.
- d. Fourth or subsequent offense, \$5,000.00.

(3) For violations which present a serious threat to the health, safety or welfare of the public and/or violations that ~~are continually repeated~~ constitute a fourth or subsequent offense by the same violator, the city attorney may seek injunctive relief and/or, in the case of commercial establishments, revoke the business tax receipt and/or certificate of use of the establishment and/or premises, in addition to the penalties set forth in sec. 90-37(2).

Sec. 90-38. Appeal to special master.

(a) Any person receiving a notice of violation pursuant to section 90-36 and/or a notice of fine pursuant to sections 90-39 and/or 90-40 may request, within fifteen (15) days of receipt of the notice, an administrative hearing before a special master, appointed as provided in article II of chapter 30, to appeal the decision of the city inspector resulting in the issuance of the notice. Procedures and application fee for the scheduling and conduct of the hearing shall be as provided in sections 102-384 and 102-385. Failure to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, as noticed, and fines and penalties may be assessed accordingly.

(b) Timely filing of a notice of appeal pursuant to this section shall toll the imposition of a lien pursuant to section 90-37 or 90-136, or enforcement procedures pursuant to section 90-36, until thirty (30) days after the issuance of a written determination by the special master. Any amounts of money due the city pursuant to such determination must be received by the city within thirty (30) days after the issuance of the determination, or a lien shall be imposed upon the property in question, and any other enforcement or collection procedures commenced, as provided by this chapter or under state law.

SECTION 3. That Article V, to be entitled "Citywide Recycling Program for Multifamily Residences and Commercial Establishments," of Chapter 90 of the Miami Beach City Code, entitled "Solid Waste," is hereby created as follows:

CHAPTER 90

SOLID WASTE

* * *

ARTICLE V.

**CITYWIDE RECYCLING PROGRAM FOR
MULTIFAMILY RESIDENCES AND COMMERCIAL ESTABLISHMENTS**

Sec. 90-340. Recycling program and separation of recyclable materials from solid waste stream required for multifamily residences of nine (9) dwelling units or more; owner/association liability; recycling contractors' assistance.

(a) As of January 1, 2013, every multi-family residence of nine (9) dwelling units or more shall provide a recycling program pursuant to this section or a City approved modified recycling program pursuant to section 90-344. The property owner shall be liable for the failure to provide a recycling program or a modified recycling program approved by the City, provided, however, that a condominium or cooperative apartment having a condominium association or a cooperative apartment association shall be liable, rather than the individual unit owner(s), for a violation of this subsection. Further, recycling contractors shall assist and provide written notice to the director of public works in identifying multifamily residences subject to this article which do not have a recycling program or, in the alternative, which have allowed a recycling program to lapse or expire.

(b) As of January 1, 2013, every multifamily residence of nine (9) dwelling units or more shall be required to use a single stream recycling process to separate, from all other solid waste, the five (5) following recyclable materials:

- 1) *Newspaper.* Used or discarded newsprint, including any glossy inserts;
- 2) *Glass.* Glass jars, bottles, and containers of clear, green or amber (brown) color of any size or shape used to store and/or package food and beverage products for human or animal consumption, and/or used to package other products, which must be empty and rinsed clean of residue. This term excludes ceramics, window or automobile glass, mirrors, and light bulbs;
- 3) *Metal food and beverage containers.* All ferrous and nonferrous (i.e., including, but not limited to, steel, tin-plated steel, aluminum and bimetal) food and beverage containers (i.e., including, but not limited to, cans, plates, and trays) of any size or shape used to store and/or package food and beverage products suitable for human or animal consumption, which must be empty and rinsed clean of residue;
- 4) *Other metal containers.* All other ferrous and non ferrous containers used to package household products including, but not limited to, paint cans and aerosol cans, which must be empty and rinsed clean of residue;
- 5) *Plastics.* All high density polyethylene (HDPE) and/or polyethylene terephthalate (PET) bottles, jugs, jars, cartons, tubs, and/or other containers, and lids, of any size or shape used to package food, beverages, and/or other household products, or crankcase oil, which must be empty and rinsed clean of residue. This term excludes all plastic film, plastic bags, vinyl, rigid plastic (i.e., toys), and plastic foam materials; and

(c) Every multifamily residence of nine (9) dwelling units or more shall be serviced by a recycling contractor licensed by the city and state.

Sec. 90-341. Recycling program and separation of recyclable materials from solid waste stream required for commercial establishments; joint and several liability; recycling contractors' assistance.

(a) As of January 1, 2013, every commercial establishment shall provide a recycling program pursuant to this section or a City approved modified recycling program pursuant to section 90-344. The failure of a commercial establishment to provide a recycling program or a modified recycling program shall result in joint and several liability for the property owner(s) and the owner(s) and operator(s) of the commercial establishment. Further, recycling contractors shall assist and provide written notice to the director of public works in identifying commercial establishments which do not have a recycling program or, in the alternative, which have allowed a recycling program to lapse or expire.

(b) As of January 1, 2013, every commercial establishment shall be required to use a single stream recycling process to separate, from all other solid waste, three (3) of the following seven (7) recyclable materials.

- 1) Newspaper, Cardboard, Magazines, and Catalogues, Telephone Books and/or Directories, and Office Paper. As defined, but not limited to, the same type(s) of recyclable materials as provided in Section 90-340(b)(1);
- 2) Glass. As defined and including the same type(s) of recyclable materials as provided in Section 90-340(b)(1)(2);
- 3) Metal food and beverage containers. As defined and including the same type(s) of recyclable materials as provided in Section 90-340(b)(3);
- 4) Other metal containers. As defined and including the same type(s) of recyclable materials as provided in Section 90-340(b)(4), but also, for purposes of this subsection (4), including scrap metal, which shall mean used or discarded items suitable for recycling, consisting predominantly of ferrous metals, aluminum, brass, copper, lead, chromium, tin, nickel or alloys thereof including, but not limited to, bulk metals such as large metal fixtures and appliances (including white goods such as washing machines, refrigerators, etc.), but excluding metal containers utilized to store flammable or volatile chemicals, such as fuel tanks;
- 5) Plastics. As defined and including the same type(s) of recyclable materials as provided in section 90-340(b)(5);
- 6) Textiles;
- 7) Wood. Clean wood waste and/or pieces generated as by-products from manufacturing of wood products. It excludes clean yard waste and clean waste (i.e. natural vegetation and minerals such as stumps, brush, blackberry vines, tree branches, and associated dirt, sand, tree bark, sand and rocks), treated lumber, wood pieces, or particles containing chemical preservatives, composition roofing, roofing paper, insulation, sheetrock, and glass,

(c) Every commercial establishment shall be serviced by a recycling contractor licensed by the city and state.

Sec. 90-342. Unauthorized collection of designated recyclable materials.

Only those recycling contractors that have been authorized and licensed by the city and the state to collect designated recyclables in the city shall be authorized to collect recyclable materials under this article. All recycling contractors shall comply with all applicable state and city laws and regulations.

Sec. 90-343. Public education program; requirements for recycling contractors; warning period; enforcement date.

- a) Beginning June 1, 2012, the city shall engage in public education efforts and the city shall not prosecute individuals who unknowingly fail to provide a recycling program or a city approved modified recycling program, or unknowingly fail to separate

recyclable materials from all other solid waste materials required to be separated by this article, until as provided in subsections (c) and (d) of this section.

- b) All recycling contractors must appropriately designate the recycling collection containers they provide to customers. The containers must contain the appropriate signage and information, as shall be established and approved by the city pursuant to subsection (c) below, that allows users to clearly and easily identify the container for recycling.
- c) Beginning January 1, 2013, the city shall provide for a six (6) month warning period, through and including ~~December 31, 2012~~, June 30, 2013, in which warning tickets shall be issued to persons who fail to provide a recycling program, or a City approved modified recycling program, or fail to separate recyclable materials from all other solid waste materials, regardless of knowledge or intent.
- d) Beginning July 1, 2013, this article shall be enforced and penalties shall be applied and imposed for violations of this article as provided in sections 90-345 and 90-346. Notwithstanding the foregoing, prior to July 1, 2013, the City Manager shall bring the enforcement provisions of Article V to the City Commission for its review and consideration.

Sec. 90-344. Modified recycling programs.

- (a) Recycling programs which incorporate modifications, substitutions or reductions to the requirements of Sections 90-340 and 90-341 may be submitted to the city's public works director ("director") for approval. Approval, rejection, or approval with conditions of the proposed modified recycling program shall be determined by the director. The director shall consider the following factors in evaluating the proposed modified recycling program:
 - (1) Whether the establishment operates a recycling program, and is self-hauling the materials to a recyclable material vendor.
 - (2) Whether the establishment generates a lesser number of recyclable materials than the required minimum types of recyclables required in Sections 90-340 or 90-341, as applicable.
 - (3) Whether the establishment generates and recycles materials not listed in Section 90-340 or Section 90-341, as applicable.
 - (4) Whether the establishment is contracting with a permitted private hauler for collection services, which services provide for a post-collection separation of recyclable material, and which:
 - (i) generate recyclable materials which comply, in kind and quantity, with the recycling requirements provided for in Section 90-340 or Section 90-341, as applicable; and
 - (ii) utilize a materials separation facility which is permitted in accordance with all applicable federal, State and local laws.

(b) Any person seeking approval of a modified recycling program shall submit an application in such form as is prescribed by the director. All modified recycling programs shall be reviewed on an annual basis and applicants shall be required to confirm or revise the information contained in their applications at that time. An application for approval of a modified recycling program shall include, but not be limited to, the following documentation, as appropriate to the specific application:

(1) Supporting documentation to evidence self-haul activities, which shall include proof of source-separation activities and copies of receipts from recyclable material purchasers.

(2) A waste composition study of the waste generated by the applicant, which shall cover a representative time period of no shorter than one (1) week.

(3) A copy of the applicable contract with a post-collection separation facility, specifying materials and volumes recycled which are attributable to the applicant.

Sec. 90-345. Enforcement.

(a) The city manager is hereby authorized and directed to enforce all the provisions of this article regulating and governing the accumulation, collection, recycling, and disposal of recyclable materials. The city manager shall have the power to delegate duties to employees working under his authority in the enforcement of the provisions of this article.

(b) Whenever a designated city inspector observes a violation(s) of this article, or an accumulation of recyclable materials that creates a health hazard, environmental hazard, or nuisance, the inspector shall order the violation(s) to be corrected within a specified period of time by serving a written notice of violation(s) upon the property owner or upon the manager or other person in charge. Such person(s) shall immediately cease or abate the violation(s).

(c) If the inspector determines that the conditions constitute an immediate threat to the health, safety or welfare of the public, the inspector may order the immediate correction of the violation(s) at the expense of the property owner, manager, or other person in charge, and the city shall have the right to recover such expenses as provided in section 90-37(1).

(d) A notice of violation shall be served personally or by certified mail upon the property owner, or upon the manager or other person in charge of the premises. If the person addressed with such notice cannot be found by the city after making a reasonable good faith effort, such notice shall be sent by certified mail to the last known address of such person, and a copy of the notice shall be posted in a conspicuous place on the premises. Such notice shall be deemed the equivalent of personal service.

(e) Beginning July 1, 2013, violators of sections 90-340 and 90-341 shall be issued one warning and shall correct the violation within 30 days. If the violation is not corrected within 30 days, a notice of violation shall be issued. After one warning, violators of sections 90-340 and 90-341 shall be issued a notice of violation. All notices of violations shall specify any fine or penalty that may be due in connection with the violation(s), the time specified by the inspector to correct the violation(s), and the procedure for timely payment or appeal of the fine or penalty.

Sec. 90-346. Penalties for violations of this article; removal of recyclable materials by city; liens imposed for failure to pay fines or appeal.

(a) Penalties for violations of sections 90-340(a) and 90-341(a) shall be as follows:

(1) For the first violation, a fine of \$350.00.

(2) For the second violation, a fine of \$500.00.

(3) For the third violation, a fine of \$1000.00.

(4) For the fourth violation, a fine of \$2,500.00.

(b) The penalty for violation of sections 90-340(b) and 90-341(b) shall be as follows:

(1) For the first violation, no fine.

(2) For the second or subsequent violations, a fine of \$100.00.

(c) The penalty for all other violations of this article shall be \$250.00 for each violation.

(d) Any penalty due pursuant to this article shall be charged to the person or entity as provided in section 90-340(a) or section 90-341(a). Failure to pay such costs and penalties, or to appeal pursuant to section 90-347 within fifteen (15) days of receipt of the notice of violation shall result in the imposition of a lien upon the premises, in the amount of such costs and penalties. Such liens shall be treated as special assessment liens against the subject real property and, until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved. Such liens shall be enforced by any of the methods provided in Ch. 86, Florida Statutes; or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions of Ch. 173; Florida Statutes; or the collection and enforcement or payment thereof may be accomplished by any other method authorized by law. The owner, occupant, operator, or manager of the premises shall pay all costs of collection, including reasonable attorneys fees incurred in the collection of fines, and other charges, penalties, and liens imposed by virtue of this chapter.

(e) For violations which (i) present a serious threat to the health, safety or welfare of the public, and/or (ii) constitute a fourth or subsequent offense by the same violator under section 90-346(a), the city may seek injunctive relief and/or, in the case of commercial establishments, revoke the business tax receipt and/or certificate of use of the establishment and/or premises, in addition to the penalties set forth in section 90-346(a), (b), or (c), as applicable.

Sec. 90-347. Appeal to Special Master.

(a) Any person receiving a notice of violation pursuant to this article may request, within fifteen (15) days of receipt of the notice, an administrative hearing before a special master,

appointed as provided in article II of chapter 30, to appeal the decision of the city inspector resulting in the issuance of the notice. The procedures and application fee for the scheduling and conduct of the hearing shall be as provided in sections 102-384 and 102-385. Failure to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly.

(b) Timely filing of a notice of appeal pursuant to this section shall toll the imposition of a lien or enforcement procedures pursuant to section 90-347, until thirty (30) days after the issuance of a written determination by the special master. Any costs or penalty amounts due the city pursuant to such determination must be received by the city within thirty (30) days after the issuance of the determination, or a lien shall be imposed upon the premises, and any other enforcement or collection procedures may be commenced, as provided by this chapter or under state law.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 6. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect the 16th day of June, 2012.

PASSED and **ADOPTED** this 6th day of June, 2012.

ATTEST:



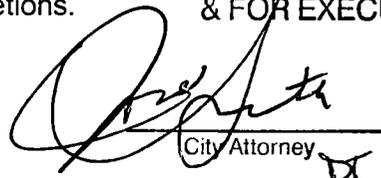
RAFAEL GRANADO CITY CLERK



MAYOR MATTI HERRERA BOWER

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Underline denotes additions and Strike-through denotes deletions.
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City Attorney

6/8/12
Date

Recycling Ordinance Fiscal Analysis - 1 Full-time & 1 Part-time Sustainability Officers

EXPENDITURES

Staffing	Hourly Rate	Hours	#	Salary	Pension	Medicare	Health	OT	Holiday Pay	Uniforms	Total
FT - Sustainability Officer	\$ 20.09	2,080	1	\$ 41,787.20	\$ 845	\$ 605.91	\$2,487	6,257	\$ 592.20	\$ 921.32	\$53,495
PT - Code Compliance Off.	\$ 20.09	1,534	1	\$ 30,818.06	\$ 770	\$ 446.86	\$0	0		\$ 600.00	\$32,635
TOTAL		20169	1	\$41,787	\$845	\$606	\$2,487	6,257	\$592	\$921	\$53,495
On-Going Operating Expenditures											
Fuel, Maintenance & Insurance	\$ 6,505		2	\$ 13,010.00							\$13,010
Office Supplies	\$ 463		2	\$ 926.00							\$926
TOTAL				\$ 13,936.00							\$13,936
One-Time Expenditures											
Vehicles - Ford Focus	\$ 13,133		2	\$ 26,266.00							\$67,431
Furniture, Fixtures & Equipment	\$ 1,000		2	\$ 2,000.00							
Computers and Software	\$ 4,269		2	\$ 8,538.00							
TOTAL				\$ 36,804							\$36,804
										Plus 1st Year Start-Up Costs	
										TOTAL ANNUAL EXPENDITURES	\$67,431
										TOTAL - First Year	\$104,235

(Data provided by IT)

Condensed Title:

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Amending Chapter 90 Of The Miami Beach City Code, Entitled "Solid Waste," By Amending The Definitions In Article I, Entitled "In General," By Amending Section 90-2, Entitled "Definitions"; By Amending Article II, Entitled "Administration" By Amending The Penalties For Solid Waste Violations And To Provide Provisions And Penalties Relative To Recycling For Multifamily Residences And Commercial Establishments; By Creating Article V, To Be Entitled "Citywide Recycling Program For Multifamily Residences And Commercial Establishments," To Provide Provisions For Recycling Requirements And Enforcement, A Public Education Program, A Warning Period, An Enforcement Date, Collector Liability, Penalties, And Special Master Appeal Procedures; Providing For Repealer, Severability, Codification, And An Effective Date.

Key Intended Outcome Supported:

Enhance the Environmental Sustainability of the Community.

Supporting Data (Surveys, Environmental Scan, etc.): The solid waste haulers operating in the City have reported that approximately 1,600 multifamily and commercial establishments within the City are currently not participating in the County-required Recycling Program.

Issue:

Shall the Mayor and City Commission approve the Ordinance?

Item Summary/Recommendation:

SECOND READING PUBLIC HEARING

The new proposed ordinance seeks to establish a comprehensive Citywide Recycling Program for multifamily residences and commercial establishments. The County Code (Section 15-2.5) gives the City the authority to establish and enforce its own ordinance, provided such ordinance is equivalent to or more stringent than the County's provisions. The new proposed ordinance would require that every multifamily residence of nine (9) dwelling units or more provide a recycling program and use a single-stream recycling process to separate recyclables.

The Sustainability Committee recommended that the City focus on education and address enforcement efforts on a complaint driven basis. Beginning June 1, 2012 the new proposed ordinance calls for a six (6) month education and community outreach effort, followed by a six (6) month warning period before penalties would be issued. During the education and outreach period, the City would implement an aggressive public education campaign to inform the public of the new requirements. After the year of extensive education and outreach, the six (6) month warning period (or pre-full implementation period) would take place, where only warning notices without monetary fines would be issued.

In FY 2011/12, \$50,000 was appropriated to initiate the education program. The City will retain a marketing company to develop a unified educational campaign with the goal of increasing recycling awareness and educating multifamily and commercial establishments. It is the intent to have enforcement of the new proposed ordinance conducted on a complaint driven basis by a Sustainability Officer whose focus will be to provide education and guidance rather than issuing of fines.

The Ordinance was approved on First Reading at the May 9, 2012 City Commission Meeting.
THE ADMINISTRATION RECOMMENDS APPROVING THE ORDINANCE ON SECOND READING PUBLIC HEARING.

Advisory Board Recommendation:

On April 19, 2012, the FCWPC recommended that the Commission approve the new proposed ordinance on First Reading. The FCWP also recommended that the City should not enforce fines until a decision has been made on how to enforce the separation requirements of the ordinance.

Financial Information:

Source of Funds:	Amount	Account
1		
OBPI	Total	

Financial Impact Summary: Approval of the Recycling Ordinance represents an annual impact of \$104,000 which will be submitted for approval through the FY2012/13 budget process.

City Clerk's Office Legislative Tracking:

Richard Saltrick ext. 6565

Department Director	Assistant City Manager	City Manager
FHB <i>[Signature]</i>	JGG <i>[Signature]</i>	JMG <i>[Signature]</i>

Sign-Offs:

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MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

**SECOND READING
PUBLIC HEARING**

DATE: June 6, 2012

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 90 OF THE MIAMI BEACH CITY CODE, ENTITLED "SOLID WASTE," BY AMENDING THE DEFINITIONS IN ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 90-2, ENTITLED "DEFINITIONS"; BY AMENDING ARTICLE II, ENTITLED "ADMINISTRATION" BY AMENDING THE PENALTIES FOR SOLID WASTE VIOLATIONS AND TO PROVIDE PROVISIONS AND PENALTIES RELATIVE TO RECYCLING FOR MULTIFAMILY RESIDENCES AND COMMERCIAL ESTABLISHMENTS; BY CREATING ARTICLE V, TO BE ENTITLED "CITYWIDE RECYCLING PROGRAM FOR MULTIFAMILY RESIDENCES AND COMMERCIAL ESTABLISHMENTS," TO PROVIDE PROVISIONS FOR RECYCLING REQUIREMENTS AND ENFORCEMENT, A PUBLIC EDUCATION PROGRAM, A WARNING PERIOD, AN ENFORCEMENT DATE, COLLECTOR LIABILITY, PENALTIES, AND SPECIAL MASTER APPEAL PROCEDURES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission approve the Ordinance on Second Reading and Public Hearing.

BACKGROUND

The Ordinance was approved on First Reading at the May 9, 2012 City Commission Meeting.

Commissioner Jonah Wolfson worked with the City Attorney's Office and City Administration, as well as members of the City's Sustainability Committee, on a proposed ordinance that would require mandatory recycling for multifamily residences and commercial establishments in the City, via the establishment of a City of Miami Beach Mandatory Recycling Enforcement Program. On July 13, 2011, the proposed recycling ordinance was approved by City Commission and referred to the Finance and Citywide Projects Committee (FCWPC) between first and second reading. The FCWPC directed the Administration to conduct a Recycling Workshop, held on October 24, 2011. At the Workshop, Commissioner Michael Gongora indicated that the item would be further discussed at the Sustainability Committee prior to referral to the FCWPC to discuss funding. On November 15, 2011, the Sustainability Committee recommended that the City revise the ordinance to more closely reflect the Miami-Dade County's ordinance, but with revised fines that do not accrue daily. Based on the Sustainability Committee's recommendations, the first reading ordinance was significantly modified. A new proposed Ordinance was presented to the Sustainability Committee on January 17, 2012 and February 28, 2012 for further discussion. On February 28, 2012, the

Sustainability Committee recommended that the new proposed ordinance be referred to the FCWPC.

On April 19, 2012, the FCWPC recommended the City not implement fines until a decision has been made on how to enforce the recycling separation requirements, and to approve the new proposed ordinance on First Reading. On May 9, 2012, the City Commission approved the new proposed ordinance on First Reading.

Currently, Miami-Dade County Code (Sections 15-2.2 to 15-2.4) requires multifamily and commercial establishments to have a recycling program. However, as a result of multiple issues, including fiscal constraints at the County level, the County Code requirement to have a recycling program is not adequately or comprehensively enforced. The solid waste franchisee haulers have reported that approximately 1,600 multifamily residential buildings and commercial establishments within the City of Miami Beach are currently not participating in the County-required recycling program. This is approximately 30% of all known commercial and multifamily accounts.

The objective of the new proposed recycling ordinance is to establish a comprehensive Citywide Recycling Program for multifamily residences and commercial establishments. The County Code (Section 15-2.5) gives the City the authority to establish and enforce its own ordinance, provided such ordinance is equivalent to or more stringent than the County's provisions. The new proposed ordinance (Attachment A), which is an amendment to Chapter 90 of the City Code, would require multifamily residences and commercial establishments in the City to provide a recycling program and to use a single stream recycling process to separate recyclables. Multifamily and commercial establishments would receive fines if they do not provide a recycling program serviced by a licensed recycling contractor or if they fail to separate recyclable material from the solid waste stream.

Single-family homes and multifamily buildings of up to eight (8) units are already provided weekly recycling services via Miami-Dade County's Curbside Recycling Program, which was done through an Inter-Local Agreement (Agreement) entered into on June 14, 1990. The Agreement authorizes the County to act on the City's behalf in the administration of the contract for this recycling service in the areas of municipal jurisdiction. The current number of households served by Miami-Dade County within the City of Miami Beach is 6,500 units. The contractor that currently provides the service to Miami Beach through the Agreement is World Waste Services.

Commercial facilities and multifamily residences with nine (9) or more units are required by Miami-Dade County to hire, by means of a contract, a private solid waste hauler for their recycling pick-up. Miami-Dade County Code Chapter 15 entitled "Solid Waste Management", Sections 15-2.2 through Sections 15-2.5 requires the following:

- Owners/Property owners of commercial establishments in Miami-Dade County must provide a recycling program for their employees and tenants, using the services of an authorized waste hauler or private recycling hauler.
- The program must recycle three (3) items from the following list of ten (10): high-grade office paper, mixed paper, corrugated cardboard, glass, aluminum, steel, other scrap production metals, plastics, textiles, and wood.
- Modified Recycling Programs - those that incorporate modifications, substitutions or reductions to the requirements stated above - may be submitted to the Department of Public Works and Waste Management for review and approval.

CURRENT ENFORCEMENT

On September 1, 2009, the Miami-Dade County Multifamily and Commercial Recycling Memorandum of Understanding (MOU) between the City of Miami Beach and Miami-Dade County

was approved. Under the MOU, the County agrees to enforce recycling under County Code Chapter 15, Sections 15-2.2 through 15-2.5 within the City of Miami Beach. When facilities are found to not have a recycling program, the County issues the offending party a warning notice followed by a notice of violation that may include fines as delineated in Miami-Dade Code Chapter 8CC - entitled "Code Enforcement". In 2007-08, the County collected a total of \$11,550 in fines Countywide for non-compliance with their recycling ordinance.

On March 29, 2010, the City provided Miami-Dade County Solid Waste Management with a list of 434 addresses from the waste haulers' multifamily and commercial accounts that were not recycling. In August 2010, the County initiated a proactive inspection approach to enforcement and inspected a total of 203 multifamily residences and 27 commercial establishments. If facilities were found to not have a recycling program, the facilities were issued a warning notice followed by a notice of violation that may include fines delineated in Miami-Dade Code Chapter 8CC entitled "Code Enforcement". However, in October 2010 the County returned to a complaint-driven approach with an emphasis on education.

In January 2012, the City franchise waste haulers provided the City with an updated list of 1,560 commercial facilities and multifamily residences that do not have a contract with them for a recycling program. The list was forwarded to the County; however, according to the County, the list was too large and needed to be verified by the City. The County requested that the City review the lists provided by the waste haulers, by visiting each address to confirm that in fact the address does not have a recycling service. The percentage of non-compliant facilities that have received fines since January 2012 is unknown. Based on the County's complaint-driven approach that focuses more on education than issuance of fines, this number is anticipated to be low.

PROPOSED RECYCLING ORDINANCE

The new proposed recycling ordinance closely mirrors the existing County ordinance. The new proposed ordinance requires that every multifamily residence of nine (9) dwelling units or more shall provide a recycling program and use a single-stream recycling process to separate recyclables. Similar to the County, the new proposed ordinance provides that multifamily and commercial facilities can submit to the City's Public Works Director for approval of a modified recycling program. The Sustainability Committee recommended that the City focus on education and address enforcement efforts on a complaint driven basis. Beginning June 1, 2012 the new proposed ordinance calls for a six (6) month education and community outreach effort, followed by a six (6) month warning period before penalties would be issued. During the education and outreach period, the City would implement an aggressive public education campaign to inform the public of the new requirements. This would entail comprehensive community outreach through the Chamber of Commerce, local schools, business associations, and homeowner and condominium associations. In addition, the City would disseminate information about the new program through TV, website, social media, and printed media. After the year of extensive education and outreach, the six (6) month warning period (or pre-full implementation period) would take place, where only warning notices without monetary fines would be issued.

In FY 2011/12, \$50,000 was appropriated to initiate the education program. The City will retain a marketing company to develop a unified educational campaign with the goal of increasing recycling awareness and educating multifamily and commercial establishments. It is the intent that this company will establish a model for the City to continue to use and build upon. In the future, the City will also look to using volunteers to continue to promote recycling education within individual condominiums and with the business community.

It is the intent to have enforcement of the new proposed ordinance conducted on a complaint driven basis by a Sustainability Officer whose focus will be to provide education and guidance rather than

issuing of fines. The new proposed ordinance fine schedule is less stringent than the County's. The County ordinance states that a repeat violation which remains uncorrected beyond the time prescribed for correction in the notice of violation shall be treated as a continuing violation, and the additional penalty for each day of continued violation shall be equal to the doubled amount due for the first day of the repeat violation. The Sustainability Committee recommended that the penalties in the new proposed ordinance not accrue daily. The new proposed ordinance mandates the following penalties for failing to provide a recycling program:

- a) For the first violation, a fine of \$350.
- b) For the second violation, a fine of \$500.
- c) For the third violation, a fine of \$1,000.
- d) For the fourth and subsequent violations, a fine of \$2,500.

The above fines mirror the City's fines for solid waste violations under Sec. 90-37 of the City Code, except for the fourth and subsequent violations. The solid waste fine is \$5,000 for the fourth and subsequent violations. However, the Sustainability Committee recommended that the fine for the fourth and subsequent recycling violations be \$2,500.

The penalties for failing to use a single stream recycling process to separate recyclables from all other solid waste are proposed as follows:

- a) For the first violation, no fine.
- b) For the second or subsequent violations, a fine of \$100.

Legally, the City's Ordinance must reflect the separation requirements set forth by the County's Ordinance. Staff conducted nationwide research regarding the method in which other municipalities enforce separation requirements. Staff has not found any municipality that enforces separation or has objective criteria to determine if a facility is not separating. The City's franchisee waste haulers do not inspect recycling containers for contamination during pick-up. Rather, contamination is handled at the material recovery facility. It is not possible to determine at the material recovery facility from which specific customer the contamination originated. The Sustainability Committee has recommended that following an intensive educational period, enforcement efforts be focused on whether or not a recycling program is in place, rather than enforcement of the separation requirements. Separation requirements will be enforced only on a complaint driven basis. If the City receives a complaint regarding failure to separate garbage from the recycling, non-compliance will be ascertained by visually determining if 10% of the material on the top of the recycling bin is considered non-recyclable. The City Administration does not recommend that the solid waste containers be inspected.

FINANCIAL IMPACT

Charter section 5.02 requires that the "City of Miami Beach shall consider the long-term economic impact (at least 5 years) of proposed legislative actions." Staff has determined that there will be a fiscal impact on the City's budget by enacting the proposed ordinance.

The implementation of the proposed recycling ordinance would require additional staffing. It is projected that recurring annual operating costs for the City to implement the proposed ordinance are to be approximately \$67,500. This includes salaries and fringe benefits associated with one (1) full-time staff and one (1) part-time staff. This estimate does not include one-time costs such as the purchase of computers, vehicles, and office furniture, which are estimated to be in the range of \$36,800, for a total first year implementation cost of approximately \$104,000. Attachment B outlines the projections for staffing and operating costs. The proposed new positions will be submitted for approval through the FY 2012/13 budget process.

The benefit of the City creating a separate ordinance from the County would be to enforce recycling program requirements with the goal to increase recycling rates and divert recyclables from the solid waste stream. The City can tailor the education and outreach specifically to the City's businesses and residents to improve compliance. Under the proposed ordinance the City would be responsible for identifying non-compliant facilities, conducting inspections, administering fines, and community outreach. After the first year of implementation, staff will have a better estimate if one (1) full-time and one (1) part-time staff are adequate to enforce the proposed ordinance.

CONCLUSION

The Administration recommends that the Mayor and City Commission adopt the Ordinance on Second Reading Public Hearing.

Attachments:

- A. Proposed Recycling Ordinance
- B. Recycling Ordinance Fiscal Analysis

JGG/FHB/JJF/RWS/ESW



MIAMI BEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

(CORRECTION TO THE MAY 24, 2012 NOTICE OF PUBLIC HEARINGS)

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **WEDNESDAY, June 6, 2012** to consider the following:

10:15 a.m.

Board Member Qualifications And Categories

An Ordinance Amending The Land Development Regulations Of The City Code By Amending Chapter 118, "Administrative And Review Procedures," Article II, "Boards," Division 2, "Planning Board," Section 118-53, "Composition;" Division 3, "Design Review Board," Section 118-72, "Membership;" Division 4, "Historic Preservation Board," Section 118-103, "Membership;" And 118-104, "Appointment;" Division 5, "Board Of Adjustment," Section 118-131, "Membership," To Clarify The Qualifications And Categories Of Members To Be Appointed To The City's Land Use Boards

Inquiries may be directed to the Planning Department at (305) 673-7550.

10:25 a.m.

Ordinance Amending Chapter 90 Of The Miami Beach City Code, Entitled "Solid Waste," By Amending The Definitions In Article I, Entitled "In General," By Amending Section 90-2, Entitled "Definitions"; By Amending Article II, Entitled "Administration" By Amending The Penalties For Solid Waste Violations And To Provide Provisions And Penalties Relative To Recycling For Multifamily Residences And Commercial Establishments; By Creating Article V, To Be Entitled "Citywide Recycling Program For Multifamily Residences And Commercial Establishments," To Provide Provisions For Recycling Requirements And Enforcement, A Public Education Program, A Warning Period, An Enforcement Date, Requirements For Recycling Contractors, Penalties, And Special Master Appeal Procedures

Inquiries may be directed to the Public Works Department at (305) 673-7080.

10:30 a.m.

Ordinance Amending The Land Development Regulations Of The City Code, Chapter 118, "Administration And Review Procedures," By Creating A New Article XII, "Maintenance And Security Bonds," Establishing Definitions And Requirements For Property Owners Applying For Development Review Approval For Substantial Construction Work To Ensure That Their Properties Are Properly Maintained And Secured Until Completion Of Work

Inquiries may be directed to the Planning Department at (305) 673-7550.

10:35 a.m.

Ordinance Amending Chapter 70 Of The Miami Beach City Code Entitled "Miscellaneous Offenses," By Amending Article II, Entitled "Public Places"; By Amending Division II, Entitled "Bicycling; Skateboarding, Roller Skating, In-Line Skating, And Motorized Means Of Transportation," By Amending Section 70-66, Entitled "Definitions," By Adding A Definition For Bicycle Path; And By Amending Section 70-67, Entitled "Prohibited Activities," By Amending The Prohibitions Regarding Motorized Means Of Transportation, Including Electric Personal Assistive Devices (Also Known As Segways), By Rewording The Provisions Therein And Conforming The Language To State Law; By Restricting The Speed Of Electric Personal Assistive Devices To Six (6) MPH On All City Sidewalks, Sidewalk Areas, And Bicycle Paths; And By Prohibiting The Operation Of Electronic Personal Assistive Mobility Devices On Interior Pathways Within South Pointe Park And Collins Park; By Amending Section 70-68, Entitled "Exemptions," By Exempting The Use Of Electric Personal Assistive Mobility Devices By City Police And City Contracted Services From The Restrictions Of Division II; By Amending Section 70-69, Entitled "Responsibilities Of Bicyclists And Skaters," By Adding Responsibilities For Persons Operating Electric Personal Assistive Mobility Devices; By Amending Section 70-70, Entitled "Penalties," To Provide For Responsibilities Of Businesses Providing Rentals And Tours Of Electric Personal Assistive Mobility Devices; By Creating Section 70-71, To Be Entitled "Penalties" To Provide Civil Penalties In Addition To Existing Non-Criminal Infraction Penalties For The Violation Of Certain Provisions In Chapter 70, Article II, Division II

Inquiries may be directed to the Public Works Department at (305) 673-7080

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Rafael E. Granado, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305) 673-7218 (TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Ad #707