



Joseph M. Centorino, Inspector General

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph M. Centorino, Inspector General

DATE: November 21, 2023
PROJECT: Sanitation Tax Auditor Annual Activity Summary
OIG No. 23-23
PERIOD: October 1, 2022 through September 30, 2023

The Sanitation Tax Auditor in the City of Miami Beach Office of the Inspector General (OIG) regularly conducts audits to verify selected contractors' compliance with provisions in the City Code related primarily to franchise waste and/or roll-off permit fees due. Unannounced site visits by the auditor are also periodically conducted at Miami Beach addresses where the City has open permits issued within any of nine Building Permit categories deemed to most likely require the removal of construction and demolition debris and/or bulky waste. If a contractor is found to be non-compliant at any of these sites, the Code Compliance Department is promptly notified to further investigate and may then issue any warranted Notices of Violation.

The joint efforts and diligence of OIG, Sanitation, Code Compliance, and Finance Department staff have resulted in increased contractor compliance with the City Code. The City Attorney's Office has also been instrumental in providing requested interpretations of the City Code and in clarifying uncertainties. The information obtained has been shared with audited contractors to provide guidance concerning the taxability of prospective transactions, thereby ensuring greater compliance by contractors and helping them to avoid the disciplinary actions authorized in the City Code.

In addition, the cumulative Sanitation revenues, separately addressed in the following sections of this report have also increased, some significantly, when compared to other recent fiscal years as contractors have become more compliant with established regulations. All analyses in this report include the most recent five fiscal years, starting with the 2018/19 fiscal year (October 1, 2018, through September 30, 2019), which ended nearly one month prior to the inception of the OIG on November 1, 2019.

City Resolution No. 2023-32654

The City Attorney's Office (CAO) has previously opined to the OIG that Miami Beach transactions involving the usage of grapple service to load debris for disposal into dump

trucks and/or other portable containers (including wheeled containers) were taxable events. As such, the OIG Sanitation Tax Auditor repeatedly followed this advice in all audits and issued assessments accordingly.

The June 28, 2023, adoption of Resolution No. 2023-32654 by the Mayor and City Commission dramatically changed the roll-off landscape by approving a narrower definition of roll-off containers to resolve existing ambiguities in the related City Code sections. As a result, only contractors using conventional roll-off containers (non-wheeled containers) of ten cubic yards or more would be thereafter required to obtain annual business tax receipts from the Finance Department Licensing Section and permits from the Sanitation Division for each Miami Beach location serviced, as well as to timely file monthly Roll-Off Permit Fee Returns with any monies due to the Finance Department for debris removal. At the time of the adoption of the Resolution, it was understood that the City Code might need further revisions to clarify the roll-off definition. Although some discussion of such revisions has occurred, no action has yet been taken.

At the request of the OIG for an interpretation of the Resolution, the City Attorney's office provided an email on September 1, 2023, opining that Resolution No. 2023-32654 applied to all OIG audits not yet finalized. Consequently, its limiting terms were extended to both current and prospective audits of all contractors, including those using wheeled containers, dump trucks and grapple services and previously considered to be covered by existing Code provisions. As a result of the adoption of Resolution No. 2023-32654 and the noted legal opinion, the OIG believes the following results will occur:

- Contractors who do not use "conventional" roll-off containers to remove construction and demolition debris and/or bulky waste will have an unearned competitive advantage, at least in the short term.
- More contractors may be expected to transition to non-taxable means to collect construction and demolition debris and/or bulky waste instead of conventional roll-offs to avoid having to remit any related permit fees to the City.
- Fewer BTRs related to roll-off activities will be required, thereby decreasing City regulation and oversight of the process.
- The Sanitation Division, which is funded primarily through service fees, will lose revenue, its customer-based fees may have to be increased to offset the lost revenue, or currently filled Sanitation employee positions may be downgraded and/or lost.

It is important to note that City Resolution No. 2023-32654 has already had some fiscal impact on the 2022/23 fiscal year results following its June 28, 2023, adoption. The OIG believes its effects going forward will increase in severity.

Business Tax Receipts (BTRs)

City Code Section 102-356 defines business tax as the fees charged for which the City grants the privilege of engaging in or managing any business, profession, or occupation within the city's jurisdiction. Furthermore, Section 102-360 states, "Each business tax receipt shall be valid for one year. Tax receipts shall be issued beginning October 1 of each year and shall expire on September 30 of the following year," and Section 102-370(a) explains that, "The city shall endeavor to notify all business tax receipt holders that their business tax receipts are due for renewal. However, if the taxee does not receive a renewal notification, the taxee is responsible to renew the business tax prior to October 1 to avoid delinquent charges."

In addition, Section 90-192(a) states, “No person shall engage in the business of disposal and/or collection of any kind of solid waste, or recyclable material within the city without first having been approved by the city manager, and having secured a current business tax receipt for such activity.” Section 90-278(7) states, “In order to effectively provide for the collection of the permit fee by the contractor to the city, any person seeking to renew his/her annual business tax receipt pursuant to the provisions of chapter 102, article V, in addition to the requirements contained therein, shall provide to the finance director evidence of payment of all outstanding permit fees, fines and other charges as a condition to reissuance or renewal of the business license.”

Section 102-377(a) states, “(a) Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the offense which shall have a civil fine of \$1,000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d) herein.” Lastly, Section 102-377(d) states, “In addition to the above, a continued violation of subsection 102-377(a) for a period of 30 days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.”

Each conventional roll-off and recycling contractor operating in Miami Beach is required to obtain an annual BTR from the City Finance Department. This requirement is often difficult to enforce by City staff as many contractors do not maintain a permanent physical business location within the City. Consequently, services provided to Miami Beach customers by non-compliant contractors without business addresses within the City may escape detection without extra vigilance by City staff.

Furthermore, the number of applicable contractors frequently changes, either upward, as new contractors abide by the City’s guidelines and obtain their annual BTRs, or downward as contractors merge or stop conducting business in Miami Beach and do not renew their BTRs. Given the OIG’s increased emphasis on Sanitation-related issues since beginning its operations on November 1, 2019, and the associated collaboration and support received from other affected City departments, there has been a significant increase in the number of recently issued BTRs to contractors who perform roll-off activities. For example, the table below shows a 160.00% increase ($26 - 10 = 16/10$) in the number of related BTRs issued during the 2022/23 fiscal year compared to the 2018/19 fiscal year.

Fiscal Year	Issued BTRs *
2018/19	10
2019/20	12
2020/21	17
2021/22	22
2022/23	26

Source: EnerGov system, the City licensing and permitting system

* The number of annual issued BTRs excludes the City’s authorized franchise waste contractors, currently Waste Management of Florida Inc. and Waste Connections of Florida, Inc., which, pursuant to City Code Section 90-192(c), are not required to obtain separate BTRs for servicing roll-offs and portable containers, for collection of hazardous and biohazardous waste, and for recycling activities.

Notices of Violation (NOVs)

Once a complaint is received, Code Compliance Department management dispatches its officers to investigate. Time permitting, Code Compliance Officers will also perform their own additional investigations.

The OIG Sanitation Tax Auditor also periodically conducts unannounced site visits of Miami Beach addresses where any of the nine categories of Building Permits typically associated with the need for roll-off services involving storage and removal of construction and demolition debris and/or bulky waste have been issued. The related Building permits include, among others, Building - Commercial, Building - Condominium, Pool - Commercial, Pool - Residential, and Roofing - Commercial. The correlation with the usage of roll-off containers has been verified in prior audits conducted by the OIG Sanitation Tax Auditor. If the contractor is deemed non-compliant, the City Code Compliance Department is then requested to further investigate and issue any warranted NOVs.

The table below shows a 721.74% (189 – 23 = 166/23) increase when comparing the number of NOVs issued during the 2022/23 fiscal year with the 2018/19 fiscal year. The OIG believes that the substantial decrease in NOVs issued during the 2021/22 fiscal year (189) compared with the 2022/23 fiscal year (482) may be due to several factors, including the uncertainties created by City Resolution No. 2023-32654 regarding the interpretation of the City Code; the suspension of field observations and referrals by the Sanitation Tax Auditor to Code Compliance pending resolution of the roll-off provisions in the Code; fewer complaints being referred to Code Compliance from individuals other than OIG staff; and increased contractor compliance.

Issued NOVs *	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
Construction and Demolition Debris Permit - 001S **	N/A	N/A	N/A	N/A	5
Demolish Roll-Off - 001s **	N/A	N/A	1	6	15
Garbage Haulers Identification - 003S **	N/A	N/A	3	161	30
Permit – 001S	7	31	83	296	77
Recycling Contractor Monthly Report - 001S **	N/A	N/A	N/A	N/A	50
Roll-Off - 001S	16	34	15	19	12
Total	23	65	102	482	189

Source: EnerGov system, the City licensing and permitting system

- * NOVs issued for:
- a. Construction and Demolition Debris Permit - 001S means a roll-off without a permit was used for the removal of construction and demolition debris and bulky waste.
 - b. Demolish Roll-Off – 001s means that the contractor failed to use a roll-off container for the removal of construction and demolition debris and bulky waste.
 - b. Garbage Haulers Identification – 003S means that the roll-off container did not contain the required identification information.
 - c. Permit – 001S means that a roll-off was placed without receiving the required permit from the City Sanitation Division.

- d. Recycling Contractor Monthly Report - 001S means a recycling contractor failed to deliver the required monthly recycling report.
- e. Roll-Off – 001S means that the roll-off container was overflowing as it contained too much material.

** These NOV's were previously non-existent and were created by Code Compliance Department management due to inquiries raised by the OIG Sanitation Tax Auditor.

Typically, each of these issued NOV's will result in increased compliance, as well as the levying of an associated fine ranging from \$100.00 to \$1,000.00. However, a property owner cited by the Code Compliance Department also has the ability to appeal issued NOV's to the Special Masters for adjudication.

Completed Audit Report Summaries

The OIG Sanitation Tax Auditor completed eight audit reports during the 2022/23 fiscal year, whose findings are summarized below. It is important to note that the OIG's ability to issue subpoenas to non-responsive and/or non-compliant contractors has been invaluable in the completion of these audits. Any collected assessments are the responsibility of the Finance Department and represent additional revenues to the City that would not have been received if these audits had not been performed. Furthermore, the audited contractors are typically remitting more monies prospectively with higher reported monthly roll-off permit fee filings to the Finance Department as the OIG Sanitation Tax Auditor educates them concerning the taxability of Miami Beach transactions.

1. OIG No. 22-14 - Medley Metal Recycling, LLC Roll-Off Fee Revenues Audit

Testing determined that Medley Metal Recycling, LLC had eleven unsubstantiated Miami Beach transactions, which were subject to roll-off permit fees pursuant to the City Code, resulting in the contractor being assessed \$1,308.50 in permit fees and \$3,529.88 in related audit costs. Similarly, the contractor did not timely obtain its fiscal year BTRs related to roll-offs during the audit period, for which it was issued related NOV's by the City Code Compliance Department.

The OIG Sanitation Tax Auditor determined that the contractor did not timely remit required monthly recycling reports during the audit period pursuant to City Code and made the Finance Department aware that it had not charged the contractor penalties for failing to timely submit its monthly reports.

2. OIG No. 22 – 15 - All County Waste, Inc. Roll-Off Fee Revenues Audit

Records furnished by the contractor showed that it did not report gross receipts generated from roll-off operations totaling \$34,374.21 to the City during the audit period, resulting in unpaid permit fees, related penalties and interest, and audit costs totaling \$11,883.23. It was also determined that the contractor did not timely obtain its 2019/20 fiscal year BTR; it performed roll-off services at twelve Miami Beach locations without obtaining the required permits contrary to City Code; and it did not timely submit its required lists of accounts to the City.

3. OIG No. 22 – 18 - Waste Plus, Inc. Roll-Off Fee Revenues Audit

The roll-off contractor had not filed monthly returns to the Finance Department since December 2021, yet it continued to provide services to Miami Beach customers. An examination of the provided documentation indicated the misclassification of 94 Miami Beach transactions, resulting in \$4,691.53 in permit fees due to the City (including penalties and interest). The contractor remained non-responsive over a lengthy period to multiple requests for additional information despite the issuance of three subpoenas. The OIG Sanitation Tax Auditor then consulted with the Office of the City Attorney and assessed the contractor an additional \$208,664.26 in unsubstantiated Miami Beach transactions reported on its General Ledger, plus \$7,675.48 in audit costs pursuant to City Code.

The OIG also determined that the contractor performed roll-off services at 26 Miami Beach locations without obtaining the permits required under City Code; did not timely obtain its 2018/19 and 2019/20 fiscal year business tax receipts; and did not remit \$7,300.00 in previously issued NOVs by the City Code Compliance Department.

4. OIG No. 23-04 - AES Portable Sanitation, Inc. Roll-Off Permit Fee Revenues Audit

The OIG Auditor determined from business records provided by this contractor, which also owns and operates J&M Scaffolds of Florida, Inc. (see below), that it did not remit permit fees due of \$28,070.37 (including penalties and interest) to the City, as a result of which audit costs of \$1,949.85 were also levied. The contractor also did not obtain the required permits at 21 identified Miami Beach locations in which it provided roll-off services and did not timely obtain the related BTRs for fiscal years 2017/18, 2018/19, 2019/20, 2020/21, and 2021/22.

5. OIG No. 23-05 - J & M Scaffolds of Florida, Inc. Roll-off Fee Revenues Audit

The contractor consistently filed monthly Roll-Off Permit Fee Returns during the audit period, but its records indicated that \$364.96 in unpaid fees (including penalties and interest) and \$1,687.89 in associated audit costs were due. Furthermore, its records indicated the performance of roll-off services at five Miami Beach locations without the required permits, and the contractor did not timely obtain its 2018/19 BTR related to roll-offs. Lastly, the contractor was not charged penalties and interest for late filings to the Finance Department during the audit period and did not timely submit its required lists of accounts to the City Manager pursuant to City Code.

6. OIG No. 23-08 - Sanitation Field Observations Audit

The OIG Sanitation Tax Auditor performed unannounced field observations of various Miami Beach properties from June 6, 2022, through June 29, 2022, to determine whether roll-off contractors at those locations had obtained valid BTRs, acquired the required Building and/or Roll-off permits, and filed Roll-off Permit Fee Returns with the City that included revenues derived from the observed properties. Noted deficiencies were forwarded to the Code Compliance Department for review and issuance of warranted NOVs, with the following results:

- 82 violations issued to non-compliant roll-off contractors ranging from \$100.00 to \$1,000.00, totaling \$32,300.00. Eight of the roll-off contractors had not obtained the required business tax receipt for the 2021/22 fiscal year, and five

of 43 addresses had not been issued Building permits required by the Florida Building Code.

- Three contractors did not obtain the required annual roll-off permits during the 2021/22 fiscal year and were cited by Code Compliance.
- The OIG made various recommendations related to roll-offs to improve the enforcement process and the City Code.

7. OIG No. 22-08 - Lopefra Corp. Roll-Off Permit Fee Revenues Audit

After multiple meetings and discussions by OIG staff with the City Administration, Office of the City Attorney, Sanitation Division, the contractor and its hired attorneys, a consensus was reached whereby unpaid permit fees of \$66.72 were due and that other fees possibly owed to the City would not be collected due the necessity of clarifying the City Code provisions related to Sanitation and roll-offs. The contractor may also be assessed audit costs. The OIG Sanitation Tax Auditor also determined that the contractor did not submit its 2017, 2018, 2019, 2020, and 2021 annual statements of gross receipts certified by a C.P.A. pursuant to City Code, and did not submit its required lists of accounts during the audit period.

8. OIG No. 23-18 - Superior Recycling & Waste Management Inc. Roll-Off Permit Fee Revenues Audit

The contractor was uncooperative and provided limited documentation to the OIG Sanitation Tax Auditor despite multiple requests and the issuance of subpoenas over many months. Since, according to the Office of the City Attorney, the burden of proof is on the contractor to show it is exempt from sanitation taxes on roll-offs and the contractor is only known to use roll-off containers, all unsubstantiated Miami Beach transactions were deemed taxable. The following related deficiencies were noted:

- The contractor was assessed \$137,834.09 in permit fees.
- Required permits were not obtained from the Sanitation Division for roll-off services performed at seven Miami Beach locations.
- The contractor did not timely obtain its 2017/18 and 2018/19 fiscal year BTRs related to roll-offs.
- \$8,050.00 in NOVs previously issued by the Code Compliance Department during the 2020/21 and 2021/22 fiscal year for not timely obtaining its required BTRs and/or roll-off permits remained unpaid.
- Its required lists of accounts were not timely submitted to the City Manager pursuant to City Code.

City Ordinance No. 2021-4456

As a result of the September 2, 2021, issuance by the OIG of its Roll-Off Permit Process Review report (OIG No. 21-17), the City Commission approved revisions of the City Code in Ordinance No. 2021-4456, effective December 18, 2021, summarized below:

1. Contractors are to pay an annual permit fee of \$1,000.00 to cover the City's annual administrative and processing costs.
2. No permits for roll-off containers, dumpsters, or portable containers shall be issued by the Sanitation Division to a contractor unless it is compliant and has obtained a

- BTR, paid the annual permit fee, and shows proof of insurance.
3. Each contractor must deliver a true and correct monthly report of gross receipts to the City Finance Department for each month, regardless of whether any work was performed within the City during the previous month. A penalty set forth in Appendix A of the City Code will be applied against any contractor failing to timely submit its monthly report.

Although 28 contractors may be authorized to perform roll-off services in Miami Beach during the 2022/23 fiscal year (26 issued BTRs + 2 franchise waste contractors), only those contractors that have applied for and received Sanitation Division issued permits are required to remit the \$1,000.00 annual permit fee. The OIG Sanitation Tax Auditor determined that nineteen contractors had properly remitted the annual permit fee to the City Finance Department during both the 2021/22 and 2022/23 fiscal years. Also, the OIG Sanitation Tax Auditor has been charging late filing penalties, when applicable, in its audits.

Roll-Off Permit Fee Revenues, Excluding Audit Assessments and Annual Permit Fee Revenues

As a result of the increased collaboration among OIG, Code Compliance, and Finance Department staff, and the stronger emphasis placed on compliance and education of contractors, related Sanitation revenues have increased accordingly, as shown in this report.

Previous non-compliant contractors are currently remitting higher roll-off permit fees pursuant to City Code. For example, after removing any revenues stemming from audit assessments and the \$1,000.00 annual permit fee, the OIG Sanitation Tax Auditor calculated that the 2022/23 fiscal year roll-off permit fee revenues increased 36.46% from the 2018/19 fiscal year ($(\$1,395,787.84 - \$1,022,848.13 = \$372,939.71 / \$1,022,848.13)$). The following table shows the corresponding adjusted roll-off permit fee revenues for each of the five most recent completed fiscal years.

Completed Fiscal Year	Roll-Off Permit Fees
2018/19	\$1,022,848.13
2019/20 *	\$901,061.30
2020/21 *	\$796,477.97
2021/22 **	\$1,036,832.34
2022/23	\$1,395,787.84

Source: Munis system, the City enterprise resource planning system

* The OIG believes that the reported decline in revenues during 2019/20 and 2020/21 fiscal years was related to the impacts of the COVID-19 pandemic.

** The 2021/22 fiscal year total of \$1,036,832.34 represents a \$19,988.61 difference from last year's reported total of \$1,056,820.95 because two audit related payments of \$5,693.80 and \$14,294.81 remitted by Lopefra Corp. and AES Portable Sanitation, Inc. respectively, were incorrectly included in that fiscal year's total.

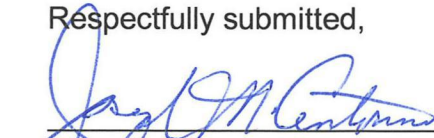
Conclusion

Increased enforcement of the City Code provisions related to Sanitation, including those in City Ordinance No. 2021-4456, have resulted in greater contractor compliance and significant increases in Sanitation revenues during the five most recent fiscal years. The additional Sanitation revenues collected related to increased enforcement of BTRs, NOVs, audits, monthly permit fee filings and remittances, etc. have resulted in the City receiving additional monies that, although due, would otherwise most likely not have been received. Furthermore, audited contractors are receiving guidance on the taxability of prospective Miami Beach transactions, which has resulted in more accurate prospective monthly roll-off permit fee filings and remittances.

Despite the progress made through the collaboration of OIG, Sanitation, Code Compliance, and Finance Department staff, there is still more work to be done. For example, discussions are ongoing with the Office of the City Attorney and the City Administration regarding recommended revisions to the City Code related to reducing existing ambiguities and/or loopholes in the City Code, clearly defining its applicability to demolitions, the usage of grapple service in debris removal, the use of wheeled containers and/or dump trucks to remove debris when conventional (non-wheeled) roll-off containers are not used, as well as facilitating the enforceability of Code provisions to all contractors operating in Miami Beach.

The OIG looks forward to a future in which contractors are more compliant with established City regulations; and scofflaws are more readily identified and brought into compliance; unfair competitive advantages in the marketplace are removed; and the City receives all revenue to which it is entitled.

Respectfully submitted,



Joseph Centorino, Inspector General

11/21/2023
Date

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11/21/2023 | 11:40 AM EST

Mark Coolidge, Chief Auditor

Date



Norman Blaiotta, Deputy Chief Auditor

11/21/2023
Date

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