

**CITY OF MIAMI  
OFFICE OF THE CITY ATTORNEY  
LEGAL OPINION – 12-002**

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**TO:** Commissioner Marc Sarnoff, District 2  
**FROM:** Julie O. ~~Ev~~, City Attorney  
**DATE:** January 30, 2012  
**RE:** Legal Opinion  
Matter ID No.: 11-2415

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You have requested an opinion on the following:

- I. WHETHER THE COMMISSION CAN CHANGE THE FUNDING ORDINANCES FOR THE COCONUT GROVE BUSINESS IMPROVEMENT DISTRICT (“BID”)?**
- II. WHETHER FUNDS HELD IN TRUST BY THE MIAMI PARKING AUTHORITY FOR THE BID CAN BE APPROPRIATED TO OTHER USES AND PURPOSES?**

**BRIEF ANSWER**

- I.** Generally, the answer is *yes*. However, the Commission can only make changes to the funding ordinances for the BID, so long as the changes will comply with the strict requirements of Florida Statutes, Chapters 170 and 190, for levying and collecting non-ad valorem special assessments, as well as general compliance with the City of Miami Charter and Code for the procedure of amending ordinances.
- II.** No, the funds held in trust by the Miami Parking Authority for the BID cannot be appropriated to uses and purposes outside of the BID, under the present City Code.

**ANALYSIS**

- I. WHETHER THE COMMISSION CAN CHANGE THE FUNDING ORDINANCES FOR THE COCONUT GROVE BUSINESS IMPROVEMENT DISTRICT BID?**

Although the Commission can change the funding ordinances for the BID<sup>1</sup> through the normal procedure under the Charter and City Code, there are stricter requirements regarding use

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<sup>1</sup> The key funding provisions for the BID are sections 2-1257, 35-221, and 35-222 of the Miami Code (based on Ordinances 12851, 13059, and 13185), Resolution 08-0455 (adopted July 24, 2008, which established the BID), Resolution 09-0076 (adopted February 12, 2009, where the City Commission fixed the final assessment roll for the BID), and Resolution 10-0008 (adopting Uniform Method of collecting non-ad valorem assessments).

of the non-ad valorem special assessment pursuant to regulations in Florida Statutes. Approximately \$450,000 of the BID's annual revenue is derived from a non-ad valorem special assessments collected pursuant to the Uniform Method for collection, Section 197.3632.<sup>2</sup>

In accordance with Florida Statutes and case law, the Commission must abide by the following regarding amendments to funding ordinances:

- The assessed property within the BID *must* continue to receive an ascertainable special and peculiar benefit from the entire amount of assessment revenue.<sup>3</sup>
- The assessment must continue to be based upon fair and reasonable apportionment of the burden to pay by the affected property owners.<sup>4</sup>

As such, any changes cannot appropriate non-ad valorem assessment revenue away from the BID. Only changes as to how the assessment revenue is spent within the BID are permissible. If such a permissible change is pursued, which will ultimately change either the *purpose* for the non-ad valorem assessment or change the *use* of the revenue generated by the assessment as laid out in the BID's Business Plan and establishing ordinances, it would require the Commission to adopt another non-ad valorem assessment roll at a public hearing, required to be held between January 1 and September 15.<sup>5</sup>

The public hearing along with the notice requirements for the hearing will ultimately result in a significant fiscal impact to the City. At least twenty days prior to the public hearing the City must give notice of the hearing by first-class United States mail to each person owning property subject to the assessment and further notice said hearing by publication in a newspaper generally circulated within the boundaries of the City.<sup>6</sup>

Prior to the public hearing the City will need to adopt a resolution to declare the special assessment.<sup>7</sup> Upon adoption of said resolution an assessment plat showing the area to be assessed, along with plans and specifications, including an estimate of the cost of the proposed improvement, must be on file with the City Clerk and open public review.<sup>8</sup>

Once this resolution is adopted, the City will need to create a preliminary assessment roll delineating the lots and lands assessed as well as the amount of the benefit to, and the assessment against each lot or parcel of land. If said assessment is to be paid in installments, the number of annual installments in which the assessment is divided shall also be entered and shown upon said assessment roll.<sup>9</sup>

<sup>2</sup> City of Miami, Resolution 10-0008 (2010).

<sup>3</sup> § 170.01 Fla. Stat.; *City of Boca Raton v. State*, 595 So. 2d 25, 29-30 (Fla. 1992); *see also* 20 Fla. St. U.L. Rev. 825, 851.

<sup>4</sup> *South Trail Fire Control Dist. v. State*, 273 So. 2d 380 (Fla. 1973); *see also* 20 Fla. St. U.L. Rev. 825, 851.

<sup>5</sup> § 197.3632(4)(a)(4), Fla. Stat. (2012).

<sup>6</sup> § 197.3632(4)(b), Fla. Stat. (2012).

<sup>7</sup> § 170.03 Fla. Stat. (2012).

<sup>8</sup> § 170.04 Fla. Stat. (2012).

<sup>9</sup> § 170.06 Fla. Stat. (2012).

Additionally, Section 2-1257(e)<sup>10</sup> of the Miami Code sets forth the sources of funds for the BID<sup>11</sup>, which includes:

- Parking waiver revenue,
- City of Miami General Fund revenue,
- Parking surcharge revenue,
- Special events supplemental fees,
- Sidewalk café fees, and
- Banner fees

The Commission can in fact make changes to the funding ordinances with respect to the above referenced revenue so long as amendments to or creation of an ordinance follow in strict compliance with the regulations set forth in the City Charter and Code. It is important to note, however, that there are express limitations with respect to parking waiver revenue funds held in trust by the Miami Parking Authority for the BID.

## **II. WHETHER FUNDS HELD IN TRUST BY THE MIAMI PARKING AUTHORITY FOR THE BID CAN BE APPROPRIATED TO OTHER USES AND PURPOSES?**

Specifically, sections 35-221 and 35-222 of the Miami Code place limits on the use of the funds held in the Coconut Grove Parking Improvement Trust Fund by the Miami Parking Authority (“MPA”), to:

- Uses within the BID, to facilitate public off-street parking, infrastructure improvements and maintenance and marketing to serve the area referred to herein as “Coconut Grove Village Center.”<sup>12</sup>
- At least 90% of funds, as determined at the beginning of each fiscal year, to be utilized to these objectives as set forth in subsection (a)(1)-(6), and at least 10% of the funds must be maintained as reserves.<sup>13</sup>

As such, the parking waiver revenue must be used for the specified purposes within the Coconut Grove Village Center.

## **CONCLUSION**

Based on the foregoing, the City Commission can change the funding ordinances for the BID, so long as the changes will comply with the strict requirements of Florida Statutes, and the City of Miami Charter and Code for the procedure of amending ordinances. However, any proposed change will have a fiscal impact on the City due to the procedure requirements set forth

<sup>10</sup> Section 2-1257(e) also mentions donations and grants. However, these funds are expressly given by a third party to the BID, are not considered herein in the treatment of city streams of revenue.

<sup>11</sup> Miami Code of Ordinances, § 2-1257(e); Ord. No. 13059

<sup>12</sup> Miami Code of Ordinances, §§ 35-221, 35-222(a)

<sup>13</sup> Miami Code of Ordinances, § 35-221(a)(7)


under Florida Statute. Additionally, the funds held in trust by the Miami Parking Authority for the BID cannot be appropriated to uses and purposes outside of the BID. Under the present City Code the funds must be solely used within the confines of the BID area for the specific purposes for which the funds are collected.

PREPARED BY:

REVIEWED BY:



Kira L. Grossman, Assistant City Attorney



Maria J. Chiaro, Deputy City Attorney

cc: Honorable Mayor and Members of the City Commission  
Johnny Martinez, P.E., City Manager  
Priscilla Thompson, CMC, City Clerk

## EXHIBIT A

### § Sec. 2-1257. Annual budget; source of funds.

- (a) Upon the effective date of the enactment of the ordinance from which this division derives, the BID board shall establish a fiscal year which coincides with that of the city. Within 60 days following the effective date of the enactment of the ordinance from which this division derives, the BID board shall submit to the city commission, in a form acceptable to the city manager, a BID board budget for adoption and ratification by the city commission. Commencing with fiscal year 2009-2010, consistent with the city's budget process, the BID board shall submit to the city manager, a BID board budget request pertaining to management, operation and maintenance expenditures and delineating the financial responsibility of the city for certain categories including but not limited to: insurance, security, utilities and maintenance to be approved by the city commission. Nothing contained herein shall be construed to prohibit the BID board from submitting a supplemental budget to the city commission for approval.
- (b) No expenditure shall be made in any given year without approval by the city commission of the BID board budget for that year and all expenditure shall comply with city procedures for acquisition of goods and services.
- (c) In conjunction with the submission of the budget, the BID board shall submit a plan reflecting the proposed operations, activities, improvements, and maintenance plans for the forthcoming fiscal year. The city commission may review and deny any item contained in the plan within 30 days from the date of its submission by the BID board.
- (d) No provision contained in this division shall be construed to violate the Anti-Deficiency Act, as set forth in sections 18-500-18-503.
- (e) The operations of the BID board shall be principally financed from the following sources and such other sources as may be approved by the city commission:
  - (1) Contributions, gifts, and/or donations to the BID board for the performance of its functions.
  - (2) Proceeds of a special assessment as authorized by Resolution 08-0455, adopted July 24, 2008, and later confirmed in Resolution #09-0076, adopted on February 12, 2009.
  - (3) Parking waiver fees as authorized by section 35-224
  - (4) Parking surcharge fees as authorized by section 35-342
  - (5) Sidewalk cafe fees as authorized by section 54-223
  - (6) Event supplemental fees as authorized by section 54-343
  - (7) Banner fees as authorized by section 54-344
  - (8) Grant proceeds.

§ Sec. 35-221. Coconut Grove Parking Improvement Trust Fund-Established.

(a) There is hereby established a trust fund to be entitled the Coconut Grove parking improvement trust fund, (the "Coconut Grove parking trust fund") to be maintained and administered by the department of off-street parking into which funds shall be deposited and from which funds shall be withdrawn pursuant to this chapter to facilitate public off-street parking, infrastructure improvements and maintenance and marketing to serve the area referred to herein as "Coconut Grove Village Center" generally bound by Oak Avenue and Tiger Tail Avenue to the North, S.W. 27th Avenue, South Bayshore Drive, both sides of McFarlane from Grand Avenue to South Bayshore Drive, both sides of Grand Avenue from Margaret Street to Mary Street, both sides of Grand Avenue from Hibiscus Street to Margaret Street, both sides of Main Highway from Grand Avenue to Commodore Plaza, both sides of Commodore Plaza, and the North side of Main Highway from Commodore Plaza to Franklin Avenue consisting of that portion of the area formerly known as the SD-2 zoning district east of Margaret Street, that portion of the area formerly known as of the SD-17 zoning district west of S.W. 27th Avenue, and that zone designated G/I in the city's official zoning atlas and bounded by Charles Avenue on the south and Main Highway on the east and presently occupied by the Coconut Grove Playhouse through means which may include, but are not limited to the following activities:

- (1) Acquire fee simple or other interest in land, and other real property for parking purposes;
- (2) Construct, maintain, operate, lease, manage, or otherwise provide off-street parking facilities for public use;
- (3) Provide public information to enhance parking utilization including publicity campaigns, graphics and signage, and other informational devices;
- (4) Coordinate plans for parking facility improvements and expansion with public transportation plans and operations in the vicinity, particularly the joint facilities that might be operated in connection with Metrorail and any feeder services existing or future;
- (5) Provide accessibility to off-street parking facilities by suitable means such as public shuttle, tram or trolley service and related physical improvements such as bus shelters and right-of-way modifications which may include the area from Bayshore Boulevard to the Coconut Grove Village Center;
- (6) Perform such other related activities as may be appropriate to carry out the intent of this article including, but not limited to, reimbursement of administrative costs, infrastructure improvements in the public right-of-way, contributing to

maintenance of the public sidewalks within the business district defined herein, as well as destination marketing;

- (7) It is the intent of this article that at least 90 percent of the funds, as determined at the beginning of each fiscal year, in the trust fund shall be utilized for subsections (a)(1)-(6). At least ten percent of the funds must be maintained as reserves;
- (8) Any such shuttle, tram or trolley service, as mentioned in subsection (a)(5), shall be subject to yearly evaluation of the Coconut Grove business improvement district board.

§ Sec. 35-222. Same-Funds made available; financial report.

- (a) Funds deposited in the Coconut Grove parking trust fund shall be made available to the Coconut Grove business improvement district board ("BID board") for the purposes set forth in section 35-221 and for administrative expenses.
- (b) A financial report on trust fund receipts and expenditures shall be prepared annually at the close of the fiscal year by the off-street parking department and presented to the BID board for its review and approval prior to filing with the city clerk.