



Village of Biscayne Park Commission Agenda Report

Village Commission Meeting Date: February 2, 2016

Subject: Resolution 2016-01 Interlocal Agreement with Miami-Dade County

Prepared By: Chief Cornelius McKenna

Sponsored By: Staff

Background

In 2015, Miami-Dade County approved the amendment of Sections 21-81 of the code of Miami-Dade County which provides for civil penalties for certain misdemeanors.

The Interlocal Agreement with Miami-Dade County would authorize the Village of Biscayne Park Police Department to enforce section 21-81 of the Miami-Dade code, including, but not limited to, the ability to issue civil violation notices. The intent of this amendment is to reclassify what was formally considered criminal behavior and reduce mass incarcerations. A police officer would have the discretion to either apprehend the offender or issue a civil citation.

Section III of the agreement refers to the costs that the Village will reimburse the County for the administrative hearings. At this time, that amount cannot be predicted as there is no prior data on how many Village citations will be appealed. Therefore it was recommended that "to be determined" be entered in that space.

Section IV of the agreement refers to the amount that the County, specifically the Clerk of Courts, will reimburse the Village from the fines collected from the civil citations, less a deduction of 17% to 20% for their administrative costs for processing the civil violation notices.

February 2, 2016

Commission Agenda Report

Resolution 2016-01

Fiscal / Budget Impact

Reimbursement from Miami-Dade County clerk of Courts of fines collected from the civil violations, less administrative costs.

Recommendation

Approval of Resolution 2016-01

Attachments

- Resolution 2016-01
- Interlocal Agreement between Miami-Dade County and Village of Biscayne Park
- Listing of applicable offenses

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3 **RESOLUTION NO. 2016-01**
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5 **A RESOLUTION OF THE VILLAGE**
6 **COMMISSION OF THE VILLAGE OF**
7 **BISCAYNE PARK, FLORIDA AUTHORIZING**
8 **THE VILLAGE MANAGER TO EXECUTE THE**
9 **INTERLOCAL AGREEMENT BETWEEN THE**
10 **VILLAGE OF BISCAYNE PARK AND MIAMI-**
11 **DADE COUNTY, FLORIDA FOR THE**
12 **ENFORCEMENT OF SECTION 8CC OF THE**
13 **MIAMI-DADE COUNTY CODE AS IT RELATES**
14 **TO SECTION 21-81 OF THE MIAMI-DADE**
15 **COUNTY CODE; PROVIDING FOR AN**
16 **EFFECTIVE DATE**
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19 WHEREAS, Section 21-81 of the Code of Miami-Dade County applies to all
20 municipalities in the County and is enforced, in part, through civil penalties under Section 8CC
21 of the Code; and,
22

23 WHEREAS, in 2015, Miami-Dade County approved the amendment of Sections 21-81
24 of the code of Miami-Dade County which provides for civil penalties for certain
25 misdemeanors; and,
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27 WHEREAS, municipalities in the County may enforce the provisions of Section 21-81
28 of the Code, pursuant to Section 8CC-11 upon the adoption by the County and municipalities
29 of an interlocal agreement; and,
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31 WHEREAS, the Village Commission has found it to be in the best interests of the
32 Village and its residents to have the Village enforce the provisions of Section 21-81 of the
33 Code through Section 8CC as provided in the interlocal agreement.
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36 **NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION**
37 **OF THE VILLAGE OF BISCAYNE PARK, FLORIDA:**
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39 **Section 1.** The foregoing "WHEREAS" clauses are true and correct and hereby
40 ratified and confirmed by the Village Commission.
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42 **Section 2.** That the Village Manager is authorized to execute the Interlocal
43 Agreement between Miami-Dade County, Florida and the Village of Biscayne Park, Florida for
44 the enforcement of Section 8CC of the Miami-Dade County Code as it relates to Section 21-81
45 of the Miami-Dade County Code. The agreement, in substantial form, is attached and
46 incorporated by reference into this resolution as exhibit 1.
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48 **Section 3.** This Resolution shall become effective upon adoption.

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PASSED AND ADOPTED this ____ day of _____, 2016.

The foregoing resolution upon being put to a vote, the vote was as follows:

David Coviello, Mayor

Attest:

Maria C. Camara, Village Clerk

Approved as to form:

John J. Hearn, Village Attorney

Mayor Coviello: ____
Vice Mayor Watts: ____
Commissioner Anderson: ____
Commissioner Jonas: ____
Commissioner Ross: ____

**INTERLOCAL AGREEMENT BETWEEN
MIAMI-DADE COUNTY, FLORIDA
AND
THE VILLAGE OF BISCAYNE PARK, FLORIDA
FOR THE ENFORCEMENT OF SECTION 8CC OF THE MIAMI-DADE COUNTY
CODE AS IT RELATES TO SECTION 21-81 OF THE MIAMI-DADE COUNTY CODE**

This Interlocal Agreement (“Agreement”) is made and entered this ____ day of _____, _____, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter "COUNTY") and THE VILLAGE OF BISCAYNE PARK, a Florida municipal corporation (hereafter "MUNICIPALITY").

WITNESSETH

WHEREAS, Section 21-81 of the Code of Miami-Dade County (“Code”) applies to all municipalities in the County and is enforced, in part, through civil penalties under Section 8CC of the Code; and

WHEREAS, municipalities in the County may enforce the provisions of Section 21-81 of the Code, pursuant to Section 8CC-11 upon the adoption by the County and municipalities of an interlocal agreement which contains (1) the sections of the Code which the municipality is entitled to enforce, (2) the job title of the agents of the municipality authorized to perform the enforcement functions, (3) the amount reimbursable to the County for administrative costs, (4) the amount of revenue reimbursable to the municipality from any fine collected, (5) an agreement to indemnify and hold the County harmless from and against any liability, actions or causes of actions related to the municipality’s enforcement, and (6) contain a term not to exceed three (3) years; and

WHEREAS, the parties agree that it is in their mutual best interests and the best interests of the citizens of the COUNTY and the MUNICIPALITY to have the MUNICIPALITY enforce the provisions of Section 21-81 of the Code through Section 8CC,

NOW, THEREFORE, IN CONSIDERATION of the mutual benefits derived here from and in compliance with Section 8CC-11 of the Code, the parties covenant and agree as follows:

I. CODE SECTIONS SUBJECT TO ENFORCEMENT

The MUNICIPALITY is authorized to enforce Section 21-81 of the Code in accordance with the provisions of Section 8CC of the Code, including but not limited to the ability to issue civil violation notices under Section 8CC-10 of the Code for violations of Section 21-81(d)1 through and including 21-81(d)7 of the Code, within its municipal boundaries. Notwithstanding this authorization, nothing in this Agreement shall be construed to limit, supersede, or remove the independent authority of the COUNTY to enforce such provisions.

II. AUTHORIZED AGENTS

All law enforcement officers as defined by Florida State Statute 943.10(1) that are employed by the MUNICIPALITY are authorized by this Agreement to perform the enforcement functions outlined in, and in accordance with, this Agreement.

III. AMOUNT REIMBURSABLE TO MIAMI - DADE COUNTY FOR COSTS RELATED TO THE CONDUCT OF HEARINGS ON APPEALS

The MUNICIPALITY shall reimburse the COUNTY the sum of _____ for the administrative costs relating to the conduct of hearings on appeals from violations as outlined in Section I above and shall also be responsible for reimbursing the County for any attorney's fees and costs, including the costs of transcripts and clerical costs, incurred in such proceedings.

Such funds shall be payable to Miami-Dade County within thirty (30) days of receipt of an invoice for such services.

IV. AMOUNT OF REVENUE REIMBURSABLE TO THE MUNICIPALITY FROM THE FINE COLLECTED

The COUNTY shall reimburse _____ to the MUNICIPALITY from the fine collected from the issuance of a civil violation notice for a violation of Section 21-81 of the Code as set forth in Section 8CC. Should the violator opt to enter the Miami-Dade County Diversion Program as set forth in Implementing Order 2-12, the COUNTY shall keep the entire processing fee paid by the violator.

V. TERM OF AGREEMENT

This Agreement shall be in full force and effect from the date of the final execution by either party and shall continue for three (3) years. At the expiration of the three (3) year period the COUNTY and the MUNICIPALITY may enter a new interlocal agreement as required by section 8CC-11 of the Miami-Dade County Code in order for the MUNICIPALITY to continue its enforcement efforts.

VI. MUNICIPALITY INDEMNIFICATION

Subject to the limitations set forth in Section 768.28, F.S., and all applicable laws, the MUNICIPALITY shall indemnify and hold harmless the COUNTY from and for any losses, claims, causes of action or damages of any nature whatsoever, arising from the act, omission or performance or failure of performance of the MUNICIPALITY or the MUNICIPALITY's agents, contractors, servants and employees hereunder relative to the enforcement of the provisions of Section 21-81 of the Code pursuant to Section 8CC of the Code. The MUNICIPALITY shall defend the COUNTY in any action including any action in the name of the COUNTY.

VII. DEFAULT

A. Without limitation, the failure by the MUNICIPALITY to substantially fulfill any of its material obligations in accordance with this Agreement shall constitute a “Municipal Default”. If a Municipal Default should occur, the COUNTY shall have all the following rights and remedies which may be exercised singly or in combination:

1. The right to declare that this Agreement together with all rights granted to the MUNICIPALITY thereunder are terminated, effective upon such date as is designated by the COUNTY. Provided, however, that the COUNTY shall give MUNICIPALITY a period of thirty (30) days after receipt of the written notice from the COUNTY of said default to cure any Municipal Default unless the COUNTY determines, in its sole and absolute discretion, that the nature of the default is such that it cannot be cured in a period of thirty (30) days from the date of the default. If the MUNICIPALITY commences reasonable efforts to cure such default no later than thirty (30) days after such notice, and such efforts are prosecuted to completion and to the COUNTY’s reasonable satisfaction, then it shall be deemed that no Municipal Default shall have occurred under the provisions of this paragraph.
2. Any and all rights provided under the laws of the State of Florida.

B. Without limitation, the failure by the COUNTY to substantially fulfill any of its material obligations in accordance with this Agreement shall constitute a “County Default.” If a County Default should occur, the MUNICIPALITY shall have all of the following rights and remedies which it may exercise singly or in combination:

1. The right to declare that this Agreement together with all rights granted to the COUNTY thereunder are terminated, effective upon such date as is designated by the MUNICIPALITY. Provided, however, that the MUNICIPALITY shall give the COUNTY a period of thirty (30) days after receipt of written notice from the MUNICIPALITY of said default to cure any County Default unless the MUNICIPALITY determines, in its sole and absolute discretion, that the nature of the default is such that it cannot be cured in a period of thirty (30) days from the date of the default. If the COUNTY commences reasonable efforts to cure such default no later than thirty (30) days after such notice, and such efforts are prosecuted to completion and to the MUNICIPALITY's reasonable satisfaction, then it shall be deemed that no County Default shall have occurred under the provisions of this paragraph.
2. Any and all rights provided under the laws of the State of Florida.

VIII. CANCELLATION

Notwithstanding the above, this agreement may be terminated by either the COUNTY or the MUNICIPALITY upon thirty (30) days written notice.

IX. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The COUNTY and the MUNICIPALITY agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

X. ENTIRETY OF AGREEMENT

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto and their authorized representatives.

XI. HEADINGS

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

XII. RIGHTS OF OTHERS

Nothing in this Agreement expressed or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

XIII. REPRESENTATION OF THE MUNICIPALITY

The MUNICIPALITY represents that: (i) this Agreement has been duly authorized, executed and delivered by the governing body of the MUNICIPALITY or its designee; and (ii) it has the required power and authority to perform this Agreement.

XIV. REPRESENTATION OF COUNTY

The COUNTY represents that: (i) this Agreement has been duly authorized, executed and delivered by the governing body of the COUNTY or its designee; and (ii) the County has the required power and authority to perform this Agreement.

XV. WAIVER

There shall be no waiver of any right related to this Agreement unless in writing signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

XVI. INVALIDITY OF PROVISIONS, SEVERABILITY

Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

XVII. NOTICE

Notices to MUNICIPALITY provided for herein shall be sufficient if sent by Federal Express or certified mail, return receipt requested, postage prepaid, addressed to:

Village of Biscayne Park
Attention: Chief Cornelius McKenna
640 NE 114th Street
Biscayne Park, FL 33161

with copy to:

Law Offices of John J. Hearn, P.A.
1001 NW 119th Avenue
Coral Springs, FL 33071

and notices to COUNTY, if sent by Federal Express or certified mail, return receipt requested,

postage prepaid addressed to:

County Mayor
Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, FL 33128

with copy to:

County Attorney
Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street, 28th Floor
Miami, FL 33128

Or such other respective address as the parties may designate to each other in writing from time to time.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:
HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
DEPUTY CLERK

By: _____
Carlos A. Gimenez
County Mayor

Approved as to form and legal
sufficiency:

Christopher A. Angell
Assistant County Attorney

ATTEST:

_____, a Florida
Municipal Corporation

By: _____
Maria C. Camara
Village Clerk

By: _____
Heidi Siegel
Village Manager

Approved as to form and legal
sufficiency:

John J. Hearn
Village Attorney

The following misdemeanor violations, as such may be amended from time, are eligible to receive a civil violation notice pursuant to [chapter 8CC](#) of the Code of Miami-Dade County, Florida, at the discretion of a law enforcement officer, provided that such violations are not charged in conjunction with any charge that is a felony, driving under the influence (DUI), incident involving domestic violence, or violent crime, as those terms are defined under State law:

(1)

Florida Litter Law, as set forth in Fla. Stat. section 403.413(6)(b), as such may be amended from time to time;

(2)

Illegal Use of Dairy Cases, Egg Baskets, Poultry Boxes, or Bakery Containers, as set forth in Fla. Stat. section 506.509, as such may be amended from time to time;

(3)

Trespass on Property Other Than Structure or Conveyance, as set forth in Fla. Stat. section 810.09, as such may be amended from time to time;

(4)

Retail Theft by Removal of a Shopping Cart, as defined in Fla. Stat. section 812.015(1)(d), as such may be amended from time to time;

(5)

Loitering or Prowling, as set forth in Fla. Stat. section 856.021, as such may be amended from time to time;

(6)

Possession of Cannabis in an amount of 20 grams or less, as set forth in Fla. Stat. section 893.13(6)(b), as such may be amended from time to time; and

(7)

Possession of Drug Paraphernalia, as set forth in Fla. Stat. sections 893.146 and 893.147(1)(b), as such may be amended from time to time.