

# City of Miami

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DATE: March 8, 2016

TO: HONORABLE MAYOR AND COMMISSIONERS

FROM: THEODORE GUBA, CPA, CIA, CFE *Theodore P. Guba*

RE: REVIEW OF NON-ASSESSMENT OF THE REQUIRED SUPPLEMENTAL  
WASTE FEE (APPROXIMATELY \$877,000) FOR THE PERIOD OF  
JANUARY 2013 THROUGH SEPTEMBER 2014  
REPORT NO. 16-02

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On October 29, 2015, pursuant to a referral from the Miami-Dade County Commission on Ethics and Public Trust (COE), our office was informed that the City of Miami (City) may not have assessed all of the required supplemental solid waste fees due on the inspection and re-inspection renewals of the Certificate of Use (CU) for rental apartment buildings during fiscal years 2013 and 2014.

As part of our review, we researched the applicable City Code provisions, interviewed key personnel in the departments of Planning and Zoning (PZ), Code Compliance, Information Technology (IT), and Finance, as well as analyzed and compared financial documentation obtained from the Oracle System (Oracle).

## **OVERVIEW**

In accordance with Section 2-207 of the City Code, residential properties consisting of three or more residential units (e.g. rental apartment buildings) as well as, multi-story condominium buildings, are considered commercial establishments and are required to have a Zoning Certificate of Use (CU) which must be renewed annually.

In addition, in order to offset the City's cost of providing right-of-way cleaning services, Section 22-12 of the Code requires the assessment of an annual "Supplemental Waste Fee" on all commercial establishments, except residential condominium units and residential condominium associations. This fee is assessed on an annual basis as an additional line item on the CU.

## **OBSERVATIONS**

1. We noted that the “Supplemental Solid Waste Fee,” which ranges from \$102 to \$144 per unit, was not assessed on any rental apartment buildings for the first 9 months of the 2013 calendar year renewal (01/01/13 through 09/30/13) and for FY2014 (10/01/13 through 09/30/14). As a result, the City did not bill revenues totaling approximately \$877,000. The fee has been assessed for all subsequent periods; therefore, the amount mentioned above was computed by extrapolating the average billings for FYs 2015 and 2016 (i.e. \$501,500) over the one year and 9 months period. We reviewed email correspondence dated during December 2012, in which the former City Manager and former City CFO approved for the solid waste supplemental rate to be set at “zero”. As a result, the supplemental waste fee was not billed during the time-period mentioned above.

In addition, we reviewed email correspondence dated during June 2014, indicating that current City management was made aware of the unbilled supplemental waste fee during the renewal period for FY2014. On November 5, 2015, the Finance Department sent a Legal Service Request (LSR) to the Office of the City Attorney (OCA) requesting a legal opinion on this matter. The LSR asked, “...whether or not the City Manager or the Chief Financial Officer has the authority to set to “0” the Solid Waste supplemental fee portion of the Certificate of Use billing for apartments under billing designation SX01.” The OCA legal opinion was as follows:

“After a review of the relevant emails and City Code, there is no language that specifically prohibits either the City Manager or the CFO from setting the rate accordingly...”

However, in light of the fact that the supplemental fees were approved by the City Commission, codified via ordinance, and assessed by City management for the period subsequent to FY2014, we believe that the Finance Department should facilitate resolving whether or not to bill the fee for the prior periods by obtaining a legal opinion. Upon further inquiry, we were informed that the Finance Department has requested such an opinion from OCA and is awaiting the results.

2. We noted that the usage code “CU01-Apartments” is not listed in the existing schedule of annual fees attached to Chapter 22, Article I, Section 22-12 (d) of the City Code. However, based on meetings with PZ employees and an examination of financial data, this fee is still currently being assessed based on the old fee schedule, which was also used during the implementation of the MiamiBiz System.

We contacted the City Clerk’s Office and obtained the old fee schedule indicating the CU01-Apartments usage code and the applicable fees. In addition, we obtained a copy of Ordinance # 11771, passed and adopted by the City Commission on March 23, 1999, in which residential condominium associations and cooperative associations were made exempt from the assessment of the supplemental waste fee. It appears that the CU01-Apartments usage code was inadvertently omitted from the existing fee schedule since those fees were no longer applicable to residential condominium associations and cooperative associations, but were in fact still applicable to rental apartment buildings.

**RECOMMENDATION: Finance Department**

Based on the fact that the supplemental waste fee was not assessed, in accordance with the Code, for the first 9 months of the 2013 calendar year renewal (01/01/13 through 09/30/13) and for FY2014 (10/01/13 through 09/30/14), but was subsequently assessed for FY 2015 and going forward, we recommend that the Finance Department work with the Office of the City Attorney and the City Manager in order to determine the feasibility of assessing the unbilled fee.

**Management Response:** On February 5, 2016, the Finance Department requested a legal opinion from the Office of the City Attorney to determine the feasibility of assessing the unbilled fee and will continue to work with the City Manager's Office regarding this matter.

**RECOMMENDATION: Solid Waste Department**

We recommend that the Solid Waste Department consult with the Office of the City Attorney and take steps to ensure that the existing fee schedule, which currently does not include the CU01-Apartments usage code, is revised/amended to include the usage code and its applicable fees.

**Management Response:** The Solid Waste Department will submit changes to Chapter 22, including the missing fee schedule which applies to apartment dwellings (CU01-Apartments usage code), for Commission's consideration in the 2016 calendar year.

**Implementation Date:** 2016 calendar year

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Audit Documentation File