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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: April 19, 2012

SUBJECT: Discussion of the Proposed Recycling Ordinance.

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. On September 26, 2011, the FCWPC asked that this item be brought to the Sustainability Committee's Recycling Sub-Committee. On October 24, 2011, the Recycling Sub-Committee hosted a recycling workshop and on November 15, 2011 the Sustainability Committee recommended that the City adopt an ordinance closely mirroring the County's ordinance, but with revised fines that do not accrue daily. On January 17, 2012 the Sustainability Committee requested to review the new proposed ordinance. On February 28, 2012, the Sustainability Committee reviewed the new proposed ordinance and recommended that the new proposed ordinance be approved by the FCWPC.

BACKGROUND

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 demonstrate a recycling program was not adequately or comprehensively enforced. It is believed that approximately 1,558 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 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 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 hauler for their regular trash pick-up, recycling and bulk 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 Solid 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 compliant-driven approach with an emphasis on education. In January 2012, the City franchise waste haulers provided the City with an updated list of 1,558 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 is requesting 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. Attachment B compares the elements of the initial proposed recycling ordinance and the new proposed recycling 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 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 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 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 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 does not recommend that the solid waste containers be inspected.

On July 13, 2011, the City Commission approved on first reading and referred the proposed ordinance to the FCWPC between first and second reading. Commissioner Jerry Libbin and Commissioner Michael Gongora stated that the ordinance needs to go back to committee to make certain the enforcement of the ordinance is complaint driven. On September 26, 2011, the FCWPC asked that this item be brought to the Sustainability Committee Recycling Sub-Committee. On October 24, 2011, the Recycling Sub-Committee hosted a recycling workshop and on November 15, 2011 the Sustainability Committee recommended that the City adopt a hybrid between the existing County ordinance and the formerly proposed ordinance. On February 28, 2012, the Sustainability Committee recommended that the hybrid proposed ordinance be approved by the FCWPC and referred to Commission for adaptation.

FUNDING

The franchisee waste hauler's contract stipulates that they contribute 1.5% of their revenues to fund green initiatives in the Sustainable Initiatives Fund. A portion of these contributions could be used to fund one (1) full-time and one (1) part-time Sustainability Officer, within the Public Works Department, who would be responsible for implementing the education, outreach, and complaint driven enforcement of the City's Recycling Program. As the program matures, if it is determined that additional education and outreach is required, additional funds from the Sustainable Initiatives Fund will be used to hire additional contracted personnel to supplement the efforts of these Sustainability Officers. In addition, the Sustainability Officers could be responsible for developing a volunteer program to supplement future education and outreach.

COST-BENEFIT ANALYSIS CITY VS. COUNTY ENFORCEMENT

It should be noted that proposed ordinance enforcement staffing would be done with additional positions, not within the current staffing plan of the Public Works Department or Code Compliance Division of the Building Department, as current staff does not have the capacity to implement this program. An additional administrative support position would also be required in order to implement this program.

The ongoing annual operating costs for the City to implement the proposed ordinance are projected to be approximately \$67,500. This includes salaries and fringe benefits associated with one (1) full-time staff and (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 \$36,804, for a total implementation cost of approximately \$104,000. Attachment C outlines the projections for staffing and operating costs.

The Sustainability Committee recommended that the City develop an ordinance because in the past the County was not aggressively enforcing recycling program requirements. The new administration has reorganized the County's departments. The City has had several meetings with the Miami-Dade County Public Works and Waste Management Department. The County is

committed to enforcing the recycling program requirements for multifamily and commercial facilities. Although the Sustainability Committee did not endorse this option, the City could simply continue to rely on the County recycling ordinance, which has the same elements as the proposed City ordinance. In discussions with the County, they have committed to enforce their ordinance in Miami Beach if the City provides a list of non-compliant multifamily and commercial establishments that has been confirmed by City staff. Under this option, the City could hire either a part-time or full-time Sustainability Officer to provide additional support to the County by confirming if multifamily and commercial facilities have a recycling program, providing education and outreach, and reporting non-compliant facilities to the County for enforcement. The Sustainability Officer would also be able to provide additional support to promote other sustainable initiatives.

Attachment D outlines the projections for staffing and operating costs to hire one (1) part-time staff. The ongoing annual operating costs are projected to be approximately \$40,000. This estimate includes salaries and fringe benefits associated with 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 \$18,500, for a total implementation cost of approximately \$58,000. Attachment D outlines the projections for staffing and operating costs.

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. Both options provide the City with flexibility to 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. One concern from staff is that the proposed ordinance shifts the onus of both education and enforcement from the County to the City. If the City chose to continue to rely on the County for enforcement, one (1) part-time employee could assist the City with identifying multifamily and commercial facilities without recycling programs. Under this option, the City would become a partner with the County in recycling education and enforcement; however the County would remain responsible for implementing enforcement and fines.

CONCLUSION

The above information is provided to set the stage for discussion whether to recommend approval of the proposed recycling ordinance as recommended by the Sustainability Committee, or not to recommend approval of a City recycling ordinance and continue under the umbrella of the County ordinance.

Attachments:

- A. Proposed Recycling Ordinance
- B. Recycling Ordinance Comparison Table
- C. Recycling Ordinance Fiscal Analysis – 1 Full-time & 1 Part-time Employees
- D. Recycling Ordinance Fiscal Analysis – 1 Part-time Employee


JGG/FHB/RWS/ESW

ORDINANCE NO. _____

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.

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 15-2.5 and 15-2.7 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 15-2.6 of the Miami-Dade County Code and have accordingly entered 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.

(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 90-345. 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.

(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.

(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 90-345. 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.

(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, 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.

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 ____ day of _____, 2011.

PASSED and ADOPTED this ____ day of _____, 2011.

ATTEST:

ROBERT PARCHER, CITY CLERK

MAYOR MATTI HERRERA BOWER

Underline denotes additions and ~~Strike through~~ denotes deletions.

(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.

RECYCLING ORDINANCE COMPARISON TABLE

Item	Old Proposed Ordinance	New Proposed Ordinance
Citywide Recycling Program	Multifamily residences & commercial establishments are required to recycle recyclable materials.	Multifamily residences & commercial establishments are required to provide a recycling program and separate recyclable materials from the solid waste stream.
Multifamily Residence Requirements	Recycling required for multifamily residences (9 dwelling units or more)	Recycling program and separation of recyclable materials from solid waste stream required for multifamily residences (9 dwelling units or more).
	1. Multifamily are required to use a single-stream recycling process to recycle	1. Multifamily residences are required to provide a recycling program and be serviced by a recycling contractor licensed by the city and state.
	2. Must recycle the following five (5) materials: newspaper; glass; metal food and beverage containers; other metal containers; and plastics. And at least three (3) of the following: cardboard; magazines; telephone books; or office paper.	2. Every multifamily establishment shall be required to use single stream recycling process to separate recyclables from all other solid waste. 3. Must recycle the following five (5) materials: newspaper; glass; metal food and beverage containers; other metal containers; and plastics. And at least three (3) of the following: cardboard; magazines; telephone books; or office paper.
Commercial Establishment Requirements	Every commercial establishment shall be required to recycle at least three (3) of the following materials: 1. Newspaper, cardboard, magazines, telephone books, and office paper; 2. Glass; 3. Metal food & beverage containers; 4. Other metal containers; 5. Plastics; 6. Textiles; or 7. Wood.	1. Every commercial establishment shall be required to provide a recycling program . 2. Every commercial establishment shall be required to use single stream recycling process to separate recyclables from all other solid waste. 3. Must recycle at least three (3) of the following materials: 1. Newspaper, cardboard, magazines, telephone books, and office paper; 2. Glass; 3. Metal food & beverage containers; 4. Other metal containers; 5. Plastics; 6. Textiles; or 7. Wood.
Public Education	The City will engage in public education efforts beginning 10 days after adoption of ordinance. The program will include establishing uniform signage to clearly delineate allowable recyclables.	Beginning June 1, 2012 the City will engage in public education efforts and the City shall not prosecute individuals who unknowingly fail to provide a recycling program or to separate recyclable materials.

RECYCLING ORDINANCE COMPARISON TABLE

Item	Old Proposed Ordinance	New Proposed Ordinance
Warning Period	For six (6) months beginning one (1) month after effective date of the ordinance. Only warning tickets will be issued.	Beginning January 1, 2013, the City shall provide for a six (6) month warning period through and including December 31, 2012. Only warning tickets shall be issued.
Enforcement Commencement	Begins eighteen (18) months and one (1) day after effective date of the ordinance.	Beginning July 1, 2013.
Modified Recycling Programs		The Public Works Director may approve modified recycling programs for both multifamily and commercial establishments.

RECYCLING ORDINANCE COMPARISON TABLE

Item	Old Proposed Ordinance	New Proposed Ordinance
Liability of Recycling Contractors	Recycling contractor shall not collect from facilities that have violated the ordinances separation requirements and the recycling contractor will be fined if they collect such waste.	
	Recycling contractors shall assist and notify the director of public works in identifying facilities that unlawfully mix solid waste and recyclables in accordance with the "Red Tag" Noticing System.	
Red Tag Noticing System	<p>First Tag Recycling contractor shall leave a "red tag" notice if materials are not the correct type as designated for that container (i.e. recyclables in a solid waste container / solid waste in a recycling</p>	
	<p>Second Tag Contractor leaves a second tag on the container identifying incorrect materials and sends a written notice to the entity who subscribes for that collection service and the director of public</p>	
	<p>Third Tag After the contractor has left two (2) tags the contractor shall refuse to empty the container and leave a third tag and send a written notice to entity who subscribes for that collection service and the director of public works. **The contractor may not refuse to empty containers from multifamily residences or commercial establishments with multiple tenants and joint account collection</p>	

RECYCLING ORDINANCE COMPARISON TABLE

Item	Old Proposed Ordinance	New Proposed Ordinance
Enforcement	<p>1. Existence of recyclable materials any place other than in a recycling container is a violation.</p> <p>2. City shall issue warnings and NOVs to property owners, managers, or other persons in charge.</p> <p>3. Warning notices & NOVs may be served upon the recycling contractor servicing the premises.</p> <p>4. Recycling contractors may issue warnings at the request of the director of public works.</p>	<p>1. The property owner or condo association shall be liable for failure to provide a recycling program, rather than the individual owner.</p> <p>2. Failure of a commercial establishment to provide a 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.</p> <p>3. Failure to use a single stream recycling process to separate recyclables from all other solid waste is a violation.</p> <p>4. 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 at the property owners expense.</p>
	<p>5. 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 at the property owners expense.</p>	<p>5. Beginning July 1, 2013, violators of the Ordinance shall be issued one warning and shall correct within 30 days. If the violation is not corrected within 30 days, a notice of violation shall be issued. After one warning, violators 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 violations(s), and the procedure for timely payment or appeal of the fine or penalty.</p>
	<p>Penalty shall be charged to the owner, occupant, operator, manager, or other person(s) in lawful possession of the premises. Such liens shall be treated as special assessment liens against the subject real property.</p> <p>1. For the first violation, a warning</p> <p>2. For the second violation a fine of \$350</p> <p>3. For the third violation a fine of \$500</p> <p>4. For the fourth violation a fine of \$1000</p>	<p>For multifamily residences, penalty shall be charged to the property owner or condominium association, rather than the individual unit owner(s). And, for commercial establishments the penalty shall be charged to the property owner(s) and the owner(s) and operator(s) of the commercial establishment.</p> <p>Failure to have a recycling program:</p> <p>1. For the first violation a fine of \$350</p> <p>2. For the second violation a fine of \$500</p> <p>3. For the third violation a fine of \$1000</p> <p>4. For the fourth violation a fine of \$2500</p>

RECYCLING ORDINANCE COMPARISON TABLE

Item	Old Proposed Ordinance	New Proposed Ordinance
Penalties	<p>5. For the fifth or subsequent violations, a fine of \$5,000</p> <p>Violations which present a serious threat to the health, safety or welfare of the public and/or violations that constitute a fifth or subsequent offense, the city may seek injunctive relief and/or, revoke the business tax receipt and/or certificate of use of the establishment and/or premises in addition to the penalties set forth in this section.</p>	<p>Failure to separate recyclables:</p> <ol style="list-style-type: none"> 1. For the first violation, no fine 2. For the second or subsequent violations, a fine of \$100 <p>All other violations of this article: \$250 for each violation</p> <p>Violations which present a serious threat to the health, safety or welfare fo the public and/or violations that constitute a fourth or subsequent offense, the city may seek injunctive relief and/or, revoke the business tax receipt and/or certificate of use of the establishment and/or premises in addition to the penalties set forth in this section.</p>
Special Master	Any person receiving a NOV may request within 15 days an administrative hearing before the special master.	Any person receiving a NOV may request within 15 days an administrative hearing before the special master.

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			1	\$41,787	\$845	\$606	\$2,487	6,257	\$592	\$921	\$53,495	
On-Going Operating Expenditures	Cost / unit	#										
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	Cost / unit	#										
Vehicles - Ford Focus	\$ 13,133	2		\$ 26,266.00							TOTAL ANNUAL EXPENDITURES	\$67,431
Furniture, Fixtures & Equipment	\$ 1,000	2		\$ 2,000.00								
Computers and Software	\$ 4,269	2		\$ 8,538.00	(Data provided by IT)						Plus 1st Year Start-Up Costs	\$36,804
TOTAL				\$ 36,804								
											TOTAL - First Year	\$104,235

Recycling Ordinance Fiscal Analysis

Recycling Ordinance Fiscal Analysis - Part-time Sustainability Officer

EXPENDITURES

Staffing	Hourly Rate	Hours	#	Salary	Pension	Medicare	Health	OT	Holiday Pay	Uniforms	Total	
PT - Code Compliance Off.	\$ 20.09	1,534	1	\$ 30,818.06	\$ 770	\$ 446.86	\$0	0	\$ -	\$ 600.00	\$32,635	
TOTAL			1	\$30,818	\$770	\$447	\$0	0	\$0	\$600	\$32,635	
On-Going Operating Expenditures	Cost / unit	#										
Fuel, Maintenance & Insurance	\$ 6,505	1		\$ 6,505.00							\$6,505	
Office Supplies	\$ 463	1		\$ 463.00							\$463	
TOTAL				\$ 6,968.00							\$6,968	
One-Time Expenditures	Cost / unit	#										
Vehicles - Ford Focus	\$ 13,133	1		\$ 13,133.00							TOTAL ANNUAL EXPENDITURES	\$39,603
Furniture, Fixtures & Equipment	\$ 1,000	1		\$ 1,000.00								
Computers and Software	\$ 4,269	1		\$ 4,269.00	(Data provided by IT)						Plus 1st Year Start-Up Costs	\$18,402
TOTAL				\$ 18,402								
											TOTAL - First Year	\$58,005

