



MIAMIBEACH

BUDGET AND PERFORMANCE IMPROVEMENT
Internal Audit Division

INTERNAL AUDIT REPORT

TO: Kathie G. Brooks, Interim City Manager
FROM: James J. Sutter, Internal Auditor

DATE: December 4, 2012
AUDIT: Sidewalk Café Permit Fee Revenues Audit
PERIOD: October 1, 2009 through January 31, 2012

This report is the result of a regularly scheduled audit of the sidewalk café permit fees billed, collected and reported in the City's Eden System between October 1, 2009 and January 31, 2012.

INTRODUCTION

City Code Section 82-366 defines sidewalk cafés as a use located on a right-of-way which is associated with a restaurant and is primarily characterized by tables and chairs; may be shaded by awnings, canopies or umbrellas; and may include such other sidewalk café furniture (tables, chairs, umbrellas, planters, etc.) as hereinafter defined as permitted and/or approved pursuant to this division. These sidewalk cafes are located in areas of high pedestrian volume and their co-existence with various stakeholders' interests within the right-of-way must be properly regulated.

Businesses must first obtain a business tax receipt and a certificate of use, have inside seating and be operating in a location permitted by the City's zoning and land development regulations before they can initiate the sidewalk café permit process. Afterwards, they can complete the Sidewalk Café Permit Application which can be obtained from the Public Works Department's Sidewalk Café Coordinator and includes among other things the following items:

- the name, address and telephone numbers of the applicant and the business establishment
- the total count of chairs which includes the number inside the restaurant as listed on the previously obtained business tax receipt
- copies of the restaurant's current insurance certificates which are to be reviewed and approved by the City's Risk Manager
- a site plan signed and sealed by a duly licensed architect or engineer which accurately depicts the layout and dimensions of the existing sidewalk area and adjacent private property; proposed location, size and number of tables, chairs, umbrellas, etc.
- photographs, drawings or manufacturer's brochures fully describing the appearance and dimensions of all proposed sidewalk café furniture

This completed application must then be approved by the City's Public Works, Planning & Zoning, Fire Prevention and Building Departments. In addition, the Finance Department must attest that the applicant does not owe any other debts to the City. If none were found and all the approvals are obtained, then the sidewalk café permit is created in the Eden System's Licensing Module and the business owner is billed accordingly.

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The permit must be applied for annually as it covers October 1st through September 30th. The sidewalk café permit renewal form that must be completed and submitted in each fiscal year afterwards is less extensive but requires the same documentation and approvals.

The sidewalk café permit charges typically include a \$150 application fee, a square footage fee and the corresponding 7% state sales tax charges. The primary exception occurs when the business operates on such state owned roads as Alton Road, Collins Avenue, 5th Street, 41st Street, 71st Street and Normandy Drive. In these cases, these exempt businesses are charged only an initial \$150 application fee by the City but they still must submit the same documentation as other paying businesses.

With the City Commission's passage of Ordinance No. 2003-3423 sidewalk café fees were last increased to \$15 per square foot effective October 1, 2004. These fees remained constant until Ordinance No. 2010-3698 was adopted whereby they increased to \$17.50 as of October 1, 2010 and then ultimately to \$20.00 per square foot after October 1, 2011.

City Code Section 82-383 states that if the permit is not paid in full by the October 1st due date, then the applicant is subject to late charges of ten percent per annum for the first thirty days. Any permits not paid within sixty days shall be automatically terminated. However, it does allow the applicant to make semiannual payments with the first due on October 1st and the second due on April 1st for any permits exceeding \$2,000.

The Sidewalk Café Coordinator is primarily tasked with the enforcement of sidewalk cafes as she routinely tours businesses (also periodically with a Code Compliance Officer) to determine compliance with the previously submitted certified site plans and the City Code. Any noted non-life safety shortcomings can be issued a 24 hour written warning notice by the City's Code Compliance Division. If the business complies, then no citations should be issued. Conversely, if the business operator does not timely comply, a second non-life safety violation is issued within sixty days or a life safety/site plan violation occurs, then civil fines and penalties starting at \$100 are applicable which escalate accordingly per City Code Section 82-371.

Also, City Code Section 82-385(t) states that the City will make its electrical outlets available between May 1st and September 30th for the powering of fans only. In turn, the business owner is charged a flat fee in the reasonable judgment and discretion of the City Manager (currently \$2 per day for 152 days totaling \$304 per outlet used but it can be pro-rated as needed). The Public Works Department's Sidewalk Café Coordinator is responsible for monitoring these electrical outlets and collecting monies from its users. These payments are recorded on pre-numbered Miscellaneous Cash Receipt forms which are then processed by the City's Central Cashier with the received monies being credited to general ledger account number 011-8000-341400.

The following amounts of sidewalk café permit revenues were recorded in the listed Eden System general ledger accounts by the City's Finance Department during the audit period:

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General Ledger Accounts	Descriptions	FY 2009/10	FY 2010/11	10/01/11 – 01/31/12	Total Revenues Collected
011-8000-322160	Ocean Drive *	\$307,328	\$360,077	\$336,494	\$1,003,899
011-8000-322161	Lincoln Road *	\$670,795	\$858,451	\$569,575	\$2,098,822
011-8000-322163	Other *	\$131,097	\$181,509	\$141,106	\$453,712
011-8000-322165	Application Fees **	\$788	\$13,155	\$239	\$14,182
011-8000-341400	Electrical Outlet ***	\$14,802	\$18,362	\$0	\$33,164
Total		\$1,124,810	\$1,431,555	\$1,047,415	\$3,603,779

- * These accounts are based on location and represent monies collected in square footage fees only. For example, any square footage fees paid by the Van Dyke Café located at 846 Lincoln Road should be included in 011-8000-322161. Meanwhile, any square footage payments from businesses not located on either Ocean Drive or Lincoln Road should be placed into 011-8000-322163.
- ** As discussed in finding #6, any Eden System fee codes labeled "scappf" representing the \$150 application fees were mistakenly placed into 011-8000-322163 general ledger account instead of 011-8000-322165. As a result, the "other" accounts' balances are overstated and conversely the "application fees" accounts are understated.
- *** Since these revenues are commingled with other Public Works Department revenues in general ledger account 011-8000-341400 entitled "Photocopies", the above figures were calculated by the Sidewalk Café Coordinator upon reviewing each of the maintained sidewalk café permit files.

OVERALL OPINION

Although there are currently in excess of 160 sidewalk café permits paying more than one million dollars annually, the City has not directed attention toward its operation, monitoring and enforcement. The following items were noted during testing and are in need of improvement:

- Lax enforcement was found for tested businesses that operated without obtaining their sidewalk café permits or did not adhere to their signed payment agreement's terms.
- The Code Compliance Division has elected to issue 24 hour written violations rather than citations when encountering life-safety/site plan violations in deference to City Code Section 82-370. This scenario accompanied with lax enforcement has resulted in few citations issued and collected despite the fact that a number of businesses are not in compliance as shown by recent site visits.
- Permits Plus and/or Eden Systems deficiencies in assigned employees' access levels, unsupervised abilities to reduce violation/citation amounts, poor audit trails, etc. are discussed.
- Identified calculation errors in state sales tax, sidewalk penalty and electrical outlet calculations are addressed.
- Although businesses operating sidewalk cafés on State-owned roads are to be exempt from City fees excluding the \$150 initial application fee, three randomly sampled businesses were inadvertently overbilled and paid a total of \$6,029.38.
- Electrical outlet fees are not billed and enforced in accordance with the provisions outlined in the City Code Section 82-385(t).
- Incorrect general ledger entries were noted during testing of sampled sidewalk café permit fees collected.
- The Public Works Department did not maintain policies and procedures on sidewalk cafes permits that accurately describe the current process.

PURPOSE

The purpose of this audit was to determine whether the Public Works Department received the required documentation and forwarded this information timely and completely to the City's Finance Department so that tested sidewalk café permits could be accurately billed; whether businesses owners timely paid or were charged the proper amount of sidewalk penalties; whether the Sidewalk Café Coordinator and the Code Compliance Division actively monitored and enforced the applicable City Code provisions; and whether tested transactions were accurately recorded in the City's Financial System.

OBJECTIVES

1. Confirm that comprehensive updated policies and procedures exist, are known to staff and are properly followed.
2. Confirm that the internal control process implemented including a proper segregation of duties is adequate.
3. Confirm that maintained documentation and software systems are organized, complete and sufficient.
4. Confirm that tested sidewalk café permit fee billing calculations are correct and agree to City Code Section 102-379.
5. Confirm that tested sidewalk café permit fees were paid timely. If not, were the appropriate late charges levied.
6. Confirm with designated Code Compliance Division personnel that tested sidewalk cafes are in compliance with selected City Code provisions.
7. Confirm that tested Code Compliance Division issued citations were fully paid before the tested sidewalk café permits were issued.
8. Confirm that tested transactions entered into the City's Financial System were correct.

FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

1. Finding: *Lax Enforcement Against Businesses that are Delinquent in Obtaining Sidewalk Café Permits but Continue Operating*
City Code Sections 82-370 through 82-373 address such issues as notice of violations and the issuance and payment of fines levied for businesses delinquent in obtaining sidewalk café permits. Much of the enforcement currently originates from the Public Works Department's Sidewalk Café Coordinator who then alerts Code Compliance Officers to issue written 24 hour warnings and/or citations to the delinquent business owners. In fact, a joint review between the two parties was underway during our audit of

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all sidewalk cafes located south of 23rd Street but it is progressing slowly as it is a time consuming process.

Most businesses comply and pay in full (including penalties where applicable) resulting in the receipt of their sidewalk café permits. However, sidewalk café operators are to have their permits withheld if they owe the City any monies (resort tax, City Bills, etc.) until the outstanding balance is paid in full.

Yet, inquiries found that the Sidewalk Café Coordinator allows these businesses to operate sidewalk cafés as long as they have paid the associated permit fees. Further conversations with Code Compliance Division personnel found that they would issue a 24 hour written warning if identified. Since the Sidewalk Café Coordinator is the primary individual for monitoring unpaid permit fees, these businesses may not be quickly identified as shown by the next three examples in which the sidewalk cafes operated for extended periods without permits: Nexxt Café located at 700 Lincoln Road which received a 24 hour written violation for not having a permit on 07/07/10 for more than nine months past the 10/01/09 due date; Burger & Beer Joint located at 1766 Bay Road which has operated since August 2009 without a permit or violation (an agreement was reached on 04/11/12); and Yardbird South located at 1600 Lenox Ave which received and paid three citations totaling \$850 shortly after their October 2011 opening but not been cited since.

Another seven sampled businesses were found whose sidewalk café permits were not issued but continued operating for a number of additional months as confirmed by subsequent resort tax payments to the City's Finance Department. In summary, the following enforcement shortcomings were found on these seven businesses:

- Two of the seven businesses or 28.57% were not issued written warnings by the Code Compliance Division giving the owner 24 hours to comply or risk being cited.
- Six of the seven businesses or 85.71% were not issued citations by the Code Compliance Division. One of these businesses named Bella Cuba Inc. was issued a written warning on 01/20/12 after Code Compliance was notified by the Sidewalk Café Coordinator on 01/04/12. However, miscommunication occurred subsequently as the applicable Code Compliance officer mistakenly thought Bella Cuba Inc. had complied when in fact they had not.
- The one citation issued against Sofa Entertainment Group was for \$100 in accordance with the City Code but it was not paid prior to the business terminating operations in September 2010.

Finally, the Finance Department secured two payment agreements during the 2011/12 fiscal year concerning sidewalk café permit fees owed by Casa Paris Inc. and Heavenly Spirits Inc. Although payment agreements are not authorized in the City Code, they have existed for many years as a means to help struggling businesses. Yet, City Code Section 82-383(c) does allow for equal semiannual payments (due October 1st and April 1st) for businesses whose sidewalk café permit fees exceed \$2,000 which is used by many businesses.

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Review of Casa Paris Inc.'s payment agreement found that it called for five monthly payments of \$1,861.82 starting 11/02/11 with the \$9,309.10 balance paid on 04/02/12, however; the business was still open as of 04/06/12 but had only paid \$2,451.67 to date and had not yet received any violations from the City's Compliance Division. Upon notification by Internal Audit, Casa Paris Inc. was contacted and has since been paid the outstanding balance in full. Meanwhile, Heavenly Spirits Inc.'s payment agreement recently started and the business owner was in compliance to date.

Recommendation(s):

Code Compliance officers should be tasked with confirming that businesses operating sidewalk cafés have received valid permits rather than relying on the Sidewalk Café Coordinator. Their enforcement of sidewalk café permits would act as a compensating internal control on the Sidewalk Café Coordinator and the Finance Department's Licensing Section. There should be a greater emphasis placed on enforcement and in getting sidewalk cafés to timely comply or they should receive continual violations and be subject to the civil fines and penalties addressed in City Code Section 82-371. Finally, the Finance Department should not make payment agreements with sidewalk café operators other than the semiannual payments specified in City Code Section 82-383(c) unless the City Administration presents the issue to the City Commission and they elect to amend the City Code accordingly.

Management's Response (Code Compliance Division):

While management agrees with the recommendations, the initiative is personnel intensive and attempts to redirect the resources will be made. The filling of vacant temporary positions should help this effort.

Management's Response (Finance Department):

The Administration will be bringing the subject matter of "Payment Plans" to the Finance and Citywide Projects Committee for guidance. The Public Works Department has referred a few Sidewalk Café customers to the Finance Department for payment plans. Payment plans that have not been kept are referred to the Public Works Department and Code Enforcement Division for enforcement of sidewalk café closure.

2. Finding: *Enforcement Deficiencies Are Resulting in an Apparently Low Number of Issued Violations, Citations and Minimal Collections*

The Sidewalk Café Coordinator is primarily tasked with the enforcement of sidewalk cafes as she routinely tours businesses to ensure that they have paid, complied with the certified site plans and City Code, etc. However, she has not been empowered to issue violations so she has to contact the Code Compliance Division to dispatch an officer once one is noted. In the interim, she states that these businesses often comply to avoid receiving violations but will then revert once everyone leaves.

Businesses with identified non-life safety violations are to receive written warnings giving them 24 hours to resolve the identified issue. If the business complies within the allotted time, then no citation is issued. Conversely, if the business operator does not timely comply, or a second non-life safety violation is issued within sixty days or a life safety/site plan violation occurs, then civil fines and penalties starting at \$100.00 are

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applicable which escalate accordingly per City Code Section 82-371. Life safety violations are defined as those conditions which, in the reasonable determination and judgment of the City Manager, involve serious danger and/or risk to the public health, safety or welfare (including without limitation, blocking pedestrian pathways and violations of the state accessibility code for building construction).

Provided Permits Plus and Eden Systems reports show that the following number of warnings and violations were issued by the Code Compliance Division, as well as the corresponding amount of monies were billed and collected during the audit period as of March 29, 2012:

	10/01/09 – 09/30/10	10/01/10 – 09/30/11	10/01/11 – 01/31/12	Total
Total 24 Hour Warnings Given	146	170	49	365
Total Number Issued Violations	203	218	66	487
Number Closed *	140	160	41	341
Number Voided *	6	4	2	12
Number Appealed *	0	0	1	1
Number Waiting Certification *	0	1	0	1
Number Open *	0	5	5	10
Number Billed *	57	48	17	122
Total Dollars Billed	\$8,350	\$5,150	\$2,200	\$15,700
Total Paid	\$3,700	\$900	\$1,250	\$5,850
Total Unpaid	\$4,650	\$4,250	\$950	\$9,850

- * Number closed means those cases in which the owner has complied, the incorrect process was followed by the applicable Code Compliance, etc.
Number voided is those cases were issued wrongfully
Number appealed is defined as those cases appealed to the Special Master
Number waiting certification is those cases in which the Code Compliance officer is waiting for the cited business owner to respond to the certified letter
Number open represents those cases still pending as the owner has not yet taken any action
Number billed in the City's Eden System through which a citation has been sent

Internal Audit has no known way to verify whether more warnings and violations were warranted during the audit period but were not issued as we must rely on the information provided. Instead, site visits to three different restaurants were performed in April 2012 with the Sidewalk Café Coordinator and a Code Compliance Officer whereby a number of non-life safety and life-safety/site plan violations were identified. These visited Lincoln Road restaurants were properly given written warnings allowing 24 hours to comply or be cited for such non-life safety violations as raising the umbrellas to above the 6' 8" minimum height, outside storage of eight heaters, etc.

Furthermore, such identified life-safety/site plan violations as the usage of extension cords, less than twelve foot right-of-ways, blocked walkways, etc. were also incorrectly included on the written 24 hour warnings but were required to be rectified immediately. No citations were given as Internal Audit was told that the goal is to educate the businesses in an effort to obtain future compliance rather than to cite them.

Also, the Sidewalk Café Coordinator and an assigned Code Compliance Division officer will occasionally perform joint investigations of sidewalk cafés. The officer will periodically prepare and submit an Excel spreadsheet called the "Code Compliance Master Sidewalk Café 2012 Report". The provided report covered the 41 sidewalk cafes inspected as of 03/19/12 in which a total of 23 written warning violations were given but again no citations were issued despite finding such life-safety/site plan violations as infringement on the five foot pedestrian pathway, the usage of extension cords, planters not on the site plan and less than five feet between the planters.

Subsequent inquiries/observations about the current process raised the following concerns:

- Several emails sent to Code Compliance to investigate businesses by the Sidewalk Café Coordinator and Internal Audit went unanswered for weeks until follow-up emails were sent thereby allowing the sidewalk café operators additional time.
- The Sidewalk Café Coordinator is typically not present on nights, weekends, holidays, etc. when sidewalk cafes are busiest. However, there can be continuous coverage from the more than thirty Code Compliance Division inspectors who work almost 24 hours per day as the division is only nonoperational Monday through Wednesday from 1:00am till 6:00am. For example, pictures were provided of Montaditos at 1502 Washington Avenue that routinely add tables at night and weekends thereby encroaching on their neighbors but have not been cited.
- The lax enforcement and small amount of the citations (which start at \$100, then increases to \$250 and so on) is not an adequate deterrent to businesses as it does not offset the earned revenues from paying customers at these added tables and chairs.

Recommendation(s):

The preferred approach is to have the enforcement duties handled exclusively by the Code Compliance Division to achieve a proper segregation of duties and extended enforcement hours. The Sidewalk Café Coordinator could continue to periodically accompany the officers in the performance of these duties and may even be deputized so that he/she could also issue violations. Whenever summoned, Code Compliance Division officers should more timely respond to posed questions and complete desired investigations.

Identified life-safety/site plan violations should receive the civil fines and penalties listed in City Code Section 82-371. Furthermore, it is suggested that the City Administration present the City Commission with the option of increasing these civil fines and penalties as a means to help obtain better compliance.

Management's Response (Code Compliance Division):

With respect to expanding the Sidewalk Café Coordinator's authority, this recommendation has recently been reviewed with the City Manager's Office. Fundamentally, the permitting and enforcement processes should be kept separate and

distinct. Notwithstanding, even though these violations require no warning and enforcement is not conditioned on such—nor is there a requirement for prior education/awareness/outreach—management needs to look at whether or not the Sidewalk Coordinator has the authority vested in the position to issue such warnings. In our Code, Section 30-3, entitled *Definitions*, code compliance officers are defined as “...agent or employee of the city whose duty it is to assure code compliance.” This provision mirrors Florida statute chapter 162.04. In essence, it is not clear whether the Sidewalk Coordinator’s review and permitting function falls within Section 30-3’s meaning of “duty...to assure code compliance.”

3. Finding: *Permits Plus and Eden Systems Employees’ Accessibility Deficiencies*
Each violation/citation is to be entered into the Permits Plus System where it is assigned a case number and all the supporting documentation is to be present (a paper file is also maintained). Inquiries found that at least twelve different Code Compliance employees (six Code Compliance Administrators and six Administrative Aide Is) were able to subsequently reduce these violation/citation amounts without supervisor’s approval during the audit period. Also, the Permits Plus System does not provide an audit trail which could be used to indicate who made these changes and when. Consequently, the possibility exists that one could unknowingly reduce the amount of the violation/citation and even if the unauthorized changes were discovered that it would be difficult to identify the corresponding employee.

Once entered and approved, the Permits Plus System case is ready to be entered into the Eden System through a City Bill which generates accounts receivable entries for the payments due. Prior to July 2010, any one of six Code Compliance Division Administrative Aide Is was able to create these City Bills since the two systems do not interface. After becoming aware of the associated delays in creating City Bills and discovering entry errors, the Code Compliance Division tasked an Administrative Aide I with the primary responsibility of creating these City Bills. It was later confirmed with the City’s Informational Technology Division that the four aforementioned Code Compliance Division Administrative Aide I’s (less one who retired in September 2010) are still empowered with the capability of reducing City Bill amounts.

Recommendation(s):

Internal Audit is cognizant that the Permits Plus System is expected to be replaced by the enterprise building development process service system (Accela Automation) during the 2012/13 fiscal year. In the interim, the following recommendations should help lessen divisional employees’ ability to reduce citation amounts and to provide a better audit trail:

- a. The City should develop written guidelines detailing the instances whereby adjustments can be made (a reduction of fines or a dismissal of cases by the Special Master, change or transfer of property prior to the placement of a lien, the violations were issued incorrectly or to the wrong party, etc.). Any adjustments for other nonspecified reasons should be prohibited.

Also, Code Compliance adjustment approval queues should be revised so that the corresponding Code Compliance Administrator, Lead Code Compliance

Administrator, the Division Director, the Division Commander, the Department Director and a Finance Department designee are included for all adjustments. Finally, the Administrative Aide I entering the transaction should scan all supporting documentation into the Eden System so that any designated approvers can better confirm the need for and accuracy of the desired adjustment.

- b. An independent person should be assigned the task of reconciling the Permits Plus charged violations with the Eden System billing entries to help ensure agreement.
- c. The Code Compliance Division Director should immediately review the access levels of all employees to determine if any need to be changed. Once completed, the Information Technology Division should be contacted to make any desired changes.

Management's Response (Code Compliance Division):

- a. In light of the recent arrests, directives have been issued that make Code Compliance staff advisory only to a higher level chain of approval outside the Division for any changes to fine/violations amounts. This would include approvals by the Department Director, the Assistant City Manager and for any cases involving substantial amounts, the Chief Financial Officer.
- b. With respect to reconciliation of charged violations in Permits Plus and Eden Systems, management agrees with the recommendation and this will be tasked with the appropriate level of documentation and recommendation on each of the reconciled amounts.
- c. Review of access levels for all employees in Code Compliance has already been accomplished (April 2012) and the Information Technology Division has been updated and instructed that access levels change only upon the approval of the Division Commander.

4. Finding: Identified Calculation Differences

Testing performed on the Sidewalk Café Coordinator's maintained files for the randomly sampled 63 businesses issued sidewalk café permits during the audit period found the following differences:

- a. The sidewalk café permit billed includes a charge for state sales tax which is computed as 7% of the applicable square footage fee. Testing found that the Eden System's sales tax calculations were incorrect for the following two corporations: Hosteria Romana Inc.'s 2009/10 fiscal year payment was understated by \$6.30 and 510 Ocean Partners Inc.'s 2011/12 fiscal year payment was understated by \$226.80. Furthermore, no state sale tax was charged or collected on 528 Lincoln Lane Inc.'s 2010/11 fiscal year payment and Triton Supermarket II's state sales tax was overcharged by \$34.30.
- b. City Code Section 82-383(d) states "*Late payments for permit fees shall accrue at the rate of ten percent per annum for the first 30 days.*" The Finance Department's Revenue Manager claimed that they have been informally

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instructed to only levy 10% per annum penalties for any sidewalk café payments received after November 1st which is thirty-one days after the October 1st due date. However, no supporting documentation was provided despite several requests.

Allowing for this grace period, Internal Audit calculated that \$17,586.00 (\$45,257.58 due - \$27,671.58 billed) more in sidewalk penalties were billed than was appropriate for the 151 transactions randomly sampled. More confusing was the fact that the two calculations were rarely in agreement as sometimes billings were more and other times they were less.

Subsequent meetings with Finance Department personnel found that the Eden System programmed calculations did not start calculating sidewalk penalties until sixty days after the due date. Also, they claimed that staff must remember to press the blue calculator key for sidewalk penalties to be levied as they are not automatically calculated regardless of the number of days past due. Additionally, they stated that any "previous year balance" line item entries will continue to be billed in subsequent fiscal year sidewalk café permit calculations if not manually zeroed out.

- c. Efforts to confirm the sidewalk café permit or electrical outlet fees were occasionally found to vary from the supporting documentation. Subsequent inquiries found that the fees were supposedly revised due to ongoing construction, inclusion of public right-of-way areas in the square footage calculations, malfunctioning electrical outlets, etc. but the files were not documented accordingly. Also, there were no indications of the City Manager's approval in accordance with City Code Section 82-381(f). Some examples noted include 528 Lincoln Lane Inc., Washmonbo Inc. and Books & Books of Lincoln Road, Inc.

Recommendation(s):

The implementation of the following recommendations should help improve supporting documentation and the audit trail:

- a. The Finance Department should closer scrutinize these accounts to determine the root causes for these identified sales tax calculation errors. If needed, Eden Systems Inc. should be contacted to investigate further. The four affected businesses should be invoiced or refunded the listed differences so that the proper amounts can be submitted to the State of Florida's Department of Revenue.
- b. The Finance Department should bill sidewalk penalties in accordance with City Code Section 82-383(d) unless documented instructions are received from the City Commission. Meetings should be held with the City's Information Technology Division and Eden System representatives to review the "sidewalk penalty" calculations and the possibility of automating the sidewalk penalty billing process.

- c. The City Administration should consider approaching the City Commission to change the City Code to read that the City Manager or his designee has the ability to pro rate prices. The reasons for any billing deviations from the City Code should be sufficiently documented and approved by the Sidewalk Café Coordinator's supervisor before being adopted.

Management's Response (Finance Department):

Sidewalk café permit fees will now be processed in the City's new Accela Automation database. This new database is being programmed and tested by staff from Public Works, Information Technology and Finance. Internal Audit will be invited to test the database before it goes live.

Currently, the City has a long-standing practice of giving Sidewalk Café customers the month of October as a grace period. This practice, along with payment plans, will be brought to the Finance and Citywide Projects Committee for guidance.

Management's Response (Public Works Department):

With Accela Automation, soon to be implemented in FY 2012/13, will provide the sidewalk cafe permit processes with the necessary resources to systematically capture all inspections, violations/violators, payment plans - pending grace period determination, current approved sidewalk cafe plans, annual sidewalk cafe renewals in an electronic database to facilitate separate query reports for independent review.

5. Finding: *Incorrectly Billing and Collecting Sidewalk Café Permit Fees from Businesses Located on Exempt State Owned Roads*

The Florida Department of Transportation or FDOT has ownership rights for several streets within the City. Examples of these streets in Miami Beach include Alton Road, Collins Avenue, 41st Street, 71st Street and Normandy Avenue. Consequently, the City is not able to issue sidewalk café permits within any of these streets' rights-of-way since it does not own the roads. However, these restaurants can still operate sidewalk cafes upon submitting to the City all the required documentation and the \$150 initial sidewalk café permit application fee.

The City's staff approached FDOT about permitting sidewalk cafes on 5th Street within its aforementioned rights-of-way. FDOT indicated that to do so, the City would require a Public Purpose Lease which is usually granted to a governmental entity or school board for social, environmental or economic purposes. While Public Purpose Leases are granted by the FDOT district offices, the FDOT general counsel's office in Tallahassee is presently reviewing the corresponding policy. Therefore, the City Commission's passage of Resolution No. 2010-27447 on 07/14/10 allowed the City to issue sidewalk café permits south of 5th Street while its request for a Public Purpose Lease is being reviewed.

Internal Audit randomly selected 63 Miami Beach businesses that were billed 151 different sidewalk café permit fee transactions during the audit period. Of these, 21 transactions were found to be located on FDOT maintained roads whereby testing found the following:

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- Fifteen were properly not charged and one permit was cancelled.
- Two that were previously exempt were properly charged in accordance with City Resolution No. 2010-27447.
- Three transactions involving Triton Supermarket II located at 1967 71st Street and Buenos Aires Bakery Corporation located at 7134 Collins Avenue were incorrectly charged and paid \$408.80 and \$5,470.58 (\$2,455.65 from the 2008/09 fiscal year and \$3,014.93 from the 2010/11 fiscal year) respectively.
- Iron Sushi located at 6940 Collins Avenue was not billed the \$150.00 initial sidewalk café permit application fee.

Inquiries found that the State of Florida is currently requesting the payment of \$4.00 per square foot for any Miami Beach sidewalk cafes operating on state owned roads since the inception of the business. Furthermore, they are expecting that the City will continue to monitor these businesses and bill/collect/forward these sidewalk café permit fees at no charge. The City's Legal Department is investigating the validity of the State of Florida's claims as no settlements have been reached to date.

Recommendation(s):

The \$3,573.73 monies paid in total by Triton Supermarket II and Buenos Aires Bakery Corporation should be applied against any other amounts owed to the City until the balance is reduced to zero. Also, Iron Sushi should be billed \$150 for the initial sidewalk permit application fee that was not charged previously. A more thorough review process should be implemented to help ensure that future sidewalk café permits are accurately billed to eligible entities. Finally, the City's Legal Department should complete their review and recommend the appropriate course of action to be followed concerning the billing and collection of sidewalk café permit fees on State owned roads.

Management's Response (Public Works Department):

With the implementation of Accela Automation, sidewalk cafe permits issued on state owned roads will be specifically identified for execution of FDOT's Public Purpose Lease to include payment of \$4.00 per square foot or 20% of the sidewalk café permit fee or renewal fee for sidewalk cafes operating on state owned roads since the inception of the business. The City will continue to monitor and bill/collect/forward these sidewalk café permit fees to Florida Department of Transportation, District Six Permit Office.

6. Finding: *Electrical Outlet Fees and Process Shortcomings are Listed*
City Code Section 82-385(t) states "Permittees may make written request to the city manager to use city electricity for powering floor fans during the summer months. Summer months are defined as the period beginning on May 1, and ending on September 30. The city manager will make electrical outlets operable upon payment of a flat fee, which fee shall be determined, and may be adjusted from time to time, in the reasonable judgment and discretion of the city manager, for each of the calendar days during the summer months. City electrical outlets will be restricted to powering floor fans only. Using the electrical outlets for powering lights, menu board lighting, and any other electrical device is strictly prohibited. Permittees violating this restriction will have the electrical boxes deactivated and forfeit any monies paid for electrical use."

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Testing found the following concerns with the monitoring, payment, enforcement and recording of these Lincoln Road electrical outlets addressed in City Code Section 82-385(t):

- a. Inquiries with the City's Electrical Supervisor found that the \$2 daily electrical outlet usage fee is insufficient to cover the associated costs for electricity and estimated repairs to be performed by Property Management staff. Instead, he calculates the City's costs to be approximately \$5 per day.
- b. Entities such as Maya Tapas & Grill located at 809 Lincoln Road have been found to be using the electrical outlets to power lighting. Rather than deactivating the electrical boxes in adherence to the City Code, the Sidewalk Café Coordinator charged the restaurant additional fees to cover the determined number of days used.
- c. Some entities such as Segafredo Espresso located at 1040 Lincoln Road are using the electrical outlets year round and are therefore being charged accordingly based on 365 days usage in violation of City Code Section 82-385(t). Meanwhile, others such as Sosta Pizzeria located at 1025 Lincoln Road were found to be powering fans during April site visits but were not charged.
- d. The electrical outlets have been numbered by the City's Property Management Division who has the ability to turn the corresponding power on or off. Currently, the power is continually left on so the onus is on the Sidewalk Café Coordinator to catch businesses improperly using these outlets and then to bill them going forward. According to the Sidewalk Café Coordinator, individuals have been observed also accessing the outlets to power their personal laptops, cell phones, etc.
- e. The Sidewalk Café Coordinator is the one tasked with monitoring and enforcing these electrical outlets, as well as charging and collecting monies from the businesses using this electricity. A better segregation of duties would be to have these tasks handled by different City employees.
- f. There is no current record of the amounts owed to the City for electrical outlets usage until the Central Cashier processes the Sidewalk Café Coordinator's Miscellaneous Cash Receipt and the customer's monies. Consequently, there is a greater likelihood that these monies owed could be overlooked than if an account receivable balance is created in the Eden System.

Recommendation(s):

The implementation of the following recommendations should help resolve the findings addressed above:

- a. The Public Works Department should perform a cost analysis of the total amounts incurred for providing electricity to Lincoln Road sidewalk cafes. This analysis should include the cost of the electricity, the associated administrative

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costs as well as estimated repair costs. Once determined, the City Manager should consider raising the fee accordingly so that all costs are borne by the vendors.

- b. The Lincoln Road electrical outlets should not be used for purposes other than for powering floor fans in accordance with the City Code unless the City Commission elects to change this provision.
- c. Businesses should not be permitted to use the City's electrical outlets outside of the designated May 1st through September 30th timeframe in deference to the City Code.
- d. The Property Management Division should keep the power turned off at all the Lincoln Road electrical outlets unless monies are received first by the sidewalk café permit holder or as needed for City purposes.
- e, f. Similar to the sidewalk café permit process, the Public Works Department's Sidewalk Café Coordinator should determine the amount that the applicable business owes for electrical outlets. Once determined, this information should be forwarded to the Finance Department so that a City Bill is created in the City's Financial System.

Management's Response (Public Works Department):

With the implementation of Accela Automation, Lincoln Road sidewalk cafes use of electrical outlets for powering floor fans will be captured in an detailed query report itemizing cost of electricity, associated administrative costs as well as estimated repair costs, for those businesses approved to use Lincoln Road Mall electrical outlets at a increased rate to be established for annual invoicing via the City's Financial System.

7. Finding: *Incorrect General Ledger Entries Identified During Testing of Sampled Sidewalk Café Permit Fees Collected*

Internal Audit randomly selected 63 Miami Beach businesses that were billed sidewalk café permit fees during the audit period. In doing so, all relevant fiscal years' transactions were reviewed resulting in analysis performed on 151 different permits which found the following shortcomings:

- a. All 151 tested permits properly contained a \$150 annual non-taxable application fee assigned the fee code "scappf" in the Eden System. It was subsequently found that all these corresponding \$150 payments were incorrectly entered into general ledger account numbered 011-8000-322163 (Other) instead of 011-8000-322165 (Application Fees).

When questioned, the Finance Department's Revenue Manager said that they had just become aware of the mistake and would correct the two accounts' balances. He further surmised that the mistake had been made in the setting up of the accounts when the City converted to the Eden System in 2006.

- b. Based on the restaurant's physical location, the square footage fees collected on

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the sidewalk café permit are currently placed into one of three general ledger accounts for "Ocean Drive", "Lincoln Road" and "Other". Although there is a similar active account numbered 011-8000-322162 called "North Shore", it does not contain any entries since its 2005/06 fiscal year inception despite the existence of some pertinent sidewalk café permits issued (Parrillada Las Vacas Gordas located at 933 Normandy Drive, Juices & Bites located at 1014 71st Street, Café Prima Pasta located at 414 71st Street, etc.) as these entries are included in the Other account.

- c. Fresco Ocean Drive Corporation located at 1410 Ocean Drive's sidewalk café permit incorrectly billed its square footage fees in the "Other" general ledger account (011-8000-322163) rather than in the one for "Ocean Drive" (011-8000-322160).
- d. Tested electrical outlet payments were recorded in general ledger account number 011-8000-341400 entitled "Photocopies" where they are commingled with other Public Works Department revenues. As a result, it becomes much more difficult to calculate the electrical outlet payment revenues for a given period.

Recommendation(s):

The City's Finance Department should implement the following recommendations to help ensure that the sidewalk café permits are accurately billed and that the amounts received are entered into the correct general ledger accounts:

- a. The Eden System's fee code distribution for "scappf" should be immediately changed so that any payments received are properly placed into general ledger account numbered 011-8000-322165. Also, the needed journal entries should be completed so that the two listed general ledger accounts are accurately stated.
- b. The Finance Department should either start using the "North Shore" general ledger account or delete it from the system.
- c. Fresco Ocean Drive Corporation's sidewalk café permit should be corrected so that any payments subsequently received are entered into 011-8000-322160. The account creation and supervisory process should be reviewed to determine if any cost beneficial changes can be implemented to help prevent similar future errors from occurring.
- d. The Finance Department should create a separate general ledger account to help users more easily determine the amount of Lincoln Road electrical outlet revenues.

Management's Response (Finance Department):

The Finance Department has prepared the recommended journal entries. The Finance Department will work with the Public Works Department in order to create any necessary general ledger accounts for Public Works to track their electrical outlet revenues.

8. Finding: *The Public Works Department Did Not Maintain Policies and Procedures Depicting the Sidewalk Café Permit Process*

Inquiries found that the Public Works Department did not maintain policies and procedures depicting the sidewalk café process. The lack of updated procedures to ensure the uninterrupted operation of the process is a matter of concern, given the almost total dependence on one individual (Sidewalk Café Coordinator).

Recommendation(s):

The sidewalk café permit's operating policies and procedures should be promptly completed since they serve both as a benchmark to measure individuals' performance and as an instruction manual in the event employees' change. Once completed, they should be maintained and distributed to all applicable personnel so that they can be read, understood and followed.

Management's Response (Public Works Department):

The Public Works Department established a New Sidewalk Café Permit Application Packet for potential new sidewalk café operators. The detailed packet consists of all required documentation that the applicant can follow to completion for process of the sidewalk café permit.

- New Sidewalk Café Application – Narrative of Sidewalk Café Permit Process.
- Sidewalk Café Plan Check List.
- Sidewalk Café Renewal Process.
- Sidewalk Café Permit Application.
- Certificate of Use (Sample Copy) - Existing Full Service Restaurant Required.
- Certificate of Insurance (Sample Copy).
- Miami Dade County - Sewer Capacity Certification Letter.
- Sidewalk Café Seating Plan – (Sample Copy).
- Sidewalk Café Ordinance No. 2008-3601.

All applicable personnel can execute and follow the packet process to completion without supervision.

EXIT CONFERENCE

Internal Auditor James Sutter and Senior Auditor Mark Coolidge held separate exit conferences with Public Works Assistant Director Jay Fink, Right-of-Way Manager Demar Woodson and Engineering Assistant I Corey Burton; with Building Director Stephen Scott and Division Commander Hernan Cardeno; and with Assistant Finance Director Georgina Echert, Revenue Manager Manuel Marquez Jr. to discuss the audit report. Audit findings and recommendations were discussed, as were management responses, which are included herein. All parties were in agreement with the contents of this audit report.

JJS:MC:mc

Audit performed by Senior Auditor Mark Coolidge

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cc: Jorge Gomez, Assistant City Manager
Fred Beckmann, Public Works Director
Stephen Scott, Building Director
Hernan Cardeno, Division Commander
Patricia Walker, Chief Financial Officer
Georgina Echert, Assistant Finance Director