

City Commission Meeting ADDENDUM MATERIAL

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive December 6, 2006

Mayor David Dermer Vice-Mayor Simon Cruz Commissioner Matti Herrera Bower Commissioner Michael Góngora Commissioner Saul Gross Commissioner Jerry Libbin Commissioner Richard L. Steinberg

City Manager Jorge Gonzalez City Attorney Jose Smith City Clerk Robert E. Parcher

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ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

ADDENDUM AGENDA

C7 - Resolutions

C7AA A Resolution Approving The Settlement Of City Fines Owed By Brilor, LLC, D/B/A Amika, In The Amount Of \$518,268 Plus Interest Of \$9,070.66, Be Settled For The Amount Of \$138,414.40.

(City Manager's Office)

R9 - New Business and Commission Requests

R9I

Discussion Regarding A Resolution Relating To Elections; Renewing The City Of Miami Beach's Request Previously Addressed In City Resolution No. 2003-25340 That The Miami-Dade County Manager Ensure, Regardless Of Voting Systems And Technologies, That There Is Produced A Voter-Verified Paper Record Of Every Ballot Cast, As An Element Of Minimum Standards Of Integrity, Said Paper Record To Have Manual Audit Capacity To Be Available As An Additional Record For Any Re-Count Conducted, As Well As Providing An Opportunity For Voters To Correct Any Error Before A Permanent Vote Is Recorded, And Further Requesting Miami-Dade County To Ensure That Each Page Of A Future Election Ballot Will Be Limited To One Race Or Question Thereon In Order To Avoid Voter Confusion And Reinforce Voter Confidence In The Election Process.

(Requested by Commissioner Richard L. Steinberg)

Condensed Title:

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE SETTLEMENT OF CITY FINES OWED BY BRILOR, LLC D/B/A AMIKA, IN THE AMOUNT OF \$518,268 PLUS INTEREST OF \$9,070.66, BE SETTLED FOR THE AMOUNT OF \$138,414.40.

Key Inten	ded Outo	ome Su	pported:
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Ensure compliance with code within a reasonable time frame.

Issue:

Shall the City Commission approve a mitigated settlement payment for certain code fines for Brilor, LLC d/b/a Amika relating to handbills?

Item Summary/Recommendation:

Since 2004, Amika has received multiple violations under the City's existing sign and handbill ordinances. At present, nineteen code violations for handbills/signs remain either open pending appeal, or have been closed and fines are owed to the City. The eleven violations under appeal (CE05005757, CE0600239, CE0600279, CE06001409, CE06001613, CE06001759, CE06002038, CE06003159, CE06003400, CE06003843, and CE06005058) have a fine value of \$197,872. While this is the fine value for these violations, mitigation of these fines typically occurs at the Special Master hearing. In the past, the special masters have used their discretion in setting fine levels, with the City recouping a wide range of the fine amounts due. The appeal period for the balance of these violations has been exhausted and a bill has been issued for the fines due (CE05003113, CE05003123, CE05000617, CE05005602, CE06000727, CE06004416, CE06005435, and CE06005407). A total of \$329,466.66 is owed from these violations. City staff has worked with this business entity to reach a satisfactory conclusion on this matter, negotiating a mitigation payment of \$ 138,414.40 (approximately 26% of total fines due). Staff believes this mitigated settlement is fair and equitable, given the nature of the violations (not life/safety). This mitigation payment is incorporated into an agreement relating to other monies owed to the City by this business. All monies due shall be paid to the City upon closing of the sale of the business, to occur no later than 45 days after Commission approval of the mitigation on certain Code fines. The City can and will utilize all available legal remedies to collect on the payment of monies owed, should the business not meet its obligations under the negotiated agreement.

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Financial Information:

Source of		Amount	Account	Approved
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City Clerk's Office Legislative	Tracking:	

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Department Director	Assistant City Manager	City Manager
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City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor David Dermer and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: December 6, 2006

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF

MIAMI BEACH, FLORIDA, APPROVING THE SETTLEMENT OF CITY FINES OWED BY BRILOR, LLC D/B/A AMIKA, IN THE AMOUNT OF \$518,268 PLUS INTEREST OF \$9,070.66, BE SETTLED FOR THE AMOUNT OF \$138,414.40.

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

Brilor, LLC d/b/a Amika is the operator of a nightclub, located at 1532 Washington Avenue. They are not the property owners. The business is currently under contract for sale and the location is undergoing renovations to reopen as a nightclub under the new ownership.

Since 2004, Amika has received multiple violations under the City's existing sign and handbill ordinances. At present, nineteen code violations for handbills/signs remain either open pending appeal, or have been closed and fines are owed to the City.

The eleven code violations for handbills/flyers under appeal (CE05005757, CE0600239, CE0600279, CE06001409, CE06001613, CE06001759, CE06002038, CE06003159, CE06003400, CE06003843, and CE06005058) have a fine value of \$197,872. While this is the fine value for these violations, mitigation of these fines typically occurs at the Special Master hearing. In the past, the special masters have used their discretion in setting fine levels, with the City recouping an inconsistent percentage of the fine amounts due.

The appeal period for the balance of the code violations for handbills/flyers has been exhausted and a bill has been issued for the fines due (CE05003113, CE05003123, CE05000617, CE05005602, CE06000727, CE06004416, CE06005435, and CE06005407). A total of \$329,466.66 is owed from these violations.

In May of this year, Amika and the City agreed to a repayment plan for outstanding Resort Taxes, as well as negotiated a mitigated payment for the handbill/sign code violations under appeal. At that time, Amika also agreed to pay the City 100% of all amounts due for other violations (fire violations and other code violations) where the cases were "closed." The payment of total amounts due, including the mitigated payment, was contingent on the sale of the business within a specified period of time, in the early summer. Although Amika made payment to the City in the amount of \$110,000 against their resort taxes due, a closing on the sale of the business did not occur and payment of the balance of the monies due was not made. A lien has been filed against the principals for the outstanding resort taxes, as well as for the outstanding code and fire fines.

Amika approached the City again in the late summer with an interest in negotiating a new agreement to resolve all of the outstanding monies owed. Attached, please find an agreement that stipulates payment of 100% of all resort taxes (and interest) due to the City up to the end of the fiscal year (approximately \$59,142.20, pending filing of remaining resort taxes); payment of 100% of Code and fire violations issued prior to May, 2006 (\$34,047.69); and a mitigated payment for the handbill/sign violations under appeal, as well as three handbill/flyer violations that occurred/were billed subsequent to May 2006. The mitigated amount for these code fines, as previously referenced, is \$138,414.40. This mitigated fine amount represents 26% of the total fines, and includes Brilor, LLC, d/b/a Amika's agreement to withdraw any pending appeals.

In total, Amika will pay the City approximately \$231,604.29 to resolve all outstanding debts (final amounts pending the filing of resort taxes for the period of July through September). Such payment will be required within seven (7) days after closing of the business sale, and such sale of the business must occur no later than forty-five days following Commission approval of the mitigated Code fines, as provided in the agreement between Amika and the City, attached for your reference.

CONCLUSION

City staff has worked with this business entity to reach a satisfactory conclusion on this matter. The mitigation payment of \$ 138,414.40 is fair and equitable, given the nature of the violations (not life/safety). The City can and will utilize all available legal remedies to collect on the payment of monies owed, should the business not meet its obligations under the negotiated agreement. It is recommended that the Mayor and City Commission approve the settlement of those certain city fines owed by Brilor, LLC d/b/a Amika, as previously defined, in the mitigated amount of 138,414.40.

Attachments

JMG/HMF

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SETTLEMENT AGREEMENT

This Settlement Agreement and Release ("Agreement") is made and entered into this _____ day of December, 2006 by and between the CITY OF MIAMI BEACH, a municipal corporation (hereinafter "MIAMI BEACH") and BRILOR, LLC, a Florida limited liability corporation d/b/a AMIKA d/b/a AMIKA LOFT LOUNGE AND DISCOTHEQUE (hereinafter "AMIKA"), collectively referred to as "THE PARTIES."

RECITALS

- A. As of December 6, 2006, Brilor, LLC d/b/a Amika d/b/a Amika Loft Lounge and Discotheque owes MIAMI BEACH the sum of \$595,077.13, plus 100% of the additional amounts due for delinquent Resort Tax returns that are to be filed for July, August, September, October, and November, 2006 is the total amount due and owing MIAMI BEACH in delinquent Resort Taxes, interest and fines, Code Enforcement, Building, Sanitation and other municipal fines, fees and/or liens, including fire code violations, for the operation of its business located at 1532 Washington Avenue, Miami Beach, Florida.
- B. AMIKA may review the final accounting of all monies owed to MIAMI BEACH and submit any errors in calculation to MIAMI BEACH, which, in its sole discretion, may change the amount due and owing.
- C. MIAMI BEACH and AMIKA have reached an understanding that AMIKA is unable to pay the amounts owed in full, and that both parties will benefit by this agreement by allowing MIAMI BEACH to recover some of the debt it is owed.
- D. AMIKA currently has an agreement for the sale of its assets, a copy of which is attached hereto. The closing of said sale shall generate the funds from which AMIKA will pay off its debt to MIAMI BEACH as herein agreed. AMIKA and the Buyer of its assets intend to close the sale of the assets within thirty (30) days of approval of this agreement by the City of Miami Beach City Commission. If for an unforeseeable reason the closing of said transaction needs to be extended for a period not to exceed fifteen (15) additional days, AMIKA and the Buyer shall submit to MIAMI BEACH, three (3) days prior to the expiration of the thirty (30) day period, an affidavit outlining why the closing needed to be extended, and reaffirming that when said issues are resolved the closing will occur.
- E. AMIKA and MIAMI BEACH agree that AMIKA shall pay 100% of its debt for Utility Bills, \$9,188.09; Fire Violations, \$1,500.00; City Bills, CB65930, CB65931,CB00250, CB85866, CB0000658, CB0000962, CB0001030, CB00001660, CB00002925, and CB00002952, totaling \$23,359.60; and delinquent Resort Tax through July, 2006 in the amount

of \$27,205.93, plus 100% of the additional amounts due for July, August, September, October, and November, 2006, said amount to be determined when AMIKA files its delinquent Resort Tax Return on Monday, December 4, 2006.

AMIKA and MIAMI BEACH agree that AMIKA shall be responsible for paying 30% of the debt owed on City Bills CB00003332, CB00003434, and CB00003729, totaling \$98,840.00; and 20% for Code Compliance Cases, CE05005757, CE06000239, CE06000279, CE06001409, CE06001613, CE06001759, CE06002035, CE06003159, CE06003400, CE06003843, CE06005058, totaling \$39,574.40.

This brings the agreed total due and owing MIAMI BEACH, pursuant to the other terms of this agreement, to \$199,668.02, plus 100% of the additional Resort Tax as recited herein.

- F. AMIKA specifically waives any right to appeal or otherwise contest the taxes, fines, and fees, including the Code Compliance cases listed in paragraph "E" herein, incurred as of the date of this Agreement or the right of MIAMI BEACH in the event of a default of this Agreement by AMIKA to immediately close the business located at 1532 Washington Avenue, in forum, whether administrative or judicial. However, while AMIKA may be subject to a suspension of its business license due by the Fire Department, MIAMI BEACH warrants that it will not seek such additional enforcement at this time against AMIKA or the purchaser of the business at any time, unless there is a default of any provision herein.
- G. AMIKA specifically represents that its counsel, Louis J. Terminello, Esq. of the law offices of Terminello & Terminello, P.A., has fully authority to enter into this Agreement on its behalf.

NOW THEREFORE, in consideration of the promises set forth herein and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. RECITALS

1. The foregoing Recitals are true and correct and incorporated herein by reference.

II. PAYMENT

2. AMIKA and MIAMI BEACH hereby agree that as and for full payment of the monies owed as recited herein, MIAMI BEACH shall accept and AMIKA shall cause to be paid to MIAMI BEACH, the sum of \$199,668.02, plus 100% of the

additional Resort Tax as recited herein. Said payment shall be made within the seven days of the date of closing on the sale of the subject business, payable by cashier's check or check from an attorney's trust account and delivered to the City Attorney's Office.

III. SUBMITTALS

3. AMIKA has provided to MIAMI BEACH a fully executed, notarized or otherwise legally sufficient copy of the purchase contract for the business located at 1532 Washington Avenue. Said contract specifies a closing date no later than 45 days from the date of the execution of said contract.

IV. DEFAULT

4. A default or failure to fulfill any obligation listed herein by AMIKA will subject the business located at 1532 Washington Avenue to immediate closure by MIAMI BEACH as well as the imposition of any applicable civil or criminal penalties. In addition, if the sale of the business does not occur within 45 days from the date of the Commission approval of this Agreement, as referenced in paragraph D *infra*, this Settlement Agreement is deemed null and void, and MIAMI BEACH may demand full payment for all monies owed and avail itself of all legal remedies for collection thereof.

V. ADDITIONAL DOCUMENTS

5. The PARTIES agree to cooperate fully and execute any and all supplementary documents and take all additional actions which may be necessary or appropriate to give full force and effect to the basis and intent of this Settlement Agreement.

VI. ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST

6. This Settlement Agreement contains the entire Agreement between the parties. This Agreement replaces any prior or contemporaneous written or oral representation or understanding about the settlement. This Agreement may not be changed except in writing signed by the Parties, or their respective attorneys. This Agreement shall be binding on all and shall inure to the benefit of the respective successors and assigns, if any, of each party.

VII. GOVERNING LAW

- 7. This Settlement Agreement is being consummated in the State of Florida and the performance by the Parties hereto is in the State of Florida. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The venue for any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this Agreement, or rising out of any matter pertaining to this Agreement shall be in Miami-Dade County, Florida.
- 8. The Parties warrant to each other that they have read this Settlement Agreement and that each has been represented by counsel before signing this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have set their hands and seals on the day and date first written above.

	BRILOR, LLC d/b/a AMIKA LOFT LOUNGE		
	Larissa C. Percy, Its Manager		
Attest:	CITY OF MIAMI BEACH		
ROBERT PARCHER City Clerk	JORGE M. GONZALEZ City Manager		



OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO:

Jose Smith, City Attorney

FROM:

Richard L. Steinberg, Commissioner RLS[mt

DATE:

December 5, 2006

SUBJECT: Agenda Item-Resolution Regarding Elections—Requiring a paper record of every ballot cast, and limiting each ballot page screen on electronic voting machines to one candidate or question in order to ensure integrity of the election process

Please draft a resolution renewing the City's prior resolution, Resolution 2003-25340, requesting for a paper trail during elections and also asking that future electronic ballots be designed with only one race or question per ballot page screen. I would like to place the resolution on the December 6th Commission Agenda.

If you have any questions, please feel free to contact my Aide, Ms. Marlene Taylor, at extension 6087.

RLS/mt

Attachment: Resolution 2003-25340

Cc: Jorge Gonzalez, City Manager

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Agenda Item Date

We are committed to providing excellent public service and safety to all who live, work, and play in ou

RESOLUTION NO. 2003–25340

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RELATING TO **ELECTIONS: REQUESTING THE MIAMI-DADE** COUNTY MANAGER ENSURE THAT, REGARDLESS OF VOTING SYSTEMS AND TECHNOLOGIES, THERE IS PRODUCED A VOTER-VERIFIED PAPER RECORD OF EVERY BALLOT CAST, AS AN ELEMENT OF MINIMUM STANDARDS OF INTEGRITY. NOT LATER THAN THE 2004 GENERAL ELECTION PROCESS, AND SUPPORTING THE "HELP AMERICA VOTE ACT OF 2002" ("HAVA") REQUIREMENTS OF A PERMANENT PAPER RECORD WITH MANUAL AUDIT CAPACITY AVAILABLE AS AN OFFICIAL RECORD FOR ANY RECOUNT CONDUCTED, AS WELL AS PROVIDING AN OPPORTUNITY FOR VOTERS TO CORRECT ANY ERROR BEFORE A **PERMANENT** VOTE IS RECORDED: PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Miami Beach City Commission is committed to protecting the rights of voters in Miami-Dade County, to re-establishing voter confidence in the process, and to improving upon the 2000 and 2002 elections; and

WHEREAS, the Help America Vote Act of 2002 ("HAVA") requires voting systems produce a permanent paper record with a manual audit capacity that shall be available as an official record for any recount conducted; and

WHEREAS, HAVA requires voting systems provide voters an opportunity at the time of voting to correct any error before the permanent vote is recorded; and

WHEREAS, providing a verifiable paper record and allowing voters to confirm their choices at the time of voting will help re-establish voter confidence, as well as satisfy the legal requirement that a ballot provide a clear indication of the intent of the voter; and

WHEREAS, history has shown that elections can be close, making manual recounts necessary.

NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA THAT IT HEREBY REQUESTS AND ENCOURAGES MIAMI-DADE COUNTY TO ENSURE THAT THERE IS PRODUCED A VOTER-VERIFIED PAPER RECORD OF EVERY BALLOT CAST AS AN ELEMENT OF MINIMUM STANDARDS OF INTEGRITY, NOT LATER THAN THE 2004 GENERAL

ELECTION PROCESS AND SUPPORTING THE "HELP AMERICA VOTE ACT OF 2002" ("HAVA") REQUIREMENTS OF A PERMANENT PAPER RECORD WITH MANUAL AUDIT CAPACITY TO BE AVAILABLE AS AN OFFICIAL RECORD FOR ANY RECOUNT CONDUCTED, AS WELL AS PROVIDING AN OPPORTUNITY FOR VOTERS TO CORRECT ANY ERROR BEFORE A PERMANENT VOTE IS RECORDED; PROVIDING AN EFFECTIVE DATE.

This resolution shall be effective immediately upon its passage.

PASSED AND ADOPTED this 10th day of September , 2003.

ATTEST:

Requested by Commissioner Richard L. Steinberg

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

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CITY OF MIAMI BEACH OFFICE OF THE MAYOR & COMMISSION MEMORANDUM

TO:

JORGE GONZALEZ

CITY MANAGER

CC:

MURRAY DUBBIN

CITY ATTORNEY

FROM:

RICHARD STEINBERG 1 (SAV)

COMMISSIONER

DATE:

August 21, 2003

RE:

Commission Agenda Item 9/10/03--Resolution Relating to

the Elections

I would like the following resolution to be placed on the September 10th Commission Agenda for action. I will also be requesting a time certain for this item from the Mayor's Office.

My office can provide you with an electronic copy of the draft document in order to facilitate the editing of the document.

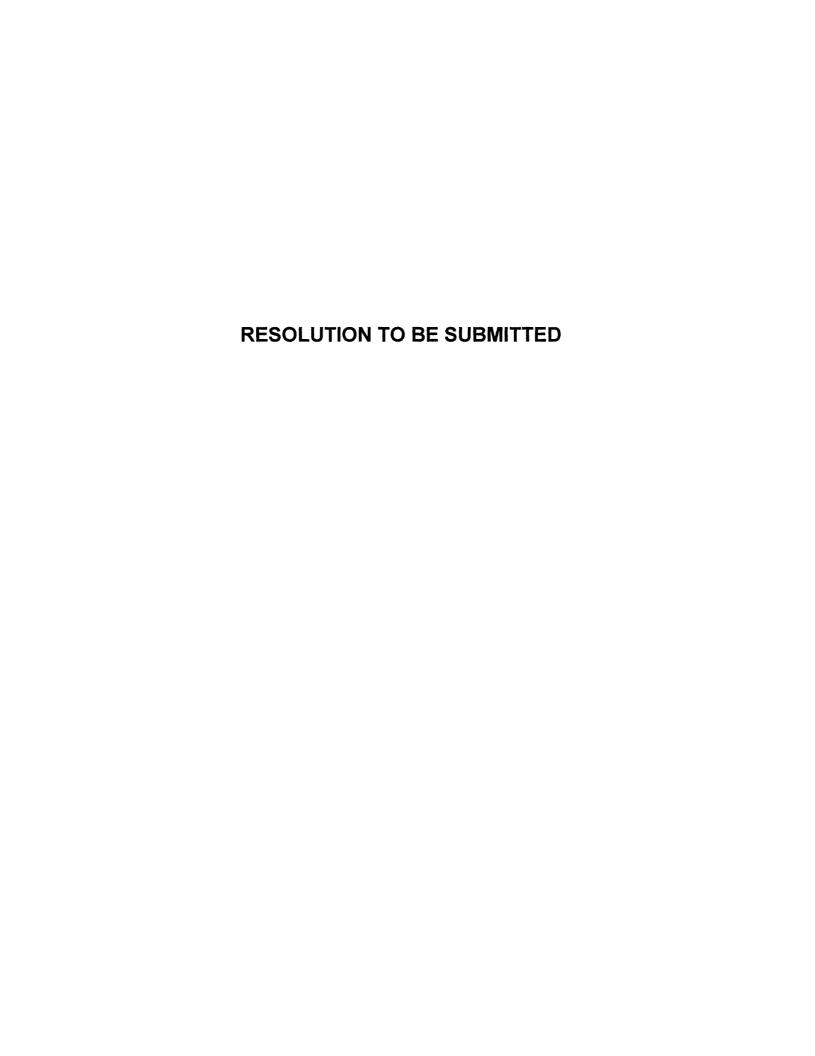
If you have any questions, please feel free to contact my Aide, Ms. Dolores Mejia, at extension 6834.

RLS/dm

Attachments: Draft resolution

Agenda Item R9E

Date 9-10-03



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