



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: November 5, 2008

SUBJECT: **REPORT OF THE NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE MEETING HELD ON WEDNESDAY, OCTOBER 22, 2008.**

A meeting of the Neighborhoods/Community Affairs Committee was held on Wednesday, October 22, 2008 in the City Manager's Large Conference Room, 4th Floor, City Hall. Commissioners in attendance: Mayor Matti Herrera Bower, Vice-Mayor Richard L. Steinberg, Commissioners Jerry Libbin, Deede Weithorn, Jonah Wolfson and Saul Gross. City staff in attendance: Jorge M. Gonzalez, City Manager; Hilda M. Fernandez, Assistant City Manager; Robert C. Middaugh, Assistant City Manager; Jose Smith, City Attorney; Raul Aguila, Deputy City Attorney; Debora Turner, First Assistant City Attorney; Saul Frances, Parking Department Director; Kevin Crowder, Economic Development Division Director; Dolores Mejia, Special Projects Coordinator; Michael Gruen, Miami Beach PD; John Heffernan, Anne Swanson, and A. C. Weinstein of the Mayor and Commissioner's Office; and Randi MacBride, Code Compliance Division.

THE MEETING WAS OPENED AT 3:55 PM.

1. DISCUSSION ON COMPLAINTS FROM RESIDENTS REGARDING THE TOWING COMPANIES.

Commissioner Libbin opened the discussion explaining that some of what is included in the agenda package is not what he requested. He stated that he requested this referral at the September 2008 commission meeting because he wanted to suggest some modification to the current towing contract. He met individually with the two towing companies, their principals and their lobbyists to suggest certain changes that he felt would be beneficial. His suggestions included requiring bumper stickers on tow trucks providing a number for the public to call to report reckless driving. This number should be for an independent company. Additionally, Commissioner Libbin suggested having a Customer's Bill of Rights document to provide information to customers informing them of the company's policies and fees. Commissioner Libbin added that the two tow companies both agreed to go one step further and agree to unhook and release a vehicle, at no charge, if the owner arrives prior to the truck leaving the scene of the tow. The tow companies are willing to amend their contract now. Commissioner Libbin added that both companies have agreed to waive storage fees until one hour after banks open on the next banking business day. Commissioner Libbin stated that these three items were the items he had wanted to bring up for discussion. He added that since the contracts are not up for renewal until February 2009, and the companies have all agreed to these changes now, he would like to have the contracts amended now.

Harold Rosen, representing Beach Towing clarified that he recalls only agreeing to two of the three suggestions. They did not agree to the waiver of the storage fees.

Agenda Item C6D
Date 11-5-08

Neisen Kasdin, representing Tremont Towing stated that they had agreed to all three suggestions.

Robert Middaugh, Assistant City Manager, added that since the referral was made several things have transpired. There was a Transportation and Parking Committee (TPC) conversation and a mailer was sent out by the Communication Workers of America (CWA) relative to the contract at Parking that made a lot of allegations about towing and incensed a lot of people. As a result, staff included the regulatory information that is in the agenda package. Mr. Middaugh added that the contract is going to expire in February and the question is what direction the commission wants to take in either negotiating other terms or other regulations. He noted that the city's current code has a requirement that specifies that in order to do business on the City of Miami Beach, you must have a tow storage yard with a 100 car capacity, and that may be problematic for Tremont going forward. The question that must be dealt with is whether to have a single company, which would be Beach Towing which is eligible under the current code, or change the regulations.

Commissioner Libbin stated that both companies currently have the necessary storage capability. Commissioner Gross stated that Tremont is talking about selling their land for a garage. Commissioner Libbin suggested that someone from Tremont explain.

Commissioner Tobin asked Mr. Middaugh if this item was put on to discuss because it is anticipated that Tremont is going to close and sell their property. Mr. Middaugh answered that Commissioner Libbin asked to have the item referred. Commissioner Libbin stated that it was to discuss the three suggestions he made earlier. Commissioner Gross stated that we need to figure out what to do if the deal goes forward, as both the Finance Committee and the Commission have approved moving forward with the garage. This would mean that Tremont's land in Sunset Harbor will disappear. Mr. Middaugh asked for direction from the committee.

Commissioner Wolfson stated his concern with this aspect of the issue of towing being discussed because he thought this meeting was to address citizen complaints regarding towing companies. Commissioner Gross raised the issue to Commissioner Tobin that he has previously recused himself on certain issues because he represents Tremont. Commissioner Tobin stated that he represents a land owner that is selling land to the city to do a development and he has never represented the tow companies. Commissioner Gross stated that the outcome of whether the deal goes through or not might affect what the committee does.

Raul Aguila, Deputy City Attorney, added that while both tow companies have agreed to certain of Commissioner Libbin's conditions, the towing rules and regulations are also governed by County and State code, so to the extent that the current operators have agreed to waive those requirement, two of those requirements (release of a tow and storage), are prescribed under the State and County code. So to the extent that these particular permittees have agreed to waive these requirements it is okay; however, it is voluntary. Commissioner Libbin added that city has to concurrently agree to waive such charges when releasing a vehicle from a tow.

Harold Rosen added that Beach Towing has agreed to all three suggestions made by Commissioner Libbin.

Mayor Bower stated that the residents think that Tremont is moving away from the area so she thinks that it behooves the committee to know what they are planning to do.

Mr. Aguila stated that under the current deal that the city is working on, as a part of the deal, it does not require Tremont to cease operations but it would provide for purchase of their current

site. However, that does not preclude them from foreseeably obtaining another site in the area and operating from there. Commissioner Gross stated that it was represented by Scott Robbins that they are not going to operate in that neighborhood. Commissioner Gross stated that the residents in the neighborhood deserve to know if Tremont plans on continuing to operate in the neighborhood, or whether the city should amend the ordinance to allow tow companies to satisfy the requirement by having a lot across the bay as long as they can deliver the cars within a certain period of time. This is what he thought was going to be discussed at today's meeting.

Commissioner Wolfson stated that it is his understanding that there is a confidential agreement between Tremont, the owner of the property and the developer, Scott Robbins. He asked who represents Scott Robbins. Commissioner Tobin answered that his law firm does. Vice-Mayor Wolfson expressed his concern that there may be a conflict. Commissioner Tobin stated he did not believe that it is a conflict.

Raul Aguila added that he believes that Commissioner Gross was referring to when the item on Sunset Harbor initially came up; Commissioner Tobin voluntarily recused himself and once you recuse yourself from discussion you cannot participate at all in the discussion involving that particular transaction. Commissioner Tobin stated that he had voluntarily recused himself from the discussion dealing with the business negotiations between the city and the developer of the property. At present, the committee is now talking about the deal between the developer for the property and the tow truck company, on a document that he has never seen. He added that he didn't handle or negotiate the deal, but for what the committee is there to decide which is, as Commissioner Gross stated, whether there may be time to amend the tow ordinance so that we can have cars towed to other places other than Miami Beach. He added further that he is somehow involved in the transaction two steps ago, but he doesn't know that it has anything to do with the current discussion.

Vice-Mayor Steinberg stated that if Tremont is still going to be in business, then there is not a scenario of a monopoly that needs to be worried about. Commissioner Gross asked how, if Tremont sells their land, they can be in business. Commissioner Steinberg stated that there have been rumors that there is other land that they have or may acquire. Mayor Bower explained that she wants this project to happen. However, she is concerned that people in the area are behind this project because they think that Tremont will be leaving the area and it will be less congested and they want the parking. Now, based on what she is hearing, she does not want to sell this project in a way that people think that Tremont is out, and then find ways for Tremont to stay. She wants to be up front with the people in the neighborhood.

Commissioner Libbin stated that he has discussed his concern with the city manager that people are urging the commission to support this project because they think that Tremont will leave the neighborhood. Commissioner Tobin stated that it sounds like the discussion is getting to the point where there is suggestion that the city may not do the deal because the residents think they are getting rid of the tow company and the tow company may not leave; so since it has something to do with the deal he would step out. Commissioner Libbin stated that he is not suggesting killing the deal, he just wants to be sure that the Commission does not end up looking like there was some sort of back room deal cooked up. Mayor Bower added that she is not saying she would be against the idea if Tremont would stay, however she does not want residents to think the tow company is leaving and then have them stay. Vice-Mayor Wolfson stated to Mr. Kasdin that the committee wants to know Tremont's intentions so that true representation can be made to the residents of the neighborhood. Mr. Kasdin answered that maybe there have been some informal discussions, however, he has not had discussions with the City about that and he is not prepared to discuss now. He added that they would be more than glad to have discussions with the City to clarify.

Mr. Middaugh stated that even if the deal does not go through and things stay exactly the way they are, when the contract comes back to the commission they will be faced with the 5/7 bid waiver vote because, historically, it is limited to only the two companies here that qualify right now. This is a policy consideration added to the current discussion.

Commissioner Gross stated that he has three concerns: whether Tremont is going to continue to operate in Sunset Harbor; what other arrangements are we, as a city, going to make if the contract expires and there is only one company that can satisfy the 100 car requirement on site; and do we want to contemplate companies being able to put the cars on the other side of the bay as long as the company can deliver the car within a certain amount of time.

Jorge M. Gonzalez, City Manager reflected on one conversation he had with Mr. Robbins where one of the things discussed was a potential solution, an idea where nothing was agreed upon. The idea that Mr. Gonzalez had broached with the principals of Tremont was if the city could come up with a different governing structure for towing where it is no longer required to have storage on-site on Miami Beach but, instead, have an alternative site that is more like a store front and the requirement would be that if a car were towed, the obligation of the towing company would be to deliver the car back to the person whose car was towed within a reasonable amount of time (to be discussed). He added that there was no follow-up; however, this conversation did happen. A lengthy discussion ensued regarding how this might work.

Mr. Gonzalez stated that when working through this deal with the Robbins Company, one of the concerns that arose from the beginning was that the consequence of building this garage was that the Tremont site would no longer be available for storage. He added that he believes that everyone agrees that one company alone cannot satisfy the needs for towing in this community. He stated that he believes that the reason the criteria for towing today exists is for the convenience of the person who was towed. If we can achieve similar conveniences in different ways then we may want to consider them from a policy perspective. Otherwise, it is going to be very unlikely that any tow company is going to come in and buy the land to store 100 vehicles in some pretty defined areas.

After some discussion, Commissioner Gross stated that he needs to know more at the time he votes for this deal. He wants to know what towing facilities will be in Sunset Harbor after the deal closes and if they are not going to be there, where else will they be.

Commissioner Libbin suggested giving direction to the manager to meet with both companies to find out what are the possibilities of staying or going. Mr. Gonzalez added to be mindful that the agreement, whatever form it takes with Scott Robbins, has no bearing and no binding requirement on them.

Commissioner Libbin made the motion directing the City Manager to meet with the two towing companies and report back to the November 5, 2008 Commission meeting any and all options they have, including staying or going, off-site storage, etc., and to amend the existing contract to include the three suggestions discussed earlier that have been agreed to by both companies. Vice-Mayor Wolfson seconded.

ACTION: The committee moved to direct the City Manager to meet with the two towing companies and report back to the November 5, 2008 Commission meeting any and all options they have including staying or going, off-site storage, etc., and to amend the existing contract to include:

- Requiring bumper stickers on tow trucks providing a number for the public to call to report reckless driving.
- Tow trucks will unhook and release a vehicle, at no charge, if the owner arrives prior to the truck leaving the scene of the tow.
- Towing companies will waive storage fees until one hour after banks open on the next banking business day.

2. DISCUSSION REGARDING THE NEED TO CREATE A GRAFFITI ORDINANCE IN THE CITY OF MIAMI BEACH.

Commissioner Libbin opened this discussion recognizing the great job Officer Julio Blanco is doing in the community. He stated that although Officer Blanco has arrested more than 100 people for graffiti that he has caught in the act, nothing happens as far as restitution or community service. He added that while the city has a graffiti ordinance, there seems to be a glitch after the arrest.

Officer Blanco explained that the criminal charging document is State Statute and unless the city or a city representative is present at the trial there is no victim in the event of graffiti on public property. The police officer cannot represent the city as the victim and state that they have been wronged and request restitution.

Commissioner Libbin asked if there is a way to have this go to the city's Special Master. Hilda M. Fernandez, Assistant City Manager explained that when police has been involved in managing graffiti they have always dealt with the state code that applies to graffiti. They have not used the civil violations for infractions that are provided for in our city code. She explained that there have been discussions and we have a procedure that involves three departments to ensure this does not happen in the future.

Officer Blanco stated that the city's current ordinance is non-criminal so he cannot charge it on a criminal document. If he makes an arrest he will forward that criminal arrest report to Code Enforcement and they will issue a code violation which has some teeth to it, and monetary fines. The city can now bring that person before Special Master and fine up to \$1000, plus damages.

Ms. Fernandez explained that if the violator is under the age of 18, the parent or guardian is responsible.

Commissioner Libbin stated that he would like to see consequences applied to the kids, including community service. He would like guidelines for the Special Master with required minimum penalties. Officer Blanco recommended adding that community service should be required to be done within the City of Miami Beach. Ms. Fernandez stated that the administration has a series of recommendations which include reworking the definition of graffiti to include etching. She added that they would like to consider changing the requirement for businesses and residential to require correction within seven and ten calendar days respectively after notice is received, instead of business days as it is now. Ms. Fernandez reviewed several other recommendations.

Commissioner Libbin asked if anyone looks to see if the signs regarding the purchase of graffiti materials are posted as required in the local stores. Ms. Fernandez stated she would have to check with Code Compliance as that would be something Code would do.

Commissioner Libbin made a motion to move forward in amending the ordinance as administration has recommended, including the ensuring that the Special Master does not have the discretion to eliminate the community service requirement or mitigate fines.

Vice-Mayor Steinberg suggested the city offer the option of using an approved, recommended company. He added that this may speed up the process for property owners since they may not have someone ready to do the work and may take some time to find someone to remediate the graffiti. Ms. Fernandez explained that the city's public works department is handling public property and that the city may be able to offer to do it for the property owner at a specified cost.

Commissioner Steinberg and Mayor Bower stated they do not feel the city should do that. Ms. Fernandez stated that they would prepare a release of liability. Commissioner Steinberg asked Ms. Fernandez to look into having someone to recommend to property owners, even possibly Teen Job Corps. Commissioner Tobin seconded motion.

ACTION: The committee moved to go forward in amending the ordinance as administration has recommended, including the ensuring that the Special Master not have the discretion to eliminate the community service requirement or mitigate fines.

3. DISCUSSION REGARDING REQUEST BY HIALEAH'S REPRESENTATIVE EDDY GONZALEZ TO DESIGNATE 71ST STREET IN MIAMI BEACH AS ROSENDO ROSELL WAY.

Kevin Crowder explained that the request came in from Representative Eddy Gonzalez. He reminded the committee that the commission passed a resolution in the spring 2008 to co-designate 71st Street as Henri Levy Boulevard.

Commissioner Tobin asked if anyone was present on behalf of Rosendo Rosell. There was no one. He asked for a motion. There was none.

ACTION: The committee took no action.

THE MEETING ADJOURNED AT 5:27PM.

JMG/HMF/rfm