



COMMISSION MEMORANDUM

TO: Mayor David Dermer and Members of the City Commission

FROM: City Manager Jorge M. Gonzalez

DATE: May 22, 2006

SUBJECT: **REPORT OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE MEETING OF MAY 18, 2006.**

OLD BUSINESS

- Discussion regarding Domestic Partner Benefits Coverage Termination -- Miami Beach Fraternal Order of Police Health Trust/Fire Fighters Insurance Trust.**

ACTION

Jorge Gonzalez, City Manager presented the item and introduced the different organizations and their corresponding members, Kathleen Phillips, Esq. from Phillips, Richard, Rind P.A., Mr. Robert Rosenwald, Esq. for ACLU, and Heddy Peña from Save Dade. Kathleen Phillips explained that when the program was initially adopted and the benefits were offered, everyone was happy and satisfied with the plan along with the benefits being offered. Therefore the organization did not do much research related to the domestic partners benefit coverage at the time the plan was adopted.

It was not until a recent audit, that the Health Trust became aware that the plan they are offering for "Domestic Partners" is not in compliance with IRS regulations which may cause them to loose their tax exempt. Miss Phillips stated that under IRS rulings domestic Partners do not qualify as dependents therefore, they are not entitled to any benefits because they are not considered to be a qualified claim. Miss. Phillips voiced her concern, that the Health Trust could loose their exempt status if they continue to provide benefits to their member's domestic partners.

Although they are looking for alternatives, they are still bound by the lack of options that, can be offered to the recipients of these benefits. One alternative offered by IRS regulations is to limit claims so they do not exceed a 3% threshold on any one given claim. Nonetheless, historically the Health Trust has and can exceed this 3% threshold stipulated by IRS regulations at any given time in any given benefit year.

Chairman, Saul Gross asked what where the consequences of the Health Trust losing their 501© 9 status. It was explained by Miss. Phillips, the City Manager and others in attendance, that it will have a great impact on all other participants

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¶ The Health Trust must comply with IRS regulation to maintain their exempt status. D
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paying into the plan, since benefit that are now tax exempt, will no longer be exempt, therefore incurring higher cost, to the participants as well as to the Health Trust itself.

Commissioner Gross asked for feedback from Miss. Peña and from Mr. Rosendwald. They both agreed that according to the IRS regulation the Trust is at risk of losing the exempt status if they continue to offer Domestic Partner benefits, but they do hope that there can be other options offered to the recipients of the plan before they opt for termination.

Commissioner Gross asked if they had consulted with any tax experts to review the IRS regulations and Miss. Phillips and Mr. Rosenwald, both stated that it has been reviewed extensively by all attorneys and parties involved.

City Manager Jorge, Gonzalez asked for further explanation as to what constitutes a qualified dependent according to IRS rules. It was explained that anyone receiving 51% of support from another member in a qualified family constitutes as a dependent under IRS rules. Such as Children, Mothers, Brother, etc.

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Mrs. Pena further explained that this issue is only applicable to non-dependent domestic partners and not to those that are dependents of the plan participants. City Manager Jorge, Gonzalez suggested leaving the benefit to those that qualify as dependents and finding other alternatives to those that are non-dependents. Miss. Phillips interjected and stated that they will then be faced with issues of discriminatory treatment and other similar issues by offering different plans to their different members. Mr. Rosenwald expressed that he did not see any discriminatory issues, nonetheless Miss Phillips stated that he does not practice in this area of law therefore his opinion was not factual.

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Commissioner Bower, questioned the City Manager, as to whether we the City Of Miami Beach offered Domestic Partners benefits. He stated that the City does offer these benefits to their employees. Miss. Phillips further clarified that for the City is not an issue because their exempt status is by virtue of being a Government entity unlike the Health Trust which is a Voluntary Employee Beneficiary Association (VEBA).

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Chairman Saul, Gross, Vice Chairman Richard Steinberg, Commissioner Matti Bower and City Manager Jorge Gonzalez still had questions and concerns as to the lack of available options to resolve this issue. They asked Miss. Phillips to go back and do more research, and to contact the IRS and maybe even get a representative involved in this issue. Item referred back to Finance and City Wide Projects Committee Meeting for further discussion.

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ITEM REFERRED BACK FOR FURTHER DISCUSSION ON THE JULY 20, 2006 MEETING.

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NEW BUSINESS

- 2. Discussion regarding alternative options to the joint development with the owners of lot 52 which are 1) underground parking at the Penrod site, and 2) underground parking in the park itself.**

ACTION

City Manager Jorge Gonzalez presented the item. He proceeded to show maps of the different proposals and options for additional parking in the South Pointe area. He then introduced Mr. Charlie Carreño from The Related Group. He mentioned that Mr. Carreño used to be a very valuable city employee and has since moved to greener pastures and is now working for The Related Group.

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The different sketches provided represented preliminary assessment of viable possibilities for additional parking in the South Pointe area. Based on the analysis, two sites were identified as viable opportunities to pursue. These sites are located on the 52 block and at the corner of Collins and South Pointe Drive (Biscayne Street), respectively.

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Since neither of the lots are owned by the City, the discussion centered on the feasibility of a joint-venture with a private sector owner to construct a public/private garage. Upon preliminary discussion with the property owners later determined that a public/private venture to construct a parking garage was not currently feasible given the land costs in the area.

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Currently, two opportunities have been identified to provide additional public parking in South Pointe. The first opportunity is within South Pointe Park and can be constructed with the park improvements if a decision is made expeditiously. The second opportunity is at Pier Park surface lot (Penrods), this is a site that was included in the previous analysis with an above-ground solution. We are suggesting that a sub-grade solution be examined at this site. Both sites are owned by the City, although control of the Pier Park lot is shared with Penrods.

South Pointe Park

It is anticipated that construction in South Pointe Park will commence this summer. The construction is being performed by TRG as part of the Portofino Settlement Agreement. There are three alternatives for additional parking in South Pointe Park. All three alternatives locate all parking, including the added parking, in essentially the same location as the current parking lot.

Alternates 1 and 2 add spaces through minor expansion of the existing lot, by widening the north parking lot boundary by eighteen (18') feet for Alternate 1, and by widening the north and south parking lot boundaries by 18' each for Alternate 2. Alternate 1 adds approximately 28 spaces. Alternate 2, which includes Alternate 1, adds approximately 79 spaces (59 net from Alternate 1). The cost per space is estimated at \$4,000 per space. This results in an estimated cost of \$112,000 for Alternate 1 and \$316,000 for Alternate 2.

Alternate 3 contemplates adding a level of parking below current grade. This would slightly modify the current proposed project as there would be two levels of parking in the eastern half of the parking lot, one below current grade and one above grade. Although the aesthetic modification to accommodate the parking lot is relatively minor, there is a significant impact to the project in terms of complexity, time, and budget in order to pursue this alternate due to it being partially underground. Issues that need to be addressed that may add time to the project include full engineering, possible requirement to go before the Design Review Board, and integration into the space in a manner that complements both

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the park and Smith & Wollensky. This Alternate would add approximately 135 spaces at an estimated cost of \$39,500 per space and a potential time delay of a few months to several months. This results in an estimated cost of \$5,400,000, although there is the possibility of financial participation from Smith & Wollensky if spaces could be directly allocated to them.

It should be noted that staff records of the Basis of Design Report process for the South Pointe Park project indicate a high level of concern from members of the public present at the meetings with regard to additional parking in the park.

Should the City be interested in pursuing additional parking in the Park, the staff recommendation is to pursue Alternate 2. If Alternate 3 is chosen, the City should consider discussing financial participation from Smith & Wollensky and providing them with dedicated parking in return. As noted above, the park is very close to entering the construction phase, so a decision on this should be made expeditiously in order to assure its inclusion into the current park project.

Pier Park (surface lot fronting Penrods)

The Pier Park site was ranked relatively low as the analysis focused primarily on an above-ground parking garage. A stand-alone, above-ground parking garage in this location is precluded by City Code and by the City's Comprehensive Plan.

Staff and TRG have contemplated the possibility of constructing a sub-grade parking facility similar in concept to the proposed Alternate 3 for South Pointe Park. This concept would provide one level of parking below grade and one level at current grade. The proposal would result in an estimated increase of 146 spaces and is estimated to cost approximately \$5,136,000 (\$35,178 per space).

This proposal is conceptual in nature. There are permitting, planning, and engineering issues that need to be further researched before a commitment to construct this Alternate should be made. It should also be noted that initial outreach to Penrods has been made and Penrods has indicated that they would be interested in discussing this option with the City, including a potential sharing of costs.

Upon presentation of said options, there were questions and suggestions voiced. Commissioner Bower, asked as to how much green space would be affected if they would choose to adopt option 1 and 2. City Manger [Jorge](#) Gonzalez stated that there is little green space as it is right now, so adopting either one of these option would not affect the green space at all.

[City Manager Jorge](#) Gonzalez stated his preference for option 1 and 2 combined since it would be less time and less money invested. [Vice Chairman Richard](#) Steinberg proposed to go with option 3 provided that they can explore the phases at different levels and time. He proposed to explore the underground parking at Penrod's first.

Commissioner [Matti](#) Bower asked [City Manager Jorge](#) Gonzalez to [analyze](#) the allocation of parking ratio for other structures in the surrounding area. She stated that the City needs to make sure that they are providing parking for the intended areas and not for the primary use and benefit of businesses.

Commissioner Steinberg prompted Mr. Frank Del Vecchio for comments on the

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different options. Mr. [Del Vecchio](#) was representing the interest of the community and spoke about the different options and the feedback the city should expect from residents and members of the community.

Mr. [Del Vecchio](#) stated that historically when this issue has come up in the past, the residents were opposed to building a park to accommodate the parking facilities instead of building the parking facility to accommodate the needs of the park and the residents. He also stated that in the past Smith & Wollensky has made a bad impression on the community because of their unwillingness to cooperate with the community and to work through challenges that affect the residents of Miami Beach.

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As a result Mr. [Del Vecchio](#) feels that if the City were to adopt option 3 the residents will feel as if the city is accommodating the needs of Smith & Wollensky and not of the resident of Miami Beach. Nonetheless he felt that if the City were to adopt Option 1 or 2 or 1 and 2 combined, that the community would not oppose the project.

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After interactive discussion among the commissioners and the attendees, it was agreed that further discussion is necessary before making a determination. [Chairman Saul](#) Gross suggested the involvement of the consultants handling the construction of the park to get their feedback. [Commissioner Bower](#) suggested to, re-visit the item during the next [Finance and Citywide Projects Committee Meeting to be held on July 20, 2006](#).

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Item will be further discussed at the July 20th meeting for further review.

3. Discussion regarding the status of the Cost of Living Adjustments that may be requested for members of the CWA who retired prior to the conclusion of the Collective Bargaining Process.

ACTION

City Manager Jorge Gonzalez introduced the item. He stated that the issue was whether 21 employees that retired between October 2003, when the old CWA contract was in effect and February 2006 when the new CWA contract became effective, should receive cost of living adjustments (COLA) for those years prior to the new contract being in effect.

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[City Manager Jorge](#) Gonzalez presented the statistical data for these 21 employees. 14 of them retired in 2003, 6 retired in 2004 and 1 retired in 2005. He explained that for those employees who retired in 2003 the COLA were funded at 0% so those employees even if entitled to the benefit, the benefit had a 0% value. For 2004 and 2005 COLA was funded at 3.5% which would affect the other 7 retirees from those years.

City Manager [Jorge](#) Gonzalez stated that according to the CWA contract, these retirees where not entitled to received any compensation. He expressed his concern, that accepting these employees' demands and compensating them for benefits that they are not entitled to, may open the door to future claims and other issue for the city.

Mr. Paul J. Ryder, City Labor Attorney from Eckerman, Senterfitt P.A., further stated that according to the CWA contract, these employees are only entitled to whatever falls under the current contract as of the date of employment for the retirees and not for any subsequent benefit of future CWA contracts.

Commissioner Bower asked for further clarification. She stated that her previous understanding was that these employees had lost benefits as a result of the city taking such a long time to sign the new contract. He questioned as to whether the retirees had full information upon their retirement. City Manager Gonzalez explained that these employees had full information and understood what they were giving up upon their retirement and that their entitlement was strictly what was provided by under the current contract and not future contracts.

She stated if going forward a document could be implemented to have the retirees sign upon their retirement date to avoid any compensation issues such as this in the future. City Manager Jorge Gonzalez as well as Mr. Ryder stated that employees upon retirement understand what the CWA contract provides for. Upon retirement their entitlement is always under what is stipulated under the current contract and not under future contracts.

Chairman Saul Gross asked for a motion to move the item, City Manager Jorge Gonzalez pointed out that because it is only a discussion item, they do not need to make any motions, they could just move the item out of the agenda. Therefore the discussion points would be mute until another time when the issue is reopened by any additional contact from the retirees or the commissioners.

Decision was reached that retirees were not entitled to a Cost of Living Adjustment as per the current CWA contract under which they retired, therefore the item was moved out of the agenda.

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Commissioner Gross asked Mattie and Commissioner Steinberg as to their decision to move this item and to make a motion. Mattie had mixed feelings as to whether to grant it or not, so did Commissioner Steinberg. Commissioner Gonzalez once again recommended against it. He stated that making this exception would only open the door to future claims and other issues as well.¶

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