

Condensed Title:

An Emergency Ordinance amending Ordinance No. 2008-3609 which provides definitions, regulations, etc. regarding the operation of pedicabs to eliminate the automatic sunset date of January 1, 2009.

Key Intended Outcome Supported:

Increase resident's satisfaction with level of Code Enforcement.

Supporting Data (Surveys, Environmental Scan, etc.): 61% of residents are satisfied with fairness and consistency of enforcement of codes and ordinances.

Issue:

Shall the Mayor and City Commission approve the Emergency Ordinance?

Item Summary/Recommendation:

EMERGENCY ORDINANCE

At the July 16, 2008 City Commission meeting, the Commission approved Ordinance No. 2008-3609 regulating pedicab operations in the City. The Ordinance was an amendment to Chapter 106 of the City Code entitled "Traffic and Vehicles" and provided for a thorough regulatory framework for pedicab operation. At the September 10, 2008 City Commission meeting, an amendment to the pedicab regulations was also adopted by the City Commission that provided a requirement that pedicab drivers obtain a pedicab driver permit as a condition to operating a pedicab in the City.

The City issued an RFP for pedicab operators and received one (1) proposal on October 21, 2008, from a Company in Boston, Massachusetts. In the evaluation of the sole response, it was determined that the vendor would only participate if all of the licenses anticipated in the RFP were granted to them as the exclusive operator. This was a condition that the City could not grant, as the City has no existing legal basis with which to grant an exclusive franchise for pedicabs, so the RFP proposal was disqualified.

With no viable vendor and no basis to provide exclusive franchises to vendors and an automatic sunset provision in Ordinance No. 2008-3608, a condition will exist that does not seem to have been intended. There will be no vendor selected and also the adopted rules will sunset which may not be the will and intent of the Commission, so the procedures and regulations concerning pedicabs would revert back to the status which existed prior to the time of the original Ordinance adoption.

The most direct manner to address any unintended consequence is to remove the sunset provision from the now existing Pedicab Ordinance. The Emergency Ordinance presented for City Commission approval would accomplish the necessary Ordinance amendment. Passage of the Emergency Ordinance will allow the regulatory provisions approved previously by the City Commission to continue without interruption.

Financial Information:

Source of Funds:	Amount	Account
Financial Impact Summary:		

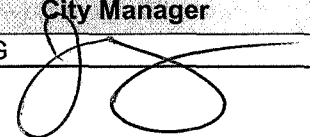
City Clerk's Office Legislative Tracking:

Robert C. Middaugh, Assistant City Manager

Sign-Offs:

Department Director	Assistant City Manager	City Manager
	RCM	JMG

T:\AGENDA\2008\December 10\Consent\PedicabEmergencyOrdSum12-10-08.doc






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: December 10, 2008

EMERGENCY ORDINANCE

SUBJECT: **AN EMERGENCY ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING ORDINANCE NO. 2008-3609, WHICH PROVIDES DEFINITIONS, REGULATIONS, ENFORCEMENT PROVISIONS, AND FINES AND PENALTIES REGARDING THE OPERATION OF PEDICABS, BY AMENDING SECTION 6 THEREOF, ENTITLED "EFFECTIVE DATE," TO ELIMINATE THE AUTOMATIC SUNSET DATE JANUARY 1, 2009; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

Approve an Emergency Ordinance amending Ordinance No. 2008-3609 of the City Code to eliminate the sunset provision of January 1, 2009.

ANALYSIS

At the July 16, 2008 City Commission meeting, the Commission approved Ordinance No. 2008-3609 regulating pedicab operations in the City. The Ordinance was an amendment to Chapter 106 of the City Code entitled "Traffic and Vehicles" and provided for a thorough regulatory framework for pedicab operation. At the September 10, 2008 City Commission meeting, an amendment to the pedicab regulations was also adopted by the City Commission that provided a requirement that pedicab drivers obtain a pedicab driver permit as a condition to operating a pedicab in the City.

As the City Commission will recall, the Ordinance was modeled after several other communities' ordinances across the United States. At the time of the adoption of the pedicab regulations on July 16, 2008, the City was experiencing a significant amount of regulatory difficulty with pedicab operators. The adopted regulations provided for a much more clear regulatory framework that allowed pedicabs to operate in the City safely.

In order to assure a reasonable number of pedicabs and pedicab operators within the City, at the time of the adoption of the pedicab regulations, the number of business tax receipts to be issued was limited to three (3) with up to ten (10) pedicabs allowed under each business tax receipt. The pedicab regulations were also put into place with a sunset provision effective January 1, 2009.

Between the time of adoption of the pedicab regulations and the expiration of the Ordinance, it was anticipated that the City would issue an RFP for pedicab operators in order to have one or more selected to operate subsequent to January 1, 2009. It was the expectation of the staff and City Commission that any operators chosen pursuant to the RFP would have incorporated into an agreement with the City all of the rules and regulations previously

established by the City Commission through Ordinance.

The City issued an RFP for pedicab operators and received one (1) proposal on October 21, 2008, from a Company in Boston, Massachusetts. In the evaluation of the sole response, it was determined that the vendor would only participate if all of the licenses anticipated in the RFP were granted to them as the exclusive operator. This was a condition that the City could not grant, as the City has no existing legal basis with which to grant an exclusive franchise for pedicabs, so the RFP proposal was disqualified. .

In the original approval of the Pedicab Ordinance, it appears that the intent of the legislation was to put rules into place until such time as an RFP could be issued and that a selected vendor would then operate under those same rules after the expiration of the Ordinance.

With no viable vendor and no basis to provide exclusive franchises to vendors and an automatic sunset provision in Ordinance No. 2008-3608, a condition will exist that does not seem to have been intended. There will be no vendor selected and also the adopted rules will sunset which may not be the will and intent of the Commission, so the procedures and regulations concerning pedicabs would revert back to the status which existed prior to the time of the original Ordinance adoption.

The most direct manner to address any unintended consequence is to remove the sunset provision from the now existing Pedicab Ordinance. The Emergency Ordinance presented for City Commission approval would accomplish the necessary Ordinance amendment. Passage of the Emergency Ordinance will allow the regulatory provisions approved previously by the City Commission to continue without interruption.

Approval of the Emergency Ordinance is recommended.

JMG\RCM\sam

T:\AGENDA\2008\December 10\Consent\PedicabEmergencOrdcommemo12-10-08.doc

ORDINANCE NO. _____

AN EMERGENCY ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING ORDINANCE NO. 2008-3609, WHICH PROVIDES DEFINITIONS, REGULATIONS, ENFORCEMENT PROVISIONS, AND FINES AND PENALTIES REGARDING THE OPERATION OF PEDICABS, BY AMENDING SECTION 6 THEREOF, ENTITLED "EFFECTIVE DATE," TO ELIMINATE THE AUTOMATIC SUNSET DATE OF JANUARY 1, 2009; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 2.05 of the Miami Beach City Charter, the Mayor and City Commission may adopt an emergency ordinance by a 2/3rds vote of the members of the City Commission in order to meet a public emergency affecting life, health, property or public safety, and may make such emergency ordinance effective immediately; and

WHEREAS, on July 16, 2008, the Mayor and City Commission passed and adopted Ordinance No. 2008-3609 that amended Chapter 106 of the Miami Beach City Code to provide definitions, regulations, enforcement provisions, and fines and penalties with regard to the operation of pedicabs, which Ordinance had an effective date of July 26, 2008 and an automatic sunset date of January 1, 2009; and

WHEREAS, in the interest of the life, health, property, and public safety of the City's residents, visitors, drivers, pedestrians, and passengers on City rights-of-way, the provisions of Ordinance No. 2008-3609 should remain in full force and effect and should not sunset on January 1, 2009.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1.

That Ordinance No. 2008-3609 is hereby amended as follows:

SECTION 6. Effective date.

This Ordinance shall take effect the 26th day of July, 2008 ~~and shall automatically sunset on January 1, 2009, or sooner in the interest of the public health, safety or welfare.~~

SECTION 2. Repealer.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. Severability.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. Codification.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. Effective Date.

This Ordinance shall take effect immediately on the 10th day of December, 2008.

PASSED and **ADOPTED** this _____ day of December, 2008.

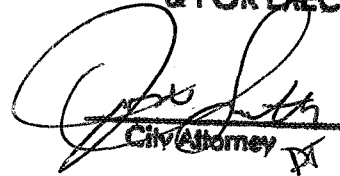
ATTEST:

Matti Herrera Bower
Mayor

Robert Parcher
City Clerk

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

Strike through denotes deletions



City Attorney
12/4/08
Date