



MIAMI BEACH

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: April 11, 2007

SUBJECT: **REPORT OF THE NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE MEETING HELD ON WEDNESDAY, FEBRUARY 28, 2007.**

A meeting of the Neighborhoods/Community Affairs Committee was held on Wednesday February 28, 2007 at 2:30 pm in the City Manager's Large Conference Room. Commissioners in attendance: Richard L. Steinberg, Jerry Libbin, Michael Góngora, Mattie Bower and Saul Gross. City staff in attendance: Jorge M. Gonzalez, City Manager; Hilda M. Fernandez, Assistant City Manager; Robert C. Middaugh, Assistant City Manager; Kevin Smith, Parks and Recreation Department Director; Janice Pye, Neighborhood Services Department Administrative Manager; Jimmy McMillion, Code Compliance Interim Division Director; Ana Cecilia Velasco, Asset Manager; Kevin Crowder, Economic Development Division Director; Marlene Taylor, John Heffernan, AC Weinstein, Yvonne Sepulveda, Diana Fontani, and Enid Rodriguez, Mayor and Commissioners Office; and Randi MacBride, Neighborhood Services Department.

1. DISCUSSION REGARDING THE STATUS OF THE SKATE PARK ALONG COLLINS CANAL.

Mr. Robert Middaugh, Assistant City Manager, introduced the item and its history. He explained that after much searching, this location was chosen for an urban skate experience.

Margi Nothard, Glavovic Studio, presented the concept plan for the skate experience. She explained that a classic "skate park" is not the most ideal model for this location. This location is better suited for a plaza where people may coexist with skaters through proper design and programming. She described the site currently as "invisible by its location". She explained that through her research and discussions with a typical skateboarder, she learned that an ideal skating environment is one that includes eight steps, some handrails and some benches. The average plaza is made up of just those things. A design which includes huge ramps and jumps is not needed for a skating park to be enjoyed by the typical skater.

Commissioner Bower expressed her concern with safety of the skaters given the location's proximity to the water.

Commissioner Gross questioned what the budget for this project is. Ms. Nothard explained that the project is in its conceptual stages. Mr. Middaugh added we are not at that point. He explained that the questions before the committee today are whether this is something that is feasible and is it something that the Administration should proceed with. He continued that regardless of what is built on this location there is going to be some type of public amenity that enhances the pedestrian transit to and from the area.

The design will include something that supports the cultural activities, steps, benches and railings. Most likely skaters will come to use it anyway. It may be in the City's best interest to just recognize this and create a space where the skaters are invited to come and that works together with the cultural activities of the community center and the pedestrian traffic.

Jorge Gonzalez, City Manager, explained that the issue is that we have allocated dollars in our RDA plan for a project which includes the Clubhouse, Little Acorn Theater, and the band shell. As we proceed forward on the project there is the opportunity to accomplish the skate park concept as well. A number of sites have been considered. This location has risen to the top because of the distance separation from residential and commercial areas. It may become a skate park even if we do not do it formally. At this point the Administration is asking the committee if they believe it is feasible to continue with the design including the skate plaza or if the committee wishes to remove this element and proceed without it.

Nancy Liebman expressed her relief that the project is not connected with the funding of other projects for this area. She stated that she believes that this is the wrong location for this project. She expressed her concern that the skate element would encroach on the cultural facility and believes there must be another place more appropriate for a skate park within the City. Commissioner Libbin asked Ms. Liebman if funding were not an issue would she still be opposed based on incompatibility. She stated that she believes it would be grand to have a skate something somewhere in the City, however at this location it is just an incompatible activity.

T. J. Marshall, South Florida Surfrider Foundation, stated he represents about 400 members in Miami area with an average age 34 years old. He explained that skaters are not just a bunch of dirty kids wearing baggy pants. This is a great idea and is optimally located near the high school. The city will have a place not only for kids to go but a place for people in their 20's and 30's as well.

Ray Breslin, Collins Park Neighborhood Association, stated that he is against the skate park and suggested an alternate location of the Par 3 golf course.

David Kelsey, South Beach Hotel and Restaurant Association, suggested using the area of the Abel Holtz tennis stadium in Flamingo Park or the under utilized golf course. He also expressed his concern for the use of the post office on Washington Avenue by skaters and the damage that has occurred.

Commissioner Libbin agreed that the tennis center location is a good possibility and there are other potential locations in North Beach. He added that he would not be opposed to creating a skate park in each end of the City; however, he is not sure that this location is the best choice.

Jorge Gonzalez, City Manager, stated that this site is a park in an area that is remote from all other residential concerns with a school to the north and the Convention Center to the south. He reminded everyone that this 15,000 square foot area is located near the back door of the Convention Center where the loading docks are found. He indicated that he believes this area is not incompatible with a skate plaza. He further indicated that the community has said that they want this and the Administration has identified this space. There may be other suitable sites as well, however, he reminded the committee that the topic for today is whether this location is suitable for a design that includes a skate element and should the City proceed with the design as shown today.

Vice-Mayor Góngora stated that this location seems to be compatible and the only thing that concerns him is whether the City will be able to maintain an adequate walkway so that pedestrians are protected from the skaters. The fact that it is near the high school is great and agrees that the area is currently under-utilized.

ACTION: The Committee moved to accept the City Manager's recommendation to proceed with the design including the skate plaza with design elements that pay special attention to mitigating programmatic conflicts. The item is to return to the committee showing these changes and the Administration is to revisit the potential North Beach site which has been identified.

2. DISCUSSION REGARDING AN ORDINANCE REGULATING STREET PERFORMERS AND ART VENDORS IN THE LINCOLN ROAD.

Hilda M. Fernandez, Assistant City Manager, presented the proposed alternative ordinance and responses to the concerns that were expressed by this committee at the January 17, 2007 meeting. She explained that staff endeavored to streamline the ordinance further from what was initially presented and provide an operating mechanism for street performers and artist vendors, to at least create a framework for better control of what is happening on Lincoln Road currently. In anticipation of this meeting, Code has surveyed the performers and artist vendors found on Lincoln Road for the past several weekends. Ms. Fernandez distributed the data acquired. She reviewed the ordinance pointing out several items:

- A permit is required for artist vendors and performers on Lincoln Road
- The permitting process is to occur quarterly
- If number of applicants exceeds the number of locations, a lottery will be held to award the locations.
- A minimum of 12 locations are recommended but 20 have been identified to allow the locations to shift each quarter so one storefront is impacted by always having a vendor, as suggested by Commissioner Libbin.
- Six zones/locations will be assigned for artist vendors and six for street performers. In the event less than six of either group is granted a permit the remaining zones/locations will be reassigned to the other group. Twelve locations will always be available for permitting.
- Artist vendors must prove that they are in fact selling art that they themselves have created. If needed there is a mechanism for the manager, an appointed designee, or committee to visit the studio to verify the art they are selling is art they created.
- The application must be submitted four weeks before the lottery to allow the City to process the application and visit the studio if required.
- Each artist vendor and street performer will be limited to one permit, one location each permit period.
- Zones/locations will be identified by the Administration – The zones/locations may change from time to time for various reasons which may include the opening of a new sidewalk café.

Ms. Fernandez indicated that staff is preparing a set of administrative rules that will govern this program. At the time of application, each applicant will be provided a copy of the rules that clearly define how the spaces shall be maintained, the maximum size of the table the permittee may utilize, how and where products may be stored within the zone, etc. Administrative rules provide more flexibility than including such language in the ordinance.

Ms. Fernandez stated that the hours of operation shall be the following:

- Sunday through Thursday - 8 a.m. to midnight.
- Friday and Saturday – 8 a.m. to 2 a.m.

A discussion ensued regarding hours especially for days when the markets are open. Commissioner Libbin asked if the 20 locations currently identified conflict with the locations of the markets and if so, how can these locations be made available to both. Sheri Sack, First Assistant City Attorney, stated that it would be improper to give preference to the markets identified as commercial speech over the artists, free speech. The ordinance would then be subject to challenge on constitutional grounds. Commissioner Bower suggested identifying locations that do not conflict with the markets. Since the markets are only on Sunday, Commissioner Libbin suggested prohibiting artists and performers to operate on Sunday. Again, Sheri Sack pointed out that this may allow for a challenge.

Claire Tomlin, The Market Company, announced that she has unused locations on the 400 block of Lincoln Road and would be willing to allow the City to utilize these spaces for the artists/vendors.

Ms. Fernandez agreed that staff would identify 12 or more locations that are not impacted by the markets.

Jorge Gonzalez, City Manager, stated that he believed selecting locations that do not conflict with the markets is the best solution. Ms. Fernandez stated that if staff is unable to find 12 spots, she will return to the committee right away.

Ana Cecilia Velasco, Asset Manager, stated the one of the biggest complaints they have received from the market vendors is that they are required to pay money for their space while right next to them an art vendor sets up for free and is accepting credit cards for sales. They feel it is direct competition and the market is a City supported project.

Commissioner Bower indicated that she does not believe that all of the vendors are true artists.

Vice-Mayor Góngora agreed and stated that it is difficult to police whether the goods sold are really made by the artists selling them.

Nancy Liebman spoke on the background and history of this subject.

Mr. David Kelsey, South Beach Hotel and Restaurant Association, spoke of his concerns with the ordinance in its previous form.

An artist expressed her concerns with the need for regulations.

Mr. Alan Tempkins, attorney, asked how the selling of art is a first amendment issue. Sheri Sack answered that artistic expression is covered under the first amendment and the fact that there is money involved does not take it out of the realm of first amendment protection.

Ms. Sherna Brody, Lincoln Road Marketing Board, suggested that the City should provide carts to the artists, as they have in Bayside Marketplace in Miami. The carts can be put away in a hurricane and a uniform appearance would be more aesthetically pleasing.

Mr. Stein, Goldtime Jewelry on Lincoln Road, expressed his surprise that this crisis is still under discussion.

Claire Tomlin stated that the Espanola Way Market is getting much smaller as vendors are choosing to set up on Lincoln Road for free instead of paying to participate.

Vice-Mayor Góngora asked how much the permit will cost.

Ms. Fernandez indicated that the fee would be comparable to the fee for non-profit T-shirt vendors currently, approximately \$25. She added, for the record, that she received two emails with comments, from Peter Wallace of the Lincoln Road Marketing Association and Mr. Wennet.

ACTION: The committee moved to recommend this ordinance to the City Commission with the provision that the twelve locations determined by Administration will be delegated as six spots each to artist vendors and street performers and that concurrent to their application, artists shall have their work reviewed by the Fine Arts Board.

3. DISCUSSION ON PROPOSED LEGISLATION GOVERNING THE DISTRIBUTION OF HANDBILLS AND FLYERS IN CERTAIN AREAS OF THE CITY.

Hilda M. Fernandez, Assistant City Manager presented the item explaining that at the December 6, 2006 Commission meeting there were several requests made of the Administration and several requests made by the Nitelife industry. One of the requests was that the industry look at self monitoring the issue of handbills. She continued that staff has proposed an alternative approach to addressing the handbill issues and will provide the committee a sense of what the situation has been like since December 6, 2006.

Ms. Fernandez presented several photos of the sidewalks and building ledges on South Beach during December 2006 and January 2007 reflecting the problem with flyers. She explained that rather than prohibiting the distribution of handbills in Miami Beach, today the package includes a proposed amendment to the existing littering ordinance, Chapter 46 of the City Code. The amendment includes the rebuttable presumption that was discussed with the previous legislation regarding the prohibition of the distribution of handbills. This proposal provides that commercial handbills that become litter would be treated as litter under certain circumstances and that in some instances the rebuttable presumption would be imposed. For example, should the commercial handbills be found in a cluster, we can apply the presumption that they were purposefully dropped, versus handed to individuals and then thrown or dropped by said individual.

Commissioner Steinberg asked Ms. Fernandez if while out on the streets over Super Bowl weekend, she witnessed people sporadically throwing flyers on the floor for distribution versus handing them out.

Ms. Fernandez stated she often witnessed the flyer being offered to someone who does not accept it and during the transaction the flyer is just "let go". This is what she has historically observed on several high impact weekends. She noted that she has also observed flyers being flagrantly thrown in the air and tossed on the ground. She continued that handbills and flyers on cars are addressed through a different provision in the code that already exists and we also have a provision in the code for signs affixed to public property such as poles. The purpose of this legislation is to fill the gap where large numbers of flyers are placed on knee walls, ledges, and fronts of buildings and then become a costly problem to clean up. The legislation provides that when these

flyers are found on the ground in a manner where it is obvious that they were purposely littered that way, a rebuttable presumption is created. The special master may apply this rebuttable presumption and allow the City to impose fines and penalties for the benefactors of that littering. In the event the litter is a commercial handbill, staff has recommended a companion fine structure separate and apart from the fine structure for typical littering. Ms. Fernandez reviewed the recommended fine structure as presented in the agenda package. A discussion ensued regarding the fine structure.

Commissioner Libbin asked for the definition of an "act of littering".

Ms. Fernandez explained that the fine imposed is imposed separately for each flyer.

Commissioner Libbin asked if the City would assess these fines on one of the typical "students" hired to pass out these flyers.

Ms. Fernandez reiterated that one purpose of the ordinance is also to provide severability. The benefactor is considered responsible and may also be fined as is typically done.

Sheri Sack, First Assistant City Attorney, clarified that what is being discussed here is commercial handbills which have been found on the ground and not seen actually being thrown down. In that situation you will not see the "student" passing out handbills.

Vice-Mayor Góngora stated that there are provisions in place for citing individuals observed littering. The purpose of this amendment is to provide a method to hold the benefactor responsible when more than 10 flyers are found in plain view.

Commissioner Libbin asked for clarification of the fine structure.

Ms. Fernandez explained the fine increases with each offense which occurs within a certain period of the first citation, which is considered a rolling year.

Commissioner Libbin asked why go with a rolling and not calendar year?

Ms. Fernandez stated that there could be an instance where the first citation might be on December 31st and the second on January 1st.

Commissioner Steinberg asked which method is better for Code Compliance to track.

Jimmy McMillion, Interim Code Compliance Division Director, answered that the rolling year is easier.

Vice-Mayor Góngora asked that the ordinance clearly indicate that the fine for littering is per flyer.

Commissioner Gross clarified that these fines would only apply if there were 10 or more flyers found in plain view. He asked for clarification on how the fines would be applied if you witness the flyers being thrown down or just find them.

Commissioner Steinberg responded that the separate section of fines deals with commercial handbills as litter and not whether it is by presumption or seeing it happen. He stated that he believes the intent is to consider these as one violation or one instance.

Ms. Fernandez explained that in the first version, when dealing with the prohibition, it was stated that it would be considered as one instance if it was found within a 24 hour period, such as noon to noon as is done with the noise ordinance. All violations given to the same benefactor during that period would be at the same level plus the per flyer charge. Ms. Fernandez asked the committee how they would suggest it be handled if the same flyers are found in two different locations, in plain view on the same night. Should this be considered as two incidents at the same fine level (first offense, second offense, etc) assessing two \$250 fines plus \$50 per flyer or is the expectation that we have one base \$250 fine per specific time period plus the \$50 per flyer?

Commissioner Steinberg answered that the expectation is that it should be one citation.

Some discussion ensued regarding whether it is possible to issue one citation for multiple incidents in a 24 hour period when the citations may be issued by more than one code officer. Ms. Fernandez stated that this can be worked out as they are scheduled for Special Master.

Vice-Mayor Góngora expressed his concern that the sections regarding placing handbills on the rim of receptacles instead of all the way inside would constitute a violation. It is possible that a violation could be written when someone was in fact trying to throw the flyers away.

Ms. Fernandez explained that often handbills are purposely stuck on the rim or other parts of the receptacle for display purposes, especially the receptacles affixed to poles; attaching them to those receptacles as a mechanism to advertise.

Vice-Mayor Góngora believes that they should not be allowed to attach the flyers to the receptacles however if the flyers are on the rim, someone may have been trying to throw them away. Vice-Mayor Góngora asked to keep the verbiage "attached" but remove "placed on the rim".

Mr. David Kelsey, South Beach Hotel and Restaurant Association, expressed his objection to this ordinance.

Commissioner Gross asked Vice-Mayor Góngora if, since he has experience as a special master, he thinks that the special master should have discretion with the fines. Vice-Mayor Góngora replied that he believes the special master should have more leeway and that he is concerned that there is a legal loophole with the fines because of the way it is written now. If the special master applies the rebuttable presumption and applies these fines, it does prohibit people from coming back for mitigation.

Ms. Fernandez stated that the ordinance will be made to mirror what is in the noise ordinance.

Jose Smith, City Attorney, stated that a special master may be inclined to find against the rebuttable presumption because the fine is so high.

Vice-Mayor Góngora agreed and that is why he would like to see more discretion available for the special master.

Commission Gross suggested a range of fines per flyer be created that may be applied by the special master.

Commissioner Steinberg asked if we want to force every issue to go to special master. If the special master is given jurisdiction to decrease only, then you are begging people to appeal.

Ms. Fernandez suggested that there be no discretion for the base violation and if discretion is allowed on the per flyer fine amount a suggested minimum per flyer could be set.

Mr. T. J. Marshall, South Florida Surfrider Foundation, suggested adding something similar to when you get a ticket where if you want to go to special master and you lose, higher costs and fines would apply.

ACTION: The Committee moved to bring this item back to the Neighborhoods / Community Affairs Committee incorporating the changes discussed and reporting on feedback from the NiteLife Taskforce and the Hotel Association before bringing it to a meeting of the full City Commission.

JMG/HMF/JMP/rfm