



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: May 16, 2007

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

A meeting of the Neighborhoods/Community Affairs Committee was held on Wednesday March 28, 2007 at 2:30 pm in the City Manager's Large Conference Room. Commissioners in attendance: Richard L. Steinberg, Jerry Libbin, Michael Góngora, and Mattie Bower. 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; Debora Turner, First Assistant City Attorney; Janice Pye, Neighborhood Services Department Administrative Manager; Jimmy McMillion, Code Compliance Interim Division Director; Wanda Ortiz and Enid Rodriguez, Office of the Mayor and Commissioners; and Randi MacBride, Neighborhood Services Department.

1. DISCUSSION REGARDING ALLOWING VIDEO ENFORCEMENT AT INTERSECTIONS IN THE CITY OF MIAMI BEACH.

Robert Middaugh, Assistant City Manager, presented the concept of video enforcement at intersections specific to red light enforcement. He explained that cameras placed at key intersections in the city either take a photo or video six seconds before and six seconds after the light turns red and produce a clear identification of the vehicle, and the license is captured which is then used to issue a citation. In Florida, there are currently only four communities pursuing this option, including Pembroke Pines, Apopka, Doral and Gulf Breeze. He referred to the agenda which includes the ordinance from Pembroke Pines. Pembroke Pines has identified a dangerous intersections ordinance, and built an enforcement mechanism that turns the red light violation into a city code violation and issues a \$125 municipal code citation to that party.

Commissioner Bower asked if video is taken continuously. Mr. Middaugh explained the vendor is focused on the light changing time so every couple of minutes the camera would run a short video.

Mr. Middaugh continued that the appeal process in Pembroke Pines is through their special master system. There is enabling legislation that allows the monitoring of the intersection so in theory a municipality can put a camera up to watch and send courtesy notices without a problem but they are unable to write a violation of the uniform traffic code and make it a traffic violation as per the Attorney General opinion included in the agenda. In Pembroke Pines it is a civil infraction, not a traffic violation. Pembroke Pines expects some level of problems with collection of fines as there isn't a lot that can be done. For instance they do not have a mechanism to piggy back on parking violations

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although this may be something to explore for Miami Beach. Pembroke Pines is going to rely on voluntary compliance or a collection agency approach.

Commissioner Steinberg stated that with any code violation the city has the ability, even if someone doesn't own property, to obtain a judgment and go after them, which presumably is what the collection agency would do. Jose Smith, City Attorney agreed that this could be done.

Bob Middaugh stated that the reason to consider this enforcement methodology is to improve safety through intersections; however, there also is a substantial revenue stream that can come from this. If this is done at ten intersections in the city there could be substantial revenue that could come to the city. Bob Middaugh explained that the vendors that he has heard about or has spoken with will, for a percentage of the revenue stream, do all the work (e.g. install the cameras, do the monitoring, issue the notices and the collection).

Commissioner Steinberg stated that city's role is to provide the police officer that would review the videos to determine whether a violation, in that officers opinion, occurred based on the evidence.

Commissioner Steinberg continued that there is an Attorney General Opinion from several years ago that restated Bob Butterworth's opinion that questioned whether municipalities can do that. Some cities have tried to take the code enforcement route as a means to circumvent that opinion. He questioned whether the City has the ability to do this right now and whether the City may be creating a potential liability and be forced to return the fines and may be liable for attorney fees in the event of a class action lawsuit. Bob Middaugh responded that Pembroke Pines requires their vendor to indemnify the city and to provide a substantial security bond.

Jose Smith, City Attorney, stated that the Attorney General's Opinion states the municipality can put up cameras, they can issue a warning, they can advise the owner, however the Attorney General did not endorse the concept of taking somebody to the Special Master. Debora Turner, First Assistant City Attorney stated her belief is that there is a risk in going forward with this legally because there is a preemption argument and in the Attorney General's Opinion even enforcing a local code ordinance, under the guise of not really enforcing the state traffic laws, is looked upon as suspect. She continued that in Chapter 316 it states that no local authority shall enact or enforce an ordinance on a matter covered by this chapter unless expressly authorized. It is not expressly authorized and the Office continues to be of the opinion that legislative changes would be needed for us to do this on a local basis.

Commissioner Steinberg explained that there is a bill pending in the legislature that is trying to allow cities or governments to cite individuals using this methodology. If that does not work, those in favor of this legislation may request a new Attorney General Opinion since the technology has certainly changed since the previous Attorney General Opinion and the question may be whether technology changes the facts in which the Attorney General's Office based their opinion. Commissioner Steinberg stated that he is not comfortable with suggesting the city do something that potentially could create liability. However, he recommended that the City issue an RFP in anticipation that legislative changes would be made to fully authorize this program. The reality is that the number of people running red lights decreases not only where the cameras are placed, but in the surrounding intersections as well. The city can see if the vendors may be able to technologically do things like "Block the Box" enforcement with the cameras to

alleviate traffic congestion in certain areas.

Commissioner Libbin stated it might be better to wait for legislative approval before issuing the RFP as there is an expectation by companies bidding for the RFP that they have a chance to actually win something. Commissioner Steinberg stated he has spoken to the two vendors who have contacted the city and expressed to them his concerns and suggested how the City might proceed and they are both okay with that. He stated that the wording could even be written into the RFP.

Commissioner Libbin asked what advantage is there to put out the RFP prior to any legislative changes. Commissioner Steinberg responded that the city could save time and would be ready to proceed. He added that he has heard that the county would like to do this everywhere if it passes in the legislature and he would prefer the county not enforce streets in Miami Beach but have us do it so that the city has control and, if there is a revenue stream, he would prefer it not go to the county.

Commissioner Góngora stated that he is not convinced that he likes this idea and he thinks it should be deferred until legislative changes are made.

Bob Middaugh stated he will get the RFP responses from Pembroke Pines for the committee to review. Commissioner Bower stated she is very concerned with the "blocking the box" problems and this concept doesn't address this problem. Bob Middaugh restated that he believes the technology could be adapted to handle that as well; however, the same legislative concerns apply. Commissioner Bower asked that before an RFP is ever issued for this, she would like to know the locations that would be considered for this program and what is considered a "high incident". Bob Middaugh advised that according to the police department, the top five accident based intersections in Miami Beach are Fifth Street and Washington Avenue, Fifth Street and Alton Road, 17th Street and Alton Road, 41st Street and Pinetree Drive, and 71st Street and Abbott Avenue.

David Kelsey spoke in favor of video enforcement.

ACTION: The Committee moved to defer the item until there is a firmer legislative authority.

2. **DISCUSSION REGARDING AN ORDINANCE AMENDING CHAPTER 6 OF THE MIAMI BEACH CITY CODE ENTITLED "ALCOHOLIC BEVERAGES" BY AMENDING ARTICLE I THEREOF ENTITLED "IN GENERAL," BY AMENDING SECTION 6-3 ENTITLED "HOURS OF SALE," BY PROVIDING FOR EXTENDED HOURS OF ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES FOR CERTAIN ALCOHOLIC BEVERAGE ESTABLISHMENTS AND UNDER CERTAIN SPECIFIED CONDITIONS ON JANUARY 1ST (NEW YEAR'S DAY), AND DURING OTHER MAJOR EVENT DAYS AND WEEKENDS AS MAY BE DESIGNATED BY THE CITY MANAGER; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Hilda Fernandez, Assistant City Manager, introduced the item explaining the proposed ordinance was approved at first reading and referred to committee prior to the second reading to consider the following elements discussed at first reading:

- a. What should be the City Manager's extended authority; in terms of what other types of events may be permitted an extension of hours.
- b. What kind of Commission process would be engaged to grant approval for

- extension of hours for events other than New Year's Day.
- c. Should additional concessions be provided should January 1st fall on a weekend.

Ms. Fernandez explained the history of extension of hours that have been approved since 2000. She continued, explaining that language has been added to the ordinance for the committee's consideration which would permit the extension of hours to include a Monday, when the Monday is the national holiday observed for a New Year's Day that falls on a Sunday.

Ms. Fernandez stated that Mr. David Wallach, owner, Mangos Tropical Café and Mr. David Kelsey, President, South Beach Hotel and Restaurant Association have both contacted staff requesting the committee's consideration of another recurring extension of hours in the ordinance. The concern is that the first day of daylight savings time each spring causes businesses to lose one hour of operation. Their request is to include in the ordinance to allow those businesses that are normally open until 5:00 a.m. to operate until 6:00 a.m., one additional hour, only on this day each year.

Commissioner Góngora and Commissioner Bower stated their belief that no one is going to have a problem with that request.

Mr. David Kelsey suggested incorporating the language for daylight savings time with no additional requirements, however, the two (2) hour extension for New Year's Eve would require compliance with the listed requirements that are included in the ordinance. Commissioner Bower and Vice-Mayor Góngora agreed with that request.

Ms. Fernandez stated the staff recommendation is to have a process to bring all requests of extension of hours for other days to the Commission via a recommendation by the city manager. Commissioner Steinberg asked why the manager's recommendation would be required. This should not have to be brought forth by the city manager, just like anything else, today; it can be brought by the manager or commissioners.

In future, it would require commission approval which can now be done by resolution without a problem.

ACTION: The Committee moved to include the following in the ordinance:

- A request for the extension of hours may be placed on the agenda by the City Manager or a Commissioner, for the Commissions consideration.
- To permit the extension of hours to include Monday, when that Monday is the observed national holiday because New Year's Day falls on a Sunday.
- Allow businesses with 5:00 a.m. licenses to extend their hours of operation of one (1) additional hour on the first day of daylight savings time each spring.



JMG/HMP/JMP/rfm