



# 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: June 6, 2007

SUBJECT: **REPORT OF THE NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE MEETING HELD ON WEDNESDAY, APRIL 25, 2007.**

A meeting of the Neighborhoods/Community Affairs Committee was held on Wednesday April 25, 2007 at 2:30 pm in the Commission Chambers, 3<sup>rd</sup> Floor of City Hall. 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; Raul Aguila, First Assistant City Attorney; Vivian P. Guzmán, Neighborhood Services Department Director; Officers Bruce Songdahl, Julio Blanco, and Alejandro Bello, Police Department; Kevin Smith, Parks and Recreation Department Director; Jimmy McMillion, Code Compliance Interim Division Director; and Randi MacBride, Neighborhood Services Department.

**1. DISCUSSION REGARDING LEGISLATION GOVERNING THE DISTRIBUTION OF HANDBILLS AND FLYERS IN CERTAIN AREAS OF THE CITY.**

Hilda Fernandez introduced the item reminding the committee that at the last meeting the committee asked for the ordinance to be reviewed. Staff brought a revised ordinance that focused on amending Chapter 46 of the Code "Litter" to address the issues of commercial handbills. The proposed amendments would not prohibit the distribution of handbills but rather would treat commercial handbills found in a certain manner as litter and would allow a rebuttable presumption to be used in determining whether or not it was in fact thrown and discarded as litter by the distributor. The committee asked that several issues be reviewed including the following:

- Fine schedule as to how to deal with multiple sets of fliers of ten or more flyers found in different parts of the city in one 24-hour period. The staff recommends that only one base fine would be assessed in a 24-hour period, while the "per flyer" fee would apply to all flyers found.
- What, if any mitigation should be allowed by the special master. The staff recommended no mitigation by the special master.

Commissioner Bower expressed her concern with the charges applying to the young person that may be handing out the flyers. Jose Smith, City Attorney stated that each violator must be treated the same, so the young person handing out flyers will be cited the same as the benefactor. Commissioner Bower asked if the person littering can be omitted from being cited and simply fine the benefactor to which Mr. Smith responded that the benefactor and violator must be treated the same.

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Vice-Mayor Góngora stated that the newest version of the ordinance does not seem to be addressing previously stated safety concerns and is simply an anti-litter ordinance. He questioned whether this will pass constitutional muster. Ms. Fernandez responded that this is not a prohibition on the distribution of handbills and that the ordinance still holds to what the public record represents, which is that the concerns of the City about the congregation of people on our sidewalks during major event periods and other periods when the city is very busy, blocking sidewalks, impacting ADA access, creating a level of litter that further impacts the environment, all of this information is still valid and supports the record. Mr. Smith stated that the only challenge would be as to the rebuttable presumption issue and added that there are dozens of situations in the state of Florida where rebuttable presumptions of this nature have been affirmed and the City is prepared to defend the ordinance in the event of a challenge and expects that the ordinance will pass constitutional muster.

Commissioner Gross stated that the city already applies a rebuttable presumption in the event of flyers tacked on light poles and cars and there is no minimum of ten required.

Henry Stolar, resident, spoke in favor of the ordinance and reminded the committee of the failure of self regulation by the industry. He distributed to the committee a group of corrections that he suggests be included in the draft.

David Kelsey, South Beach Hotel and Restaurant Association, distributed his letter to the committee and restated his concern that the problem is not handbills, it is litter and police on the street is the answer to litter.

Vice-Mayor Góngora expressed his concern with this ordinance in the section that states that the special master "shall" apply a rebuttable presumption. He believes that "shall" should be replaced with "may" allowing discretion by the special master.

**ACTION:** The Committee moved the ordinance as is to the next meeting of the full City Commission where the use of "shall" or "may" will be discussed and that the City Attorney's Office will review the recommendations submitted by Mr. Stolar and provide their opinion.

**2. DISCUSSION REGARDING THE "URBAN DECO" MANHOLE COVERS DESIGNED BY THE ARTIST GARREN H. OWENS TO BE COMMISSIONED FOR PLACEMENT THROUGHOUT THE CITY OF MIAMI BEACH, AS RECOMMENDED BY THE ART IN PUBLIC PLACES COMMITTEE.**

Max Sklar presented the item and reviewed the process that began in 2005.

Commissioner Steinberg asked if there was any consideration given to having more than one theme created to allow a different theme to be placed in neighborhoods where it may be more appropriate. Mr. Sklar responded that the Art in Public Places (AiPP) Committee had discussed this and wanted to wait for all submissions to be turned in. Once all entries were actually received, the committee determined that this entry was the only worthy submission to be used.

Rabbi Katz, resident, stated that he believes that the city should spend tax dollars more wisely and asked how much this project is costing.

Commissioner Libbin explained that manholes are replaced on a regular basis and that the decision here is to replace as necessary with a new design.

Mr. Sklar stated that the only expense is the \$5,000 honorarium paid to the artist which comes from AiPP funds which must be spent on public art.

**ACTION:** The Committee moved to approve the item to the full City Commission without opposition.

**3. DISCUSSION REGARDING APPROPRIATE LANDSCAPE AROUND A UTILITY PLANT AT 51<sup>ST</sup> AND PINETREE DR.**

**ACTION:** The Committee moved to defer the item to the next meeting of the Neighborhoods/Community Affairs Committee.

**4. DISCUSSION REGARDING THE CITY POLICY AS IT RELATES TO FPL CONDITIONS TO UNDERGROUND ELECTRIC UTILITY LINES.**

Mr. Bob Middaugh, Assistant City Manager, presented the item explaining that the City is at a point now where it is almost being precluded from moving ahead with undergrounding which is of interest in several neighborhoods. He asked for direction from the committee as to how the members want staff to proceed and what level of priority and resources should be attached to this issue. He continued that Florida Power and Light (FPL) is now insistent on very stringent indemnity clause that makes it virtually impossible and unwise for the city to agree to it. The clause goes to the level of having the city waiving its sovereign immunity if the language is agreed to.

Commissioner Libbin stated that it is not just a few neighborhoods that are interested in undergrounding. There are many areas throughout the City. There is a larger policy question and it is whether or not the City is willing to back an initiative to put underground wires throughout the City, not just whether we are going to look at just a few neighborhoods. He stated that the City should look at the policy, in general, of undergrounding.

Mr. Middaugh responded that the issues being raised are to establish ground rules for everyone.

Commissioner Steinberg stated that the Commission, some time ago, stated their position that the City was interested in citywide undergrounding and had asked the administration to hire a consultant to find out how to go about doing that. He asked where the resulting report from the consultant is. Mr. Middaugh stated the report is nearly complete. Commissioner Steinberg continued that the city will soon have the report and will then discuss the more global issue of undergrounding, however right now the issue is whether the city should become a part of the multi-community coalition and expend the resources necessary to do that.

Ms. Gross of the Venetian Islands Homeowner Association spoke of her experience including the many hurdles over the past nine years.

Joe Fontana, chairman of the Miami Beach Hurricane Taskforce, stated that this issue has been discussed repeatedly and he recommends that whatever is decided or proposed that it be brought to the taskforce for further discussion and recommendation. He invited the HOAs to attend the taskforce meetings.

**ACTION:** The Committee moved to authorize the recommendation to participate in the coalition and have the consultant's report at the next meeting of the Neighborhoods/Community Affairs Committee.

**5. DISCUSSION REGARDING COMMUNITY AWARENESS OF PANDEMIC FLU.**

**ACTION:** The Committee moved to defer the item to the next meeting of the Neighborhoods/Community Affairs Committee.

**6. DISCUSSION REGARDING LIGHTS IN PINE TREE PARK.**

Mr. Bob Middaugh, Assistant City Manager, presented the item to the committee and reviewed the history including the petition that requested the lights in the park. He added that the rough estimate of the cost to put lights in the park is \$500,000. In general, the neighborhood says "no", the dog owners say "yes", and parties on both sides of the issue will state that the need for safety as the basis for their opinion.

Gabriel Redfern, Henry Lowenstein, Nina Yarus, Daniel Herssein, Claire Warren, and Vivian Gluck were among those that spoke against the idea of adding lights in Pinetree Park.

Roby Greer, Michael Jones, Avi Rosenberg, Bonnie Lerner, Mr. Kornfeld, Mr. Smirnoff, Robert Arnove, David Goldwasser, Mike Schmidt, Rosabella Befeler and Robert Croce were among the speakers that spoke in favor of have the lights installed in Pinetree Park.

Vice-Mayor Góngora asked for statistics on the crime and safety issues brought up by some of the speakers. Bruce Songdahl of the Police Department explained that this is not considered a high crime area and that most calls reflect concerns regarding the dogs in the park. Drugs have not been an issue in the park.

Commissioner Steinberg asked the Neighborhood Resource officers from the police department, if, while attending neighborhood meetings, they have heard complaints regarding safety and drugs in the park. Officer Songdahl stated they have not.

Vice-Mayor Góngora stated that representatives of each side of the issue have declared that the lights are a factor in the crime in the park by either encouraging crime or by discouraging it and he wondered what the Police Department's position on this issue is. Officer Alex Bello stated that it is their position that whatever is decided by this committee, they will be okay with, although the facts do not support that there is much crime in this park.

Mr. Middaugh stated that the question here today is whether the city wants to alter the usage pattern by adding the lights or continue with the current usage pattern as it exists.

Commissioner Libbin asked if there are any legal issues impacting the use of the park or the installation of the lights. Raul Aguila, First Assistant City Attorney, stated that legal staff has reviewed the legislative history of the property and lighting the park is not "illegal". There are no deed restrictions or covenants.

Commissioner Libbin questioned Kevin Smith, Parks and Recreation Department Director as to the status of the park. Mr. Smith responded that as of a site visit just earlier today, the park is in very good shape. He added that the park is on a regular maintenance schedule and is fully maintained by mowing 34 times each year, litter control three times each week, mulch as needed which is approximately four to five times per year, spraying of weeds every two months or more as needed, fertilizer treatment is done three times each year, tree planting has already been done recently and more is planned as part of the City's Reforestation Plan, the dog park itself is inspected at least once each month and two sprayings are done when ticks and/or fleas are found which was done about 30 days ago, and they are anticipating new sod to be placed on the west end within the next 30 days.

Commissioner Gross stated that the Commission tries to do things by consensus in the City and there doesn't seem to be a super majority on either side so he suggested the two sides meet with each other and come up with a compromise that each side can live with. Commissioner Gross added that he is not ready to vote on something that will make half the people unhappy. Vice-Mayor Góngora agreed.

**ACTION:** The Committee moved to not make a decision until the two sides of this issue come to more of a consensus.

JMG/HMF/JMP/rfm

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