



## COMMISSION MEMORANDUM

TO: Mayor David Dermer and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: October 17, 2007

SUBJECT: **REPORT OF THE NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE MEETING HELD ON WEDNESDAY, SEPTEMBER 19, 2007.**

A meeting of the Neighborhoods/Community Affairs Committee was held on Wednesday September 19, 2007 at 2:30 pm in the Commission Chambers. Commissioners in attendance: Richard L. Steinberg, Michael Gongóra, Vice-Mayor Matti Bower, and Saul Gross. City staff in attendance: Robert C. Middaugh, Assistant City Manager; Hilda M. Fernandez, Assistant City Manager; Jose Smith, City Attorney; Sheri Sack, First Assistant City Attorney; Vivian P. Guzmán, Neighborhood Services Department Director; Max Sklar, Tourism and Cultural Development Director; Fred Beckmann, Public Works Department Director; Raul Aguila, First Assistant City Attorney; Gary Held, First Assistant City Attorney; Debora Turner, First Assistant City Attorney; Jorge Gomez, Planning Department Director; Ana Cecilia Velasco, Asset Manager; Kevin Crowder, Economic Development Division Director; Bob Halfhill, Public Works Department Assistant Director; Kevin Smith, Parks and Recreation Department Director; Lynn Bernstein, Community Resource Coordinator; Robert Anderson, Financial Analyst III; AC Weinstein, John Heffernan, and Enid Rodriguez, Office of the Mayor and Commission; and Randi MacBride, Neighborhood Services Department.

1. **DISCUSSION REGARDING LEGISLATION PROPOSED BY LAGORCE NEIGHBORS.**

**ACTION:** Item deferred, without discussion, to the next meeting of the Neighborhoods/Community Affairs Committee.

2. **DISCUSSION REGARDING THE ORDINANCE REVISING THE REGULATION AND ADMINISTRATION OF SIDEWALK CAFES.**

Fred Beckmann, Public Works Department Director presented this item and reminded the committee that one of the reasons that this item has not been before the committee since November, 2006 is because of the budget discussions. There was some potential that there would be a request for an increase in the fees. However, it has been determined that the fees will remain the same. He stated that, other than some code issues suggested by the Code Compliance Director, there are no changes from what was previously before the committee. Mr. Beckmann wanted a reaffirmation from the committee of the major revisions to the ordinance that were made at the last meeting, including the following:

- a) The establishment of a minimum open area of 50% on Lincoln Road.
- b) To not allow expansion across the center line on Lincoln Road, absent an

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extreme hardship.

- c) Allow restaurants that begin serving lunch by 11:00am to stack chairs in the mall overnight so long as the tables are set up by 10:00am.

Mr. Beckmann explained the Code Compliance Director's recommendation of a revision to the ordinance regarding site plan violations, such as an expansion of the seating area, which shall be corrected immediately instead of the warning notice that is normally given. This type of violation is a manner of business for some owners that ignore the site plan and violate this on a regular basis. He added that Code Compliance officers shall issue a notice of violation to a business that has previously been issued a 24-hour warning notice for the same violation within the last 60 days.

Mr. David Kelsey, South Beach Hotel and Restaurant Association, expressed his concern that the sidewalk café ordinance has been discussed for almost three years. There have been so many different versions and this one still needs to be discussed in a workshop forum with those in the industry that this will be directly impacted. He described an example where he assisted someone to go through the process of acquiring a sidewalk café permit. This process took twenty-two visits to City Hall and over four months. Mr. Kelsey suggested that there be a person provided by whatever department that will be charged with handling the permit process, to expedite this service by walking the applicant through all the different departments or have all the departments together at one point, maybe once a week allowing an applicant to go person to person at one time. He stated that it currently is a very cumbersome process.

Commissioner Gross asked Mr. Beckmann if there was anything he could suggest to facilitate the process. Mr. Beckmann stated that it often depends on the documents that the applicant brings in.

Mr. Kelsey explained his concern regarding the payment of the permit. He explained that there is no prorating of the permit fee. The least an applicant will pay is for six months, even if it is for just a week before the permit period is ending. He added that there is no refund if a business goes out of business or loses its permit. Bob Middaugh, Assistant City Manager, explained the way this ordinance is crafted there are two 6-month intervals. There is no prorating now, however, this would be an easy change, should the Commission give that direction. Commissioner Gross stated that he feels that if only weeks are involved it doesn't seem fair to charge for six months. Mr. Middaugh added that the only change in the document presented today from the one presented in November 2006, are the ones related to the Code Compliance process. Bob Anderson, Finance Department, explained that under the current process, after May 1<sup>st</sup>, the applicant pays for six months and anything prior to that date is the full year.

Mr. Middaugh added clarification to the compliance issue in that if there is a person seated at the table, compliance would be expected when the person leaves. Patrons would not have to get up during their meal.

Mr. Marvin Silverman, manager of Carnivale Restaurant on Lincoln Road, spoke of the many meetings that have happened and that in spite of certain objections raised by business owners at these meetings, he doesn't believe they are being addressed in this document. One particular item is that there is no consensus regarding food displays. There is also a catch-22 situation regarding the propane heaters where the businesses are not allowed to store them outside, however they are also not allowed to store them inside. He added that the requirement to be open by 10am to allow the restaurants to leave the tables and chairs out overnight is an unfair burden.

Commissioner Gongóra reminded everyone how many businesses were lost over the last several months on Lincoln Road and stated that he would like to make it easier, not more difficult on business so they will survive. Vice-Mayor Bower stated that she does not have so much a problem with allowing the tables to be left out for businesses that open by 11 am, so long as the tables are not stacked.

A lengthy discussion ensued regarding the storage or placement of heaters.

Mr. Jay Gomez of Aura Restaurant spoke in favor of food displays.

Graziano Sbroggio requested that merchants be allowed to pay for fees on a monthly basis. He also asked whether, when a sidewalk café is in an area that is already over the 50% rule, if the site plan will survive a sale of the restaurant. Mr. Middaugh explained that the ordinance is not specific in how that is addressed.

A lengthy discussion ensued regarding the 50% rule and grandfathering the site-plan when a business is sold. It was decided that the 50% rule will not prevent any location from opening as a restaurant however it may limit the café to the area directly in front of the storefront and the area beyond the front of the storefront is subject to the 50% rule.

Commissioner Gross asked if entertainment should be allowed within sidewalk café areas. Hilda Fernandez, Assistant City Manager, responded that this would be a policy decision. The concern for the committee's consideration is whether permitting the entertainment to be physically located on the public sidewalk might create any safety issues or pedestrian flow issues.

Vice-Mayor Bower said that allowing this would be the same as allowing street performers that may impact pedestrian flow.

**ACTION:** The Committee moved with a vote of two in favor (Commissioner Steinberg and Vice-Mayor Bower) and one against (Commissioner Gongóra) to bring the item to the full commission incorporating the following:

- a) Allow the prorating of the fees to monthly
- b) Allow sidewalk cafes to leave tables set out overnight with the condition that they are open for business by 11 am

**3. DISCUSSION REGARDING UTILIZING THE 2216 PARK AVENUE (FORMER DELTA HOUSE) AS A HOUSING FACILITY FOR THE MIAMI CITY BALLET.**

Hilda M. Fernandez, Assistant City Manager introduced the item and referred to the memo in the agenda package. She added that there has been no funding identified for this project and the asking price is over 4 million dollars.

Ray Breslin explained that both the Collins Park Neighborhood Association and the CANDO committee are desperately trying to find housing for Miami City Ballet. The housing is so needed that he convinced eighteen owners at the Mantel to rent their units to Miami City Ballet students for the school year. Commissioner Gross suggested to Mr. Breslin that he try to find a private entity willing to go in joint venture with the ballet. Mr. Breslin stated that he has been trying.

Commissioner Gongóra stated that he thinks this is an interesting idea however until there is funding, he does not see this moving forward.

Commissioner Gross added that he believes that the city needs to spread around the benefits that are given out and the City gave the Miami City Ballet several million dollars last year. This is probably something that is better done with a private entity.

**ACTION:** Committee unanimously moved to defer this item indefinitely.

#### **4. DISCUSSION REGARDING CONDITIONS OF THE BOARDWALK.**

Assistant Chief Martinez introduced the item. Master Officer Bruce Songdahl presented the results of his security survey of the boardwalk where his findings included the following:

- a) Numerous lights were out on the boardwalk
- b) Two lights were out on the pavilion and one was very dim.
- c) Street light out on 27<sup>th</sup> Street
- d) All emergency phones do not function, with the exception of one that will dial 911 but then hangs up. In this instance dispatch will send an officer to the location anyway but does not allow for any direct communication.
- e) Landscaping is creating a canyon effect which obstructs natural surveillance in certain areas on the boardwalk.
- f) Some landscaping is blocking lighting.

Officer Songdahl explained that these findings have all been sent to Lynn Bernstein who is their partner in Neighborhood Services. She has sent these findings out to the various departments for their attention. The pole lights have already been repaired and unfortunately there are now other light outages which have been reported for attention.

Commissioner Steinberg asked for a recommendation as to what should be done with the phones as to whether they should be removed entirely or repaired? Officer Songdahl recommended the phones be replaced with something similar. He added that there has been some discussion on this subject.

Commissioner Steinberg asked if the security staff that patrols the boardwalk is charged with the task of reporting light outages. Fred Beckmann suggested that the guards call directly to (305) 673-7625 which is available 24-hours each day to report outages.

Commissioner Gross asked if there is any recommended capital outlays as far as the boardwalk is concerned as the commission considers the safety on the boardwalk to be of utmost priority. Fred Beckmann stated that there is some funding to replace some of the light fixtures and that they are trying to decide which fixture to use. Mr. Beckmann added that they will probably be replacing the fixtures and not the poles keeping in mind that there are areas that will be replaced with beachwalk and will receive new lighting altogether.

Ray Breslin asked why, if the phones are a concern on the boardwalk, are there no phones on the beachwalk. He suggested removing the phones as an archaic system since almost everyone has a cell phone. Commissioner Steinberg added that the pricing of replacement of the system should include the beachwalk as well.

**ACTION:** Committee moved to have the call boxes removed, gather information as to

the cost to replace the system on the boardwalk and add call boxes to the beachwalk, and ask IT to consider the possibility of a WIFI alternative. Additionally, the Police Department is to have the security guards monitor and report to public works any lighting outages for quick response, and work with the appropriate departments to maintain the landscaping.

**5. REQUEST FOR APPROVAL OF THE ATLANTIC GREENWAY NETWORK MASTER PLAN.**

Fred Beckmann, Public Works Department Director explained that this item is the result of a two year effort by the City and the Mayor's Bikeways committee and that it is being presented to the Planning Board next week. He explained that this is an effort to provide a roadmap or master plan for bikeways and pedestrian pathways across the city. This will become essentially the footprint that will be used for every city project and it has already been incorporated into most of the projects that CIP has been working on. He said that they are also partnering with developers such as Canyon Ranch in the developing of part of the master plan bikeway behind their property.

**ACTION:** Committee unanimously moved to take this item to the Planning Board allowing it to move directly to the full City Commission if the Planning Board endorses the plan.

**6. DISCUSSION ON THE PROCESS FOR ADMINISTERING THE POWERS AND DUTIES WITH RESPECT TO THE COMMUNITY BENEFIT FUND FOR PERFORMING ARTS.**

Max Sklar, Tourism and Cultural Development Director explained that with the change in the management of the Jackie Gleason Theater over to Live Nation, what is being asked is how to continue administering the Community Benefit Fund Program. This fund was created in 1983 by the establishment of a surcharge added to every ticket sold at the Gleason, which would be used to offset and provide discount tickets to seniors and, later, for students as well. It has also been used to provide grants or rent waivers for non-profits to use the facility. Live Nation is obligated by contract to continue to do this, however the duties and powers to administer the program was previously handled by the Convention Center Advisory Board. He explained that staff is here before the committee asking for a determination if the Convention Center Advisory Board will continue to do this or should the authority be given to the Cultural Arts Council (CAC), as they are the cultural and arts advisory board of the city, and since these groups and users would be non-profit users that would typically apply for grants through the CAC anyhow. The CAC has endorsed this idea.

**ACTION:** The Committee unanimously moved to transfer responsibility to the Cultural Arts Council.

**7. DISCUSSION REGARDING THE PLACEMENT OF A BUST SCULPTURE OF DR. PERITZ SCHEINBERG AT FLAMINGO DRIVE.**

Vice-Mayor Bower explained that Mrs. Scheinberg had come to her office requesting to memorialize her husband, Dr. Peritz Scheinberg at Flamingo Drive. Mrs. Scheinberg elaborated on the accomplishments of her husband and his involvement in the

community. She explained that she already has the bust that could be placed in one of the parks on Flamingo Drive and that there would be no cost to the city.

Raul Aguila, First Assistant City Attorney, explained that the procedure includes that the concept first go to the Neighborhoods/Community Affairs Committee. If it is voted on with a majority vote, it goes to the City Commission for a public hearing and if it receives the required a 5/7<sup>th</sup>s vote, it then goes to the Art in Public Places board (AiPP) for their recommendation. Max Sklar explained that AiPP merely looks at it for maintenance, aesthetics and location.

Commissioner Gongóra asked to see a picture of the piece when it goes to Commission.

Mr. Ray Breslin said he thought that there was a decision made to limit the placement of memorials in Collins Park for any individuals because there are so many already and he thought that this was more citywide.

Mr. Aguila stated that rule was made to apply to streets, not for memorials.

**ACTION:** The Committee moved, unanimously, to take this to the public hearing and discuss at the Commission meeting.

**8. DISCUSSION REGARDING A PROPOSED AMENDMENT TO SECTION 86-141-175, ENTITLED NONPROFIT VENDING AND DISTRIBUTION; TO LIBERALIZE VENDING IN THE OCEAN DRIVE CORRIDOR TO INCLUDE ARTIST VENDORS/STREET PERFORMERS.**

Hilda M. Fernandez, Assistant City Manager presented this item and explained that since earlier this year, staff has been monitoring the increased artist vending and performances occurring on Ocean Drive. There have been complaints from the merchants on Ocean Drive and Code Compliance officers have been monitoring the number of artist vendors that are on Ocean Drive. Artist vendors and street performers are currently setting up tables on the west sidewalk on Ocean Drive. There is currently a process in place that allows non-profit vendors and distributors to set up tables on the east sidewalk of Ocean Drive with a lottery process for three locations on Ocean Drive and two locations on Lincoln Road; there is currently no other provision to allow anyone to set up a table, in fact it is a violation of City Code to obstruct the sidewalk. She showed photographs demonstrating instances where the sidewalk has been obstructed.

Ms. Fernandez explained that the City can enforce the placement of items placed on the west sidewalk of Ocean Drive as well as preventing anyone from using generators. She explained that staff attended a meeting of the Ocean Drive Association recently where the members expressed their concerns with the proliferation of artist vendors and their concerns with the pedestrian flow on both the east and west sidewalks. Following that meeting, she added that staff made sure everyone, including code, was clear as to what was and was not allowed, thus ensuring that those permitted activities that are constitutionally protected were allowed to continue, yet those activities that either obstruct the sidewalk, involved the use of electronic equipment or were otherwise prohibited by code would not be permitted. Ms. Fernandez stated that the proposal here today is to consider liberalizing the existing ordinance on non-profit vending on Ocean drive by including provisions for a lottery for artist vendors or street performers to be able to apply to be permitted and be in identified locations on the east sidewalk of Ocean Drive where tables are currently permitted under the nonprofit vending ordinance.

Mr. Bill Farkus, representing the Miami Design Preservation League expressed his appreciation with the city's response time in dealing with this issue.

Mr. David Wallach asked that there be an acknowledgement to the noise ordinance in the proposed amendment as even street performers are to be responsible for maintaining their adherence to the noise ordinance of the City of Miami Beach.

Mr. Marlo Courtney spoke in favor of the proposed amendment.

Mr. David Common, an artist and vendor, spoke against the proposed amendment.

Ms. Randie Hofer spoke in favor of the proposed amendment.

Mr. Alex Beal, an artist vendor, spoke in favor of the proposed amendment.

Ms. Iris Chase spoke in favor of the proposed amendment.

Mr. Jose Gomez expressed his idea to have the artist Romero Britto design umbrellas for use by vendors to have some uniformity and to beautify Ocean Drive. He said he would like to speak to Mr. Britto to ask him to consider this endeavor.

Commissioner Gongóra stated that he believes that this legislation is necessary as he has seen first hand what is happening on Ocean Drive.

**ACTION:** The Committee unanimously moved to take this item to the full City Commission.

**9. DISCUSSION REGARDING AN ORDINANCE AMENDING CHAPTER 10 OF THE MIAMI BEACH CITY CODE ENTITLED "ANIMALS," BY AMENDING SECTIONS 10-1 THROUGH 10-16; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**ACTION:** Item deferred, without discussion, to the next meeting of the Neighborhoods/Community Affairs Committee.

**10. DISCUSSION REGARDING NORTH BAY ROAD AND 23RD STREET PARK.**

**ACTION:** Item deferred, without discussion at the request of Commissioner Gongóra, to the next meeting of the Neighborhoods/Community Affairs Committee.

**11. DISCUSSION REGARDING A RESOLUTION AFFIRMING A DESIGN REVIEW BOARD DECISION PERTAINING TO DRB FILE NO. 9024, LOCATED AT 1330 WEST AVENUE.**

Gary Held, First Assistant City Attorney, explained that this appeal will be heard by the Commission on October 17, 2007 and in the interim staff was to try to reach some agreement with the association as to a more definite timetable for the opening of the baywalk. He stated that the Waverly had previously committed to open the baywalk while we were in dispute. However, there are recent circumstances in that there is a problem with the seawall that has caused part of the baywalk to collapse. The Waverly is currently in the process of securing permits and bids to do the necessary repair work and have stated in writing that they will open the baywalk when the permits are obtained

and the work is completed. Mr. Held stated that he does not have a formal agreement to present to the committee at this time.

Mr. W. Tucker Gibbs, attorney representing the Waverly at South Beach Condominium Association stated that his clients do have the money to make these repairs and are anxious to get this done as soon as possible because it is only getting worse. He added that this is a good faith effort by his clients.

**ACTION:** No action was taken on this item.

**12. DISCUSSION REGARDING AN ORDINANCE AMENDING CHAPTER 82 OF THE MIAMI BEACH CITY CODE, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 82-4 – 82-5, ENTITLED "RESERVED," TO PROHIBIT FOODS CONTAINING ARTIFICIAL TRANS FAT IN VENDING MACHINES ON CITY PROPERTY; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Ana Cecilia Velasco, Asset Manager, stated that the city has the support of the vending machine concessionaires. There were very few items that are in the vending machines that have any trans fat and there are none at this point. She added that there should be some consideration that the beachfront concessionaires also be included.

Commissioner Steinberg asked if they have been contacted yet. Ms. Velasco stated that she was waiting to see what the committee decided. Since there are so many product options now that there would not be a hardship and she offered to contact these vendors. Commissioner Steinberg said he would contact them. He added that he thought that the convention center might also be considered. Ms. Velasco stated that she is currently in negotiation with the Boucher Brothers so that can be introduced as part of their agreement with no problem.

Commissioner Steinberg asked for a recommendation from this committee to move forward with this ordinance and to expand it to include vending on the beach concessions and the convention center, with the understanding that any current contracts would not be subject to this unless the vendor agrees to voluntarily modify their contract and include these provisions.

**ACTION:** The committee moved to recommend the ordinance and to expand it by including the beach concessions and the convention center requiring any new contracts or renewals to adhere to the ordinance.

  
JMG/HMF/rfm