



# 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: June 25, 2008

SUBJECT: **REPORT OF THE NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE  
MEETING HELD ON WEDNESDAY, MAY 28, 2008.**

A meeting of the Neighborhoods/Community Affairs Committee was held on Wednesday, May 28, 2008 at 3:00 pm in the Commission Chambers, 3<sup>rd</sup> Floor, City Hall. Commissioners in attendance: Mayor Matti Herrera Bower, Commissioners Ed Tobin, Jonah Wolfson, Jerry Libbin, and Richard L. Steinberg. City staff in attendance: Hilda M. Fernandez, Assistant City Manager; Robert Middaugh, Assistant City Manager; Jose Smith, City Attorney; Jean Olin, Special Counsel; Fred Beckmann, Public Works Department Director; Fernando Vazquez, City Engineer; Dolores Mejia, Special Project Administrator; John Heffernan; A. C. Weinstein, Anthony Broad, Marlene Taylor and Anne Swanson of the Mayor and Commissioner's Office; and Randi MacBride, Neighborhood Services Department.

### 1. DISCUSSION REGARDING THE SHARED CAR CONCEPT IN THE CITY OF MIAMI BEACH.

Robert Middaugh, Assistant City Manager, introduced the shared car or zip car concept to the committee explaining that this item was referred to committee some time ago. Rather than wait any longer for the company to submit their proposal, staff decided to bring the subject to committee to make sure the committee knew what it was, and to see if there is interest by the committee to pursue the concept and take some of the next steps. He explained that there are at least several companies that provide this service in cities across the United States, one of which is ZipCar (which has just merged with FlexCar) and City Car Share. They both have similar models where an interested user joins the company and, after approval, the user has the ability to rent/share a vehicle with other members of this group to drive an hour, a day, or multiple days from a location that is typically dispersed around the city. The concept of operation generally is to take pods of cars and place them in different locations around the city so the user can walk from their home, condominium, or business to get the car, use it and bring it back. In order to be successful, the City would probably have to have some level of involvement because the City has so much of the parking inventory. This is where some of the economics would come into play as the City may need to provide a subsidized rate to nurture the program along as a public benefit. Mr. Middaugh added that this program typically works where there is high density, where there are more individuals that do not own cars (which we have), and where there is good access to a transit system. He also stated that, typically, the zip cars are intended to displace permanent car ownership. Some of the data reviewed preliminarily shows that in places like Philadelphia they have seen a 10-12 car reduction for every zip car inserted into their environment.

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Commissioner Steinberg clarified that the reduction was a result of people transitioning from car ownership and actually giving up their cars, and not just people who didn't have a car and transitioned to the shared car instead of a cab or bicycle.

Commissioner Libbin asked what Philadelphia did with respect to subsidizing. Mr. Middaugh advised he did not have that information yet.

Commissioner Tobin asked if a vendor has contacted the City and how this item is up for discussion today. Commissioner Steinberg explained that almost two years ago, a resident had recommended this item after seeing it in Boston. Commissioner Tobin also asked if it would cost the City any money to consider this and Mr. Middaugh answered that it would only if the City goes to the extent of issuing a Request for Proposal (RFP), which takes staff time and industry time to respond.

Commissioner Libbin expressed that this concept merits some checking out because anything that can be done to get more cars off the road and provide alternate means of transportation is beneficial.

Commissioner Steinberg stated that someone had also contacted him that there is a shared scooter concept, and someone else just handed him some information on bicycles. He asked to keep it open as there may be other means in addition to cars.

Fernando Vazquez, City Engineer, added that the car sharing is a component of the transportation demand strategy, which includes bicycle sharing, car sharing, providing for bikeways and pedestrians, and providing new alternatives for mobility.

Ray Breslin spoke.  
Gabrielle Redfern spoke.

Commissioner Libbin asked what should be the next step. Mr. Middaugh stated that he could come back to committee with the framework of an RFP and scope for the next meeting and come back with some additional research. Commissioner Tobin asked staff to contact another couple of cities to learn how the program is working for them. Commissioner Steinberg asked that the RFP be done with or without a subsidy so there is no assumption and that way the Commission is in a position to make a decision. Commissioner Libbin made a motion for staff to bring back to this committee for further review a draft RFP to include bicycles as well as cars, along with the additional information discussed. Commissioner Wolfson seconded.

**ACTION:** The committee unanimously moved to bring this back to this committee for further review a draft RFP to include bicycles as well as cars along with the additional information discussed.

**2. DISCUSSION REGARDING AN ORDINANCE AMENDING MIAMI BEACH CITY CODE SECTION 2-451 ENTITLED "USE OF POSITION TO SECURE SPECIAL PRIVILEGES" BY PROHIBITING A CITY OFFICER OR EMPLOYEE FROM USING ANY CITY PROPERTY OR RESOURCES WHICH MAY BE WITHIN HIS TRUST TO SECURE SPECIAL PRIVILEGES FOR HIMSELF OR OTHERS OR TO USE HIS OFFICIAL POSITION TO SOLICIT CLIENTS OR CUSTOMERS FOR HIS PRIVATE BUSINESS.**

Jean Olin, Special Counsel City Attorney's Office, recapped that the ordinance included in the agenda package was presented to the City Commission and on first reading, the Commission suggested deleting the sub-section b, which is crossed through, while retaining

sub-section c. The Commission also requested this committee review the remaining language.

After some discussion Commissioner Wolfson made a motion to refer the ordinance back to the City Commission as is presented in the agenda. Commissioner Libbin seconded.

**ACTION:** The committee unanimously moved to refer the ordinance back to the city commission as is presented in the agenda.

### **3. DISCUSSION OF PLACING A TOT LOT ON ONE OF THE BISCAYNE POINT GRASS TRIANGLES.**

Commissioner Wolfson introduced the item explaining that it was brought to his attention that Biscayne Point is a larger residential community here on Miami Beach with 335 homes. He thought that it would be nice to have a tot-lot on one of the grass triangles as part of the CIP, so he asked for this to be discussed to see ballpark price and also to revisit a prior issue, which was a suggestion to put a tot-lot on North Bay Road. He noted that the prices that came through for the triangles were substantially less than the North Bay Road prices.

Rhonda Gracie, Landscape Project Coordinator, explained that the lot on North Bay was significantly larger and involved seawall issues. Commissioner Wolfson stated that when looking at what is proposed for the Biscayne Point triangle, it seems to him that there has to be a way to try to get the other one within a similar budget. He asked if Parks had heard back from the residents in the area of the North Bay Road site as to whether they would be interested. Ms. Gracie explained that she understands that CIP is looking at that location for use as a staging area. Commissioner Wolfson said that he was never advised of this. Ms. Gracie stated that she did put out an RFP and had a proposal for the safety fencing along the seawall to secure that area in order to begin spending the \$50,000 that was directed to be spent on the lot at a previous committee meeting. However, she was then advised that CIP was looking at this for a staging area. Julio Magrisso, Parks and Recreation Assistant Director, stated that he would get a clarification from CIP and report back to the committee.

Mr. Magrisso explained that two potential sites have been reviewed for a tot-lot on Biscayne Point and both are appropriate for a tot-lot. He reviewed the two options presented in the agenda and the menu of what can be done at these sites. The ultimate price will be determined by what is chosen by the neighbors.

Commissioner Tobin asked how tot-lot locations are usually determined in the City. Mr. Magrisso explained the process would include density and where the neighbors want it.

Mayor Bower expressed her concern for safety of the children in these triangles with regards to traffic.

Commissioner Libbin asked if there are adequate dollars in the approved CIP program to accommodate a tot-lot. Mr. Middaugh explained that the Basis of Design Report (BODR) funding that is provided will not be sufficient to cover an additional \$200,000 without reprogramming something else. Commissioner Libbin stated that if the neighbors can build a consensus to reprioritize to do a tot-lot, and it is not too late in terms of the design, then it should be accommodated.

Ms. Gracie explained that the programming for the proposed park on North Bay Road included separate areas for 2-5 year-olds and 5-12 year-olds. As a result, when compared to the proposed tot-lot for Biscayne Point (which is only being designed for 2-5 year-olds)

there is a cost difference. Commissioner Tobin and Commissioner Wolfson asked to do the same on North Bay Road as is proposed for Biscayne Point and bring back some prices.

Commissioner Libbin reiterated that if a neighborhood has already gotten approval for a program and already has funding approved for it and it has not gone too far into the design phase and the residents have built a consensus and would like to swap out one thing for another, not increasing the total budget, then he is all for it. If, however, a neighborhood does not have consensus and/or cannot give up something and it costs additional dollars, then that is an issue.

Commissioner Wolfson stated that sometimes not enough was analyzed and planned for in these neighborhoods to begin with, and you address it by adding something that may be missing. In this case it very well could be the tot-lot and in the case of Sunset Island he believes it is drainage. To make them swap something out he did not believe was fair and just. Commissioner Libbin stated that the bottom line is that we have to find the dollars and we have to find the dollars from a source that can pay for the particular improvement. He continued that when it comes to drainage he believes that the City should sell more bonds to pay for where needed; if that results in freeing up dollars to allow a tot-lot that would be fine. However, if there is not a dedicated source, and the Commission is not going to sell additional bonds for drainage, he does not see where the city would come up with those dollars.

Lucero Levy from the Biscayne Point Homeowners Association spoke.

Commissioner Libbin asked if administration can work with the residents to see what, if any, opportunities there are to move things around that they would have a consensus within the BODR approved funds. Mr. Middaugh stated that it can be done. Commissioner Wolfson made a motion that Parks and Recreation staff reach out to the Biscayne Point residents for input with a direct mailing to see whether or not they want a tot-lot on either one of the triangles, requesting their response; to reach out to the North Bay Road neighborhood with a new proposed budget something more in line with what is proposed for Biscayne Point; and go to the Par 3 area and come up with a similar proposal. Commissioner Tobin wants staff to make sure to let the residents know that the City is looking to do this yet may not be able to do this as the city is looking at budget cuts. Commissioner Libbin requested to add to the motion to explore an add-alternate method. Commissioner Wolfson agreed to amend his motion to state if funding is available. Commissioner Libbin seconded.

**ACTION:** The committee unanimously moved to return to the Neighborhoods/Community Affairs Committee to report on the results of the following:

- have Parks and Recreation staff reach out to the Biscayne Point residents for input with via direct mailing to see whether or not they want a tot-lot on either one of the triangles;
- reach out to the North Bay Road neighborhood with a new proposed budget (something more in line with what is proposed for Biscayne Point);
- go to the Par 3 area and come up with a similar proposal. Commissioner Tobin wants staff makes sure to let the residents know that the City is looking to do this yet may not be able to do this as the City is looking at budget cuts;
- Ensure that residents in these areas are aware that these projects are being explored and are subject to funding availability.

#### 4. DISCUSSION ON PEDICABS.

Hilda M. Fernandez, Assistant City Manager, presented the item and referred to the handout she distributed to the committee at the beginning of the meeting entitled Additional Information - Pedicabs, (Attachment A). She explained the reason this item is for discussion is because in the last few months various emails have been received from multiple individuals regarding pedicabs in the City of Miami Beach. Staff has met and discussed the administrative policy that was enacted in January 2007, which delineated which streets that for-hire pedicabs could not operate in the city. There have been business tax receipt (licenses) issued because the City Code currently authorizes licenses for transportation services. Currently, licenses have been limited to two vehicles per occupational license, only because staff wanted to get further direction from the Commission as to whether it is desired to regulate the pedicabs further than is done now. As an example, Ms. Fernandez noted that pedicabs are not currently prohibited on sidewalks. Ms. Fernandez added that since February 27, 2008, the city has issued fourteen violations.

Shuly Zimmerman spoke.  
Gabrielle Redfern spoke.

Mr. Middaugh explained the history of the discussion regarding pedicabs and the objections that were raised with the Commission at that time, which included the safety and traffic congestion. There was unanimity with the police department, the public works engineering department and the parking department.

Commissioner Tobin asked if insurance is required for a license. Ms. Fernandez informed the committee that a minimum \$1,000,000 policy is required per license.

Sean Hidden spoke.  
David Kelsey spoke.  
Mr. Zabari spoke.

Commissioner Libbin described his experiences dealing with pedicabs while recently riding along with code compliance staff. He stated that he would like to include in the administrative rules a requirement of 100% refund to passengers that are on-board when a driver is pulled over for a violation. He would also like to see a fine schedule that escalates and has a specific dollar amount associated with it, and if you are determined to be a repeat violator then it should go into a license revocation process. He added that the administrative rules need to be corrected to refer to non-motorized "for hire" vehicles by adding "for-hire". Commissioner Libbin also believes pedicabs should not be allowed on Lincoln Road and finally he stated that the sidewalk on the east side of Ocean Drive needs to be included in the definition of Ocean Drive because there is no way for pedicabs to be on the east side without going on Ocean Drive and they are not supposed to be there.

Commissioner Wolfson asked if pedicabs can be prohibited. Mr. Smith responded that under state law they can be restricted and regulated. He added that the administrative policy is consistent with our code and Florida law.

Commissioner Tobin commented that he would like to be sure the insurance is a B-plus rated company or better with a very small deductible, no self insurance. He would also like to close the loophole for people to simply open a new business to avoid repeat violation status, and he would like a limit on the number of pedicabs citywide while still keeping it fair enough that everyone gets a shot at it.

Commissioner Libbin made a motion to draft an ordinance for the next meeting of the city commission that would address the following issues:

- Close loophole to not allow pedicabs on the sidewalk of Ocean Drive or Lincoln Road;
- Create a violation and fine schedule with escalating fines and penalties leading to revocation of the occupational license, and stating that the Special Master may not reduce those fines;
- Create an equitable system for the number of pedicabs in the city with a combination of the number of licenses and/or cabs on a license;
- Revisit the insurance requirements;
- Create something that might address claims that a passenger is non-paying to avoid violation when riding in areas where prohibited;
- Correct the wording in the administrative rules from non-motorized vehicles to reflect the intent of non-motorized "for-hire" vehicles

Commissioner Wolfson suggested amending the motion to include checking that, periodically during the year, the insurance coverage is maintained or to pay in full for the year up front. Commissioner Libbin agreed and Commissioner Wolfson seconded the motion with that amendment.

**ACTION:** The committee unanimously moved to have staff draft an ordinance for the next meeting of the City Commission that will address the following issues:

- Close loophole to not allow pedicabs on the sidewalk of Ocean Drive or Lincoln Road;
- Create a violation and fine schedule with escalating fines and finite penalties leading to revocation of the occupational license, and stating that the Special Master may not reduce those fines;
- Create an equitable system for the number of pedicabs in the City, with a combination of the number of licenses and/or cabs on a license;
- Revisit the insurance requirements;
- Create something that might address claims that a passenger is non-paying to avoid violation when riding in areas where prohibited;
- Correct the wording in the administrative rules from non-motorized vehicles to reflect the intent of non-motorized "for-hire" vehicles;
- Periodic review of insurance during the year, or payment in full for the year, to ensure coverage.

##### **5. DISCUSSION REGARDING THE POSSIBILITY OF EXPANDING BEYOND OCEAN DRIVE AND LINCOLN ROAD, THE AREAS COVERED UNDER THE ARTIST VENDOR ORDINANCE.**

Hilda M. Fernandez, Assistant City Manager, introduced the item for discussion which was requested as a result of the increased number of artist vendors that have set up their tables on Collins Avenue primarily from 15<sup>th</sup> Street to about 16<sup>th</sup> Street and on 16<sup>th</sup> Street from Collins Ct. to Collins Avenue. She reviewed the history of the ordinance regulating artist vending on Lincoln Road and Ocean Drive and reminded the committee that artist vending is the vending of art that is produced by the artist themselves, as the city does not permit commercial vending anywhere in the city. Ms. Fernandez explained the process for being permitted to artist vend on Lincoln Rd. and Ocean Drive that resulted from the ordinance and explained that other than those two locations, artist vending can take place anywhere in the city as long as sufficient pedestrian access is provided, which is a minimum of 5 feet, as long

as no other public safety issues are impacted (such as blocking a fire hydrant or ADA curb cuts, blocking entrance or exit of a building) and as long as the artist is making their own art. Code Compliance has been monitoring the increased artist vending that has occurred beyond the areas requiring permits, and as long as they meet the criteria mentioned previously they are not removed from their locations. Ms. Fernandez stated that the issue that has been referred to this committee for consideration and discussion is what if anything should be done regarding our artist vendor program. She also explained how San Francisco handles its artist vendors and how it differs in that they require all artist vendors be licensed after being screened by an arts commission that verifies that the art they are selling is in fact art that they have produced. San Francisco also has lotteries so licensed artists are not guaranteed a spot.

Commissioner Bower stated that review by a board, such as the Fine Arts Board, could be utilized to review the making of the art by the artist. She added that in San Francisco they require uniformity in the umbrellas, so it looks much better. If the City raises the mark it will not be such an eyesore to the neighborhood.

Commissioner Wolfson asked Ms. Fernandez for clarification on increasing the standard. Ms. Fernandez answered that several problems have been identified in the last several months. There have been concerns by residents of artist vendors being in other areas of the City besides Ocean Drive and Lincoln Road, and complaints that these vendors are selling items such as shoes, t-shirts and wallets, which are clearly not art. One way to address the second issue is to require licenses for all artist vendors who wish to vend in the city, regardless of whether they get a location. If the artist wishes to artist vend, the City could require them to go through a process to prove the art they want to sell, regardless of whether it is on 15<sup>th</sup> Street and Collins on a spot they picked that morning, or a spot they have been granted by the lottery process.

Commissioner Wolfson stated that he believes the review process should be done by a board in the sunshine rather than by staff. He added that he has heard a number of complaints regarding the blocking of the pedestrian flow, especially in the area of 15<sup>th</sup> Street and Ocean Drive.

Commissioner Tobin asked if fees are paid by artist vendors. Ms. Fernandez advised that a \$15 application fee is paid for those applying for the lottery for Lincoln Road and Ocean Drive only in the areas that are regulated.

Commissioner Tobin noted that there is no mention of street performers in this matter. Ms. Fernandez concurred.

Speakers from the public included:

Gustavo Meneses  
Kathleen Wright  
Mark Halpern  
Pietro  
Nora Kreger  
Sherry Roberts  
Rachel  
George Aronsky  
Jeff Beal

During the discussion, Commissioner Tobin asked if covering the costs incurred by the City to regulate can be considered in determining the cost of the licenses. Ms. Fernandez stated that this is a constitutionally protected activity and we only charge what it costs to process

the application. The cost to enforce is considered as part of our code compliance duties no differently than the city enforces any of the other ordinances that exist. Jose Smith, City Attorney, added that although he has not read any cases recently on this issue, typically constitutionally protected activities cannot be the subject of those types of regulatory fees. Commissioner Tobin asked that this be researched.

Commissioner Libbin made a motion to ask administration to create a formal process to verify that artists are selling their own art and license those artists to vend in the City by removing that process from an administrative role to the Fine Arts Board or another board or committee that is best suited. Commissioner Wolfson seconded.

**ACTION:** The committee unanimously moved to create a formal process to verify that artists are selling their own art and the licensing of those artists to vend in the City by removing that process from an administrative role to the Fine Arts Board or another board or committee that is best suited.

## **6. DISCUSSION REGARDING STREET VENDORS.**

Please refer to item #5 above.

**ACTION:** Please refer to item #5 above.

JMG/HMF/rfm

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# MIAMI BEACH

## NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE

MAY 28, 2008

### SIGN-IN SHEET

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NAME	ORGANIZATION / DEPT.	PHONE NO.	FAX / EMAIL
WILBUR JOHNSON	Street Performer <sup>Team</sup> <sub>United</sub>	305-397-8737	team-united@hotmail.com
EUSTAVO MENESES	STREET PERFORMING	(786) 443-1413	Non
ALBERTO MENESES	STREET VENDOR (ARTIST)	(305) 978 8682	Non
Pietro Refinardo	street. artist	786-7151740	
Yona Kreger	resident	305-5319053	
Sherry Roberts	resident	305-205-2030	Sherry Roberts @ SBBREALTY.COM
Vanessa Pacheco	The Ritz-Carlton, South Beach	786-276-4058	Vanessa.pacheco@ritzcarlton.com
MARC HALPERN	ATTY FOR IL VILLAGIO, 1500 OCEAN DRIVE	305 442-8883	mhalpern@hrllaw.com
Sean Hidden	allpro services pedicabs SOUTH FLORIDA INC	561 578 1702	SeanHidden2003@yahoo.com
Jeff Miller	ALLPRO SERVICES (pedicabs) SOUTH FLA	845-796-8334	Jeffrey Miller @ Yahoo



# MIAMI BEACH

## NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE

MAY 28, 2008

### SIGN-IN SHEET

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NAME	ORGANIZATION / DEPT.	PHONE NO.	FAX / EMAIL
D. Kelsley	SMH Hotel + Res. Center		
Tania Valdemoro	Miami Herald	305-376-4564	
Jean Olin	CMB Legal	46488	
Ben Tertz	Sun Post	305 405 7368	
Shirley Sica	CMB Legal	7470	
Brenda Kramer	M.B. Vendor	305 757 6425	
Joe Cook	M.B. Vendor	570 575 2257	
Kathleen Wight	Vendor meeting	305 801-4132	
Randi MaeBride	NSD	7077	