



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Interim City Manager Kathie G. Brooks

DATE: July 18, 2012

SUBJECT: **REPORT OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE MEETING OF June 28, 2012.**

OLD BUSINESS

1. Discussion regarding a proposed ordinance on ethics guidelines for acceptance of gifts, favors, or services by City Employees

ACTION

The Committee recommended that the item be brought back to the Finance and Citywide Projects Committee and then brought to the September 12, 2012 Commission Meeting.

City Attorney Jose Smith presented the item and gave a brief history of the item.

On April 13, 2011, Commissioner Jonah Wolfson referred this matter for discussion to the Finance and Citywide Projects Committee (FCWP). The item referred for discussion attempted to more broadly address the issue of potential amendments to the City Code relating to gifts, favors or services provided to the City's Officers and Employees, below fair market value, from an entity doing business with the City or from a lobbyist. At the September 26, 2011 FCWP Committee meeting City Attorney Jose Smith advised Committee members that the County's Commission on Ethics was reviewing the issue of complimentary ticket policies; the Committee recommended that the matter be monitored and a status report provided to the Committee. The discussion on a ticket distribution policy stemmed from an initial investigation by the Miami-Dade Commission on Ethics and Public Trust (COE) and State Attorney's Office (SAO) in response to a complaint by the New World Symphony (NWS) about the inclusion of a complimentary ticket program as part of the negotiations of proposed revisions to the "public benefit" section of the NWS's lease with the City for the NWS use of public land.

In 1992 the Florida Commission on Ethics issued its Opinion No. 92-33, holding that City of Miami Beach elected officials could legally accept complimentary tickets from the City (obtained via negotiated 'public benefit' clauses in City contracts) to performances taking place at City-owned venues, subject only to the requirement that public disclosure of such ticket receipt be made by the recipient/Officials on quarterly gift disclosure forms. In reliance upon the opinion of the State Ethics Commission, the City of Miami Beach adopted its Resolution No. 93-20694, in which the City Commission formally established

a procedure for the City's distribution of its tickets to performances taking place at City-owned venues, whereby designated municipal officials and deserving members of the community would receive complimentary tickets to such productions. A complimentary ticket program has been negotiated as part of resulting public benefits programs for other venues with management and/or lease agreements, including the Miami City Ballet and Byron Carlyle Theater. Based on this longstanding City policy and State Commission on Ethics opinion, the SAO closed its case on October 18, 2011, with a finding of no wrongdoing, but referred the matter to the COE for further review on the policy elements of the issue. On March 1, 2012, the COE released a DRAFT "Guidelines and recommendations regarding 'public benefit' clauses in certain government contracts. The focus of the guidelines was on complimentary ticket programs in those public benefits clauses, and what they perceived to be "flawed" policies by several municipalities related to such. The City Attorney's Office reviewed the COE's recommended guidelines and on February 28, 2012 submitted a Memorandum of Law to the COE addressing the issues raised by their guidelines, and challenging the authority of the COE to issue such standards/guidelines. It is the opinion of the City Attorney that these are matters of public policy and not subject to review by the COE.

Assistant City Manager Hilda Fernandez presented the item and explained the City's current ticket distribution policy. Discussion ensued. City Attorney Smith added that he felt that only the County Commission or the City Commission can legislate what is and what is not a "public benefit" and was confident in defending the proposed resolution should the City Commission choose to adopt it. Commissioner Jorge Exposito was concerned that the guidelines suggested by the COE and the proposed City resolution contradicted each other. Chairperson Deede Weithorn suggested that the language defining a "public benefit" in the proposed resolution be strengthened. Ms. Fernandez stated that City Officials are entitled to receive two (2) tickets to a single/performance event and that 70% of the remaining tickets are distributed to deserving members of the community, 15% distributed to others such as organizations that assist in promoting and marketing the City through a municipal marketing agreement with the City or to persons and/or entities that have made special contributions to the community; and 15% distributed to employees through an Employee Recognition Program. Ms. Fernandez also added that on an annual basis, an advisory committee would review and recommend a list of deserving organizations and/or groups eligible to receive tickets and that the list shall be reported to the City Commission. Chairperson Weithorn expressed concern about tickets being unused and asked what happened to tickets that were not picked up. Ms. Fernandez stated that tickets which are not picked up would be given to employees which are part of the Employee Recognition Program. City Attorney Smith also suggested that Commissioners make note of the how tickets were used using the public purpose categories identified in an addendum by the COE.

Chairperson Weithorn opened the floor to public comment. Miami Beach Resident Frank Del Vecchio suggested reducing the administrative burden by following the City's 1993 resolution, keeping the disclosure requirements but removing the distribution policy and adopting guidelines which reference the guidelines of the COE. City Attorney Smith stated that there were other reasons that the 1993 resolution needed to be updated and that he would go over them with Mr. Del Vecchio. City Manager Jorge Gonzalez asked what the COE expected the City to do. City Attorney Smith stated that the COE said that if the City does not follow their guidelines the City could be subject to an ethics complaint. The Committee recommended that the item be brought back to the Finance and Citywide Projects Committee and then brought to the September 12, 2012 Commission Meeting.

NEW BUSINESS

2. Status Report from the engineering company assigned to do the City's Citywide Stormwater Master Plan

ACTION

The Committee recommended that the item be brought back to the August Finance & Citywide Projects Committee meeting and that a special meeting be set up for the Public Works Director and the public to discuss technical issues with the Stormwater Master Plan.

Public Works Director Fred Beckmann presented the item and went on to introduce Jason Johnson of Camp Dresser & McKee (CDM), a firm that has provided stormwater master planning for a number of cities including New Orleans, Venice and Italy.

The City has recently completed the final draft of a new Stormwater Management Master Plan (SWMMP) that evaluates the existing system and recommends sustainable improvements to provide an appropriate level of service (LOS). The previous stormwater master plan, prepared in 1997, prioritized drainage basins and provided hydrologic and water quality calculations for the priority basins. The new SWMMP project has created a comprehensive, citywide model, using more powerful software that evaluates the existing system, simulates inter-basin flows, and identifies those basins that are experiencing reduced LOS. This project has developed a computerized hydraulic model of the Flamingo/Lummas and West Avenue neighborhoods. This task analyzed the existing system in the referenced neighborhoods and identified system deficiencies as well as the improvements required to meet LOS. The Stormwater Master Plan also accounts for climate change and sea level rise. The consultant made use of a variety of published resources and analyzed historic sea level data. As a result, for all new projects, a new sea level elevation of 0.50 feet NAVD88 is now being used for stormwater design purposes and an elevation of 3.2 feet NAVD88 as a minimum for seawall elevations. The previous designed criteria were 0.04 feet NAVD88 for sea level elevation and no minimum seawall elevation.

The model has also been used to provide concurrency reviews of recently bid neighborhood improvements projects, which has prompted changes to the stormwater designs of the neighborhoods due to the revised sea level elevation and the inter-basin flows. The neighborhoods reviewed to date are: Biscayne Point; Central Bayshore; Lower North Bay Road; Lake Pancoast; Sunset Islands I & II. In addition, the new criteria are being used in the preparation of the following projects: Star Island; Palm and Hibiscus Islands; Sunset Islands III & IV; Sunset Harbor; Flamingo 6th Street; 16th Street; La Gorce. Further, the SWMMP has developed an order of magnitude cost estimates for the improvements required that total almost \$200 million in needed infrastructure improvements. These improvements will need to be made over an estimated span of 25 years, contingent upon the rate of sea level rise.

Mr. Johnson presented the report, which is an update and expansion of the SWMMP. The SWMMP is intended to be a guide for improving the City's stormwater management system performance for the next 50 years, with considerations to potential sea level rise over this time period. Chairperson Deede Weithorn asked where the outflows are of the pump stations that are being installed as part of the FDOT project on Alton Road and if the City needed to get permission from the buildings along Alton Road to install the outflows. Mr. Beckmann stated that the outflows go to Biscayne Bay and that the pump

stations are being installed under the city right-of-ways. Commissioner Jorge Exposito asked why the recommendation by Coastal Systems International Inc. (CSI) regarding the sea level rise was not utilized. Mr. Johnson explained that CSI provided a great deal of information including the latest yearly mean high water elevation which was based off a document developed by the National Oceanic and Atmospheric Administration. However sea levels are calculated not over one year but over an epoch; and an epoch is based on 19 years of information. Mr. Johnson went on to explain that CSI took that information and made projections based off of Virginia Key. Mr. Johnson then stated that CDM used a combination of the information provided by CSI and the epoch information to establish their recommendations. Commissioner Exposito expressed concern that the recommendations by CDM were not conservative enough in light of global warming and rising tides. Mr. Johnson stated that there were three options; one was to raise the entire elevation of Miami Beach; two, "give back" the city or retreat from part of the city, more specifically, everything west of Washington Avenue would be "given back"; or three find the appropriate level of solutions and implement them as more definitive information regarding sea level rise becomes available. Mr. Johnson went on to say that CDM's solutions have been recommended in such a manner that allows for the City to make the appropriate level of capital investment over an appropriate period of time based on the life span of the particular components. Conversation ensued. Chairperson Weithorn opened the floor to public comment which included concern about the rising sea levels and whether the proposed minimum seawall elevation is sufficient. The Committee recommended that the item be brought back to the August Finance and Citywide Projects Committee meeting and that a special meeting be set up for the Public Works Director and the public to discuss technical issues with the Stormwater Master Plan.

3. Approval of scope of services and criteria for outsourcing of Lincoln Road Mall Maintenance Services RFP

ACTION

The Committee recommended that in concept the item be moved and brought to the September 12, 2012 Commission Meeting subject to Mr. Beckmann meeting with Chairperson Weithorn and Commissioner Exposito to further refine the Request for Proposal.

Chairperson Deede Weithorn asked that Public Works Director Fred Beckmann meet with her to address some of the language in the Request for Proposal (RFP). Commissioner Jorge Exposito also asked that Mr. Beckmann meet with him to discuss the RFP. Discussion ensued. The Committee recommended that in concept the item be moved and brought to the September 12, 2012 Commission Meeting subject to Mr. Beckmann meeting with Chairperson Weithorn and Commissioner Exposito to further refine the Request for Proposal.

4. Discussion regarding development of criteria and procedures for use of the Commission Chamber

ACTION

Item Deferred

5. Discussion regarding the appropriateness of granting a perpetual sub-surface easement to Collins 3300, LLC and 3420 Collins Avenue, LLC, for a proposed sub-surface parking garage

ACTION

The Committee recommended using fee simple methodology for valuation of the easements with flexibility to have discounts when appropriate based on the recommendations from the City Appraiser.

Assistant City Manager Jorge Gomez presented the item.

At the June 6, 2012 meeting, the City Commission referred a proposal for a subsurface perpetual easement underneath 34th Street to the Land Use and Development Committee (LUDC) and the Finance and Citywide Projects Committee (FCWPC) for discussion. On a similar track, a proposed revocable permit for an aerial bridge across Ocean Court was referred to the LUDC. However the City Administration believes that policy direction should be provided on the precedent created by both requested easements to use the air rights over and subsurface rights underneath public property.

At its June 13, 2012 meeting, the LUDC discussed the policy question regarding the proper method for effectuating these requests, whether by revocable permit or easement or other instrument, and possibly including financial remuneration to the City. The Committee discussed setting the required public hearings and sending the issue of appraisal and methodology to the FCWPC. The Committee then discussed thresholds for future approvals, expressing that large projects should probably have a public hearing, but smaller ones might not need it. Finally, the Committee voted 3-0 in favor of advancing both of these projects.

The Waronker and Rosen firm is preparing the appraisals of the proposed easements and estimates of their values which were due to the City on July 6, 2012. Lee Waronker of Waronker and Rosen stated that the City of Miami handles requests for public easements using a Floor Area Ratio (FAR) method but suggested that a fee simple methodology be used in this case and that the City of Miami Beach would hold an easement on the land up to a certain height of the air rights. Mr. Waronker then stated that if this is done, the City should be concerned with the cost of buying the rights back, which could cost one thousand times more than the cost they were sold for. He also added that at this point the firm has approached it as estimating the value of fee simple interest, which would include the temporary construction easement and that, would be the compensation to the City. Chairperson Deede Weithorn stated that the City's valuation techniques may have some differences based on criteria, such as air rights over an alley versus air rights over a thoroughfare. Chairperson Weithorn then asked when an appraisal is being done using fee simple methodology if the use of the area mattered. Mr. Waronker stated that it did matter and added that since the City is the property owner, it should set the value of the property and not use a formula to determine it. Commissioner Michael Gongora asked what would happen if the current owner transferred the property to a new owner. Public Works Director Fred Beckmann stated that it would depend on how the easement is drafted and in most instances it is transferrable. Chairperson Weithorn opened the floor to public comment. Michael Zurh, representing Ari Pearl, stated he was in favor of using the fee simple methodology. Neisen Kasdin, representing the FAENA group, stated that he would expect that a discount would be applied to the valuation based upon the restricted area and restricted use. Conversation ensued. Keith Kulynych of Revuelta Architecture International presented an overview of the Saxony project. Resident Frank Del Vecchio asked if accommodations or a provision be made for extraordinary conditions, in terms of the

rising sea level and the citywide Stormwater Master Plan, for the City that would ensure that the public interest would be served. Mr. Kasdin stated that the engineers would look at the range of possibilities and possible needs of the City and account for them by giving appropriate rights to the City. The Committee recommended using fee simple methodology for valuation of the easements with flexibility to have discounts when appropriate based on the recommendations from the City Appraiser.

6. Discussion regarding CDBG funding for fixing storefront

ACTION

The Committee recommended that a start date of August 31, 2012 for the acceptance of applications be established.

Economic Development Division Director Kevin Crowder presented the item.

The program, as approved by the Mayor and City Commission, provides funding in the amount of \$100,000 for a storefront improvement program in the target area of Collins Avenue between 73rd Street and 75th Street. Eligible applicants will be able to apply for the funding for this program until December 31, 2012 or until the funds are exhausted, whichever occurs first. Funding may be provided to building owners or tenants within the target area up to a maximum of \$30,000 per building or business. Applicants are eligible for up to \$10,000 with no match requirement. For any amount between \$10,001 and \$30,000, applicants must provide a match equal to or greater than fifty percent of the amount awarded through this program. The match must be spent on eligible activities in the Façade Improvement Program (FIP). Businesses that have been in operation for less than one year must provide a 50% match to all funds that are applied for, including funding below \$10,000. Eligible properties are commercial and mixed commercial/residential properties with commercial facades visible from the street. Program funding is provided in the form of a loan which is forgiven over a five year period with no payments required, provided the property continues to be maintained in accordance with the program requirements.

The approval also included \$20,000 for program management. The Administration has contacted outside organizations to inquire about their interest in managing this program on behalf of the City, but has not received a positive response, likely due to the low funding level and the amount of work that may be involved. Therefore, the Administration has developed an in-house process for management of the Façade Improvement Program, and will determine whether or not to hire a qualified independent contractor as necessary for those tasks that City staff is unable to perform, if any. A Memorandum of Understanding (MOU) is being developed between Economic Development, Planning, and Real Estate, Housing, and Community Development (REHCD), which is similar to what REHCD, has done with Community Services and with Code Enforcement in the past, which clearly establishes the parameters of the program and how it will be managed. Staff from Economic Development and Planning will work closely with the applicant through the entire project, and will engage a qualified independent contractor with experience in federal funding project management for assistance with the program if necessary, depending on the workload.

During the week of June 25, 2012, Economic Development and Planning staff visited each business in the target area with an announcement of the program, as well as a preliminary application, and explained the program to each business owner or scheduled a follow-up visit to do so. Additionally, staff reached out to each property owner either through telephone or mail to inform them of the program.

Commissioner Michael Gongora asked who would decide whether or not a business receives funding. Mr. Crowder stated that funding would be awarded on a first come first serve basis, funds would run through September 30, 2013 and that a deadline of December 31, 2012 was established for applications. Mr. Crowder added that three property owners are interested and six storefronts are interested, and that he feels that there will be more than enough interest in the program to exhaust the funds. Commissioner Gongora was concerned about the fairness of the funds being awarded on a first come first serve basis. Chairperson Deede Weithorn suggested that a date be established for the acceptance of applications and that funds then be awarded on a first come first serve basis. The Committee recommended that a start date of August 31, 2012 for the acceptance of applications be established.

7. Discussion regarding advertising on DecoBike stations

ACTION

The Committee recommended moving forward with option J and bringing the item to the full Commission.

Chief Financial Officer Patricia Walker presented the item.

The request by Deco Bike to allow advertising on the kiosks was previously discussed at the April 19, 2012 Finance and Citywide Projects Committee meeting Ms. Walker presented Option J, which provided a return to the City and a return of capital along with a modest profit to DecoBike over a ten year period. After reviewing Option J the Committee asked that further analysis be done and suggested limiting the rate increase to \$6 per hour; adjusting the City's revenue sharing; the 3% profit be subject to ordinary, normal, and customary charges and limit discretionary items; and that the Legal Department review the legal provisions. The objective of the contract modification is long term fiscal sustainability for this extremely successful public amenity. The City's objective is to provide a public amenity and recover the value of revenue lost from the parking spaces where the DecoBike stations are located through the City's revenue share of the contract.

The amendment to the advertising ordinance discussed at the June 6, 2012 City Commission Meeting, where the Commission requested that the item be brought back to Finance and Citywide Projects Committee Meeting being held on June 28, 2012 to discuss additional revenue alternatives.

Ms. Walker at the direction of the Commission presented Options K, L, and M to the Finance and Citywide Committee, where Option K reflects going to the \$6 Hour rate, Option L eliminates kiosk advertising and Option M eliminates the City Revenue Share and kiosk advertising. Chairperson Deede Weithorn stated that the DecoBike Bike Share Program was being implemented in other cities and asked what the rates would be in those cities. Mr. Bonifacio Diaz, Chief Operating Officer DecoBike, LLC., stated that the rates would be the same as the rates in Miami Beach. Chairperson Weithorn was concerned that if the rates in Miami Beach were higher that bikes would be rented in the surrounding cities rather than in Miami Beach. Commissioner Jorge Exposito asked if the other cities were allowing advertising. Mr. Diaz stated that advertising has been allowed. The Committee recommended moving forward with option J which was presented at the FCWP on April 19, 2012 meeting and bringing the item to the full Commission.