



# MIAMIBEACH

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

## COMMITTEE MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: Interim City Manager Kathie G. Brooks 

DATE: July 26, 2012

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for July 26, 2012, at 3:00 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

### OLD BUSINESS

1. **Discussion regarding a proposed ordinance on ethics guidelines for acceptance of gifts, favors, or services by City Employees** (*April 13, 2011 Commission Item C4I*) (9)  
Status update

Jose Smith – City Attorney  
Max Sklar – Acting Assistant City Manager

### NEW BUSINESS

2. **Discussion regarding development of criteria and procedures for use of the Commission Chamber** (*April 11, 2012 Commission Item R9E*) (57)  
Jorge Gomez – Assistant City Manager
3. **Discussion regarding a proposed municipal marketing program for South Pointe Park, and an update on other potential municipal marketing partnerships** (*June 6, 2012 Commission Item C4I*) (62)

Max Sklar – Acting Assistant City Manager

**Finance and Citywide Projects Committee Meetings for 2012:**  
**July 30, 2012 (Joint Meeting w/Neighborhood/Community Affairs Committee)**  
**August 22, 2012**  
**September 20, 2012**  
**November 29, 2012**  
**December 20, 2012**

**Committee Members**

Deede Weithorn  
Jorge Exposito  
Michael Gongora  
Jerry Libbin (Alternate)

KGB/PDW/rs/th

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Cc. Mayor and Members of the City Commission  
Management Team

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## COMMITTEE MEMORANDUM

TO: All Members, Finance and Citywide Projects Committee

FROM: Jose Smith, City Attorney

DATE: July 26, 2012

SUBJECT: **Status Report: Discussion regarding a proposed ordinance on ethics guidelines for acceptance of gifts, favors, or services by City Employees**

### **Proposed Ticket Distribution Policy**

On April 13, 2011, Commissioner Jonah Wolfson referred a matter for discussion to the Finance and Citywide Projects Committee (FCWPC) entitled: *Discussion regarding a proposed ordinance on ethics guidelines for acceptance of gifts, favors, or services by City Employees*. Please see attached (**Attachment D**) referral and correspondence (excluding referenced attachments).

### **BACKGROUND:**

The matter referred by Commissioner Wolfson was heard at the September 26, 2011, FCWPC meeting. The item referred for discussion attempted to more broadly address the issue of potential amendments to 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 that time, the City Attorney 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. Please see attached Afteraction Report for the September 26, 2011 FCWPC meeting (**Attachment E**).

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 benefits" section of the NWS's lease with the City for the NWS use of public land. The proposed inclusion of the complimentary ticket program was in keeping with established, negotiated public benefits in other City agreements, subsequent to both a State Commission on Ethics opinion, as well as a City resolution on the concept.

More specifically, 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 (see **Attachment F, Opinion No. 92-33**). 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 (see **Attachment G, COMB Reso. No. 93-20694**). 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, Jackie Gleason Theater and Byron Carlyle Theater.

Based on this longstanding City policy (approved as a resolution by the City Commission) and State Commission on Ethics opinion, upon which the City relied in negotiating complimentary ticket programs as part of public benefits clauses, 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 relating to such. Cities that were researched to develop these recommendations included the City of Miami Beach, Miami, Homestead, Coral Gables and Hialeah. While acknowledging the City of Miami Beach’s prior ethics opinion on the matter, and the City of Miami Beach Resolution that has existed since 1993, the COE raised concerns with the methodology of distribution, in particular when elected officials re-allocate tickets provided to them through complimentary ticket programs in public benefits clauses, as this may appear to serve a personal or political agenda, rather than meet the intended purpose. The recommendations did acknowledge, as well, that elected officials and other City staff may need to attend events in their official capacity. On March 27, 2012, the COE issued an “Addendum” to the guidelines that specifically address the latter (see **Attachment H, COE Draft Guidelines and Addendum**).

The City Attorney’s Office reviewed the COE’s recommended guidelines and on February 28, 2012, I 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 my opinion that these are matters of public policy and not subject to review by the COE (**Attachment I**).

### **CITY ATTORNEY’S OFFICE PROPOSED RESOLUTION**

In response to the COE’s recommended guidelines, the City Attorney’s Office developed a proposed resolution establishing a policy for the distribution of tickets received pursuant to a complimentary ticket program in a negotiated public benefit clause. Please refer to the attached “DRAFT” resolution presented for the Committees review and discussion. In summary, the key recommended policy points are:

- Delineates the applicability of the policy (when it would apply);
- Establishes what “public purpose” is served by the distribution of tickets;
- Recommends a process for the distribution of tickets received by the City; and
- Delineates disclosure requirements (by the City and by the recipient).

Pursuant to this policy, elected officials and certain City Staff would receive tickets on a limited basis (e.g. only for opening night events), with the balance of the tickets distributed to “deserving organizations or groups” that are identified, through a Committee, once a year as being eligible to receive tickets for their participants. In addition, the proposed resolution provides for a process for tickets to also be distributed to other parties by the City in other circumstances (e.g. visiting dignitaries, to meet contractual obligations relating to a municipal marketing program, to recognize employees).

### **ADMINISTRATION REVIEW**

The Administration was asked to review the attached DRAFT to ensure that the procedures for distribution included in the proposed resolution could be implemented without any administrative difficulty. Many of the elements of the administration of the ticket distribution process being proposed are already in place today.

### **FINANCE AND CITYWIDE PROJECTS COMMITTEE – June 28, 2012**

The Finance and Citywide Projects Committee (FCWPC) discussed this item at its June 28, 2012 meeting. The Administration explained that the draft resolution and accompanying guidelines entitle City Officials 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. Furthermore, 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. City Officials who do not use their tickets must return their tickets and tickets will subsequently be offered following the aforementioned procedure.

The Committee recommended that the item be brought back to the Finance and Citywide Projects Committee for further discussion and then brought to the September 12, 2012 Commission Meeting. The Committee expressed concern that unused tickets returned at the last minute would go unused and requested more flexibility to distribute those to employees in that situation.

The attached Resolution has been amended to reflect a reference to **Exhibit A** for the full listing of allowable public purposes and to reflect the reference to administrative guidelines for the distribution of tickets. This also reflects language in disclosures referencing the responsibility of the receiving party to know which public purpose they will use the tickets under. This also includes **Exhibit B** which is an addendum to the guidelines and recommendations regarding "public benefit" clauses in certain government contracts: Public Purpose.

The Administrative Guidelines for Distribution are also now attached as a stand-alone document (**Exhibit C**), as requested at committee, and further amended to include the recommendations of the Committee in terms of flexibility.

#### ATTACHMENTS (A-I)

F:\cmgr\\$\ALL\Max Sklar\Admin\FCWPC memo - Ticket policy.doc

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, REPEALING CITY OF MIAMI BEACH RESOLUTION NO. 93-20694 WHICH ESTABLISHED THE CITY'S COMPLIMENTARY TICKET POLICY, AND SUBSTITUTING THEREFOR A COMPREHENSIVE POLICY STATEMENT OF THE CITY OF MIAMI BEACH REGARDING ITS USE AND DISTRIBUTION OF CITY TICKETS TO EVENTS AND PRODUCTIONS OCCURRING AT CITY-OWNED VENUES AND/OR CITY-SPONSORED EVENTS.**

**WHEREAS**, 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; and

**WHEREAS**, in reliance upon this 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; and

**WHEREAS**, as a result of a 2011 joint investigation by the Miami-Dade State Attorney's Office and the Miami-Dade County Commission on Ethics ("COE") of the City of Miami Beach's negotiations with the New World Symphony (finding no criminal wrongdoing), the COE scrutinized the above-referenced ticket distribution process of the City of Miami Beach as well as that of Coral Gables, Hialeah, Homestead, Miami and Miami-Dade County; and

**WHEREAS**, the COE consequently issued its "Guidelines and Recommendations regarding 'public benefit' clauses in certain government contracts," which although not legally binding upon the City of Miami Beach's ticket policy determination, have been stated by the COE as a suggested method of "ensuring conformance" with applicable ethics rules; and

**WHEREAS**, pursuant to the City of Miami Beach's continued commitment as a leader in government ethics, and in recognition of the requirement that municipal resources be devoted primarily to public purposes as determined by the Mayor and City Commission, the City has conducted public meetings for the purpose of evaluating its complimentary ticket policy with the COE's subject Recommendations; and

**WHEREAS**, having assessed citizen comment and public need, the Mayor and City Commission determine that the continued distribution of complimentary tickets to disadvantaged youths, senior citizens, non-profit organizations and other individuals who may not have the financial ability to purchase tickets to cultural events serves a public purpose, that public purpose is further served via the distribution of tickets to exemplary City employees and other notable members of the community, and that the ability of designated City officials to attend such cultural events as official City representatives for the purpose of monitoring and evaluating such events and the quality of performances therein, and/or monitoring and evaluating the value of City-sponsored events and their compliance with City policies, agreements and other requirements further serves a public purpose; and

**WHEREAS**, the City thus hereby establishes the following comprehensive municipal policy regarding its use and distribution of City tickets to events and productions occurring at City-owned venues and/or sponsored by the City, with said comprehensive policy serving as substitution for, and in repeal of, City of Miami Beach Resolution No. 93-20694.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH:**

**SECTION I. APPLICABILITY OF POLICY**

In order to establish a fair, equitable and transparent process for the distribution of its complimentary tickets, the City of Miami Beach thus hereby establishes this Comprehensive Complimentary Ticket Policy. This policy shall apply to tickets or passes for admission to a facility, show, event or performance for an entertainment, recreational, amusement or similar purpose, which are provided to the City of Miami Beach: (i) pursuant to the terms of a contract/agreement/lease for the use of public property within the City's boundaries; (ii) because the City of Miami Beach controls the event; (iii) that is purchased by the City of Miami Beach at fair market value; (iv) or otherwise received from an outside source and which are provided without charge by the City of Miami Beach to personnel as designated herein. Tickets or passes purchased at full face value or fair market value of the ticket, as appropriate, by the official using the tickets are not subject to this Policy.

**SECTION II. PUBLIC PURPOSE**

The distribution of any ticket by the City of Miami Beach shall promote a public purpose, which purpose shall include those delineated in Exhibit "A" to this resolution.<sup>1</sup>

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<sup>1</sup> The County Ethics Commission has issued an "Addendum" to its "Guidelines and Recommendations," outlining specific 'suggested permissible public purposes' for use of public benefits, which grounds are adopted and incorporated herein by reference. (See Exhibit "B," attached hereto.)

### **SECTION III. DISTRIBUTION OF TICKETS**

#### **A. General Provisions.**

Distribution of tickets shall be in accordance with the public purposes stated in Section II above, and be subject to the following:

1. Such tickets shall not be earmarked by the original donor for use by any particular recipient of tickets. Notwithstanding, any tickets provided to the City pursuant to a negotiated complimentary ticket program in a public benefits clause which delineates a specific deserving organization or group as the recipient of such tickets in the lease, contract or agreement with the City, may be provided by the City to that specifically identified deserving organization or group.
2. The City of Miami Beach determines, in its sole discretion, which individual and/or entity shall receive the tickets, in accordance with the Distribution Process set forth below.
3. No person receiving tickets pursuant to this Policy shall sell or otherwise transfer any ticket, or receive any consideration for the value of any ticket. Nor may such ticket recipient use any ticket for political fundraising purposes. Notwithstanding the preceding, the City may sell any tickets received pursuant to this Policy (if resale by the City is permitted by the donating entity) if the proceeds of such sale are intended for donation to programs and services rendered by community and other non-profit resources for the benefit of the community, including artistic and cultural organizations and institutions.
4. If a ticket recipient cannot use any ticket, that person must notify the City Manager's Office promptly and return the ticket to the City Manager's Office. Failure to do so will result in that recipient being ineligible to receive future tickets. Such returned tickets shall be distributed by the City Manager's Office to any of the persons/groups within the distribution categories set forth immediately below in III B.
5. All recipients of tickets must sign a form acknowledging the terms and conditions of the City of Miami Beach's Comprehensive Complimentary Ticket Policy, as reflected in this Resolution.

#### **B. Distribution Process.**

Tickets received by the City through a complimentary ticket program, or otherwise provided to the City for distribution, shall be distributed in accordance with established Administrative Guidelines set forth herein within the attached Exhibit "C," as may be amended by City Administration from time to time (amendments to be publicly noticed via "Letter to Commission" which LTC shall be posted on the City's website). Such guidelines shall serve to ensure that the tickets distributed promote an established public purpose.

### **SECTION IV. DISCLOSURE REQUIREMENTS**

#### **A. City Disclosure.**

The City Manager's Office shall maintain a log detailing the distribution of City tickets

pursuant to this Policy. The log detailing the distribution of tickets shall be posted by the City Manager's Office, no less than once every quarter, on the City's website by no later than the 15<sup>th</sup> day of the month following such quarter. Such posting shall include the following information:

1. The name of the person receiving the tickets or passes, except that if the tickets or passes are distributed to a deserving organization and/or group, only the name, address and description of the deserving organization and/or group, and the number of tickets or passes provided to the deserving organization and/or group, may be posted in lieu of the names of individuals from the deserving organization and/or group that received the tickets;
2. A description of the event;
3. The date of the event;
4. The face value of the tickets provided; and
5. The number of tickets provided.

B. Recipient Disclosure.

1. City personnel receiving complimentary tickets shall disclose their receipt of tickets via the timely filing of gift disclosure forms, in accordance with State Commission on Ethics Opinion No. 92-33 (forms available through City Clerk's Office). City personnel shall be responsible for ensuring that the tickets received promote a public purpose, consistent with the City of Miami Beach's Complimentary Ticket Policy.
2. Tickets which are provided free of charge may have tax consequences for the recipient and may be reportable and taxable as regular income or as taxable fringe benefits to a recipient. All recipients of tickets must consult with their own tax advisers to determine the reporting requirements for income tax purposes, as well as the tax consequences of any tickets received.

**SECTION V. EXCLUSIVITY OF CITY'S COMPREHENSIVE POLICY**

A. The matters set forth in this Resolution shall serve as the City's Comprehensive Complimentary Ticket Policy, and it shall be referenced in all future "public benefits" clauses of all City contracts, and shall be further posted prominently on the City's website.

B. City of Miami Beach Resolution No. 93-20694, constituting the City's former policy governing complimentary tickets, is accordingly hereby repealed in its entirety.

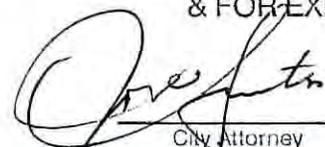
**PASSED AND ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2012.**

**ATTEST:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor Matti Herrera Bower

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

7/23/12  
\_\_\_\_\_  
Date

## EXHIBIT "A"

### ACCEPTABLE 'PUBLIC PURPOSE' USES (BY CATEGORY) OF CMB TICKETS

(PER CMB RESO NO. \_\_\_\_\_, II.)

1. Economic development of the City, including the promotion/exposure to, marketing and awareness of tourism, nightlife, recreational, educational, and cultural facilities or attractions on City property or awareness of the City as a regional destination, economic asset or business opportunity;
2. Promoting or showing City appreciation for programs and services rendered by community and other non profit resources for the benefit of the community, including artistic and cultural organizations and institutions;
3. Advertisement and promotion of City-controlled or City-sponsored events, activities, or programs, public facilities and resources;
4. Monitoring and evaluation of City venues and the quality of performances therein (in particular, attendance at opening day events at City-owned venues), and/or monitoring and evaluation of the value of City-sponsored events and their compliance with City policies, agreements and other requirements;
5. Information gathering and education regarding matters of local, regional and state wide concern that affect the City including enhancing intergovernmental relations through attendance at events with or by officials from other jurisdictions;
6. Promoting, encouraging and rewarding educational and athletic achievements by students and officials of local and regional educational institutions;
7. Promotion of City recognition, visibility and or profile on a local, state, national or worldwide scale, including exchange programs with national and foreign officials and dignitaries, and as part of any marketing promotions with municipal marketing partners, or as may be required by contractual obligations with municipal marketing partners;
8. Attracting and retaining highly qualified employees in City service, including special recognition or reward of meritorious service by a City employee;
9. Performance of a ceremonial or official function on behalf of the City, not otherwise set forth above, including but not limited to the following:
  - a. Hosting leaders of community service organizations (organizations that serve the disadvantaged, senior citizens, disabled, ill, children, etc.), dignitaries from municipal, county, state and federal governmental entities; dignitaries and business leaders from other countries; youth groups, student leaders, and recipients of awards; and/or elderly, disabled or low-income City residents;

- b. Hosting constituents as (a) a designated official appointed by the City Commission, or (b) upon invitation of the event(s) organizers or some other person or entity authorized to extend such invitation;
- c. Hosting groups of employees being specifically recognized for job-related achievements;
- d. Being officially recognized by sponsors of event in a printed program or other public announcement;
- e. Performance of one of the following functions in one's official capacity as (a) a designated official appointed by the City Commission or (b) an individual invited by the venue:
  - 1. Introducing organizers, participants or dignitaries;
  - 2. Recognizing the contributions of organizers or staff;
  - 3. Receiving or giving an award or other special recognition;
  - 4. Giving a speech;
  - 5. Greeting and welcoming attendees;
  - 6. Ribbon cutting;
  - 7. Leading the pledge of allegiance or national anthem;
  - 8. Acting as a Goodwill Ambassador, as designated by the City Commission;
  - 9. Assess facility needs, proposed changes and constituent concerns in response to a documented complaint specifically addressed to the attendee.

**EXHIBIT "B"**

**MIAMI-DADE COUNTY COMMISSION ON ETHICS AND PUBLIC TRUST:**  
**ADDENDUM TO GUIDELINES AND RECOMMENDATIONS**  
**REGARDING "PUBLIC BENEFIT" CLAUSES IN CERTAIN**  
**GOVERNMENT CONTRACTS: PUBLIC PURPOSE**  
(PER CMB RESO NO. \_\_\_\_\_, II (f.n.#1)).

(see attached)

ADDENDUM TO GUIDELINES AND RECOMMENDATIONS REGARDING  
“PUBLIC BENEFIT” CLAUSES IN CERTAIN GOVERNMENT CONTRACTS:  
PUBLIC PURPOSE

It is the intent of these guidelines and recommendations concerning the distribution of tickets and other public benefits, obtained by governmental entities through contractual negotiation or other exercise of public authority, to assure that these benefits, which are public property, shall be used and distributed for a public purpose. The overriding principle behind these suggestions is to curtail the private use of these public benefits by government officials and employees for their own personal benefit, directly or indirectly. In addition, these guidelines are established to provide guidance to such officials and their employees, as well as their advisors, in order to avoid possible future misuse of such public resources. It is hoped that this will also increase public confidence in the integrity of government in its use of such resources, as well as help to remove the perception that elected and other government officials distribute these public benefits with unfettered discretion and for purposes inconsistent with the proper disposition of public property. Further, it is the intent of these guidelines and recommendations to make clear that public benefits may be utilized under certain permissible circumstances by elected and other government officials and employees where there is a genuine, legitimate and articulable public purpose involved. To that end, we have set forth below a list of suggested permissible public purposes for government officials, staff and employees to consider when it is appropriate to use, for themselves or others, public benefits contemplated by these guidelines. The foregoing list is not exhaustive. The Commission on Ethics is always available to provide an opinion to an inquiring public official or employee regarding whether any particular use or method of distribution is ethically acceptable.

**A. PERMISSIBLE PUBLIC PURPOSES FOR OFFICIALS, STAFF AND EMPLOYEES**

1. Host business leaders to promote economic development;
2. Host leaders of community service organizations (e.g. organizations that serve the disadvantaged, senior citizens, disabled, ill, children, etc.);
3. Host dignitaries from municipal, state and federal governmental entities;
4. Host dignitaries and business leaders from other countries;
5. Host youth groups, student leaders and recipients of awards;
6. Host elderly Miami-Dade County residents;
7. Host disabled residents;
8. Host low-income residents;
9. Host constituents as: (a) a designated official by the Commission, Chairperson, Mayor or some other person delegated that responsibility, or (b) upon invitation of the event organizer(s) or a person or entity authorized to extend such invitation;
10. Host group(s) of governmental employees being specially recognized for job-related achievements;
11. Being officially recognized by the sponsors of event in a printed program or other public announcement.
12. Performing one of the following functions in one's official capacity as: (a) a designated official by the Commission, Chairperson, Mayor or other person delegated that responsibility, or (b) an individual invited by the venue

- a. Introducing organizers, participants, or dignitaries;
- b. Recognizing the contributions of the organizers or staff;
- c. Receiving or giving an award or other special recognition;
- d. Giving a speech;
- e. Greeting and welcoming attendees;
- f. Ribbon cutting;
- g. Leading the pledge of allegiance or national anthem;
- h. Acting as a goodwill ambassador designated by the Commission/Council, Chairperson, Mayor or other person qualified to delegate that responsibility;
- i. Assess facility needs, proposed changes and constituent concerns in response to a documented complaint specifically addressed to the attendee;
- j. Attending the opening day game or performance of a County/City-owned facility.

**B. OTHER PERMISSIBLE USES OF PUBLIC BENEFITS**

- 1. Distribution to residents on a publicly-advertised first-come, first-served basis or by lottery;
- 2. Sell to members of the public, if permissible, with the proceeds going to the general fund or a specially-designated public purpose;
- 3. Return to donor in exchange for monetary value, with the approval of the governing body of the County/City;
- 4. Allocations to:
  - a. Non-profit agencies for distribution to individuals served by the organizations;
  - b. Schools/students or youth athletic leagues;
  - c. Bona fide organizations that represent needy individuals, which organizations have no affiliation with the public official providing the benefits or the official's immediate family;
  - d. Community based organizations for distribution to individuals served by the organizations.
- 5. Allocations to the following based upon their contributions to the community or local government:
  - a. Employees, as part of an employee recognition program with defined criteria;
  - b. Residents who have made special contributions to the community, as established by defined criteria;
  - c. Unelected members who serve without pay on County/City boards; County, State and/or federal officials or local officials from other cities, in recognition of significant assistance to the local government;
  - d. Businesses and institutions which have contributed to the welfare of the County/City;
  - f. Visiting dignitaries or foreign officials.

## EXHIBIT "C"

### ADMINISTRATIVE GUIDELINES: TICKET DISTRIBUTION PROCESS

(PER CMB RESO NO. \_\_\_\_\_, III(B)).

1. The following City Officials shall each be entitled to receive two (2) tickets to a single performance/event. An Event shall only include one performance during each production engagement or run at the City venues or for the City-sponsored event or other event.
  - Mayor and City Commissioners
  - City Manager
  - City Attorney
2. The remaining tickets shall be distributed as follows:
  - a. Deserving Members of the Community (@70% of remaining tickets)

The City Manager shall create an advisory committee to establish a list of deserving organizations and/or groups eligible to receive tickets. Such advisory committee shall meet no less than once each year to review the list of deserving organizations and/or groups eligible to receive tickets. Deserving organizations and/or groups on the list shall be eligible to receive, on a rotating basis, a maximum of four (4) tickets to a single event. The list of deserving organizations and/or groups eligible to receive tickets shall include the following categories:

- Non-profit (legally established tax-exempt) agencies who serve residents of the City of Miami Beach, for distribution to individuals served by the agency;
- Local educational institutions for use by deserving students;
- Senior citizen, disabled persons, and disadvantaged youth who: are residents of the City; do not have the financial ability to purchase tickets; and, participate in any City-sponsored program.

On an annual basis, the advisory committee's recommended list of deserving organizations and/or groups eligible to receive tickets shall be reported to the City Commission.

- b. City Employees (@15% of remaining tickets)

The City Manager is authorized to create an "Employee Recognition Program" setting forth defined criteria for the award of tickets to exemplary City employees. This Program shall entitle each selected City employee with two (2) tickets to an event. City employees shall also be eligible to receive two (2) tickets to an event on a first-come, first served basis.

City employees may not use tickets for an event if the event conflicts with the employee's work schedule and the employee has not secured the appropriate leave or permission of his Department Head and corresponding Assistant City Manager.

In the event that no City employees are provided or request tickets, these tickets may be distributed to deserving organizations and/or groups eligible to receive tickets pursuant to the criteria in Section III (B) 2 (a) above.

c. Others (@15% of remaining tickets)

d.

The remaining tickets may be distributed by the City as follows:

- i. The City may create a "Special Incentive Award Program" for the purpose of distributing tickets to persons and/or entities that have made special contributions to the community, or to individual civic leaders, including visiting dignitaries. This Program shall have defined criteria, and such criteria shall be provided to the City Commission; or,
- ii. The City may provide the tickets to organizations that assist in promoting and marketing the City through a municipal marketing agreement with the City, to the extent that such use is permitted by the entity providing the tickets.



# MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

## MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Jonah Wolfson, Commissioner

DATE: March 14<sup>th</sup>, 2011

**SUBJECT: Discussion Item for April 13<sup>th</sup>, 2011 Commission Meeting**

Please place on the April 13<sup>th</sup>, 2011, Commission meeting agenda a referral to the Finance Committee on the attached memorandum and proposed ordinance.

If you have any questions, please do not hesitate to contact Leonor Hernandez at extension 6437.

JW/h

RECEIVED  
2011 MAR 16 PM 5:18  
CITY OF MIAMI BEACH

Agenda Item C4I  
Date 4-13-11

March 12, 2011

MEMORANDUM FOR: Commissioner Jonah Wolfson, City of Miami Beach

FROM: Frank Del Vecchio, 301 Ocean Drive, Apt. 604, Miami Beach, FL 33139

SUBJ: Ethics Guidelines for Acceptance of Gifts, Favors or Services by City Employees

I recommend enactment by the city commission of a standard of conduct prohibiting the city's officers and employees from accepting a gift, favor or service discounted below fair market value from an entity doing business with the city or from a lobbyist. Section 2-449 of the Standards of Conduct "Acceptance of gifts, favors, services", is the appropriate section of the city code for such an amendment. [Attachment 1.]

Also attached is a reprint of the United States Department of Justice Ethics Office Handbook on acceptance of gifts by federal employees. [Attachment 2.]

In addition, also attached are excerpts from the DOJ Handbook, applicable to "Gifts from Outside Sources" (two pages), the focus of the recommended addition to the city's standard of conduct.

ATTACHMENTS:

Recommended amendment to Section 2-449, City Code ["Acceptance of gifts, favors, services."]

U.S. Department of Justice Ethics Office Handbook on Acceptance of Gifts by Federal Employees.

Excerpt from DOJ Handbook: Definition of Gift; Exceptions to the Gift Rule.

Amend Article VII. Standards of Conduct, of Part II, Subpart A, Chapter 2, Miami Beach City Code, by adding a sentence to Section 2-449; the amended subsection to read as follows:

**Sec. 2-449. Acceptance of gifts, favors, services.**

No officer or employee of the city shall accept any gift, favor or service that might reasonably tend improperly to influence him in the discharge of his official duties. Acceptance of a gift, favor, or a service discounted below its fair market value, from a business entity doing business with the city, as defined in section 2-450(b), or from a lobbyist, as defined in section 2-481, is deemed a violation of this section.

[Language added underlined.]

proposed alternatives for the Festival of the Arts.

## **2. Discussion regarding a proposed ordinance on ethics guidelines for acceptance of gifts, favors, or services by City employees**

### **ACTION**

**The Committee recommended that Administration monitor the county regarding ethics guidelines for acceptance of gifts, favors or services by elected officials and City Employees and provide a status report to the Finance & Citywide Projects Committee.**

Commissioner Jonah Wolfson introduced Frank Del Vecchio, Miami Beach Resident, who presented the item. Mr. Del Vecchio proposed that the City Commission implement a standard of conduct prohibiting the City's Officers and Employees from accepting a gift, favor or service discounted below fair market value for an entity doing business with the City or from a lobbyist. Mr. Del Vecchio provided examples from the United States Department of Justice Ethics Office Handbook on acceptance of gifts by federal employees. Discussion ensued. City Attorney Jose Smith stated that Miami-Dade County is currently reviewing the issue. The Committee recommended that Administration monitor the county regarding this issue and provide a status report to the Finance & Citywide Projects Committee.

## **3. Discussion regarding Security Alliance**

### **ACTION**

**The Committee recommended that the Administration begin the Request for Proposals (RFP) process for security services and include the new criteria mentioned in the meeting as part of the evaluation process.**

Procurement Division Director Gus Lopez presented the item.

Beginning in or around at least the late 1990's and continuing until in or around March 2007, the defendant, JAMES B. LOFTUS, JR., and Brian W. Ouellette occupied high-level security positions at Rooms To Go ("RTG"), which was a Florida corporation with its principal place of business in the Middle District of Florida. In those positions, the defendant and Ouellette were given substantial discretion by RTG to handle security-related matters entrusted to them.

Without RTG's knowledge and approval, however, the defendant and Ouellette created, among other entities, Lot 49 Inc. and Wiley Management Corp. ("Wiley Management"), respectively to enable themselves to secretly receive kickbacks from an outside security vendor named Security Alliance, LLC, a/k/a Security Alliance of Florida, LLC ("Security Alliance"), which RTG had retained to employ and manage its security guards. Unbeknownst to RTG, Security Alliance had created another company, Choice Management Solutions, LLC ("Choice Management"), to make these kickback payments to the defendants and Ouellette.

To conceal and cover-up these kickbacks from RTG, the defendant and Ouellette, among other things, secretly prepared sham invoices addressed to Security Alliance and Choice Management which fraudulently sought payment for "consulting" services, and which required that such payments be made indirectly to the defendant and Ouellette

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CEO 92-33 -- July 17, 1992

**GIFT ACCEPTANCE/DISCLOSURE****CITY COMMISSIONERS RECEIVING TICKETS TO EVENTS AT CITY-OWNED AUDITORIUM***To: (Name withheld at the person's request.)***SUMMARY:**

City commissioners have received a gift, not a benefit of office, when the city gives them a block of tickets to performances at a municipally-owned theater, which tickets the city receives as a condition of its lease agreement with the producers. However, there is no indication that the tickets are indirect gifts from a lobbyist or from a partner, firm, employer, or principal of a lobbyist who lobbies the city commission, and there is no indication that the city contract manager is a lobbyist who lobbies the city commission for purposes of Section 112.3148, Florida Statutes. Thus, the members of the city commission may accept the sets of tickets, but where the combined face value of a set of tickets exceeds \$100, the commissioners must disclose them quarterly on CE Form 9. CEO 92-12 is referenced.

**QUESTION:**

Where a city, by contract, receives tickets to events at the city-owned theater, and where the tickets are divided among the members of the city commission for either their personal use or to distribute to others at their discretion, have the members of the city commission received gifts which are subject to the gift acceptance and disclosure provisions of Section 112.3148, Florida Statutes?

Your question is answered in the affirmative.

In your initial letter of inquiry and through subsequent correspondence and discussions with our staff, we are advised that the City of Miami Beach owns and operates a performing arts theater where Broadway shows, ballets, and concerts are offered to the public. You advise that the City has entered into two different contracts involving performances at the theater. For non-Broadway shows, the City has a contract with a management company which specifies that the City will be provided 26 tickets per performance for every event staged at the theater. For Broadway shows, the City contracts directly with a producer, and that contract requires the producer to give the City 20 tickets for the opening night performance and 10 tickets for each performance during the remainder of the show's run. Thus, for a typical Broadway show, the producer gives the City a total of 170 tickets, and each Commissioner receives 20 tickets.

The distribution of tickets is effected in the following manner. Prior to any show or event, the City Contract Administrator places each Commissioner's allotment of tickets in an envelope, and the envelopes are distributed to the Commissioners by personnel in the Mayor's Office. Commissioners are then free to use or distribute the tickets to others at their discretion. You question the applicability of the gift provisions contained in Section 112.3148, Florida Statutes, as well as the Commission's rules promulgated in Chapter 34-13, Florida Administrative Code, to this situation.

Section 112.312(12), Florida Statutes, contains the following definition of the term "gift":

'Gift,' for purposes of ethics in government and financial disclosure

required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for his benefit or by any other means, for which equal or greater consideration is not given, including:

10. Entrance fees, admission fees, or tickets to events, performances, or facilities.

14. Any other similar service or thing having an attributable value not already provided for in this section.

'Gift' does not include:

1. Salary, benefits, services, fees, commissions, or expenses associated with the recipient's employment.

We are of the view that the tickets provided to the City as a condition of the contracts the City enters into with its management company and producers would not be considered "gifts" to the City, as it appears that they are a part of the consideration the City receives for leasing its auditorium. Even if we did consider the tickets to be gifts to the City, Section 112.3148, Florida Statutes, does not prohibit the giving of gifts to governmental entities. See CEO 92-12.

With regard to the complimentary tickets that the City receives and then distributes to its Commissioners, Rule 34-13.210(2), Florida Administrative Code, provides:

Where the donee is being reimbursed or provided by his public agency for travel or expenses incurred in the performance of public duties, the donee has not received a gift when a public purpose for the expense exists. Salary, benefits, services, fees, or other expenses received by a public officer or employee from his or her public agency do not constitute gifts.

It is our view that these tickets would not be considered "benefits" associated with the City Commissioners' public office. Twenty tickets to a Broadway show was not the type of benefit we had in mind when we promulgated this rule. The use of the term "benefits" in Rule 34-13.210 was intended to convey those benefits typically associated with one's employment, such as health insurance, sick leave, or paid parking. It was not intended to include such perquisites as a large number of tickets to theater performances. Thus, we are of the view that these tickets are not a benefit of office that would preclude them from being considered a gift.

The focus of our discussion then turns to Section 112.3148, Florida Statutes, which provides in relevant part:

(2)(b) Lobbyist means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a reporting individual or procurement employee or his agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his agency. With respect to an agency that has established, by rule, ordinance, or law, a registration or other designation process for persons seeking to influence decisionmaking or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of the agency, the term "lobbyist" includes only a person who is required to be registered or otherwise designated as a lobbyist in accordance with such rule, ordinance, or law or who was

during the preceding 12 months required to be registered or otherwise designated as a lobbyist in accordance with such rule, ordinance, or law.

(4) A reporting individual or procurement employee or any other person on his behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political committee or committee of continuous existence, as defined in s. 106.011, or from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he knows or reasonably believes that the gift has a value in excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

(5) A political committee or a committee of continuous existence, as defined in s. 106.011; a lobbyist who lobbies a reporting individual's or procurement employee's agency; the partner, firm, employer, or principal of a lobbyist; or another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist is prohibited from giving, either directly or indirectly, a gift that has a value in excess of \$100 to the reporting individual or procurement employee or any other person on his behalf; however, such person may give a gift having a value in excess of \$100 to a reporting individual or procurement employee if the gift is intended to be transferred to a governmental entity or a charitable organization.

(6)(a) Notwithstanding the provisions of subsection (5), an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, an airport authority, or a school board may give, either directly or indirectly, a gift having a value in excess of \$100 to any reporting individual or procurement employee if a public purpose can be shown for the gift; . . . .

(b) Notwithstanding the provisions of subsection (4), a reporting individual or procurement employee may accept a gift having a value in excess of \$100 from an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, an airport authority, or a school board if a public purpose can be shown for the gift; . . . .

Subsection 112.3148(4) would prohibit a City Commissioner from accepting a gift with a value in excess of \$100 from a lobbyist who lobbies the City, or from the partner, firm, employer, or principal of a lobbyist. While we recognize that public employees can and do attempt to influence the official actions of the officers of their public agency, we do not believe that the definition of "lobbyist" was intended to encompass such persons or that their duties with respect to their own agencies constitute "lobbying." Nor is there any indication that the City Contract Manager in this instance is acting on behalf of a partner, firm, employer, or principal of a lobbyist who lobbies the City. Accordingly, it is our view that Section 112.3148(4), Florida Statutes, is inapplicable to this scenario.

Subsection 112.3148(5) prohibits a lobbyist who lobbies the City of Miami Beach, or the partner, firm, employer, or principal of a lobbyist, from directly or indirectly giving a gift with a value in excess of \$100 to members of the City Commission. For the reasons stated in the foregoing paragraph, we do

not consider the City Contract Manager as a lobbyist who lobbies the City Commission, or as the partner, firm, employer, or principal of a lobbyist. Thus, Subsection 112.3148(5), is also inapplicable to our analysis.

With regard to Subsection 112.3148(6), Florida Statutes, we construe this provision as an exception to the prohibitions contained in Subsections 112.3148(4) and 112.3148(5), Florida Statutes, for governmental entities who are engaged in lobbying activities. For example, were the City to employ a lobbyist to lobby the Legislature for additional funding for the arts and where the City gave each member of the Legislature theater tickets worth more than \$100, then Section 112.3148(6), Florida Statutes, would be applicable and a public purpose would have to exist both for the City to be able to give the tickets to the members of the Legislature, and for the legislators to be able to accept the tickets. We do not view the situation before us to be one of this type, and we therefore find Section 112.3148(6) to be inapplicable.

As neither Subsections 112.3148(4), (5), nor (6) appear to prohibit the members of the City Commission from accepting the tickets the City receives pursuant to its various contracts, we are of the view that the City Commissioners may accept the tickets but must disclose them in accordance with Subsection 112.3148(8), Florida Statutes. Thus, where the face value of each set of tickets a Commissioner receives exceeds \$100, the Commissioner must disclose the sets of tickets quarterly on CE Form 9, which we have promulgated specifically for this purpose.

Your inquiry is answered accordingly.

RESOLUTION NO. 93-20694

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, PROVIDING THAT COMPLIMENTARY TICKETS FOR PERFORMANCES AND EVENTS AT TOPA AND THE CONVENTION CENTER WHICH WOULD OTHERWISE BE RECEIVED BY THE MAYOR, CITY COMMISSIONERS AND CITY EMPLOYEES SHALL HEREAFTER BE MADE AVAILABLE TO DISADVANTAGED YOUTHS, DISABLED PERSONS, SENIOR CITIZENS AND OTHER INDIVIDUALS WHO DO NOT HAVE THE FINANCIAL ABILITY TO PURCHASE TICKETS FOR CULTURAL EVENTS.

WHEREAS, pursuant to contracts between the City of Miami Beach and producers and promoters of performances and events of the City of Miami Beach Theater of the Performing Arts (TOPA) and the Miami Beach Convention Center, the Mayor, City Commissioners and City employees currently receive tickets for various events and performances occurring at those facilities; and

WHEREAS, the City Commission believes that these tickets should be utilized for the benefit of disadvantaged youths, disabled persons, senior citizens of the City and other individuals who do not have the financial ability to purchase tickets for cultural events; and

WHEREAS, it is fitting and proper that cultural events should continue to be available to disadvantaged youths, disabled persons, our fine senior citizens and other individuals who do not have the financial ability to purchase tickets for cultural events; and

WHEREAS, City sponsored programs for the use and benefit of the disadvantaged youths, disabled persons, senior citizens and other individuals who do not have the financial ability to purchase tickets for cultural events are necessary and proper; and

WHEREAS, organizations, such as the Miami Heat, have created programs for this purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that:

- 1) That the following City Officials shall receive a maximum of four (4) complimentary tickets for one performance of all new productions or events at TOPA and the Convention Center for which such tickets are available:
  - (1) Mayor and City Commissioners
  - (2) City Manager

(3) City Attorney

The following City officials shall receive a maximum of two (2) complimentary tickets for one performance of all new productions or events at TOPA and the Convention Center for which such tickets are available.

(1) Senior Assistant City Manager, Contract Administrator

(2) Chief Deputy City Attorney

2) Any and all remaining tickets shall be donated to disadvantaged youths, disabled persons, senior citizens of Miami Beach and other individuals who do not have the financial ability to purchase tickets for cultural events.

3) The City administration shall develop guidelines and appropriate procedures with regard to the administration of this program and shall submit said guidelines and appropriate procedures to the City Commission for final approval.

PASSED and ADOPTED this 6th day of January, 1992.

ATTEST:

Richard E. Brown  
City Clerk

[Signature]  
Mayor

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FORM APPROVED  
LEGAL DEPT.

By [Signature]

Date 1/8/1992

ROUGH DRAFT, NOT FOR DISTRIBUTION

R-7. RESOLUTIONS (CONTINUED)

- G. DISTRIBUTION OF COMPLIMENTARY TOPA/CONVENTION CENTER EVENT TICKETS.
1. DECEMBER 29, 1992, MEMORANDUM FROM MAYOR SEYMOUR GELBER.
    - a. A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, PROVIDING THAT COMPLIMENTARY TICKETS FOR PERFORMANCES AND EVENTS AT TOPA AND THE CONVENTION CENTER WHICH WOULD OTHERWISE BE RECEIVED BY THE MAYOR, CITY COMMISSIONERS, AND CITY EMPLOYEES, SHALL HEREAFTER BE MADE AVAILABLE AT A DISCOUNT TO SENIOR CITIZENS RESIDING IN MIAMI BEACH, WITH THE REVENUE FROM SAID SALES TO BE ADDED TO THE ONE DOLLAR TICKET SURCHARGE BANK ACCOUNT FOR EXPANDED FUTURE SENIOR CITIZEN DISCOUNTS BY THE ADDITIONAL PURCHASE OF TICKETS FOR GENERAL PERFORMANCES AND RESALE TO SENIOR CITIZENS RESIDING AT MIAMI BEACH AT A DISCOUNT OF 50% OR MORE. (REQUESTED BY MAYOR SEYMOUR GELBER)
  2. DECEMBER 29, 1992, MEMORANDUM FROM CITY ATTORNEY.
    - a. A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, PROVIDING THAT COMPLIMENTARY TICKETS FOR PERFORMANCES AND EVENTS AT TOPA AND THE CONVENTION CENTER WHICH WOULD OTHERWISE BE RECEIVED BY THE MAYOR, CITY COMMISSIONERS, AND CITY EMPLOYEES, SHALL HEREAFTER BE MADE AVAILABLE TO DISADVANTAGED YOUTHS, DISABLED PERSONS, SENIOR CITIZENS, AND OTHER INDIVIDUALS WHO DO NOT HAVE THE FINANCIAL ABILITY TO PURCHASE TICKETS FOR CULTURAL EVENTS. (REQUESTED BY COMMISSIONER NEISEN KASDIN)
  3. DECEMBER 29, 1992, MEMORANDUM FROM CONTRACT ADMINISTRATOR NORMAN LITZ, TO COMMISSIONER SUSAN GOTTLIEB, REGARDING COMMUNITY BENEFIT COMMITTEE (CBC) FOR THE PERFORMING ARTS, WITH RESOLUTIONS, FINANCIAL STATEMENTS, MINUTES, ETC.

**ACTION:** Joel Arnold, PTG-Florida, Inc. counsel and CBC Chairman, advised that PTG believed that resale of free tickets was improper; that PTG suggested (endorsed by CBC) that the City Manager establish the ticket distribution procedure, with the users afforded an opportunity to discuss any proposed procedure before implementation.

Commissioners offered several suggestions, including:

- That the Commission address the issue of the number of complimentary tickets when considering renewal of the PTG contract. (Comr. Gottlieb)
- That the Commissioners request staff to advise producers that it would no longer accept the tickets. (Comr. Pearlson)
- That the Commission adopt a resolution indicating that it no longer wished to receive these quantities of tickets, and ask a committee to develop a plan for Commission's consideration that would address the issues raised. (Mayor Gelber)
- That the Administration/SMG survey the ticket distribution policy/practice of other such facilities and submit report/recommendation for Commission's consideration. (Comrs. Gottlieb and Kasdin)

In response to Commissioner Gottlieb's inquiry, the City Attorney advised that although no resolution had been adopted creating the policy, it was written into the contracts which were authorized by resolution, thereby approving the receipt of tickets by the City. Commissioner Pearlson expressed concern that under either proposal, the tickets would continue to flow to staff who would be making the contracts with producers.

1. No action taken on proposed resolution.
2. Resolution No. 93-20694 adopted. (Vote: 7-0.)

Commissioner Pearlson advised the Administration that he no longer wished to receive any tickets, and it may direct them as it wished (suggested they be given to the Personnel Director for an employee incentive and employee-of-the-month program which he was attempting to create with the new Personnel Director). Commissioner Gottlieb advised of her 12/23/92 letter to the City Manager stating that she would no longer accept tickets for any event in TOPA; and Commissioner Eisenberg advised that he had sent a similar letter to the Manager.

During the discussion, Commissioner Eisenberg expressed dissatisfaction with the inaccuracy and erroneous impression left to the reader by the *Miami Herald* articles on this matter.

Note: 1/5/93 letter from PTG-Florida, Inc., expressing concerns regarding the proposal to disburse tickets via the Citizens Benefit Committee, submitted at meeting and filed with the records.

Also see related item R-6B.

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST**DRAFT**Guidelines and recommendations regarding "public benefit" clauses in certain government contracts.

Pursuant to the Ethics Commission's enabling ordinance<sup>1</sup> the purpose of the Ethics Commission is to serve as the guardian of the public trust by, among other things, educating the public, elected and appointed officials and other public servants as to the required standards of ethical conduct. The Ethics Commission is empowered to exercise all powers either specifically granted or necessary in the exercise of those enumerated powers. Accordingly, after the conclusion of a joint investigation by the Public Corruption Unit of the Miami-Dade State Attorney's Office (SAO) and the Commission on Ethics (COE); we felt it appropriate to follow up on concerns identified during the investigation and suggest recommendations and guidelines to address those concerns. The investigation involved a grant dispute between the City of Miami Beach (CMB) and the New World Symphony (NWS). The initial complaint was made by a prominent local attorney and former Miami Beach mayor who was also the Chairman of the Board of Trustees of the NWS. The allegation was that the CMB was refusing to pay the NWS monies due under a Grant-in-Aid Agreement (GIAA) unless the NWS provided the Mayor, Commissioners, and CMB Senior Administrative staff with complimentary tickets to NWS performances. The SAO Close-Out memo is attached hereto as Exhibit 1.

Although the joint investigation did not uncover any violation of criminal laws, it did expose flawed policies that have resulted in unwarranted and inappropriate benefits for elected and appointed officials. Elected and appointed officials can exploit these policies which provide them with thousands of dollars worth of tickets to coveted events sponsored by private entities that have a contractual relationship with the local governments which these officials serve. Moreover, further investigation has shown that several other municipalities engage in similar

<sup>1</sup> Section 2-1066 of the Code of Miami-Dade County.

ticket distribution plans. These distribution plans sometimes amount to no more than a thinly disguised form of political favoritism used by elected officials to curry favor with supporters and to build political support. The Commission on Ethics and Public Trust finds these practices troublesome and urges all local governments to consider the recommendations set forth in this report.

The City of Miami Beach:

The investigation found that the practice by the City of receiving complimentary tickets to City-owned venues was officially sanctioned with the passage of CMB Resolution 93-20694, which reads as follows:

*A Resolution of the City Commission of the City of Miami Beach, Florida, providing that complimentary tickets for performances and events at TOPA<sup>2</sup> and the Convention Center which would otherwise be received by the Mayor, City Commissioners, and City employees, shall hereafter be made available to disadvantaged youths, disabled persons, senior citizens and other individuals who do not have the financial ability to purchase tickets for cultural events...*

*Now, therefore, be it resolved by the City Commission of the City of Miami Beach, Florida, that:*

*1) The following City officials shall receive a maximum of four (4) complimentary tickets for one performance of all new productions or events at TOPA and the Convention Center:*

- (1) Mayor and members of the City Commission*
- (2) City Manager*
- (3) City Attorney*

*The following City officials shall receive a maximum of two (2) complimentary tickets for one performance of all new productions or events at TOPA and the Convention Center for which such tickets are available:*

- (1) Senior Assistant City Manager, Contract Administrator*
- (2) Chief Deputy City Attorney*

*2) Any and all remaining tickets shall be donated to disadvantaged youths, disabled persons, senior citizens of Miami Beach and other individuals who do not have the financial ability to purchase tickets for cultural events.*

*3) The City administration shall develop guidelines and appropriate procedures with regard to the administration of this program and shall submit said guidelines and appropriate procedures to the City Commission for final*

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<sup>2</sup> Theater of the Performing Arts.

*approval... (emphasis added)*

While CMB Resolution 93-20694 allows for the receipt of complimentary tickets to events at only the TOPA and the Convention Center, both City-owned facilities, this resolution has been used by CMB Commissioners and employees to justify the receipt of complimentary tickets to many events at CMB venues including the NWS.

In 1993, the then City Manager established a "Promotional Ticket Policy." The policy mirrored the resolution's eligibility requirements, stating that the complimentary tickets be first given to the Mayor, the Commission, the City Attorney, the Assistant City Managers, the Chief Deputy City Attorney, and the Contract Administrator, and that any remaining tickets be donated to disadvantaged youths, disabled persons, and senior citizens. The policy also established the following guidelines:

- 1) A committee appointed by the City Manager shall meet to establish a list of organizations and/or groups eligible to receive promotional tickets... the list shall be updated every quarter.*
- 2) A current list of local organizations or civic groups shall be maintained from which a rotation of recipients shall exist.*
- 3) Donated promotional tickets may be used by organizations solely to promote fundraisers...*
- 4) No more than ten (10) promotional tickets shall be issued to any one organization for one show/event.*
- 5) When a representative from an organization receives the tickets he/she will sign a receipt. Organizations will be given a form to be completed and returned to the City Manager's office within two weeks of the show/event... If the organization does not return the completed form, then the City Manager will not issue any more tickets to that organization...*

It should be noted that virtually none of the CMB employees or elected officials (except for one Assistant City Manager) interviewed during the investigation, were aware of the City's own "Promotional Ticket Policy." Not even the current City Manager, who, according to the policy, is responsible for managing the "Promotional Ticket Program," was aware of its existence. Apparently, the only part of the policy implemented was the distribution of complimentary tickets to the Mayor, Commissioners, and CMB senior staff. No record of the appointment of a ticket distribution committee, nor the creation of a list of organizations authorized to receive tickets, was found.

The investigation found that the CMB City Manager acts as the distribution point for all complimentary tickets received by the City. Once tickets come to his office, they are then distributed among the Mayor and City Commissioners. A distribution log is maintained. Once the tickets get into the hands of the elected officials, however, they then have unfettered discretion to do with them what they please. The investigation revealed that many Commissioners kept certain tickets for their personal use. Often, however, Commissioners gave their allotted tickets away to friends, family, staff or other constituents. Certain anecdotal evidence gathered during the course of the investigation suggests that, quite often, the recipients are targeted groups of senior citizens who are made well aware of which Commissioner's beneficence is responsible for the free tickets. The political goodwill derived from these acts of taxpayer subsidized generosity can itself be perceived as a "gift" to the elected official. Utilized by elected officials, this practice is likely to lead to political pandering, including the currying of favor with blocks of potential voters and/or other influential individuals within the electorate.

It is clear that the CMB is not adhering at all to the spirit of its own resolution (93-20694) in that few of the intended recipients i.e. disadvantaged youths, disabled persons, senior citizens of Miami Beach and other individuals who may not have the financial ability to purchase tickets for cultural events, end up benefiting from these free tickets. "Public Benefits" should, in our view, benefit the actual public at large. It is clear that the primary beneficiaries of these "public benefits" are the government officials; this needs to end. Moreover, this type of ticket distribution system appears to be the same type of system that the Florida State Ethics Commission (FSEC) opined, results in "gifts" being given to elected officials.

Distribution of tickets obtained through "public benefit" clauses:

We recommend that elected official be entirely removed from the process involving distribution of complimentary tickets. All local government entities that have contractual relationships wherein their municipality receives "public benefits," including, but not limited to, event tickets, should adopt a policy or procedure that insulates elected and appointed officials from involvement in the distribution process of the benefits, and limits their receipt of complimentary tickets to occasions when there is a public purpose served by their attendance.

We underscore that, when public power is executed through government contracts to extract a benefit, such as complimentary tickets, from a private party, there can be no permissible purpose for such a benefit other than a public one. Such publicly obtained assets do not differ in character from any other public property such as tax revenue or public buildings. Use of such assets for anything other than public purposes is ethically and legally problematic.

In light of the City of Miami Beach investigation, the Ethics Commission surveyed the "public benefit" practices in several other municipalities. We learned that, in the City of Miami, tickets are routinely provided to elected officials and the City Manager for events at, among other locales, the James L. Knight Center, Bayfront Park and the Sony Ericsson Tennis Tournament (SETT), through a similar distribution procedure.

An Assistant City Manager advised the COE that in 2011, Commissioners, the Mayor and the City Manager each received two (2) tickets per session for a total of twenty-two (22) sessions plus a parking space for the SETT. A City official advised the COE that the SETT tickets are provided as part of an agreement between the City's Department of Asset Management and Miami-Dade County for use of the Marine Stadium parking lot. One elected official in the City advised that he gives the tickets away to "friends...and other important people." Thus, we see another example of elected officials using the so-called "public benefits," in a manner that inures to their personal or political benefit. In practice, the "public" derives little, if any, benefit, from such a self-interested mode of distribution.

Inquiry into similar practices by the City of Homestead (COH) revealed that COH has lease agreements for the Homestead Sports Complex and the Homestead Speedway (the "Lease Agreements"). For each event held at the complex (pursuant to the City's lease agreement with La Ley Sports at the City of Homestead, Inc.), COH receives: the use of a designated skybox, forty (40) skybox tickets, and twenty (20) parking passes. Pursuant to COH's agreement with Homestead Motorsports Joint Venture and Ralph Sanchez, COH has been granted: eighty (80) complimentary general admission tickets, the use of two (2) skyboxes, and complimentary tickets for each seat in the skyboxes for each event held at the speedway. In addition, employees of COH are granted a twenty-five percent (25%) discount off of the face value of a ticket to all motorsports events held at the speedway. Each eligible employee may purchase a maximum of two (2) discounted tickets.

One COH official advised the COE that such tickets are routinely left in his office and that he then distributes those tickets to City officials. This individual said he would appreciate formal guidance from the Ethics Commission on this issue.

As another example of the often times inappropriate use of these "public benefits," in 2008, a COH Councilperson was advised by the COE that it would be inappropriate for a Councilperson to offer a candidate running for State office the opportunity to hold a fundraiser at the designated City skybox and only be charged the discounted City rate.

An inquiry into the policies of Miami-Dade County's related policies was also made. According to a representative of the Adrienne Arsht Center (AAC), there is no policy that requires the Performing Arts Center to provide a certain number of tickets to each performance to County officials. However, if the Arts Center/AAC has, what they term, "excess inventory," they do contact County Commissioners' offices to obtain the names of non-profit and/or other charity type organizations they can donate the excess inventory tickets to. The tickets themselves do not pass through the hands of County officials. Once again, however, we find that the practice of making the tickets available to a private, non-profit, group upon the mere designation by a single elected official, rather than a neutral, non-political person or entity, is similarly questionable and problematic.

COE interviewed the County's Director of Cultural Affairs who advised that he "scrupulously avoids" having any type of "public benefit" clauses in any of the contracts between the County and any of the cultural arts groups that perform at various County owned facilities. He further advised that many arts groups themselves often provide tickets directly to underprivileged groups on their own but his office does not engage in any distribution of tickets to elected officials nor requires that any number of tickets be provided contractually.

The City of Coral Gables (CG) was asked about its policy concerning the issuance of tickets under similar agreements. The COE found that the Actors Playhouse (Miracle Theater) in CG manages to avoid interference from elected officials in their distribution of public benefit tickets. The Executive Director of the Miracle Theater advised that the Playhouse has a management agreement with CG. In the agreement, the Playhouse agrees to give 500 tickets to the community. According to the Executive Director, the Playhouse gives away thousands of tickets every year to not-for-profit agencies, schools, and other groups that represent individuals

who cannot afford to buy tickets. She advised that the Playhouse recently gave away 60 tickets to Northwestern High School students (value of more than \$1,000.00).

The decision as to which tickets to give away and to whom ultimately lies with the Executive Director. The Executive Director claimed that CG does not interfere with the Playhouse's distribution of the tickets. The City does not monitor the Playhouse's distribution of complimentary tickets. She advised that no tickets go to the City.

When such benefits are provided wholly through the discretion of a non-governmental entity that is not performing a government function, there is no legal prohibition to consider pursuant to the Miami-Dade County Conflict of Interest and Code of Ethics ordinance, provided that there is no connection between the acceptance of the proffered tickets and any action to be taken by the recipients in his or her public role. The acceptance of such tickets by a public official does, of course, subject the official to the gift reporting requirements where the value of the tickets exceeds \$100.00.

Attendance as part of official city/county business:

Investigation also determined that, in addition to the myriad number of tickets provided pursuant to "public benefit" clauses, elected and appointed officials are invited to attend numerous events as a matter of "official city business."

Attendance at "official city business" events generally does not require gift disclosure as long as the elected/appointed official is, in fact, performing some bona fide official function at the event (see generally, FSEC opinion 01-019). However, it should be noted that mere attendance at an event by an elected official does not magically transform the event into official city business. "Official functions" can include, but are not limited to: participating in a ribbon cutting, giving a speech, or leading the pledge of allegiance.

There may also be occasions when, due to the presence of visiting dignitaries or other special invited guests, it will be appropriate for officials to attend an event to socialize with such persons as representatives of the local government. Such occasions, however, should be limited to special occasions rather than regularly scheduled events, and ought to include some official designation by the county/city government to those officials in attendance.

It is unlikely that mere, passive attendance by an elected official to such an event, without either some official role in the event, or, at a minimum, recognition as part of an official program of the event, can be considered attendance at an "official function."

Ramifications under gift rules:

Irrespective of the method of distribution employed by a government entity, elected officials must be cognizant of State and local gift rules when accepting tickets to an event. As previously discussed, if an elected official is attending a function as official city/county business, the value of the ticket or function is not considered a gift and therefore, the elected official is not required to disclose it as such.

It is important to note, however, that in CEO-92-33, the FSEC held that City Commissioners have received a gift, not a benefit of office, when the city gives them a block of tickets to performances at a municipally-owned theater, which tickets the City receives as a condition of its lease agreement with the producers. Where a City, by contract, receives tickets to events at the City-owned theater, and where the tickets are divided among the members of the City Commission for either their personal use or to distribute to others at their discretion, the members of the City Commission receive gifts which are subject to gift acceptance and disclosure provisions.

Also, a ticket received directly from a non-government entity outside of any previous agreement between the entity and the local government, is subject to the disclosure requirements set out in Section 2-11.1(e) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (reproduced below in its entirety).

Lastly, pursuant to Section 112.3148(4), Florida Statutes:

"A reporting individual<sup>3</sup>...is prohibited from knowingly accepting, directly or indirectly, a gift...from a lobbyist who lobbies the reporting individual's...agency...if he or she knows or reasonably believes that the gift has a value in excess of \$100..."

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<sup>3</sup> "Reporting individual" includes "(a) (1.) Every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office." Section 112.3145(1), Florida Statutes.

Thus, it is important that elected officials exercise extreme caution in accepting tickets from an individual registered to lobby in their particular government as State law outright prohibits the acceptance of such, if the value is in excess of \$100.00.

**Relevant Ordinances:**

Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Miami-Dade County Code Section 2-11.1 states in pertinent part:

***"(e) Gifts.***

**(1) *Definition.*** The term "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single sitting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.

**(2) *Exceptions.*** The provisions of Subsection (e) (1) shall not apply to: (a) Political contributions specifically authorized by state law; (b) Gifts from relatives or members of one's household; (c) Awards for professional or civic achievement; (d) Material such as books, reports, periodicals or pamphlets which are solely informational or of an advertising nature; (e) Gifts solicited by County employees or departmental personnel on behalf of the County in performance of their official duties for use solely by the County in conducting its official business; (f) Gifts solicited by Commissioners on behalf of the County in performance of their official duties for use solely by the County in conducting its official business; (g) Gifts solicited by Commissioners, or their staff members, on behalf of any nonprofit organization for use solely by that organization where neither the Commissioner nor his or her staff receives any compensation as a result of the solicitation. As used in this subsection, a "nonprofit organization" shall mean any entity described in section 501(c) (3) of the Internal Revenue Code (the "Code") that is tax exempt under section 501(a) of the Code. As used in this subsection, "compensation" means any money, gift, favor, political contribution, thing of value or other financial benefit.

**(3) *Prohibitions.*** A person described in Subsection (b) (1) through (6) shall neither solicit nor demand any gift. It is also unlawful for any person or entity to offer, give, or agree to give to any person included in the term defined in Subsection (b) (1) through (6) or for any person included in the term defined in Subsection (b) (1) through (6) to accept or agree to accept from another person or entity, any gift for or because of: (a) An official public action taken or to be taken, or which could be taken; (b) A legal duty performed or to be performed, Or which could be performed; or (c) A legal duty violated or to be violated, or which could be violated by any person included in the term defined in Subsection (b) (1).

(4) *Disclosure.* Any person included in the term defined in Subsection (b) (1) through (6) shall disclose as provided herein any gift, or series of gifts from any one person or entity, having a value in excess of one hundred dollars (\$100.00). Said disclosure shall be made by filing a copy of the disclosure form required by Chapter 112, Florida Statutes, for "local officers" with the Clerk of the Board of County Commissioners simultaneously with the filing of the form with the Secretary of State."

City of Miami Code, Section 2-613 states in pertinent part:

"Every officer, official or employee of the city, including every member of any Board, commission or agency of the city, is expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is or might be awarded, any rebate, gift, money or anything of value whatsoever, except where given for the use and benefit of the city."

**Conclusion:**

It is important to note that the problem we perceive, i.e., the unfair advantage provided to elected officials utilizing these tickets as an extension of their self-promotional or campaign activities, is not an issue the Ethics Commission has ever addressed in the past. It appears though that there is simply no good reason why event tickets received by a municipality through a contractual "public benefits" clause or through any other understanding between the municipality and a private entity, should pass through the hands of elected officials. It is recommended that these tickets be distributed to the public by an objective, non-political mechanism. Such a neutral process would remove any suggestion of political or other non-public benefit to the officials. This recommendation is not intended to suggest that distribution of complimentary tickets by public officials is an automatic or per se violation of the ethics ordinance or of other applicable ethics rules. It is conceivable that some public officials distribute such benefits in a manner that is non-political and otherwise appropriate. However, the temptations that are inherently likely to cause ethical problems in any distribution of public benefits are heightened by a policy that allows for discretionary distribution of such benefits by politicians without oversight or accountability. The difficulty in fashioning an ethically unassailable policy under these circumstances has led to the recommendations contained in this report.

One of the ways we suggest that tickets be made available to the public is to post an announcement on the city/county's website or other publicly advertised medium, notifying the public of when tickets are available and allowing individuals interested in obtaining them to seek them from a non-political source, for example, the City/County Clerk's office. The tickets could be either given away or sold at a discounted rate. Another method might be to follow the Promotional Ticket Policy that the City of Miami Beach adopted but never implemented. This method would seem to ensure that youth organizations, seniors or low income groups get to reap the majority of the public benefit, consistent with the true intention of such contract provisions. It would deny elected officials the undeserved opportunity to grandstand or otherwise use the giveaway of tickets to further their personal or political agendas. Yet another suggested process is to follow CG's example and remove the government entity from the process entirely.

Again, we reiterate that "public benefits" should not inure to the personal, private benefit of elected and appointed officials. These "public benefit" clauses should not be interpreted as another opportunity for elected and appointed officials to reap "perks of office" or be utilized by them for political or other self-aggrandizing purposes. Public benefits should truly benefit the public-at-large, not just certain influential or well-connected individuals.

We understand that the SEC has opined that officials may receive tickets pursuant to "public benefit" clauses, as long as they report them pursuant to the gift reporting requirements. We want to underscore, by this policy statement, that we believe that elected and appointed officials should have no need to report benefits received under "public benefit" clauses because they should not be the recipients of these benefits in the first place, unless they are being used by them in their official roles, as previously described.

Public benefits should benefit the public; they should not be used by elected officials to ingratiate themselves with supporters. It is unethical, in our view, for officials to dole out benefits meant for the public-at-large in a manner that serves the officials personal interests rather than the public's interest.

We hope that local governments will take these recommendations seriously and expeditiously implement changes in accordance with this report. The frequency with which the issue of distribution of "public benefits" has arisen in the past and continues to arise, including inquires to this agency, has led to this attempt to clarify and explain the ethical issues involved.

To that end, we hereby resolve to adopt as a set of "best practices" the recommendations set forth in this report.

Moreover, we will continue to examine the ticket distribution policies of local governments to ensure that they are in conformance with applicable ethics rules. While such policies need not be identical, we believe that adherence to the guidelines and recommendations herein would insure such conformance. Further, we will investigate any instance brought before us, where it appears that "public benefits" are being exploited for the benefit of elected or appointed officials for possible violations of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance. In sum, we recommend as follows:

1. Municipalities and local governments may have "public benefit" clauses in contracts between certain entities and the respective cities. The "public benefits" however, should benefit the public-at-large.
2. Tickets or other "public benefits" should be distributed in a non-political, neutral manner with no interference from local officials.
3. If local officials are the recipient of tickets or other benefits, and the value of the benefits exceed \$100.00, the official must comply with gift disclosure rules.
4. Local officials may not accept tickets with a value in excess of \$100.00 from any person registered to lobby the government which they serve. This is prohibited pursuant to Section 112.3148(4), Florida Statutes:

A reporting individual<sup>4</sup> ...is prohibited from knowingly accepting, directly or indirectly, a gift...from a lobbyist who lobbies the reporting individual's...agency...if he or she knows or reasonably believes that the gift has a value in excess of \$100..."

5. If an official is appearing at an event in his or her official capacity, for a public purpose, the official need not report the attendance at the event as a gift. However, mere passive, spectator attendance at an event will not be regarded as attendance in one's official capacity for a public purpose. Attending an event merely to "be seen" by your constituency is not, in our view, a "public

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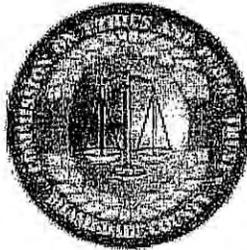
<sup>4</sup> "Reporting individual" includes "(a) (1.) Every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office." Section 112.3145(1), Florida Statutes.

purpose". Attendance at "official city business" events generally does not require gift disclosure as long as the elected/appointed official is, in fact, performing some bona fide official function at the event. Although the Miami-Dade County Ethics Commission may not have specifically opined in this area in a formal way, we agree with the rationale of the State Ethics Commission's opinions in FSEC opinions 91-46 and 01-019. Those opinions hold that a public or local officer who claims that [a] trip is not a gift is not relieved of the responsibility of determining that he is in fact giving quid pro quo, that is, that the value of his time and services are equal to or greater than the value of the trip.

**Smith, Jose**

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**From:** Ramos, Miriam S. (COE) [MSRAMOS@miamidade.gov]  
**Sent:** Tuesday, March 27, 2012 2:46 PM  
**To:** Abbott, Daniel; Aguila, Raul; Alfonsin, Lourdes; Amuchastegui, Fernando; Armstrong, Bart; Barnes, Monica; Bieler, Alison; Bierman, Mitch; Bilzin Sumberg (Christine Bower); Bittner, Warren; Boksner, Aleksandr; Boniske, Nina; Boutsis, Eve; Brisibe, Emomotimi; Britton, Tiffany; Brochin, Robert; Bru, Julie; Caballero, Sylvia; Callejo, Karen; Chiaro, Maria J. ; Citrin, Charles; Cypen, Stephen; Dannheisser, Lynn ; Dickens, Sonia Knighton; Dumas, Carmen; Entin, Monica; Espino, Daniel; Everett, Cynthia; Forte, Iliana; Friedman, Chad; Galdos, Roland; Garcia-Toledo, Vicky; Geller, Joseph; Greco, John; Green, Chris; Greenberg, Murray; Grodnick, William; Hearn, John; Held, Gary; Helfman, Steve ; Herin, John; Hernandez, Elizabeth; Herrera, Jose Pepe; Hialeah Attorneys; Hill, Marlon; Irizarri, Ramon; Jacobowitz, Jan; Jaramillo-Velez, Elsa; Jimenez, Jose; Kennedy, Harlene; Kuper, Richard; Leen, Craig; Lehr, Bruce; Lenard, Howard; Lloyd-Still, Robert; Maer, Miriam; Marks, Lloyd; Martinez-Esteve, Jorge (CAO); Mehaffey, Kathy; Mendez, Victoria; Meyers, Robert; Min, Barnaby; Moas, Joanna; Monestime, Regine; Morales, Jimmy; Negron, Melissa; Norris-Weeks, Burnadette; Olin, Jean; Ottinot, Hans; Palenzuela, Alexander; Papy, Don; Pepe, Thomas; Pizzi, Michael; Reyes, Ninoshka; Riesberg, Barbara; Rosewald, Rob; Rothstein, Steven; Santiago, Amy; Sarafan, Richard; Seiden, Jan; Sherman, Craig B.; Sibila, Estrella; Siegel, Darcee; Smith, Jose; Suarez-Rivas, Rafael; Switkes, Robert ; Trevarthen, Susan L.; Turner, Debora; Ventura, Ralph; Villalobos, Jose; Vizcaino, Diane; Weiss, Richard Jay; Wendell, Laura K.; Wolfe, Mel; Wolpin, David; Xiques, Veronica  
**Subject:** Ethics Commission meeting summary



For Immediate Release: March 27, 2012  
Contact: Joseph Centorino, Executive Director  
(305) 350-0613 or [centori@miamidade.gov](mailto:centori@miamidade.gov)

#### **Ethics Commission supplements guidelines on free event tickets**

As a follow up to guidelines it issued earlier this month for the official use of complimentary tickets by public officials, the Miami-Dade Commission on Ethics and Public Trust (COE) today adopted internal guidelines that clarify when a politician appears at a function in an "official capacity." The list of recommended public purposes for attending ticketed events includes hosting dignitaries, visitors and certain residents or groups and performing actions related to the official's position, such as introductions, presentations, ribbon cuttings and speech making.

The addendum to the guidelines\* also suggests how public officials should distribute tickets that are received through a contractual agreement with a private entity in order to avoid possible misuse of public resources and bolster confidence in the integrity of government. Distribution may be first-come, first-serve or by a lottery. The tickets could be sold, with the proceeds designated to a public purpose. They could be allocated to non-profit agencies, schools, children's groups or community organizations. The tickets also could be used as rewards for citizens or employees making substantial contributions to the community or local government. The COE will continue to provide opinions to inquiring officials regarding whether other uses are ethically acceptable.

In a related matter, Ethics Commissioners found No Probable Cause to a complaint (C 12-07) that officials in the City of Miami violated County and City Ethics Ordinances by failing to report tickets they had received to events at the Knight Center, Bayfront Park and the Mayor's Ball, but also approved the drafting of a general Letter of Instruction for future reference. That letter will cite the clarification of "public purpose" and emphasize that officials are not entitled to the use of public benefit tickets as a matter of right. Public officials will be reminded they have an obligation to report gifts (which include tickets to events) and that when an official receives two tickets for use with a spouse or partner, they must be disclosed as the total value of the gift.

In other action at today's meeting, probable cause was found that a bus maintenance technician for the Miami-Dade Transit Department violated the "prohibition on outside employment" provision of the Conflict of Interest and Code of Ethics Ordinance. An investigation by the Inspector General's Office had found that Niranjana Seepersaud also worked for American Coach Lines from March 2007 through June of 2010, but failed to obtain authorization for outside employment and did not file financial disclosure forms each year as required by the Code. After the case was turned over to the Ethics Commission, Seepersaud was told that if he complied with the filing requirement by the end of 2011, no action would be taken. He has failed to do so, and the complaint (C 12-08) will proceed.

Two complaints (C 12-09 and C 12-13) accusing Homestead Mayor Steven Bateman of misspending campaign funds at a liquor store were found "not legally sufficient." The charges are based on state law, which is outside the Ethics Commission's jurisdiction.

The same citizen accused Homestead Councilman Stephen Shelley of "exploitation of official position" by using a photo of himself on the city website for his business website. The city did pay for the original photograph. However, works of government are excluded from copyright protection, are considered in the public domain and can be used by anyone. For that reason, the complaint (C 12-16) was deemed "not legally sufficient."

Seven complaints were filed against Homestead Councilwoman Judy Waldman relating to her re-election campaign last fall. Four of them (C 12-17, C 12-18, C 12-19 and C 12-23) were deemed "not legally sufficient" because they don't violate any laws. Two complaints (C 12-20 and C 12-21) were found "not legally sufficient" because they allege violations of state election laws, which is outside of the jurisdiction of the COE. The final one (C 12-22) does not allege an action that violates the Ethics Code.

No Probable Cause was found to a complaint (C 12-06) accusing a Miami Lakes Council member of exploitation of official position. A resident of the city alleged that Richard Pulido demanded that, as a part of a municipal beautification project, trees be planted in front of his home first, and that he pressured the Town's park staff to provide free use of public land to a flag football league. The investigation found no substance to the charges, and the complaint was dismissed.

A complaint (C 12-03) filed against a lobbyist, John Morse, who registered on behalf of Ascent Healthcare Solutions in September of 2010 but failed to file the required Lobbyist Expenditure Statement by the July 1, 2011, deadline, was dismissed after he completed the form. Investigators learned he had moved out of town and never received the notices, but once they called him and explained his obligations, he responded.

In light of cases like that, which consume investigative resources, the Ethics Commission discussed changing the rule requiring lobbyists to file annual expenditure reports if they spent no funds during the reporting period. A proposed amendment to the Code of Ethics will be forwarded to the County Commission for its consideration.

A liability claims adjuster with Miami-Dade County's Risk Management division may provide consulting and inspection services for private clients, including some governmental entities, if he has permission from his supervisors. The COE response to Request for Opinion 12-07 stated that Kenneth McCoy's private clients cannot have interests adverse to the County or control or maintain property associated with the County. The RQO also recommends that, if granted permission, McCoy provide the names of his private clients to his supervisor.

*The Ethics Commission was created in 1996 as an independent agency with advisory and quasi-judicial powers. It is composed of five members, serving staggered terms of four years each. Through a program of education, outreach and enforcement, the Commission seeks to empower the community and bolster public trust.*

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\*The addendum is posted on [MiamiDadeEthics.com](http://MiamiDadeEthics.com)

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*Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure.*



MIAMI BEACH

OFFICE OF THE CITY ATTORNEY  
JOSE SMITH, CITY ATTORNEY

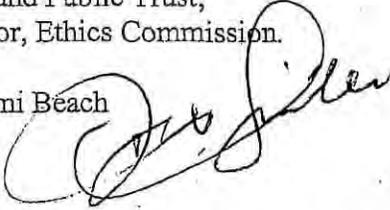
MEMORANDUM

**TO:** Miami-Dade County Commission on Ethics and Public Trust;  
and Joseph Centorino Esq., Executive Director, Ethics Commission.

**FROM:** Jose Smith, Esq., City Attorney, City of Miami Beach

**DATE:** February 28, 2012

**RE:** Miami-Dade County Ethics Commission's Proposed Guidelines and Recommendations regarding "Public Benefits" Clauses in Certain Government Contracts.



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As City Attorney for the City of Miami Beach, the following represents my legal analysis of the above-referenced draft Guidelines and Recommendations<sup>1</sup> proposed by Joe Centorino, Executive Director of the Miami-Dade County Commission on Ethics and Public Trust. In essence, Executive Director Centorino has concluded that:

- Tickets to events received by City officials pursuant to "Public Benefits" clauses in City contracts should not be distributed by individual city officials; and
- City officials' acceptance of tickets/attendance at such ticketed events is appropriate only when a public purpose is evidenced by active, official action rather than by "passive spectator attendance".

While it is undisputed that City resources (such as event tickets) may be used only where a "public purpose" exists, a municipality's policy determination concerning the manner of accomplishing such purpose should be left to the discretion of the City's governing body. Absent legislation specifically authorizing the County Ethics Commission to evaluate said policy, such determination is not subject to review by the Ethics Commission. Although Mr. Centorino's Proposed Guidelines address legitimate public concerns, the County Commission has not vested the COE with oversight authority governing a City Commission's determination of "public purpose". For that reason, the Proposed Guidelines are not appropriate for adoption by the COE.

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<sup>1</sup> This (undated) draft proposal is entitled: "Guidelines and recommendations regarding 'public benefit' clauses in certain government contracts".

## I. INTRODUCTION:

THE CITY OF MIAMI BEACH HAS BEEN A PROVEN LEADER IN GOVERNMENT ETHICS.

Subsequent to the conclusion of the 2011 State Attorney's investigation of the City of Miami Beach's negotiations with New World Symphony (finding no criminal conduct), the Proposed Guidelines were written to address "flawed policies that have resulted in unwarranted and inappropriate benefits for elected and appointed officials"<sup>2</sup>. Although the City recognizes that the Proposal is intended as guidance for all governmental entities subject to the jurisdiction of the County Ethics Commission, the stated genesis for said report unfairly depicts the City of Miami Beach as a transgressor of ethics laws, failing to recognize the great contribution the City has made towards ethics and good government.

For well over the past decade, the City has enacted strict ethics laws supplemental to Federal, State and County legislation to strengthen ethics rules and avoid the skirting of said laws, otherwise achievable due to loopholes or the simple failure of other legislative bodies to so legislate. Included among these novel City-enacted ethics laws have been increased lobbyist restrictions, campaign finance reform, post-service restrictions for elected officials and governmental employees, prohibitions on direct and indirect lobbying activities by appointed and elected government officials, increased prohibited contractual relationships of government employees and officials, increased prohibitions on direct and indirect prohibited business relationships, and enlarging scope of voting conflict proscriptions. Additionally, and most evident of the City's commitment to ethics legislation is the City Charter provision (self-initiated by the City Commission) requiring voter approval before the enactment of any law weakening City ethics laws.

All of the aforesated measures demonstrate an absolute and unwavering commitment by the City to enact effective ethics laws. Any suggestion that the City has exploited its policies ignores the City's demonstrated resolve towards enacting and enforcing meaningful ethics legislation.

## II. FACTUAL BACKGROUND.

THE CITY OF MIAMI BEACH'S TICKET POLICY HAS BEEN IN EFFECT SINCE ITS APPROVAL BY THE STATE ETHICS COMMISSION IN 1993, WITHOUT COMMENT OR CRITICISM FROM COUNTY ETHICS COMMISSION.

The City of Miami Beach ticket policy as embodied in City Resolution No. 93-20694, (signed by then Mayor Seymour Gelber) had as its foundation an opinion from the Florida Commission on Ethics condoning public officials' acceptance of complimentary tickets, conditioned only upon disclosure of tickets received. In State COE 92-33, the tickets were held to constitute permissible gifts to the City commissioners<sup>3</sup>, which had to be disclosed quarterly if their value

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<sup>2</sup> See, Proposed Policy at page 1, paragraph 2.

exceeded \$100. The basis for the City's request for the opinion was a concern for strict compliance with applicable ethics regulations and a need to ensure legality of the City's contractual process, whereby (in that instance) it negotiated with a theater management company to operate the City's theaters and the City would receive, as partial consideration, tickets per performance for every event staged at the theater.

As reflected in State COE 92-33, the City of Miami Beach made full disclosure to the State Ethics Commission of all relevant facts concerning the manner in which the City negotiated for and received the tickets, and the City's process for distribution and usage of the tickets. Aware of all relevant facts, the State COE determined the ticket policy to be consistent with ethics laws so long as the appropriate disclosure forms were filed reflecting the names of ticket recipients and the value of tickets received<sup>4</sup>. Since the Opinion's issuance in 1992, the City of Miami Beach has relied in good faith upon its holding, and has adhered to its dictate of timely gift disclosure.

Despite the transparency of the City's ticket policy<sup>5</sup>, it has never been questioned by the Miami-Dade County Ethics Commission or anyone else.

### III. LEGAL ANALYSIS.

Municipalities in the State of Florida enjoy home rule power, granting them "...governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law." Fla Const. Art VIII, sec. 2 (b).

Home rule municipalities are subject to the additional Constitutional requirement that expenditures of City funds be for a "public purpose". Fla. Const., Art. VII, sec. 10. Accordingly, although a City may enact a policy with regard to its use of public resources, such policy must serve a "public purpose". As will be seen below, the "public purpose" determination by a City carries the presumption of constitutional validity, and is subject only to judicial review.

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<sup>3</sup> Note: At the May 26, 2011 County Ethics Commission hearing on Complaint 11-04, COE Commissioner Seymour Gelber (after recognizing the City of Miami Beach's well-established ticket policy) stated his belief that the complimentary tickets received by City personnel were not "gifts" and therefore did not require disclosure. Commissioner Gelber further went on to state that the ticket issue was "much ado about nothing".

<sup>4</sup> In subsequent opinions, the State COE has condoned identical ticket distribution/use policies of the City of Daytona Beach (State COE 05 re: tickets to International Speedway), City of St. Petersburg (State COE 01-19 re: Tropicana Stadium), and the City of Orlando and Orange County (State COE 95-36 re: tickets to Amway Stadium).

<sup>5</sup> See f.n. #8 herein.

A. THE CITY COMMISSION'S TICKET POLICY IS PRESUMED VALID.

1. POLICY DETERMINATION IS FOR CITY COMMISSION ALONE TO MAKE, NOT THE ETHICS COMMISSION.

What constitutes a public purpose is, in the first instance, a question for the legislature (i.e., City Commission) to determine, and its opinion should be given great weight. Jackson Lumber Co. v. Walton County, 116 So. 771 (1928); State v. Housing Finance Authority of Polk County, 376 So.2d 1158, 1160 (Fla. 1979), holding that the determination of what constitutes a valid public purpose for the expenditure of public funds is a factual determination for the legislative and governing body involved. The question of "public purpose" thus involves the exercise of legislative judgment and is a matter that the Miami Beach City Commission, as the legislative and governing body of the City of Miami Beach, must determine by City Resolution setting forth the requisite legislative findings and intent.

A legislative declaration of public purpose is presumed to be valid, and should be deemed correct unless so clearly erroneous as to be beyond the power of the legislature. Wald v. Sarasota County Health Facilities Authority, 360 So.2d 763 (Fla.1978); Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla.1971); Price v. City of St. Petersburg, 29 So.2d 753 (1947); State v. Monroe County, 3 So.2d 754 (Fla.1941). Unless expressly or impliedly restrained by statute, a municipal corporation has discretion in the choice of means and methods for exercising the powers given it for governmental or public purposes, and the usual limitations upon the actions of municipalities within their legal powers are good faith and reasonableness, not wisdom or perfection. All doubts as to the propriety of means used in the exercise of an undoubted municipal power will be resolved in favor of the municipality. State v. Tampa Waterworks Co., 47 So. 358 (Fla. 1908).

2. THE COURTS, AND NOT THE ETHICS COMMISSION, HAVE POWER TO REVIEW CITY COMMISSION'S POLICY.

When a policy decision is brought into question resting upon the police power, only the courts have the power and duty to inquire whether it is within constitutional limits. It is thus particularly a judicial question whether the legislative determination of "public purpose" comports with constitutional and statutory rights. See, Askew v. Schuster, 331 So.2d 297 (Fla.1976); Art. II, § 3, Fla. Const.; and Liquor Store v. Continental Distilling Corp., 40 So.2d 371, 374 (Fla. 1949).

Unlike the courts, which possess jurisdiction to review public policy determinations, agencies such as the Miami-Dade County Ethics Commission may engage in such review only if the authority to do so is granted in the corresponding enabling legislation. As an administrative body, the powers of the Ethics Commission are limited to statutory authorization as set forth in the County Code, and the COE may only act within those grants of power specifically afforded it: "Administrative authorities are creatures of statute and have *only* such powers as the statute confers on them." Fla. AGO 75-120 citing 42 Am. Jur., Public Administrative Law, sec. 68, and State ex rel. Greenberg v. Florida State Board of Dentistry, 297 So.2d 628, at 638 (1 D.C.A. Fla., 1958). Both the State Attorney General and Florida Commission on Ethics have recognized their lack of jurisdiction to review a City's legislative findings governing "public purpose":

...we view this question [expending City funds towards Sister City program] as being primarily a question of whether there is a legitimate public purpose... rather than as being an ethical question. *As there is no issue under the Code of Ethics presented in this situation, we have no authority to decide in an advisory opinion whether the use of City resources in this manner is proper.*

(Emphasis added) State COE 85-13; and see, Fla. AGO 83-5 holding that a “public purpose” determination cannot be delegated to the Attorney General’s Office.

Accordingly, the issue of “public purpose” is not within the purview of the Miami-Dade County Ethics Commission. Neither the Miami-Dade (County Code section 2-11.1) or the related Code provisions enabling the Ethics Commission (County Code Chapter 2, Article LXXVIII) give the COE the legal authority to issue guidelines establishing what is and what is not acceptable justification for a City’s public policy regarding its use of government resources. A thorough review of the County Code fails to reveal any authority, either express or implied<sup>6</sup>, granting unto the Ethics Commission the power to second-guess a City’s public policy determination. See Peck Plaza Condominium v. Division of Florida Land Sales and Condominiums, Department of Business Regulations, 371 So.2d 152 (Fla. 1st DCA 1979).

The only sections of the County Ethics Code relevant to the City’s use of its resources (such as tickets to events it has received via arms-length negotiations) are:

- County Code section 2-11.1 (e) governing “Solicitation of Gifts”; and
- County Code section 2-11.1 (g) governing “Exploitation of Official Position”.

Neither of the above ethics regulations however establish a criteria for “public purpose”. Moreover, both of these Code sections recognize that so long as the actions taken were pursuant to City policy (i.e., City of Miami Beach Resolution No. 93-20694), those Code sections are complied with. (See, County Code section 2-11.1 (e)(2), and (g): “...No person included in the terms defined in subsection (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others *except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners*”.

(Emphasis added.) Id. Although the COE may desire to review issues of a City’s public policy determination<sup>7</sup>, absent County Code authorization, the COE lacks such reviewing power. See,

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<sup>6</sup> Although County Code section 2-1066 provides that the COE “...may exercise all those powers either specifically granted herein or necessary in the exercise of those powers herein enumerated”, such implied authority may not warrant the exercise of a substantive power not conferred. Molwin Inv. Co. v. Turner, 167 So. 33 (Fla. 1936); Fla. AGO 73-374. Any implied power must be necessarily implied from a duty which is specifically or expressly imposed by statute. Fla. AGO 75-161; FSU v. Jenkins, 323 So.2d 597 (Fla. 1DCA 1975). Any power to be implied must also be *essential* in order to carry out the expressly granted power or duty imposed, e.g., Fla. AGO 73-374 and 67 C.J.S. *Officers* s. 102.

<sup>7</sup> However laudable or commendable the actions of the COE, as stated in St. Regis Paper Company v. State, 237 So.2d 797, 799 (Fla. 1st DCA 1970), “(i)t is well settled that a statutory agency does not

Context Development Co. v. Dade County, 374 So.2d 1143 (Fla. 3DCA 1979), in which the Third District Court of Appeal found that Miami-Dade County's DERM did not have the legal authority to issue a particular order as the Director lacked any legislative authority under the Dade Code to require any environmental impact statement from appellant:

...in our opinion, contrary to appellees' contentions, none of appellant's activities as reflected by this record show a violation of the Dade Code provisions relied upon in the cease and desist order. Appellees argue that agricultural use, in and of itself, constitutes a discharge of organic or inorganic matter as chemical compounds into the waters of Dade County within the definition of "nuisance" in the Dade Code. See s 24-3(14)(b), Dade Code. However, ...the important question before us is not whether these activities complained of should or could be forbidden, but rather only whether they have been.

Id. at 1149. Just as in Context, supra, the issue before the COE is whether the City policy violates the County Ethics Code, not whether the City's policy should be subject to review by the Ethics Code. Regardless of its good intentions, the COE may not invoke jurisdiction over a matter when the County Commission has not granted it such power.

3. CONSTITUENTS HAVE ULTIMATE SAY CONCERNING PROPRIETY OF CITY'S TICKET POLICY.

After all legal arguments have rested, the ultimate decider of whether the City's ticket policy is valid and serves the public interest is, of course, the electorate. If indeed City residents object to the present ticket policy, they are free to voice their objections to the governing body, and if, the policy is not amended to reflect the public's concerns, the recourse will undoubtedly be at the ballot box:

Courts will not determine whether or not the action of public officers is wise, economical or advantageous, such questions belonging exclusively to the public officers and boards. If they exercise their powers foolishly or unwisely, *the recourse of their constituents is to go to the ballot box and not to the courts.*

(Emphasis added.) Broward County Rubbish Contractors Ass'n v. Broward County, 112 So.2d 898, 903 (Fla. 2DCA 1959). Accord, Town of Riviera Beach v. State, 53 So.2d 828, 831 (Fla. 1951) citing McQuillin on Municipal Corporations (3<sup>rd</sup> Ed.), at sec.10.33.

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possess any inherent powers; such agency is limited to the powers granted, either expressly or by necessary implication, by the statutes (here the Dade Code) creating them." See e. g., Askew v. Cross Key Waterways, 372 So.2d 913 (Fla.1978); Lewis v. Bank of Pasco County, 346 So.2d 53 (Fla.1976); Sarasota County v. Barg, 302 So.2d 737 (Fla.1974); and Sarasota County v. Beker Phosphate Corp., 322 So.2d 655 (Fla. 1st DCA 1975).

It is significant to note, however, that **the City's residents have not objected** to the City's ticket policy. In a City of vocal, pro-active, government-involved residents with:

- over 41 citizen-volunteer committees (the majority of such committees meeting at least 11 or more time per year),
- 4-6 public meetings per week,
- 1 regularly-scheduled City Commission public meeting per month<sup>8</sup> (including at least 1 monthly Commission committee meeting),
- approximately 46 public records requests handled on a monthly basis in 2011, and
- 1292 phone requests in 2011 directed to the City's main public information telephone line

**there have not been any complaints regarding the City's use of its negotiated tickets.** If the citizens had objected to this ticket policy, surely the City Commission would have addressed those concerns prior to the COE's instant review of the matter. In light of the absence of COE jurisdiction over such policy determination it is particularly inappropriate for the COE to insert itself into what is essentially a local issue, especially given the absence of citizen outcry.

#### B. THE CITY'S TICKET POLICY IS SUPPORTED BY ITS COURSE OF CONDUCT.

While it is clear that the COE lacks jurisdiction to assert that only active participation by City personnel constitutes "public purpose" for purposes of assessing the City of Miami Beach's ticket policy<sup>9</sup>, the following analysis bears upon the City's policy for ticket usage.

Although the City abandoned certain terms of its Resolution 93-20694,<sup>10</sup> the policy's objective of ensuring high-level City personnel presence at such events has been the custom of the City since 1993, and has been unassailed. The fact that this policy has been in effect for almost two decades<sup>11</sup>, and has not been the subject of prior citizen outcry, is relevant support of the City's legislative policy determination:

In deciding whether such purpose is public or private, courts must be largely influenced by the course and usage of the government, the object for which taxes

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<sup>8</sup> As an undisputable fact, numerous "Public Benefits" clauses have been included within contracts presented to the City Commission in public hearings.

<sup>9</sup> See Executive Director Centorino's proposal at page 12, para. 5.

<sup>10</sup> No suggestion has been made that the City's noncompliance with implementing terms (such as establishing a City board for non-profit ticket distribution) was due to anything other than inadvertent oversight.

<sup>11</sup> See, In re marriage of Larry Lappe and Lynn Lappe, No. 81605. May 1, 1997: "Further, the legislation challenged here has been in existence in this state for over 20 years. In determining whether a statute serves a public purpose, a court "may take into consideration a long course of legislation and usage of the government."

and appropriations have been customarily and by long course of legislation levied and made, and what objects have been considered necessary to the support and for the proper use of the government. *Whatever lawfully pertains to this purpose and is sanctioned by time and the acquiescence of the people*<sup>12</sup> may well be said to be a public purpose and proper for the maintenance of good government. (Emphasis added.) Hagler v. Small, 138 N.E. 849 (1923).

Furthermore, what is a "public purpose" is not a static concept, but is flexible and capable of expansion to meet the changing conditions of a complex society. The Florida Supreme Court has recognized this concept and has found that "...[e]ach generation may determine its concept of these things.' State v. Washington County Development Authority, 178 So.2d 573, 579 (Fla. 1965); State v. City of Tallahassee, 195 So. 402 (1940). See also State v. City of Jacksonville, 50 So.2d 532 (Fla.1951). Indeed, the consensus of modern legislative and judicial thinking (particularly after the State grant of municipal home rule power) is to broaden the scope of activities that may be classified as involving a public purpose.

1. THE CITY OF MIAMI BEACH'S HISTORY OF ENCOURAGING ITS PERSONNEL TO ATTEND PUBLIC FUNCTIONS IN CITY-OWNED VENUES CONTRIBUTES TOWARDS THE CITY'S PROSPERITY.

For over 25 years, the City of Miami Beach has devoted its resources toward economic development<sup>13</sup> with regard to planning and zoning issues, infrastructure improvement, including the ongoing maintenance and promotion of facilities providing visual performing arts productions and cultural events. The City has deemed it a public need for high-ranking City officials' attendance at functions of City-owned venues in order to provide them with the opportunity to learn more about the citizens' concerns and interests as well as the host organizations and their unique issues and needs. The exchange of information facilitated by attending these functions helps City officials be more responsive to these needs. It is consistent with the City's goal to allow these high-ranking City officials to attend, at City expense, cultural productions and events taking place in the City's facilities, resulting in increased communication regarding City affairs with the public outside of City Hall, as well as publicizing the productions, and events and thus encouraging public attendance.

The Attorney General's Office has found that so long as the governing body has approved the use of public resources, public funds may be expended for entertainment expenditures that are

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<sup>12</sup> The City's ticket policy has not been objected to by the public, despite its decades'-long existence. (See, above argument at III (A) 2(b).)

<sup>13</sup> Economic Development has been statutorily recognized as an appropriate public purpose of municipalities. See Florida Stat. 166.021(8)(b).

(b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law that can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection. " (Emphasis added.) Id.

determined by the body to serve a public purpose. In an early opinion from 1968, the Attorney General addressed the legality of a special district spending public funds for entertainment and, acknowledged the requirement that the Legislature authorize the use of public funds for purposes of hospitality and entertainment. Absent such specific legislative authorization, the Attorney General's office found that the creation of special districts would not in and of itself indicate a need to carry on extensive programs of hospitality and entertainment. See, Fla. AGO 68-12.

2. THE CITY'S TICKET POLICY PROVIDES A PREDOMINANT PUBLIC BENEFIT, AND ANY BENEFIT TO CITY PERSONNEL IS INCIDENTAL AND THUS PROPER.

Finally, the fact that City officials may be incidentally benefitted by use of these tickets does not destroy the public nature of the City's policy. Florida's courts have recognized that the execution of a public purpose that involves the expenditure of money is usually attended with private benefits, and so long as the principal purpose of the enactment is public in nature, it is irrelevant that there will be an incidental benefit to private interests. See, Blackburn v. State Commission on Ethics, 589 So. 2d 431 (Fla. 1<sup>st</sup> DCA 1991); and Thornber v. City of Fort Walton Beach, 568 So. 2d 914, 917 (Fla. 1990) (defending against recall lawsuit created incidental benefit to elected official while providing primary benefit to public).

IV. CONCLUSION.

The authorities cited above support the legal proposition that the City of Miami Beach may, subject to judicial review, establish policy governing the distribution and usage of its tickets to City-owned venues, which policy carries the presumption of validity. The COE lacks jurisdiction to issue a policy statement stating what is and what is not a lawful "public purpose" with regard to the City's distribution and use of these tickets. It is the City Commission that is the final arbiter of its ticket policy, and not the Ethics Commission.

With regard to the distribution of City tickets to high-ranking City personnel, it is not unreasonable to presume that part of their official duties may be to attend certain high-profile special events (such as Art Basel or the South Beach Wine & Food Festival) that focus national and international attention on the City of Miami Beach and thus promote commerce and tourism. As to those "ordinary" performances or events which do not necessarily garner national attention, there is a public purpose in the presence of City officials at these events as well, and this too is a matter of good faith discretionary decision-making by the City's governing body.

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## COMMITTEE MEMORANDUM

TO: All Members, Finance and Citywide Projects Committee

FROM: Kathie G. Brooks, Interim City Manager

DATE: July 26, 2012

SUBJECT: **Discussion regarding a proposed municipal marketing program for South Pointe Park, and an update on other potential municipal marketing partnerships**

As you are aware, the City has been involved in efforts to maximize its strong brand presence by partnering with corporate entities in a manner that generates good publicity and marketing for the City, while at the same time generating revenue or providing savings to the City. The City's municipal marketing (also known as "corporate sponsorship") consultant, The Superlative Group (TSG), has identified priorities for their efforts, while other activities have been identified to be pursued internally with the City's Development Coordinator. The City's Development Coordinator serves as the contract support staff for TSG.

Efforts have focused on identifying potential municipal marketing partners and opportunities for partnership, and reaching out to these potential partners to gauge interest. The current economic conditions have impacted the marketing budgets for many large corporations with histories of engaging in these types of partnerships; municipal marketing efforts are funded principally from marketing budgets, as they serve the primary purpose of promoting the corporation's brand and/or product. Not surprisingly, corporate marketing budgets have been impacted and are often the first affected when cost-cutting measures are initiated. While we continued to pursue various efforts in municipal marketing, as you know, we made considerable progress in the area of an Exclusive/Official citywide beverage partner, resulting in the ten-year exclusive, non-alcoholic beverage sponsorship with Coca-Cola Refreshments.

Most recently, TSG has initiated discussions with a large corporate entity interested in partnering with the City on South Pointe Park. These discussions have progressed considerably and direction from the Committee/Commission is necessary at this time to determine whether to proceed with negotiations. Other discussions are also underway relating to a licensed sunscreen product ("official Miami Beach sunscreen") and SoundScape Park. All of these opportunities all represent sponsorship funds for the City, but will require the City's agreement to the proposed terms.

For your reference, attached please find a copy of the Asset Inventory and Valuation Report prepared by Superlative as their Phase I deliverable. This was previously presented to the Mayor and City Commission in 2009. This report provides an explanation of the municipal marketing approach, municipal marketing opportunities and a matrix of assets identified throughout the City for potential sponsorship opportunities. The matrix provides a broad look at the types of assets owned by the City that may provide a value to a sponsor; these may be facilities, programs or events, or other intangibles. A brief description of each asset is given, as well as a description of the rights available, a value rating and an estimate of the level of difficulty in "selling" that asset.

**HOW TO READ THE REPORT**

The report is designed to give the reader a broad and comprehensive look at the types of assets owned by the City, which might provide value to a sponsor. Several pieces of information were considered for each asset mentioned. Generally, assets were grouped as “facilities”, “programs”, “events”, and “intangibles.” A brief description of each asset is given, as well as a description of the rights available, a value rating, and an estimate of the level of difficulty of selling the asset. Generally, naming rights – by way of example – are high value, difficult sales, while special events are lower value, but easier to sell.

There are some assets for which no available pricing can be reasonably estimated because either there are no benchmarks or the information was unavailable at the time this report was written. For each asset listed, we have included a general description of the marketing value, other assets or sponsorships the assets can be packaged with, a value range and selling difficulty, and comments on any restrictions or guidelines.

Generally, it is beneficial to see all the rights on one report so that the natural packaging of certain assets can be seen more readily. Also, the existence of this database allows the City to be more responsive to companies when opportunities present themselves.

The report has a value indicator for each asset, designated by dollar signs, with the greater number of dollar signs meaning greater value. It should be noted that the value of each asset is packaged with being an Official Partner of the City of Miami Beach. The values of each individual asset are not presented in an individual value basis. In other words, you cannot take the value range of each asset below and add them together to get a whole value of a sponsorship. The sponsorship success column determines the level of difficulty in place for attaining a sponsor for that specific asset; this is shown with stars, with more stars the more attractive the asset is to a potential partner.

<b>RANK (Dollar Signs)</b>	<b>SPONSORSHIP VALUE</b>
\$\$\$ \$	\$500,000 +
\$\$\$	\$100,000 - \$499,999
\$\$	\$50,000 - \$99,999
\$	\$5,000 - \$49,999

<b>RANK</b>	<b>SPONSORSHIP SUCCESS</b>
★★★★	Likely Attainable
★★★	Moderate Success
★★	Difficult
★	Extremely Difficult



Specifically, the following considerations account for the valuation and salability levels outlined above:

### Value Range:

- **\$\$\$\$** - Indicates a high-value sponsorship that would represent a long-term revenue stream and partnership for the City with a specific organization or private entity. These packages usually include naming rights or presenting sponsorship to a highly visible asset along with marketing, advertising, and promotional events.
- **\$\$\$** - Partnerships/sponsorships in this value range are comparable to the ones outlined above, but are representative of assets that are not as visible, do not allow signage, or have limited promotional and/or program capability. Contrastingly, this level of sponsorship may have a higher salability because the investment is not as demanding for the corporation.
- **\$\$** - Generally, this level of sponsorship represents programs, smaller events and assets that have limited or no marketing/signage capabilities. For example, all parks are displayed with this value range because of the need to keep over commercialization out of the parks of Miami Beach. Allowing signage, promotional opportunities, and/or vending rights would most likely move sponsorships in this category to a higher value.
- **\$** - Sponsorships in this value range can be described as donations or gifts more so than a sponsorship. This value range is also effective as “added value” to a larger sponsorship package, depending on the corporation involved.

### Salability:

- **★★★★** – A sponsorship that is “Likely Attainable” is a program, facility or department that has been used successful in a number of different municipalities before and there is general interest from corporations to invest in this kind of relationship.
- **★★★** – Salability is seen as moderately successful with this type of asset. The industry understands what is included and the asset is generally one that is attractive to companies that invest in municipal marketing.
- **★★** – Sponsorship/partnership is difficult to acquire because of restrictions with the type of asset, investment involved, and/or the asset is new to the municipal marketing industry.
- **★** – Difficulty of a sponsorship/partnership for this asset is extremely high because of the location, restrictions, type of asset, limited knowledge of what companies could be involved, and/or needs of the department.

The value range and salability are estimates determined from industry standards, previous success, and general interest in the municipality, specifically, connection to the City of Miami Beach’s brand. Statements regarding value range and salability for the specific departments can be found below under the department or group of assets.



## PARKS AND RECREATION DEPARTMENT

**Description:** The Parks and Recreation Department is responsible for all of the City-owned and managed Parks, recreational facilities, programs, events, etc. The Department is very organized and publishes two annual guides (in various amounts) for after-school programs, community events, adult leagues and summer camps.

**Opportunity:** The Parks and Recreation Department is one of the most valuable when it comes to corporate sponsorships because it is the most visible with the largest amount of inventory to present to a potential partner. The opportunity for sponsorship is represented by the amount of facilities and programs available, the quality of that program, and the media value of each sign, calendar, publication, and vocal announcement.

**Packaging:** Sponsorships can include Official Sponsorship to the entire Parks and Recreation Department, naming rights to one of the many facilities located inside each of the Parks, or small sponsorships to events, programs, maintenance, etc. The facilities that make up each of the Parks or recreational sites are highly visible and will not have the same political repercussions as renaming the entire park.

**Limitations:** It will be very difficult to change the names of the Parks or recreational sites because of the popularity of the name and the political considerations.

**Value Range and Salability:** The majority of assets in Parks and Recreation can be packaged together depending on the interests of the City and the partner corporation. The sponsorship packages are usually mid-range value and easier to develop than other departments. Value of sponsorships depends on the amount and location of the entitlements.



**PARKS AND RECREATION DEPARTMENT**  
**FLAMINGO PARK**

Asset Name	Description	Packaging availability	Value Range	Salability	Comments
Flamingo Park	Located in the center of South Beach, Flamingo Park is a highly visible, renowned asset. Approximately 150,000 visitors per year.	All Parks and Recreation programs, Official Sponsorship of the park, etc.	\$\$\$	★	High visibility and unique programs are attractive to many corporations
Flamingo Park Pool	Located in the center of Flamingo Park, the pool holds many activities and programs for all ages. Approx. 75,000 users per year.	Aquatic Programs, Merchandizing, other facilities	\$\$	★★★	Larger sponsorships that include naming of the pool are more lucrative to the City
Track Facility	Complex located next to the pool and behind the Police Athletic League	Track and field programs, Parks and Rec. events, and capital improvement projects	\$\$	★★★	The track needs to be renovated – corporate sponsorship opportunity for facility improvements
Tennis Center	Tennis facility with full-time instructor and programs for all age groups	Programs, events, tournaments, and other tennis related activities at the other park locations	\$\$\$	★★	The fact that the tennis center was named before lowers the value of the sponsorship
Basketball Courts	Flamingo Park's basketball courts were voted "Best of Miami"	Programs, events tournaments, and other facilities within the park	\$\$	★★★	The basketball courts are highly visible and used year-round



Asset Name	Description	Packaging availability	Value Range	Salability	Comments
Youth Programs, Camps, and Events	Day camps, after school programs, adult programs and all other events held at Flamingo Park	Associated facilities and events	\$ \$	★ ★ ★	Programs and events offer a great packaged value to all of the facility Presenting Sponsorships
Baseball Diamond	Home to the Miami Beach High Tides, Major League Baseball (MLB) teams train on this field during the off-season	Programs, facilities, and events	\$ \$	★ ★ ★	The location of the baseball diamond will give sponsorships a higher value
Athletic Fields	Miami Beach's travel and intramural teams play and compete on this field. This area is also used for general activities	Programs, tournaments, and events or other facilities in the park	\$ \$	★ ★ ★	The field renovation gives an excellent opportunity to bring in a presenting sponsors
Police Athletic League	13,000 sq. ft. facility that houses after school programs and a fitness center that is open to the public	Programs and events	\$	★ ★ ★	The Athletic League is already an established brand but can be packaged with other facilities like the track facility
Bark Park					



**PARKS AND RECREATION DEPARTMENT**  
**SCOTT RAKOW YOUTH CENTER**

Asset Name	Description	Packaging availability	Value Range	Salability	Comments
<b>Scott Rakow Youth Center</b>	Built in 1976 to serve the teens of Miami Beach, the facility now serves all ages with a variety of recreational activities. Approx. 32,000 users per year.	Presenting Sponsorship package that includes the entire facility and programs and events at the site	\$\$\$	★★★★	A Presenting Sponsorship will help keep the facility free and support the overall budget
Youth programs, camps, and events	Children (4 <sup>th</sup> -12 <sup>th</sup> grade) can attend the after school and summer camp programs that are held during the week. Approx. 25,000 users per year.	Facilities or a specific area of the center where the program takes place	\$\$	★★	Youth programs and events are excellent underwriting opportunities for potential sponsors
Specialty Camps	Includes ice skating, hockey, outdoor swimming and water polo camps. Almost 18,000 users.	Facilities or a specific area of the center where the program takes place	\$	★★★	Excellent underwriting opportunity
Ice Rink	12,885 sq. ft. ice rink is home to many programs for children and adults. 5000+ users.	Programs and events or a Presenting Sponsorship of the center	\$\$\$	★★	Excellent opportunity because of high visibility and uniqueness



<u>Asset Name</u>	<u>Description</u>	<u>Packaging availability</u>	<u>Value Range</u>	<u>Salability</u>	<u>Comments</u>
Bowling Lanes	Bowlers of all ages and skill levels can enjoy the six lanes	Events and Presenting Sponsorship	\$	★ ★ ★	Not as much exposure as other aspects of the center
Youth Center Pool	A six-lane lap pool that is aerated in the summer and heated in the winter	Movies in the pool, programs, events, and Presenting Sponsorship	\$\$	★ ★	Most visible asset of the center with great signage opportunities
Seahawks Swim Team	Swim team for children that are high level swimmers	Pool and other program or events	\$	★ ★ ★	Great to package with another sponsorship to add value



**PARKS AND RECREATION DEPARTMENT  
NORTH SHORE PARK AND YOUTH CENTER**

Asset Name	Description	Packaging availability	Value Range	Salability	Comments
<b>North Shore Park Youth Center</b>	Computer lab, fitness center, teen room with wide screen TVs and the latest in gaming, a dance room, and auditorium	Presenting Sponsorship can include all facilities and events in the center	\$\$\$	★★★★	Opportunities to include entire facility for specialty programs or events
Youth Programs, camps, and events	Camps include, marine biology camp, boat building, water safety, bowling camp, and cheerleading camp	Official Partner of Parks and Recreation and other programs or events	\$\$	★★	Programs can be packaged with similar programs from other Parks in the City
Tennis Center	State of the Art Tennis facility with full-time instructor and programs for all age groups	Programs, events, tournaments, and other tennis related activities at the other park locations	\$\$\$	★★	



**PARKS AND RECREATION DEPARTMENT**  
**NORMANDY ISLE PARK AND POOL**

Asset Name	Description	Packaging availability	Value Range	Salability	Comments
Normandy Isle Park	Includes multipurpose basketball courts, a tot lot, soccer field, pavilion and after school programs for children K-6 <sup>th</sup> grade; approx 200,000 users/year.	Other programs and events held at the park or with other Parks in the system	\$\$\$	★ ★ ★ ★	Only underwriting or Presenting Sponsorship available – no naming rights
Educational Programs	Programs that are held at the park including, marine biology, surfing, snorkeling, learn to swim, and life guarding classes	Presenting Sponsorship, events, and signage opportunities	\$\$	★ ★	Excellent opportunity for company to pay for the classes and maximize the relationship
Pool	The pool offers an array of unique opportunities and programs that other pools don't offer like marine biology and snorkeling classes	Presenting Sponsorship of Miami Beach pools and other programs or events	\$\$	★ ★	Opportunity for access to a unique demographic



**PARKS AND RECREATIONL DEPARTMENT**  
**MIAMI BEACH GOLF CLUB, NORMANDY SHORES GOLF CLUB, PAR 3**

Asset Name	Description	Packaging availability	Value Range	Salability	Comments
<b>Miami Beach Golf Club</b>	18-hole, par-72 course with new, environmentally friendly and exceptionally playable Paspalum turf is combined with world class course design; located in close proximity to city's boutique hotels and hotel row. Approx. 44,000 users/yr.	Other golf related events, tournaments, programs, and facilities	\$\$\$	★ ★ ★	Miami Beach is a very golf-friendly community and there are many corporations that are comfortable investing in golf tournaments, visibility in carts, etc.
<b>Normandy Shores Golf Club</b>	A newly redesigned and challenging 18-hole, par-71 course that features native tree lined fairways and water hazards on 12 of the holes	Other golf related events, tournaments, programs, and facilities	\$\$\$	★ ★ ★	Miami Beach is a very golf-friendly community and there are many corporations that are comfortable investing in golf tournaments, etc.
<b>Par-3 Golf Course</b>	The course provides a place for beginners to learn and love the game of golf	Other programs and events	\$\$	★ ★ ★	Great packaging opportunity



**PARKS AND RECREATIONAL DEPARTMENT**  
**OTHER OPPORTUNITIES**

Asset Name	Description	Packaging availability	Value Range	Salability	Comments
<b>Fairway Park</b>	A large neighborhood park; 4.48 acres bordered by North Shore Dr., South Shore Dr., and Normandy Shores Blvd.	Other Parks and Recreation facilities, programs, and events	\$\$	★ ★	Excellent opportunity for an “Official Sponsor” or a value add asset
<b>Fisher Park</b>	Neighborhood green space with a secured, shaded playground, contains a prominent memorial to Carl Fisher	Other Parks and Recreation facilities, programs, and events	\$\$	★ ★	Excellent opportunity for an “Official Sponsor” or a value add asset
<b>LaGorce Park</b>	A .75-acre park that primarily serves the surrounding single-family neighborhood	Other Parks and Recreation facilities, programs, and events	\$\$	★ ★	Excellent opportunity for an “Official Sponsor” or a value add asset
<b>Lummas Park</b>	26.34-acre regional park located east of Ocean Dr. and adjacent to Art Deco District.	Other Parks and Recreation facilities	\$\$	★ ★ ★	Excellent opportunity for an “Official Sponsor” or a value add asset
<b>Marjory Stoneman Douglas Park</b>	Small family-friendly park located east of Ocean Dr. in the South of Fifth Neighborhood	Other Parks and Recreation facilities			



Asset Name	Description	Packaging availability	Value Range	Salability	Comments
<b>Maurice Gibb Memorial Park</b>	3.43-acre neighborhood park that provides recreational resources to residents of Venetian and Sunset Islands	Other Parks and Recreation facilities	\$ \$	★ ★ ★	Excellent opportunity for an "Official Sponsor" or a value add asset
<b>Muss Park</b>	Located near the geographic center of Mid-beach District, anchors the mini Parks of the area by providing a full range of organized recreational programs	Other Parks and Recreation facilities	\$ \$	★ ★ ★	Excellent opportunity for an "Official Sponsor" or a value add asset
<b>North Shore Open Space</b>	34.61 acres and the largest open space park in Miami Beach makes it a highly treasured natural resource	Value added benefits with the park and environmental sponsorships	\$ \$	★ ★ ★	As the largest open space park, there are many environmental packaging capabilities
<b>Palm Island Park</b>	A 2.13-acre park that serves the predominately single-family homes on Palm Island	Other Parks and Recreation facilities	\$ \$	★ ★ ★	Excellent opportunity for an "Official Sponsor" or a value add asset
<b>Pinetree Park</b>	A 7.75-acre passive park of the Mid-beach District. Includes bark park	Other Parks and Recreation facilities	\$ \$	★ ★ ★	Excellent opportunity for an "Official Sponsor" or a value add asset



Asset Name	Description	Packaging availability	Value Range	Salability	Comments
<b>Polo Park</b>	Playground with spring riders and free-standing upper body equipment, horizontal bars and includes tennis, racquet ball, basketball courts, and fields	Other Parks and Recreation facilities	\$ \$	★ ★ ★	Excellent opportunity for an "Official Sponsor" or a value add asset
<b>South Pointe Park</b>	17-acre regional park at the southern most point of the island and one of Miami Beach's most scenic Parks. Location readily visible to cruise ships.	Other Parks and Recreation facilities	\$ \$	★ ★ ★	Excellent opportunity for an "Official Sponsor" or a value add asset
<b>Stillwater Park</b>	A 1.68-acre neighborhood park serving the surrounding single and multiple family homes	Other Parks and Recreation facilities	\$ \$	★ ★ ★	Excellent opportunity for an "Official Sponsor" or a value add asset
<b>Tatum Park</b>	A .78-acre neighborhood park located on a triangular lot bordered by Tatum Waterway Dr.	Other Parks and Recreation facilities	\$ \$	★ ★ ★	Excellent opportunity for an "Official Sponsor" or a value add asset
<b>Washington Ave. Bark Park</b>					



Asset Name	Description	Packaging availability	Value Range	Salability	Comments
<b>City Center Park</b>	New park under construction outside the New World Symphony, next to Lincoln Road and Fillmore Miami Beach. To be designed by world-renowned architect.	Other cultural events and facilities	\$\$	★ ★	The park will have very high visibility and a premium for being a new location
<b>21<sup>st</sup> St. Recreation Center</b>	The center offers a variety of programs and activities for all ages including, dance, gymnastics, yoga, and salsa classes, and has 4,070 sq. ft. auditorium with at wooden dance floor and stage	Programs and events held at the facility through Presenting Sponsorships, and adult or special populations activities	\$\$\$	★ ★ ★	This center has less exposure than the others but can be an excellent value-added opportunity
<b>Community Gardens</b>	Two community gardens (North Beach and South of Fifth)				



## CULTURAL AFFAIRS

### **Description:**

With The City of Miami Beach working to become a major cultural destination for tourism and events, this is a perfect time to get assistance in developing programs through private/public partnerships. There are a lot of very unique aspects to the assets controlled by the Cultural Affairs Department, from Art Museums to Convention Centers and Theatres. This inventory offers opportunities for value added benefits through a corporate foundation or an individual gift to support the Arts in Miami Beach.

### **Opportunity:**

There are many opportunities within the Cultural Affairs Department, which match companies' giving missions through grants and donations, but can also be a great opportunity for underwriting and sponsorships. Other opportunities in the Cultural Affairs Department are to partner with one or all of the events, facilities, or conventions that paint the Beach every year. For example, providing opportunities to package sponsorships with the following organizations and events that are not directly owned and operated by the City:

- Art Basel Miami Beach
- Art Miami
- Art Americas
- South Beach Comedy Festival
- International Ballet Festival
- Miami World Theatre Festival
- Winter Music Conference
- Florida Dance Festival
- Maim International Piano Festival
- Miami / Project Hip-Hop
- Fillmore Miami Beach at the Jackie Gleason Theatre
- Lincoln Road Organizations
- Gallerie d'Arts Decorateifs
- Britto Gallery
- Miami Beach Convention Center
- Sleepless Night



**Packaging:**

Cultural Affairs sponsorship packages can go from a small exhibit in the Bass Museum of Art to Presenting Sponsorship of Art Basel Miami Beach depending on how passionate the company and its representatives are about supporting the arts.

**Limitations:**

Some exhibits and facilities will have their own sponsors that are known nationally, this sponsorship may overshadow any local sponsorship in the category if the sponsor of the exhibits and facilities has exclusive rights. This needs to be checked before any sponsorship is solicited so it is known that the category of sponsorship is off limits. Also, Cultural Affairs has a higher level of signage restrictions so as to not take away from the performance or exhibit.

**Value Range and Salability:**

In Miami Beach, culture is a very attractive asset to a partner corporation and/or municipal marketing opportunity. These assets are going to be valued at a much higher value than other departments because of the cultural destination Miami Beach has become. The difficulty of the sale stems from 1) the amount of an asset actually controlled and/or owned by Miami Beach, 2) visibility, and 3) the fact that some of these assets are new to corporations that invest in Municipal Marketing.

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**CULTURAL AFFAIRS**

<b>Asset Name</b>	<b>Description</b>	<b>Packaging availability</b>	<b>Value Range</b>	<b>Salability</b>	<b>Comments</b>
<b>Fillmore Miami Beach at the Jackie Gleason Theater Road Signage</b>	City owned asset on the LED sign outside the Theatre. Approx. 150,000 visitors/yr.	Provides a value-added benefit to a large Presenting Sponsorship	\$\$\$	★ ★ ★	Will be more valuable in a package; management company has interior rights; City outside.
<b>Bass Museum of Art</b>	The Museum is a cultural staple in Miami Beach – it is going through many renovations over the next few years. Approx.. 33,000 visitors/yr.	Programs and events held at the facility	\$\$\$	★ ★	The renovations will be an excellent opportunity to help build the cultural arts in Miami Beach
<b>Colony Theatre</b>	The refurbished auditorium, with a seating capacity of 440, is the region’s premiere mid-sized performance space. Premium location on Lincoln Road. Approx. 80,000 users/yr.	Programs, events, plays, workshops in the facility and other cultural affairs assets	\$\$	★ ★	Cannot be renamed because of its history but is available for Presenting Sponsorships
<b>Byron Carlyle Theatre</b>	Renovated 1968 structure that houses 304 patrons as a single playhouse. Approx. 40,000/yr.	Programs, events, play, workshops in the facility and other cultural affairs assets	\$\$	★ ★	As a historic building with a name, only programs and events held at the theatre will be available for sponsorship



Asset Name	Description	Packaging availability	Value Range	Salability	Comments
<b>CANDO Cultural Arts District</b>	The mission of CANDO is to provide a wonderful and successful neighborhood for arts-related mixed use and community gatherings	Other cultural related events, programs, and facilities	\$\$\$	★★	Available for an underwriting sponsor to support the program
<b>Sleepless Night Event</b>	City-wide event to celebrate the culture of Miami Beach and the extra hour of daylight savings time	Cultural Affairs Department sponsorship	\$\$\$	★★	There are many different levels of involvement in the event and the success of the first year will increase involvement in coming years
<b>North Shore Bandshell Building</b>	Band shell located in North Shore Park that hosts a number of cultural events throughout the year. Approx. 15,000 users/yr.	North Shore Park activities and other cultural events and programs	\$\$	★★	Opportunity for Naming Rights or Presenting Sponsorship as a part of a Parks or cultural affairs sponsorship
<b>Miami Beach Convention Center</b>	Regional convention center with more than 1 million sq ft in meeting/exhibit space				Management company has Interior sponsorship rights with City approval; City controls all external rights.



## **PUBLIC WORKS DEPARTMENT AND FLEET VEHICLES**

**Description:** To maintain the City's roadway and traffic control infrastructure and provide services related to causeway operations and maintenance, and the physical environment. Its primary focus includes emergency/disaster recovery efforts, highway engineering, street cleaning, maintenance, and government building repair. The fleet vehicles include all of the police and rescue vehicles, dump trucks, construction equipment, and other maintenance and city owned cars and trucks.

**Opportunity:** The Public Works Department understands the concept of corporate sponsorship and is extremely eager to implement it into its properties, programs, and services. This department will be most involved in Official Sponsorships of The City of Miami Beach because it is charged with new facilities, replacements, and signage placement.

**Packaging:** The Public Works Department manages the entire inventory that will be included in an Official Sponsorship of the City of Miami Beach and the assets can be packaged with most of the other inventory. Fleet vehicles can be included in these sponsorships as well through in-kind and signage opportunities.

**Limitations:** The Miami Beach signage ordinance is the largest limitation for the Department of Public Works. With each sponsorship, the ordinance will have to be consulted on the size and shape of the signs according to the particular location and partnership.

**Value Range and Salability:** The higher value range in the Department of Public works are displayed by assets that are visible, help the environment, or can include some kind of licensing arrangement or "official product" status for the corporate partner. Salability depends on the willingness to provide amenities to the corporate partner.



**PUBLIC WORKS DEPARTMENT AND FLEET VEHICLES**

<b>Asset Name</b>	<b>Description</b>	<b>Packaging availability</b>	<b>Value Range</b>	<b>Salability</b>	<b>Comments</b>
<b>Vehicle Inventory</b>	Police, rescue, construction, clean-up, code, parking and maintenance vehicles used in a very densely populated area.	Official partners of the City, the police department, and other inventory where applicable	\$ \$ \$	★ ★ ★	The exposure of vehicles in Miami Beach makes a sponsorship very attractive for an in-kind investment
<b>Maintenance</b>	The City maintains and operates facilities, streets, Parks, beaches, government buildings, etc.	Packaging opportunity with a “Keep Miami Beach Clean” sponsorship	\$ \$	★ ★	Excellent opportunity for packaging with signage on street sweepers or in-kind product sponsorships
<b>Streetscape Environmental Seawalls</b>	Miami Beach has a unique obstacle in keeping the seawalls, beach, and boardwalk well maintained and in regulation with codes set by the County and State	Package with an Official Beach partnership	\$	★ ★	Great opportunity for a company that is committed to helping the environment – especially the ocean
<b>Street Clean Up Effort</b>	Miami Beach prides itself in being clean and well kept – this effort is very expensive for the City	Opportunity for product company to give an in-kind donation	\$ \$	★ ★	Sponsorship can include signage on the street sweepers and dumpsters and public relations opportunities



## **PARKING DEPARTMENT**

**Description:** Responsible for the operation of the entire City owned parking in garages, on the street, and residential areas. The Department controls 11,000 on street spaces, six garages, and 64 surface lots.

**Opportunity:** Parking garages can be seen as another facility in the City's inventory with signage, naming rights, promotional, and advertising opportunities to offset the costs of maintenance and operation of the garage or lot. There are also opportunities with pay to park displays, meter sponsorships, and free lot cost underwriting. The annual exposure of a parking garage sponsorship would include the parking garage patrons (~210,000 annually) and other patrons that will see signage or receive promotional material. This value will be contingent on exactly what kind of partnership is established with the Parking Department.

**Packaging:** Parking sponsorships can be packaged together for a limited number of high value corporate partnerships keeping with the overall design of the City.

**Limitations:** Limitations include signage ordinances and naming rights of existing garages to keep from over commercialization of city managed properties. Some companies only see parking garages as advertising, not as a sponsorship opportunity. That will also hinder the value and ease of sale of a parking department sponsorship.

**Value Range and Salability:** Assets within the Parking Department have a lower value range because of the limited amenities available, but a higher sale rate because of the impressions available and the simplicity of the relationship.



**PARKING DEPARTMENT**

<b>Asset Name</b>	<b>Description</b>	<b>Packaging availability</b>	<b>Value Range</b>	<b>Salability</b>	<b>Comments</b>
<b>Six Parking Garages</b>	Garages in Miami Beach that are maintained by the City and provide business and hotels with parking separate from the street. There are more than 3,300 spaces that serve more than 2.2 million cars each year.	Signage opportunities on roof to be seen by airplanes; also elevators, security arms, pay stations	\$\$\$	★ ★ ★	Most of the garages are not available for naming rights
<b>68 Surface Lots</b>	Parking for visitors of the beach, Parks, and other cultural destinations that serve more than 5 million cars each year.	Packaged with other department sponsorships or solo	\$\$\$	★ ★	Opportunity for community relations investment
<b>8,500 Metered Spaces</b>	Spaces located on the street or in small lots that are used on a hourly basis by visitors	Value add to a parking sponsorship or garage naming rights partnership	\$\$	★ ★	Added to a partner package for the parking department to keeps price down
<b>250 Pay Stations</b>	Located near metered stops and in surface lots to pay for time allowed to park in the space	Value add to a parking sponsorship or garage naming rights partnership	\$\$	★ ★	Backs of Pay Stations are currently bare and can be used for signage placement



Asset Name	Description	Packaging availability	Value Range	Salability	Comments
<b>Smart Cards</b>	Cards that residents and employees use to access a specific garage at a monthly cost	Value add to a parking department sponsorship or garage naming rights partnership	\$	★	Backs of cards are available to be printed with company name and logo.
<b>In Car Meter</b>	Parking payment alternative that electronically allows you to deduct payment				Highly visible, as left on dash;



## THE BEACH

**Description:** The Beach is the jewel of Miami Beach and the surrounding area. It is showcased in many different movies and TV shows, which in turn displays the City and its many assets available for corporate sponsorship.

**Opportunity:** Through discussions with representatives – Superlative has determined that cash and in-kind investments and partnership will be very lucrative for the City and help off-set costs incurred from the maintenance and operation of the Beach and its departments.

**Packaging:** The assets held on the beach can be packaged in a way where in-kind donations (combers, jet-skies, etc.) can be combined with cash sponsorships depending on what company is approached and what they can offer to the City to make the partnership mutually beneficial.

**Limitations:** Many City representatives feel that sponsorship can be representative of over-commercialization of such an important landmark. The City and its consultants need to be careful in the entitlements that it offers a sponsorship with regards to signage and product display on the beach.

**Value Range and Salability:** The Beach is another valuable asset to the City of Miami Beach with the most visibility and relationship opportunities. More than 13 million people are estimated to use the guarded beaches along. Partnership/sponsorship opportunities are valuable and straightforward to develop, with difficulty arising in providing corporate value to the asset while keeping with the vision of the City.



**THE BEACH**

Asset Name	Description	Packaging availability	Value Range	Salability	Comments
<b>Ocean Rescue</b>	The beach patrol is a staple of life in Miami Beach - making the beaches safe for residents and visitors. Over 13 million persons use the guarded beaches in the City.	Official Beach Sponsorships	\$ \$	★ ★	The beach patrol has many value added benefits that can be included in a "Official Beach Partnership."
<b>Life Guard Stations (29)</b>	The lifeguard stations are the symbol of Miami Beach. The image is widely shown in magazines and movies about the City.	A large asset that can be included with an "Official Beach Sponsor" package	\$ \$ \$ \$	★ ★	Some of the stations are considered public art and corporate sponsorship signage has to be done tastefully without over commercialization
<b>Other</b>	The beach has value added assets, including boardwalks, beachwalk, combers, towels, showers, etc.	Value-added benefits to beach packages	\$	★ ★	Current concessionaire and other City Vendors have inventory that can be bought and then distributed to a corporate partner.



**OTHER AVAILABLE INVENTORY**

<b>Asset Name</b>	<b>Description</b>	<b>Packaging availability</b>	<b>Value Range</b>	<b>Salability</b>	<b>Comments</b>
<b>City-owned vehicles</b>	Miami Beach owns an impressive number of vehicles from ATV's to dump trucks	Automotive or vehicle sponsorship package	\$\$\$	★★	The fleet vehicle department is very aware of sponsorship opportunities
<b>Trash Cans</b>	The trash cans are very visible and in high demand with the tourists and residents to keep the City clean. City services a total of ### cans, many located in highly visible areas.	Value added awareness benefit to any sponsorship	\$	★	Opportunity available after conclusion of the "Adopt a Trash Can" campaign
<b>Wi-Fi</b>	Wi-Fi is going to be a very large asset to the City because of the recent agreement that allows Wi-Fi to be free to residents	Technological partnerships or a value added benefit to Official Sponsors	\$\$	★	The Wi-Fi assets will not be available until advertising is allowed
<b>MB Magazine</b>	With six issues a year, Miami Beach turns to the magazine for the latest happenings in government, culture, and nightlife. Direct mail piece with over 65,000 distributions.	The magazine advertising section can be packaged with any sponsorship to add value – it is also a great PR outlet	\$\$\$	★★★	Keeping the magazine free, the advertising and sponsorship dollars have to offset the printing costs
<b>Signage (Entrance Signage)</b>	The City is placing new LED signs in all the entrances to the City – showcasing the new logo for the city	Official Partnership Sponsorship of the City	\$\$\$	★★	Have to support the signage ordinance and overall design



Asset Name	Description	Packaging availability	Value Range	Salability	Comments
<b>Intellectual Rights</b>	The City owns intellectual rights to its name and all of its sister agencies such as South Beach	Copyrights and trademarks to insure payment for use of marks	\$\$	★ ★ ★	The City is working on the paper work, but also has to make this a priority in the legal department
<b>Fourth of July Fireworks</b>	Miami Beach holds many different free Independence Day fireworks celebrations in different parts of the City	Other official status partnerships and events	\$\$	★ ★ ★	Feel good opportunity to keep an event free for residents
<b>Lighting</b>	All of the lighting of the beachwalks, board walks and streets are the City's responsibility	Value add to other sponsorship packages or solo	\$\$	★	In-kind sponsorship opportunity for a environmentally friendly lighting company
<b>Street-pole Banners</b>	Many streets have street-pole banners that promote events and/or city facilities	Value add to other sponsorship packages	\$	★ ★ ★	Excellent to add exposure value to a sponsorship; limited by program rules.
<b>Street Furniture</b>	Bus benches and shelters				The program is currently contracted, with revenues shared by City and contractor.
<b>Beverage Vending</b>	City-wide official beverage provider for any park, department, beach, or area that has vending machines and sales	Other "Official Partner" sponsorship of City or with another product or service	\$\$\$\$	★ ★ ★	Beverage vending asset is very lucrative but may have political issues with other companies involved



<b>Workforce</b>	Approximately 2,000 employees; employees with highly visible jobs can be seen by visitors and residents on a daily basis (e.g. ocean rescue, pool lifeguards, police, fire, sanitation, code, parking)	"Official sponsor" status for a service			Examples include uniforms (official outfitter), sunglasses, etc.
<b>Doggie Dispensers</b>	Located in densely populated areas. There are 110 currently installed throughout the City, providing 500,000 bags.				Opportunities on bags as well as dispensers to offset hard costs.

