

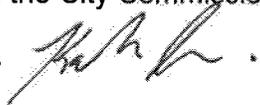


MIAMI BEACH

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: September 12, 2012

SUBJECT: **REPORT OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE MEETING OF JULY 26, 2012.**

OLD BUSINESS

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

ACTION

The Committee recommended moving forward with the ethics guidelines and bringing the item to the full Commission.

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

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

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

Agenda Item CGE

Date 9-12-12

adopted its Resolution No. 93-20694, in which the City Commission formally established a procedure for the City's distribution of its tickets to performances taking place at City-owned venues, whereby designated municipal officials and deserving members of the community would receive complimentary tickets to such productions. A complimentary ticket program has been negotiated as part of resulting public benefits programs for other venues with management and/or lease agreements, including the Miami City Ballet and Byron Carlyle Theater. Based on this longstanding City policy and State Commission on Ethics opinion, the SAO closed its case on October 18, 2011, with a finding of no wrongdoing, but referred the matter to the COE for further review on the policy elements of the issue. On March 1, 2012, the COE released a DRAFT "Guidelines and recommendations regarding 'public benefit' clauses in certain government contracts." The focus of the guidelines was on complimentary ticket programs in those public benefits clauses, and what they perceived to be "flawed" policies by several municipalities related to such. The City Attorney's Office reviewed the COE's recommended guidelines and on February 28, 2012 submitted a Memorandum of Law to the COE addressing the issues raised by their guidelines, and challenging the authority of the COE to issue such standards/guidelines. It is the opinion of the City Attorney that these are matters of public policy and not subject to review by the COE.

On June 28, 2012, Assistant City Manager Hilda Fernandez presented the item and explained the City's current ticket distribution policy. Discussion ensued. City Attorney Smith added that he felt that only the County Commission or the City Commission can legislate what is and what is not a "public benefit" and was confident in defending the proposed resolution should the City Commission choose to adopt it. Commissioner Jorge Exposito was concerned that the guidelines suggested by the COE and the proposed City resolution contradicted each other. Chairperson Deede Weithorn suggested that the language defining a "public benefit" in the proposed resolution be strengthened. Ms. Fernandez stated that City Officials are entitled to receive two (2) tickets to a single performance event and that 70% of the remaining tickets are distributed to deserving members of the community, 15% distributed to others such as organizations that assist in promoting and marketing the City through a municipal marketing agreement with the City or to persons and/or entities that have made special contributions to the community; and 15% distributed to employees through an Employee Recognition Program. Ms. Fernandez also added that on an annual basis, an advisory committee would review and recommend a list of deserving organizations and/or groups eligible to receive tickets and that the list shall be reported to the City Commission. Chairperson Weithorn expressed concern about tickets being unused and asked what happened to tickets that were not picked up. Ms. Fernandez stated that tickets which are not picked up would be given to employees which are part of the Employee Recognition Program. City Attorney Smith also suggested that Commissioners make note of how tickets were used, using the public purpose categories identified in an addendum by the COE.

City Attorney Smith opened the discussion by stating the recent issues that came up in Miami Dade County Commission on Ethics and Public Trust which issued some guidelines for all governments to follow. A list of public purposes, distribution of tickets and disclosure requirements were set forth. The distribution of any ticket by the City of Miami Beach shall promote a public purpose, which purpose shall include those delineated in this resolution. Distribution of tickets shall be in accordance with the public purposes stated 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 fund raising 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.
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.

For the 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, but 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.

City Attorney Smith stated the ethics commission was very strong on the notion of political pandering, giving tickets to political supporters and others to gain political favors. Any transfer or assignment of tickets has been eliminated, as the tickets can only be used by those individuals that are Mayor or City Commissioners, City Attorney or City Manager. The City will create a sight on the webpage to show what the tickets were used for. Chairperson Weithorn asked for clarification on the use of the second ticket. City Attorney Smith stated that there was no mentioning of the second ticket by the ethics guidelines or Mr. Santarino. As long as the Commissioner goes, it should not be an issue of who they take with them. To avoid the appearance of impropriety, it was suggested to maintain a log of the public purpose of the tickets just in case there is an audit to demonstrate the eligible use of the tickets. Mr. Sklar stated they will look at the form and see if there's a way to provide space for the public purpose or create a check-off list with a corresponding number that can just be listed. It will be made as simple as possible before distribution. Commissioner Exposito asked if he cannot attend an event,

could he offer his tickets to another Commissioner. Mr. Sklar stated that, based on what's written, the tickets would have to be returned if not used. Chairperson Weithorn asked if she could continue to give her tickets away to a charity. City Attorney Smith stated the tickets would have to be given back, but those charitable organizations can place themselves on this list of organizations that can receive group tickets. Chairperson Weithorn stated to pass this item. Commissioner Exposito moved it, and it was sent to the full Commission.

NEW BUSINESS

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

ACTION

The Committee recommended no action be taken.

Assistant City Manager Jorge Gomez presented this item.

Assistant City Manager Jorge Gomez opened up by stating that this was prompted by the request of Crescent Heights to use the Chambers to hold their own independent roll out of their projects. At the time, the City Clerk informed the Commission that this had never been done where a private entity was allowed to use the Chambers. Numerous emails were then sent by the community objecting to the use of the Chambers. Eventually, the requestor decided to do this off site anyways as there were too many logistic issues in using the room and opposition from the community.

Assistant City Manager Gomez asked if they wanted to discuss the criteria and guidance that can be brought back to the full Commission. Commissioner Exposito stated the easiest thing would be to state we prefer not to have others use the Chambers for private purposes unless we can justify it. Chairperson Weithorn stated there has been request from time to time in the pass from schools and others in which they have allowed the schools to do Mock Debates. They were just asked to schedule when the Chambers were empty. Chairperson Weithorn made a recommendation to avoid any future use until there is actually City participation in any project or agreement in writing. Assistant City Manager Gomez stated there was never anything brought to the planning board regarding this matter. This was really a private RFP or process that didn't fall under any of the City's umbrella or planning board. Chairperson Weithorn stated if they get an issue where someone chooses to use the Commission Chambers, they can choose to have a special meeting if they feel it's important for the public. City Attorney Smith suggested delegating this to the Mayor and City Manager to make the preliminary finding of whether it is a public purpose. Chairperson Weithorn recommended doing nothing in the interim.

3. Discussion regarding a proposed municipal marketing program for South Pointe Park, and an update on other potential municipal marketing partnerships

ACTION

The Committee recommended The Superlative Group bring back a more detail report to the October meeting.

Acting Assistant City Manager Max Sklar presented this item.

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 a list of priorities, 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, the City has made considerable progress in the area of an Exclusive/Official citywide beverage partner resulting in a 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 represent sponsorship funds for the City, but will require the City's agreement to the proposed terms.

Mr. Sklar introduced Mr. Kyle Cantor from TSG and stated that he wanted to make sure they were working in the direction of what is expected and discuss any issues or concerns anyone may have before negotiations get too far along. Mr. Sklar also provided a copy of the Asset Inventory and Valuation Report from 2009 as a reference guide.

Mr. Cantor of TSG opened by stating they successfully completed the 7.2 million Coca Cola deal and they are now looking for relationships that would be lucrative for the City at South Pointe Park. To date, they feel they are in negotiations with the right partner (anonymous), a local area business. The discussions began at the naming rights to South Pointe Park. In the objectives, this anonymous company has listed to support the City of Miami Beach by enhancing and updating South Pointe Park for many years to come. In the vision and position, the anonymous company stated they will support the City of Miami Beach over many years to offer an enjoyable, inclusive and accessible experience that will strengthen awareness and reinforce the core values of the City of Miami Beach and that of the brand.

Mr. Sklar asks for Mr. Cantor to go over some of the terms they have discussed with the Company. Mr. Cantor of TSG stated the discussions are focused on getting 4 million over 20 years for this agreement which is a hard cash fee with an additional contribution toward the maintenance of the park. This portion of the details has to be worked out based off of feedback and negotiations. Chairperson Weithorn stated that this is a very important detail because if they properly maintain and take some of the maintenance

issues from the City, it's a big savings so it needs to be quantifiable, definable and measureable.

Interim City Manager Kathie Brooks stated that she saw the schedule prepared by TSG with a rank in terms of value assigned to facilities. She thought the value for South Pointe Park would have been higher and if Mr. Cantor can give his thoughts on that. Mr. Cantor explained rankings are based on impressions, major streets and media value. Interim City Manager Brooks suggested another study be done on the impressions of South Pointe Park that is more up to date since the last one was done in 2009. Commissioner Exposito stated that he wants to maintain the tastefulness of the park when you enter. Mr. Sklar stated that everything that gets done has to go through a regulatory review and must meet the City Code and our design standards. Chairperson Weithorn stated concern with the sun tan lotion and that the display of the products should be tasteful showing. Mr. Cantor clarified there's no intent to add or create events in the park. Mr. Sklar stated that they want to make sure people experience the park for the way it was designed and possibly add an educational component that discusses the parks history and its connection to the ocean. Mayor Bower stated that the deal sounds too good to be true and that we have to be careful. Commissioner Exposito stated that he loves the educational piece, but they have to be careful of the signage throughout the park. Chairperson Weithorn stated that we keep in mind this is an active, not organized park. Commissioner Exposito asked for clarification if the Pier would be added in the negotiation of the park. Mr. Cantor stated the Pier is being included in the initial discussions. Mr. Sklar stated they would come back before the Committee probably at the September meeting. Chairperson Weithorn stated that it's important that this process be done right as this is the first one to be considered. Mayor Bower stated we need to make sure it's clear why we are doing this, if it will be an endowment or trust. Mr. Harold Rosen asked if the naming rights were bid out. Mr. Sklar stated the contract was bid out to Superlative and awarded through a competitive process to manage selecting a company. Mr. Rosen asked will the naming rights be put out to the community as there are many individuals that would take advantage of this opportunity of having their name on a City Asset. Mr. Cantor stated the process used to secure these types of projects was to target the top 50 companies in your corporate community. Naming rights are almost always sold to a super regional entity as it's a draw for them to support the area in which they do business. City Attorney Raul Aguila clarified that in order to follow the code provisions, when the request goes public, it has to go before this committee and be approved by 5/7 vote or the City Commission for the naming of public facilities. Chairperson Weithorn suggested bringing this item back to the October meeting in which everyone agreed. Meeting adjourned.

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