

## **INDEPENDENT REVIEW PANEL MINUTES**

**December 18, 2008**

**LOCATION:** 140 West Flagler Street, Conference Room 908  
Miami, Florida 33130

### **PANEL MEMBERS PRESENT**

Julia Dawson, Esq. Chairperson  
Michael R. Band, Esq., 1st Vice Chairperson  
Jean-Robert Lafortune, 2nd Vice Chairperson  
Doris Shellow, Substitute Member  
Tangier Scott, Ed.D.  
Julie C. Ferguson, Esq.

### **EXCUSED**

Glenn P. Falk, Esq.  
Jorge E. Reynardus, Esq.  
Moiez Tapia, Ph.D

### **ABSENT**

Josie Perez Velis, Esq.

### **PANEL STAFF PRESENT**

Dr. Eduardo Diaz, Executive Director  
Kristin Anderson, Conflict Resolution Specialist  
Anna Sidan, Conflict Resolution Specialist

### **AUDIENCE**

MDPD: Glenn Theobald, Chief Counsel; Robert L. Diers, Police Legal Advisor  
Others: Gary J. Dufek

**Agenda Item #1) Call to Order.** Ms. Dawson called the meeting to order at 2:03 p.m. and asked staff to call roll.

**Agenda Item #2) Adoptions of the Minutes from November 20, 2008.** Ms. Dawson requested that that staff write out names the first time and thereafter use abbreviations. She referred to pg. 2, 2<sup>nd</sup> paragraph. In addition, Ms. Dawson stated that on the last line of page 2. it should read, “record” as opposed to “arecord.”

Doris Shellow made a motion to approve the minutes as corrected. Julie Ferguson seconded. It was passed unanimously.

**Agenda Item #3) Complaint Follow-up: Peddler and Vendor Ordinance. MDPD Legal Bureau.**

Dr. Diaz opened up by stating that he believed this would be a great opportunity for Panel Members to become acquainted with how the Police Legal Bureau is structured and how their actions may differ from the County Attorney's Office. Mr. Theobald, Chief Counsel for MDPD, introduced himself. He stated that the Miami-Dade Police Department (MDPD) has a Police Legal Bureau that works specifically for the Director of the department. The Bureau provides legal advice regarding laws, search warrants, discipline, etc. It also interprets policy and procedures. The Bureau has a mixture of civilian and sworn legal advisors.

The Bureau also provides legal advice regarding new statutes. A Law Enforcement Handbook is provided to MDPD Officers, which includes Miami-Dade County ordinances and state laws.

Ms. Dawson inquired whether a legal bulletin is prepared whenever a new statute comes out. Mr. Theobald replied that the Legislature puts new laws out in July and October, and a "New Laws Bulletin" is sent out with anything that pertains to officers. About 300 laws are passed yearly and about 60 of those laws affect officers.

Ms. Dawson stated that the Panel asked Mr. Theobald to address Legal Bulletin 95-4. Ms. Dawson asked whether an officer could be held liable if he/she followed the advice in a legal bulletin and harm resulted to a citizen. Mr. Theobald replied that, if the officer is acting in accordance with the bulletin, the Department will back up the officer. If the citizen feels he/she has been harmed by the actions of the officer, the citizen can file a lawsuit. The citizen can challenge the ordinance or the action of the police department.

Mr. Lafortune asked what jurisdiction the ordinance covers. Mr. Theobald responded by stating that county ordinances cover all jurisdictions in Miami-Dade County, unless a city decides to adopt its own ordinance. He mentioned that when people apply for a peddler's license, whether in the City of Miami, or in unincorporated Miami-Dade, they get instructions on what the ordinance says they can and cannot do.

Dr. Scott made reference to MDPD Director Parker's letter of 2006, where he states that MDPD would work to re-structure the ordinance so that a lay person would be able to understand it, however there appears to be a retraction in that position. Mr. Theobald replied that MDPD does not create ordinances; it only enforces them. The ordinance is created by the Board of County Commissioners with the assistance of the County Attorney's Office. MDPD can help; however, it is up to the Commissioners to change the ordinance if they see a need to do so.

Mr. Theobald stated that Police Legal Advisor Robert Diers already drafted an amendment to the ordinance and he is willing to work with any of the commissioners to change the legislation if the commissioners feel it is in the best interest of the county.

Ms. Dawson referred to the October 4, 2006 letter from Director Parker, where it reads, "To reduce the potential of mistaken application of mistaken application, the Police Legal Bureau will work with the County Attorney's Office to draft a new countywide ordinance containing clearer language." Ms. Dawson stated that subsequently, Mr. Diers drafted an ordinance and then, about one year later, there

was a communication that the Police Legal Bureau believes that the current Legal Bulletin is “an accurate summary of the ordinances, which remain to be good law.”

Mr. Diers replied that his idea was to draft a new ordinance that would prohibit vending. After reviewing court decisions and the Attorney General’s opinion, he realized that there cannot be a total ban on vending. He sent a draft ordinance to the Independent Review Panel (IRP) with language that was taken from other municipal and county ordinances throughout the State of Florida. Mr. Diers stated that later he worked with Andrew Boese, Assistant County Attorney assigned to the Planning and Zoning Department, to draft an amendment that states a vendor must remain mobile and can only stop to service customers. Mr. Diers said this would legalize vending and his position is that vending is not legal. Mr. Diers reported that if the County Attorney’s Office wants to recommend a change in the ordinance, it can do that, however if mobile vending is legalized, it will impact business owners.

Mr. Diers stated that all vendors with occupational licenses know they must remain mobile. Mr. Theobald stated that when vendors receive their license they are told that they must continue to move and can only stop when requested by a customer.

Ms. Dawson responded the vendors know that because they have been told that, however the issue is whether they *should be* told they must keep moving. Mr. Falk researched the laws and found that telling vendors they had to be mobile was not supported by the statutes or by the ordinances.

Mr. Diers read from the section of the County Code relating to BU-2 “Special Business District.” “Sale of fruit or merchandise from trucks, wagons or other vehicles parked on or along public or private streets or from open stands or vacant lots shall be prohibited. Such business on private or public property shall be conducted only from within approved permanent substantial buildings.”

Ms. Dawson recognized Gary Dufek, a member of the MDPD South District (Cutler Ridge) Citizens Advisory Board who lives on Krome Avenue. Mr. Dufek stated that stationary vendors are a major problem on Krome Avenue. That the area is near the Hammocks District and the problem is compounded by the fact the South District enforces the vendor ordinance and the Hammocks District does not. Mr. Dufek stated that peddlers know they must be mobile but it is not convenient for them.

Ms. Dawson responded that the question is, can the police force peddlers to be mobile and that remains unresolved.

Dr. Diaz summarized the discussion as follows: It doesn’t appear that the initiative to change the ordinance will come from the police. The IRP got concerned because Director Parker said the Police Legal Bureau would work with the County Attorney’s Office to draft a new ordinance containing clear language. Then, Mr. Diers’ research led to the conclusion that it might not be a good idea to change the ordinance because it would legalize vending. At this point MDPD does not see a need to revise the ordinance and it stands by its interpretation of the law as related in the Legal Bulletin.

Ms. Dawson stated that Mr. Diers intention in revising the ordinance was to prohibit mobile vending, however that was not the intention of the Panel when they recommended revising the ordinance. She thanked Chief Theobald and Mr. Diers for their participation and advised that the IRP would continue to monitor the issue for possible future action.

**Agenda Item #4) Executive Director's Report** Dr. Diaz stated that a couple of meetings ago, there was a request from Mr. Lafortune for an opinion by the County Attorney's Office in regards to the issue of whether or not the Panel could address an item that voters were voting on. Dr. Diaz reported that he communicated with Assistant County Attorney Ron Bernstein who advised that only the Board of County Commissioners could take positions on pending resolutions and referendums on behalf of the county.

Dr. Diaz reported that the Panel received several emails regarding the chapter which he wrote last year December on "Police Oversight." He also mentioned that the County budget process for the next fiscal year has already started. Every county department is being asked to reduce its current budget by three percent. Dr. Diaz reported that the only way the IRP can cut three percent cut is to reduce staff.

**Agenda Item # 5) Adjourn** Ms. Dawson made a motion to adjourn. Mr. Lafortune seconded. It was passed unanimously.