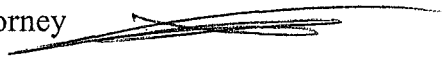


CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
MEMORANDUM - #09-001

TO: Victor I. Igwe, Independent Auditor General
FROM: Julie O. Bru, City Attorney 
DATE: April 20, 2009
RE: Legal Opinion - Applicability of the Parking Surcharge Ordinance to Pay and Display Machines; Matter ID: 09-1072

You have requested a legal opinion on the following issue:

WHETHER PARKING REVENUES DERIVED FROM THE USE OF PAY AND DISPLAY MACHINES ARE SUBJECT TO THE PARKING SURCHARGE.

The answer to the question is in the affirmative.

ANALYSIS

Pay and Display (“PAD”) machines are machines that are used throughout the City of Miami (“City”) to regulate parking. Customers purchase tickets from the machines using either a credit card or cash and display the ticket on the dashboard of the vehicle. The ticket usually includes the location of the PAD machine, the amount of the fee paid, the time the fee was paid, and the time the ticket expires. PAD machines are replacing parking meters that have historically been used throughout the City.

Florida Statute §166.271 authorizes certain municipalities, subject to referendum approval by voters, to charge a surcharge “of the amount charged for the sale, lease, or rental of space at parking facilities within the municipality which are open for use to the general public.” The monies that are collected as a result of the parking surcharge are then used to reduce the municipality’s ad valorem tax millage and improve transportation in the municipality.

Pursuant to Florida Statute §166.271, the City enacted Chapter 35, Article IX of the City of Miami Code¹ to collect the parking surcharge from parking facilities within the City. The City collects a 15% surcharge on all revenues derived from parking transactions in parking facilities located within the City. See Section 35-342 of the City of Miami Code. Pursuant to Section 35-345 of the City of Miami Code, the surcharge applies to all parking in parking facilities in the City except for residential parking.² The surcharge is collected at the time the parking transaction occurs and the operator of the parking facility submits the surcharge to the City no later than the 20th day of each calendar month. See Section 35-346 of the City of Miami Code.

The operative issue in the question presented is whether parking spaces regulated by PAD machines are parking facilities subject to the parking surcharge. Section 35-344 of the City of Miami Code defines a parking facility as:

any use in whole or in part of *any space*, plot, place, lot, parcel, yard, enclosure, parking lot, garage, street, building or structure that is open to the general public at which motor

¹ Chapter 35, Article IX of the City of Miami Code is currently pending amendments before the City Commission. The proposed amendments do not affect the analysis of the issue presented in this legal opinion.

² The proposed amendment to Chapter 35, Article IX also exempts airports, seaports, and county administration buildings pursuant to Florida Statute § 166.271.

vehicles may be housed, stored, kept, or parked for which any fee or charge is made, no matter how the fee or charge is collected.

(Emphasis added). Accordingly, pursuant to Section 35-344, revenues received from a PAD machine for the use of a parking space are subject to the parking surcharge.

Chapter 35, Article IX of the City of Miami Code also grants the City Manager certain powers to enforce the parking surcharge. Specifically, Section 35-346 of the City of Miami Code authorizes the City Manager to collect the surcharge and adopt or amend any rules and regulations to assist in the collection of the surcharge. This section also authorizes the City Manager to delegate the duties and functions concerning the collection of the surcharge to another entity. Pursuant to Section 35-346, the City Manager has authorized The Parking Network, Inc. ("TPN") to collect the parking surcharge on behalf of the City.

In its rules and regulations which are reprinted on its website, www.miamisurcharge.com, TPN states that the parking surcharge "does not apply to meters on the public right of way (streets) but all other meters are subject to the surcharge."³ The decision by TPN to have this exemption listed on its website and in its regulations was pursuant to discussions with the City Administration. Previously, the Administration imposed a policy that the parking surcharge shall not apply to parking metered spots located on the street, including PAD machines. This policy was previously adopted because of (1) difficulties in enforcing the surcharge on parking meters and (2) the Administration's belief that parking metered spots on the street, including PAD machines, did not meet the definition of a parking facility.

CONCLUSION

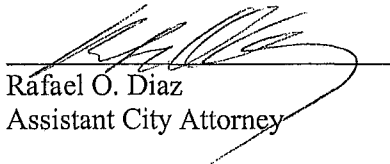
While Florida Statute §166.271 as well as Chapter 35, Article IX of the City of Miami Code authorize revenues received from PAD machines to be subject to the parking surcharge, pursuant to policy decisions made by the City Administration, the surcharge is currently not collected from said parking revenues.

PREPARED BY:

REVIEWED BY:



Barnaby L. Min
Assistant City Attorney



Rafael O. Diaz
Assistant City Attorney

cc: Honorable Mayor and Members of the City Commission
Pedro G. Hernandez, City Manager
Diana M. Gomez, Director of Finance
Franklin Laso, The Parking Network, Inc.

³ This language was recently removed from TPN's website after discussions with the City Administration. TPN is currently amending its rules and regulations based on the proposed amendments to Chapter 35, Article IX of the City of Miami Code pending before the City Commission.