

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY and CITY MANAGER

LTC # 013-2025

LETTER TO COMMISSION

TO: Honorable Mayor Steven Meiner and Members of the City Commission

FROM: Ricardo J. Dopico, City Attorney and Eric T. Carpenter, City Manager
Ricardo J. Dopico *Eric T. Carpenter*

DATE: January 9, 2025

SUBJECT: Injunction in *Clevelander Ocean LP et al. v. City of Miami Beach et al.*,
Requiring Ocean Drive Reconfiguration

The purpose of this Letter to Commission (LTC) is to advise you of the recent oral ruling by Judge Beatrice Butchko Sanchez in the case of *Clevelander Ocean LP et al. v. City of Miami Beach et al.*, Case No. 2021-11642-CA-01 (11th Jud. Cir.) (the "Lawsuit"), requiring the City to return Ocean Drive between 5th Street and 14th Place to its pre-COVID-19 configuration.

The plaintiffs in the Lawsuit are the owner of the Clevelander hotel property, the operator of the Clevelander hotel (together with the owner, the "Clevelander Parties"), and the owner of the Essex House hotel. Among other claims, the Clevelander Parties allege in the Lawsuit that (1) the closure of Ocean Drive to vehicular traffic between 13th Street and 14th Place, and (2) the closure of Ocean Drive's northbound lane to vehicular traffic between 5th Street and 13th Street, are both unauthorized by Miami-Dade County (the "County") and therefore illegal. The Clevelander Parties therefore requested in the operative Complaint in the Lawsuit that the Court enter both a temporary and permanent injunction requiring Ocean Drive to be restored to its pre-COVID-19 condition.

The City filed a Motion to Dismiss the operative Complaint, including the claims relating to the Ocean Drive configuration, arguing that those claims are barred by sovereign immunity, that the County had previously granted temporary permits for the closures, that the Clevelander Parties lack standing to enforce the County's traffic laws, and that the Clevelander Parties otherwise failed to state any plausible legal claim. The City was advised that the earliest Judge Butchko Sanchez could hear the Motion to Dismiss would be February 26, 2025. Even though the Motion to Dismiss remains pending, the Clevelander Parties filed a Motion for Partial Summary Judgment ("MPSJ") on the Ocean-Drive-related claims and unilaterally set it to be heard on January 8, 2025. The City asked Judge Butchko Sanchez to wait to decide the MPSJ until after she could hear argument on the City's Motion to Dismiss, but Judge Butchko Sanchez denied that request and proceeded with the hearing on the MPSJ on January 8th.

During the hearing, counsel for the Cleveland Parties presented deposition testimony from the County's corporate representative characterizing the road closures as "unsafe" and "unauthorized." Counsel for the Cleveland Parties also presented the letter (see attached) dated January 7, 2025, from the County Department of Transportation and Public Works ("DTPW"), directing the City to "remove in a safe and controlled manner all barriers installed on, along, or nearby Ocean Drive which impede general vehicular traffic between 13th Street and 14th Place and Ocean Drive" and noting that "DTPW encourages the City to pursue a parallel application for the existing one-way condition on Ocean Drive from 5th Street to 14th Place . . . [and] to pursue other concepts in the future in collaboration with DTPW to enhance pedestrianization and contextual urban design opportunities on Ocean Drive."

Over the City's strenuous objection, Judge Butchko Sanchez orally granted the Cleveland Parties' MPSJ and declared she would be entering an injunction order requiring the City to "reopen" Ocean Drive between 5th Street and 14th Place no later than Wednesday, January 15, 2025, at 5:00 p.m.

Judge Butchko Sanchez is expected to enter a written order confirming her oral ruling sometime within the next few days, although she is not under any specific deadline to enter the order. We will keep you advised of this and related developments.

It is imperative that whatever changes are made must be consistent with the safety standards and codes of the authority having jurisdiction, the DTPW. To that end, the City Attorney's Office and the City Administration are working diligently with the County on next steps and all possible avenues for an outcome that continues to provide safe transportation options for our residents, business owners and visitors, while complying with lawful mandates.



Department of Transportation and Public Works
Office of the Director
701 NW 1st Court • 17th Floor
Miami, Florida 33136

January 7, 2025

Eric Carpenter, P.E., City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

RE: Ocean Drive Temporary Pedestrian Plaza (DR 2024002764)

Dear Mr. Carpenter:

Since our correspondence on August 23, 2024, the Miami-Dade Department of Transportation and Public Works (DTPW) has been in close coordination with the City of Miami Beach (the "City") Department of Transportation in relation to the Ocean Drive pedestrian plaza that is currently in place along Ocean Drive between 13th Street and 14th Place.

Our staff has been monitoring the progress of the pedestrian plaza and has provided comments to City staff working to identify possible solutions to address the operational and safety issues identified with the subject closure to vehicular traffic of portions of Ocean Drive. The City has complied with all submission timelines stipulated in the letter; however, as of the date of this letter, the County has not given its final approval for the subject closure due to significant concerns regarding traffic operations and safety arising from the road closure. The closure of portions of Ocean Drive to vehicular traffic and re-routing of general traffic continues to be at the forefront of our concern. The County has identified and communicated with City staff regarding various safety hazards that are created by the City's closure of portions of Ocean Drive to vehicular traffic. By way of example, the closure of Ocean Drive to vehicular traffic between 13th Street and 14th Place limits access for emergency vehicles to reach the surrounding area and creates several conflict points for pedestrians and motorists. The concerns with safety and traffic operations are further documented in the testimony from DTPW Traffic Engineering Division staff during deposition on the *Clevelander Ocean LP* filing (Case No.: 2021-11642-CA-22).

Pursuant to sections 2-95.1 and 2-96.1 of the Code of Miami-Dade County, the City is hereby directed to remove in a safe and controlled manner all barriers installed on, along, or nearby Ocean Drive which impede general vehicular traffic between 13th Street and 14th Place and Ocean Drive.

By way of this letter, DTPW encourages the City to pursue a parallel application for the existing one-way condition on Ocean Drive from 5th Street to 14th Place as this concept was temporarily approved by DTPW with conditions that have not been met to date including a post-implementation traffic analysis of the one-way operation. The County also encourages the City to pursue other concepts in the future in collaboration with DTPW to enhance pedestrianization and contextual urban design opportunities on Ocean Drive.

Should you have any questions or require additional information, please contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Josiel Ferrer-Diaz'.

Josiel Ferrer-Diaz, P.E., Interim Director and CEO
Department of Transportation and Public Works

c: Jimmy L. Morales, Chief Operating Officer, Miami-Dade County
Miguel Soria, P.E., Assistant Director, DTPW
Yamilet Senespleda, P.E., Chief of Traffic Engineering, DTPW