

R9 AJ DISCUSS/TAKE ACTION: UPDATE ON THE CONFIGURATION OF OCEAN
DRIVE BETWEEN 5TH STREET AND 14TH PLACE.

Applicable Area:

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Mayor Steven Meiner

DATE: February 3, 2025

TITLE: DISCUSS/TAKE ACTION: UPDATE ON THE CONFIGURATION OF OCEAN DRIVE BETWEEN 5TH STREET AND 14TH PLACE.

RECOMMENDATION

The Mayor and City Commission desire an update from the City Administration concerning the configuration of Ocean Drive between 5th Street and 14th Place.

BACKGROUND/HISTORY

Prior to January 7, 2025, Ocean Drive between 5th Street and 13th Street was operating with one-way northbound vehicular traffic (the "One-Way Condition") with bicycle lanes on both sides of the street, while Ocean Drive between 13th Street and 14th Place was closed to vehicular traffic as a temporary pedestrian plaza (the "Pedestrian Plaza"), pending permanent approval by the Miami-Dade County Department of Transportation and Public Works ("DTPW").

On January 7, 2025, DTPW transmitted a letter to the City declining to permanently approve the Pedestrian Plaza and 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" while simultaneously "encourag[ing] the City to pursue a parallel application for the existing one-way condition on Ocean Drive from 5th Street to 14th Place" and "encourag[ing] the City to pursue other concepts in the future in collaboration with DTPW to enhance pedestrianization and contextual urban design opportunities on Ocean Drive".

In connection with ongoing litigation 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"), Judge Beatrice Butchko Sanchez announced an oral ruling on January 8, 2025, requiring the City to return Ocean Drive between 5th Street and 14th Place to its pre-COVID-19 configuration no later than January 15, 2025, at 5:00 p.m.

On January 10, 2025, Judge Butchko Sanchez entered a written order confirming her oral ruling from January 8th.

On January 13, 2025, the City filed an emergency motion in the Lawsuit seeking to extend the deadline to comply with the ruling.

On January 14, 2025, Judge Butchko Sanchez entered an order granting in part and denying in part the City's emergency motion, ruling that the City must return Ocean Drive between 5th Street and 14th Place to its pre-COVID-19 configuration no later than January 15, 2025, at 5:00 p.m.

On January 24, 2025, the City filed a Notice of Appeal, commencing appellate review of Judge Butchko Sanchez's January 10th order. The Lawsuit remains ongoing.

ANALYSIS

FISCAL IMPACT STATEMENT

N/A

Does this Ordinance require a Business Impact Estimate?

(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:

See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

CONCLUSION

Applicable Area

South Beach

**Is this a "Residents Right to Know" item,
pursuant to City Code Section 2-17?**

Yes

**Is this item related to a G.O. Bond
Project?**

No

**Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481,
includes a principal engaged in lobbying?** No

If so, specify the name of lobbyist(s) and principal(s):

Department

Office of Mayor Steven Meiner

Sponsor(s)

Mayor Steven Meiner

Co-sponsor(s)

Condensed Title

Discuss/Action, Update on Configuration of Ocean Drive Between 5th Street & 14th Place.
(Meiner)

Previous Action (For City Clerk Use Only)



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
 

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.

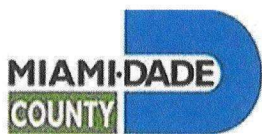
The City filed a Motion to Dismiss the operative Complaint, including the claims relating to the Ocean Drive configuration, arguing that those claims are barred by sovereign immunity, that the County had previously granted temporary permits for the closures, that the Clevelander Parties lack standing 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 *Cleveland 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-Díaz', with a stylized flourish at the end.

Josiel Ferrer-Díaz, 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

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY and CITY MANAGER

LTC # 023-2025

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

DATE: January 16, 2025

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

This Letter to Commission (LTC) is a follow-up to LTC 013-2025, where we advised 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.), requiring the City to return Ocean Drive between 5th Street and 14th Place to its pre-COVID-19 configuration.

In her January 8th oral ruling, Judge Butchko Sanchez ordered the City to restore to its pre-COVID-19 condition on or before Wednesday, January 15, 2025, at 5:00 p.m. However, on Monday, January 13, 2025, the City filed an emergency motion to extend the compliance deadline, supported by a declaration by the Assistant Director of the City's Transportation department explaining why it would be impossible to lawfully and safely comply with the January 15th deadline.

Late in the evening, Tuesday, January 14, 2025, Judge Butchko Sanchez entered an Order granting the City's emergency motion in part and extending the deadline to Friday, January 31, 2025, at 5:00 p.m., "to re-open the closed portion of Ocean Drive and revert Ocean Drive from a one-way road to a two-way road." A copy of Judge Butchko Sanchez's Order is attached to this LTC.

The City Attorney's Office and the City Administration continue to work 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. To that end, attached is a letter sent by the City Administration to the Miami-Dade County Department of Transportation and Public Works (County) on Friday, January 10, 2025, seeking the County's guidance. As the County has been and remains the authority having jurisdiction regarding all traffic flow regulations countywide, it will be imperative to obtain permits from the County for the modifications to the existing conditions.

As we move through the process with the County, we will keep you informed.

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-011642-CA-01

SECTION: CA22

JUDGE: Beatrice Butchko Sanchez

Clevelander Ocean LP

Plaintiff(s)

vs.

City of Miami Beach et al

Defendant(s)

_____ /

**ORDER GRANTING IN PART CITY OF MIAMI BEACH'S EMERGENCY MOTION
FOR EXTENSION OF TIME TO COMPLY WITH COURT ORDER OF JANUARY 8, 2025**

Docket Index Number: **314**

Or

Efiling Number: **214485221** Date Filed: **01/13/2025**

Full Name of Motion: **CITY OF MIAMI BEACH'S EMERGENCY MOTION FOR
EXTENSION OF TIME TO COMPLY WITH COURT ORDER**

THIS CAUSE came before the Court on January 14, 2025, without oral argument, via electronic courtMap filing on Defendant City of Miami Beach's Emergency Motion for Extension of Time to Comply with Court Order, and the Court having considered Defendant's motion, Plaintiffs' response, and being otherwise advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

Defendant City of Miami Beach's Emergency Motion for Extension of Time to Comply with Court Order is **GRANTED, IN PART**. Defendant is granted an extension until Friday, January 31, 2025 at 5:00 PM to re-open the closed portion of Ocean Drive and revert Ocean Drive from a one-way road to a two-way road.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 14th day of January, 2025.


2021-011642-CA-01 01-14-2025 9:22 PM

2021-011642-CA-01 01-14-2025 9:22 PM

Hon. Beatrice Butchko Sanchez

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

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Physically Served:



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

OFFICE OF THE CITY MANAGER

Tel: 305.673.7010

January 10, 2025

Josiel Ferrer-Diaz, P.E.
Interim Chief Executive Officer and Director
Miami-Dade County Department of Transportation and Public Works
701 NW 1st Court, 17th Floor
Miami, FL 33136

RE: Ocean Drive Configuration

Dear Mr. Ferrer-Diaz,

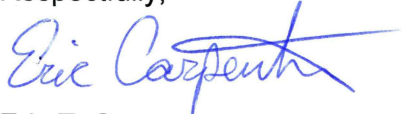
The City of Miami Beach (the "City") is in receipt of the letter from the Miami-Dade County Department of Transportation and Public Works ("DTPW") dated January 7, 2025 (attached). Pursuant to the letter, the City is working with Calvin Giordano & Associates, Inc. to complete a post-implementation traffic analysis of the existing one-way southbound traffic operation of Ocean Drive as conditionally approved by DTPW under DR #2022001010 on January 12, 2022. The City anticipates submitting a new permit application inclusive of signage and pavement marking plans on Monday, January 13, 2025, and a post-implementation traffic analysis by January 20, 2025. We sincerely hope that we can work with the County for the reauthorization of the permit before Wednesday, January 15, 2025, at 5 pm. Statements made by a County representative during the legal proceedings regarding the safety of the current conditions make it even more important that we continue to collaborate as we always have regarding traffic flow modifications on this or any street in the City.

It is the understanding of the City that the January 8, 2025 ruling by Judge Butchko Sanchez directing the City to "reopen" Ocean Drive between 5 Street and 14 Place to two-way vehicular traffic no later than January 15, 2025, at 5 p.m. was premised on the lack of permanent approval of the prior permit DR #2022001010 for the one-way condition. In the event that we cannot reauthorize the permit for the one-way vehicular traffic and two-way bicycle facility, the City is requesting further clarification and confirmation from DTPW regarding the roadway design standards and permitting requirements to be followed for the reconfiguration of Ocean Drive back to the two-way vehicular flow condition.

The City has done research and the most recent marking and signage plan for that two-way configuration of Ocean Drive was designed in 1988, and we believe the standards and requirements have changed since that time. Given the urgency, the City appreciates receiving a written response from DTPW on the permitting requirements for the two-way condition by close of business on Monday, January 13, 2025 so that we may expeditiously work to comply with the order of the Court should the full restriping of Ocean Drive become necessary.

Please feel free to contact me should you have any questions or concerns regarding this matter. Thank you for your consideration and commitment to working with the City to find a viable path forward that accomplishes a safe and acceptable plan for Ocean Drive.

Respectfully,



Eric T. Carpenter
City Manager

cc: Rickelle Williams, Assistant City Manager
José R. González, P.E., Transportation and Mobility Department Director/Interim Parking Director
Ricardo J. Dopico, City Attorney

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY and CITY MANAGER

LTC # 043-2025

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

DATE: January 24, 2025

SUBJECT: Update on the Injunction in *Cleveland Ocean LP et al. v. City of Miami Beach et al.*, Requiring Ocean Drive Reconfiguration

This Letter to Commission (LTC) is a follow-up to LTC #023-2025, where we advised the Mayor and Commission of an Order by Judge Butchko Sanchez granting the City's emergency motion in part and extending the deadline to Friday, January 31, 2025, at 5:00 p.m., "to re-open the closed portion of Ocean Drive and revert Ocean Drive from a one-way road to a two-way road." Today, the City filed a Notice of Appeal, triggering appellate review of the re-opening order.

The City Administration ("Administration") continues to collaborate with the Miami-Dade County Department of Transportation and Public Works ("County") to obtain a permit for the conditionally-approved one-way southbound travel lane and two-way bicycle lanes on Ocean Drive. To this end, the City has re-submitted the design plans for the one-way southbound configuration and a post-implementation traffic study to the County for review and approval. The City received numerous technical comments from the County on the design plans, including a requirement to update the design plans to current roadway design standards with a new Engineer of Record. This modification requires a re-evaluation of the design plans by the City's consultant (Calvin Giordano & Associates), which will extend beyond the January 31, 2025 deadline imposed by the Court Order.

In addition, the County has advised the Administration that the only requirement for the two-way conversion is to obtain approval of a maintenance of traffic ("MOT") plan to be in effect during the implementation of the two-way conversion. In an abundance of caution, the Administration is taking steps to engage a contractor and prepare an MOT plan for review and approval by the County for the implementation of the two-way conversion of Ocean Drive by the January 31, 2025 deadline, in compliance with the Court Order.

As the County has been and remains the authority having jurisdiction regarding all traffic flow regulations countywide, it will be imperative to obtain whatever permits are deemed necessary by the County for the modifications to the existing conditions.