

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMISSION MEMORANDUM

**TO:** Mayor Dan Gelber and Members of the City Commission

**FROM:** Rafael A. Paz, City Attorney



**DATE:** February 1, 2023

**SUBJECT:** A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING A GRANT IN THE AMOUNT OF \$72,500 TO THE MIAMI BEACH ERUV COUNCIL, INC., FOR THE PURPOSE OF OFFSETTING COSTS RELATED TO THE MAINTENANCE AND REPAIRS OF THE PORTIONS OF THE ERUV LINE LOCATED ON THE CITY'S PUBLIC RIGHT OF WAYS, IN FURTHERANCE OF THE CITY'S INTEREST IN ENSURING THE SAFETY OF STRUCTURES INSTALLED ON THE PUBLIC RIGHT OF WAY; AND FURTHER, AUTHORIZING THE CITY CLERK AND CITY MANAGER TO EXECUTE THE CITY'S STANDARD GRANT AGREEMENT WITH RESPECT TO THE FOREGOING.

---

Pursuant to the request of Commissioner Laura Dominguez, the above-referenced Resolution is submitted for consideration by the Mayor and City Commission at the February 1, 2023 City Commission meeting.

The City has accommodated an Eruv line within the City's territorial limits since as early as the 1970s, if not earlier. An Eruv line currently exists not only in Miami Beach, but extends to Surfside, Bal Harbour, Bay Harbour Islands, Aventura, and other municipalities, making the South Florida Eruv one of the largest known Eruvs in the country. Eruv lines have been repeatedly upheld by the courts as a government entity's neutral accommodation that facilitates residents and visitors engaging in certain secular outdoor activities on the Sabbath, including activities such as the carrying of items such as medication, or the pushing of a baby stroller. See, e.g., *Jewish People for the Betterment of Westhampton Beach v. Village of Westhampton Beach*, 778 F.3d 390 (2d Cir. 2015); *Tenaflly Eruv Association, Inc. v. Borough of Tenaflly*, 309 F.3d 14 (3d Cir. 2002); *American Civil Liberties Union of New Jersey v. City of Long Branch*, 670 F. Supp. 1293 (D.N.J. 1987). In Miami Beach, for many years, the beloved Rabbi Pinchas Weberman was well-known for being seen riding his ATV weekly on the beach as he checked the status of the Eruv during his long tenure.

The City has currently issued a right-of-way permit to the Miami Beach Eruv Council, Inc., a Florida not-for-profit organization that has assumed responsibility for the installation and continued maintenance of the Eruv in Miami Beach. To date, the maintenance of the Eruv has and continues to be privately funded.

In order to assist with repair and maintenance of the Eruv structures on public property, and in furtherance of the City's interest in ensuring that all structures installed on public property are safe and do not present any risk or hazard of tripping or deterioration, Commissioner Dominguez has

proposed that the City award a one-time grant to the Miami Beach Eruv Council, Inc., for the limited purpose of funding repair and maintenance activities of the Eruv line on public property installed within the City of Miami Beach pursuant to the City-approved right of way permit. As with all City grants, the funding must be used for secular purposes only (in this case, maintenance and repair-related activities only), and may not be used for religious indoctrination or instruction of any kind.

Although there is ample case law supporting the placement of Eruv lines on public property, we are not aware of any case involving a government entity's financial grant for maintenance of an Eruv line on public property. The Establishment Clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion...." U.S. Const. amend. I. The U.S. Supreme Court has construed the Establishment Clause, in general, to mean that the government is prohibited from sponsoring or financing religious instruction or indoctrination. See, e.g., *Mitchell v. Helms*, 530 U.S. 793 (2000) (upholding use of federal funds for schools, including private religiously-affiliated schools, for educational materials and equipment, so long as the aid itself was used for secular purposes). Recent Supreme Court opinions have considerably relaxed the Establishment Clause jurisprudence and have upheld the constitutionality of public funding of certain secular elements of religious organizations, among other accommodations, so long as there may be a "reference to historical practices and understandings" that supports the accommodation. See, e.g., *Carson v. Makin*, 142 S.Ct. 1987 (2022); *Kennedy v. Bremerton Sch. Dist.*, 142 S.Ct. 2407 (2022).

In view of the foregoing, the proposed grant is legally defensible, given that the City has a clear interest in the safety of structures placed on public property, the City has previously awarded numerous grants to organizations performing work or holding private events on public property, and the use of funds here would be limited for maintenance and repair activities on City right of ways, activities that are entirely secular in nature.

RAP/ag