



**CITY OF FORT LAUDERDALE  
City Commission Agenda Memo  
REGULAR MEETING**

**#15-0635**

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**TO:** Honorable Mayor & Members of the  
Fort Lauderdale City Commission

**FROM:** Cynthia A. Everett, City Attorney

**DATE:** May 5, 2015

**TITLE:** Resolution rescinding Resolution NO. 15-59 and authorizing the City Manager to negotiate and enter into an agreement with American Traffic Systems (ATS) and the law firm of Weiss Serota Helfman Cole & Bierman, to act as substitute counsel to undertake and completely fund the representation of the City in seeking and obtaining judicial review of the County Court Traffic Magistrate's decision in *State of Florida (City of Fort Lauderdale) v. Mary Welsh Wesolowski*, Case No. 14-032655TI20A, and the Omnibus Order dismissing all red light camera prosecutions presently pending or filed in the future, and appointing Weiss Serota Helfman Cole & Bierman as Special Counsel

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**Recommendation**

It is recommended that the City Commission adopt the attached resolution rescinding Resolution No. 15-59, and authorizing the City Manager to negotiate and enter into an agreement with American Traffic Systems (ATS) and the law firm of Weiss Serota Helfman Cole & Bierman, to act as substitute counsel to undertake and completely fund the representation of the City of Fort Lauderdale, for purposes of seeking and obtaining judicial review of the Broward County Court's ruling in *State of Florida (City of Fort Lauderdale) v. Mary Welsh Wesolowski*, Case No. 14-032655TI20A, and the Omnibus Order, which concerns traffic citations issued for red light camera violations. Based upon the foregoing, it is further recommended that the City Commission appoint Weiss Serota Helfman Cole & Bierman as Special Counsel for the limited purposes set forth in the attached resolution.

**Background**

On October 15, 2014, the Fourth DCA issued an opinion in the *City of Hollywood v. Arem*, 154 So.3d 359 (Fla. 4<sup>th</sup> DCA 2014) (rehearing denied on January 30, 2015), finding that the City of Hollywood improperly delegated its police powers by permitting its vendor (ATS) to have unfettered discretion in reviewing red light camera event data, prior to sending the events captured by the camera system to the Traffic Infraction Enforcement Officer (TIEO) for determination of a violation.

On February 13 and 20, 2015, the City prosecuted a red light camera violation case before County Court Traffic Magistrate Wich titled *State of Florida (City of Fort Lauderdale) v. Mary Welsh Wesolowski*, Case 14-032655TI20A. During the proceedings, the defendant moved to dismiss the case alleging that the City improperly delegated its review process to ATS in the same manner as described in the *Arem* opinion. Unlike the City of Hollywood in *Arem*, the City put forth evidence which demonstrated that the City does not afford ATS unfettered discretion to decide which events to send the City's TIEO for review. The City presented to the Court the City's business rules which ATS is contractually obligated to follow. These business rules set out specific directives to ATS regarding the types of events the City desires to be forwarded to the TIEO for determination of a violation. The City also presented the testimony of ATS witnesses who described the initial review process and how they train their reviewers on the implementation of the City's business rules.

Nonetheless, on February 23, 2015, Magistrate Wich entered an order dismissing the red light camera violation on the grounds that the City had improperly delegated its police powers by permitting the City's vendor (ATS) to review red light camera events prior to submitting same to the City's TIEO. Additionally, on March 5, 2015, Magistrate Wich entered a separate order dismissing all of the City's filed, pending, and docketed red light camera cases presently scheduled or to be scheduled in the future.

Magistrate Wich's ruling is contrary to Section 316.0083(1)(b)4., Florida Statutes (2014), "The Mark Wandall Traffic Safety Act", which permits an agent of the municipality to conduct a review of data prior to the issuance of a uniform traffic citation. The ruling is also contrary to existing case law which defines an improper delegation of police power as one where the municipality fails to retain sufficient power and authority over the delegated process. Additionally, subsequent to the Magistrate's ruling, a Polk County Court Judge's upheld the City of Lakeland's process, which is the same process as utilized by the City.

Based upon the evidence presented to the Traffic Court, the City has a good faith basis to seek appellate review of the County Court's rulings. Furthermore, the Court's decision has a substantial impact upon the operation and effectiveness of the City's automated red light traffic system and can potentially be used in other jurisdictions as a persuasive argument for dismissal.

Consequently, on March 17, 2015, the City Commission approved Resolution 15-037 authorizing the City Manager to negotiate and enter into an agreement with ATS and its counsel, Carlton, Fields, Jordan, Burt, P.A., to undertake the representation of the City, however, the City, ATS and Carlton Fields were unable to resolve issues of potential conflicts of interest. Therefore, ATS has extended the offer to fully fund the firm of Weiss Serota Helfman Cole & Bierman to act as substitute counsel to undertake the representation of the City of Fort Lauderdale with regards to it seeking and obtaining judicial review of the County Court's decisions.

## **Resource Impact**

No budgetary impact.

Attachments: Exhibit 1: *State of Florida (City of Fort Lauderdale) v. Mary Welsh Wesolowski*, Case No. 14-032655TI20A  
Exhibit 2: Omnibus Order  
Exhibit 3: Resolution 15-59  
Exhibit 4: Proposed Resolution

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Charter Officer: Cynthia A. Everett, City Attorney