



776 N.E. 125 Street, North Miami, Florida 33161

## Council Report

To: The Honorable Mayor and City Council

From: V. Lynn Whitfield  
City Attorney

Date: May 17, 2011

RE: Sierra v. City of North Miami, (Red Light Camera Class Action)  
Case No.: 09-62226 CA 06

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### **RECOMMENDATION**

The City Attorney's offices, along with outside counsel, Michael Popok, recommend the City Council adopt the resolution authorizing the City Manager and City Attorney to enter into a settlement agreement to settle the class action lawsuit resulting from implementation of Dangerous Intersection Safety Ordinance under Option A.

### **BACKGROUND**

On or about March 25, 2008, the Mayor and City Council passed Ordinance 1252 creating the Dangerous Intersection Safety Enforcement program, commonly known as "Red Light Cameras". Hugo Sierra challenged the notice of violation and filed a lawsuit alleging that the city had no authority to enact the ordinance and was preempted under state law. The lawsuit also alleged unjust enrichment and the tort of conversion. The lawsuit further sought to have a class designated of all persons who had received notices of violations under the ordinance.

Similar lawsuits were filed against twenty-one cities in Miami-Dade and Broward who had enacted the same ordinances. American Traffic Solutions, our vendor, was also named as a defendant in the lawsuit. The City of North Miami joined with the cities of Homestead, Aventura, Hallandale Beach and North Bay Village in retaining the services of Michael Popok as outside counsel to defend the city. Also the agreement with ATS



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required them to assist in the defense of the ordinance. To date less than Ten Thousand Dollars (\$10,000) has been spend in the defense of this litigation.

ATS has been successful in reaching an agreement in principle to settle all of the claims in all 21 class action cases currently pending including the one against the City of North Miami. Of course, any agreement is still subject to court approval; however neither side anticipates the court not approving the settlement. The agreement would require the City to contribute up to thirty (30%) percent of the total fines collected on violations issued prior to July 1, 2010. The Plaintiffs' counsel fees would be paid from the total settlement amount prior to payments to class members. If the total amount of valid claims is less than the combined amount from ATS and the city, the city would pay only the amount necessary to satisfy those valid claims.

Furthermore, the settlement would not require payment until the 2011-2012 fiscal year, giving the City an opportunity to budget for the payment of the settlement. Attached is the information from ATS on the amount of the revenue collected prior to July 1, 2010 which shows the City's revenue as \$982,096.

Under Option A the City would pay up to \$294,628 and ATS would pay up to \$86,661. Both the City and ATS would pay only to the extent of actual, valid claims. The settlement would offer a broad release of all claims that were or could have been brought in the litigation by any member of the class.

In that this is a class action lawsuit and if unsuccessful in its defense, the City would be responsible for the Plaintiffs' attorney fees along with its own and the payment to the class members, it is recommended that the City approve the settlement in principle and authorize the City Manager and City Attorney to negotiate and execute the settlement agreement, with the understanding at if the court rejects the agreement the matter will proceed to litigation.

### **Attachments**

Powerpoint presentation from American Traffic Solutions outlining Settlement Options

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO EXECUTE A SETTLEMENT AGREEMENT TO SETTLE THE CLASS ACTION CLAIM IN SIERRA V. CITY OF NORTH MIAMI, CASE NO. 09-62226 CA 06 (RED LIGHT CAMERAS); PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.**

**WHEREAS**, on or about March 25, 2008, the Mayor and City Council passed, on second reading, Ordinance 1252, creating the Dangerous Intersection Safety Enforcement Program, more commonly known as “Red Light Cameras”; and

**WHEREAS**, Hugo Sierra received a notice of violation pursuant to Ordinance 1252 and challenged the constitutionality of the City’s ordinance; and

**WHEREAS**, through legal counsel, Mr. Sierra filed for class designation to include all persons issued red light camera notices of violation in the City of North Miami from the start of the program until June 30, 2010; and

**WHEREAS**, similar lawsuits were filed against every municipality in Miami-Dade and Broward Counties which had installed red light camera under city ordinances and the red light camera vendor, American Traffic Solutions (“ATS”); and

**WHEREAS**, the City’s agreement with ATS required ATS to contribute to the defense of the City in any challenge to the ordinance; and

**WHEREAS**, the City was represented by Michael Popok of Weiss Serota law firm, who also represented the cities of Homestead, Aventura, Hallandale Beach and North Bay Village; and

**WHEREAS**, continued litigation could continue for the next three (3) to five (5) years costing the City hundreds of dollars in legal fees alone; and

**WHEREAS**, ATS has been able to successfully negotiate a proposed settlement on all outstanding red light camera cases to the benefit of all municipal defendants; and

**WHEREAS**, the proposed settlement would not require a pay out until the beginning of the next fiscal year, thereby allowing the City an opportunity to budget the funds necessary to satisfy the settlement; and

**WHEREAS**, the Mayor and City Council have been fully advised of the terms of the settlement and find that it is in the City's best interests to enter into the proposed settlement under Option A; and

**WHEREAS**, acceptance of the settlement has no effect on the continuation of the Dangerous Intersection Safety Program which is conducted pursuant to state law.

**NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:**

**Section 1. Authorization of City Manager and City Attorney.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager and City Attorney to execute a settlement agreement to settle the class action claim in Sierra v. City of North Miami, Case No. 09-62226 CA 06 (Red Light Cameras).

**Section 2. Effective Date.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
ANDRE D. PIERRE, ESQ.  
MAYOR

ATTEST:

\_\_\_\_\_  
JACQIE VIEIRA  
ACTING CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
V. LYNN WHITFIELD  
CITY ATTORNEY

SPONSORED BY: CITY ATTORNEY

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Vote:**

Mayor Andre D. Pierre, Esq.	_____ (Yes)	_____ (No)
Vice Mayor Michael R. Blynn, Esq.	_____ (Yes)	_____ (No)
Councilperson Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Jean R. Marcellus	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)



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# North Miami

Total Fines Collected: \$1,270,966 City Revenue: \$982,096   ATS Service Fee Revenue: \$288,870		
Option A	Option B	Option C
<p>City pays 30% of City Revenue, up to \$294,628*</p> <p>ATS pays 30% of service fees paid or owed to ATS based on pre-July 2010 violations, up to \$86,661*</p> <ul style="list-style-type: none"> <li>• City and ATS pay valid claims in proportion to the funds made available by each toward settlement.</li> <li>• City and ATS pay only to the extent of actual, valid claims.</li> </ul>	<p>City pays 30% of total fines collected, reduced by ATS' contribution, up to \$324,952*</p> <p>ATS contributes \$56,338 toward settlement</p> <ul style="list-style-type: none"> <li>• City contributes only to the extent of valid claims.</li> <li>• ATS contribution is made regardless of total valid claims.</li> </ul>	<p>City opts not to settle</p> <p>ATS settles its liability by paying \$56,338</p> <ul style="list-style-type: none"> <li>• Case ends as to ATS</li> <li>• Litigation continues against the City</li> </ul>
<p><i>* Final amount will be based on the number of individuals who file valid claims, but will not exceed the total funds the City and ATS agree to make available.</i></p>		

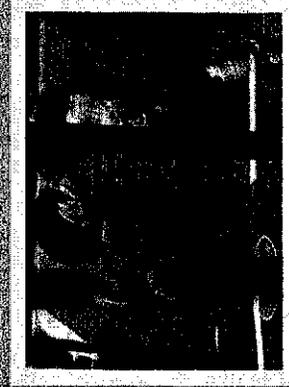
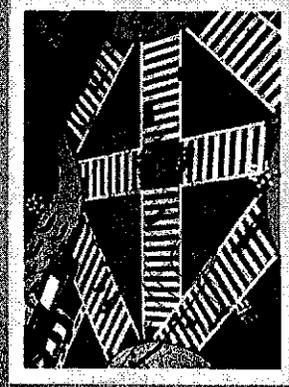
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# Florida Class Action Settlements

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- ATS has reached an agreement in principle to settle the claims against ATS in 21 class action cases currently pending against ATS and various local governments in the State of Florida.
- As part of this agreement, ATS worked diligently to ensure that all ATS local government clients also have substantially the same opportunity to settle.

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- Based on a number of factors, including the potential risks and expense of additional litigation that could continue for the next 3–5 years, ATS believes these settlements are in the best interests of ATS and its clients.
- Although each government entity will need to make its own decision as to whether or not to participate in the settlement, we believe that this is an excellent opportunity to put this litigation behind your program and move on.



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## General Terms of the Settlement

- The cases will be settled on a class-wide basis, with a class certified solely for the purpose of the settlement.
- Settlement offers a broad release of all claims that were or could have been brought in the litigation by any member of the class.
- Members of the class will be given notice and an opportunity to object or to opt-out.
- Members of the class must submit a claim form to verify their eligibility to participate. It is possible that fewer than 100% of class members will submit valid claim forms. In that event, the amount paid out would be less than 100% of the settlement amount.

There are two ways in which the government entity can participate, if they so choose, in the current settlement:

**Option A:**

- The local government makes available 30% of the revenue it obtained from paid fines for pre-July 2010 violations for settlement.
- ATS makes 30% of the service fees from pre-July 2010 violations that were paid to, or owed to, ATS by the local government available for settlement.
- Plaintiffs' counsel may apply for a fee award not to exceed 30% of the total settlement amount, which will be paid from the total settlement amount, in proportion to the amounts made available by ATS and the local governments, prior to payments to class members.
- If valid claims of class members are less than the combined amount made available by the local government and ATS, the local government and ATS will only be obligated to pay valid claims in proportion to the total funds made available by each to the settlement.

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## Option B:

- ATS commits a fixed dollar amount (based on a percentage of service fees paid or owed to ATS on pre-July 2010 violations) to settle the claims against ATS.
- Each government entity contributes the difference between the ATS contribution and 30% of the total fines collected on violations issued prior to July 1, 2010, such that the total settlement amount is 30% of the total fines collected.
- Plaintiffs' counsel may apply for a fee award not to exceed 30% of the total settlement amount, which will be paid from the total settlement amount, in proportion to the amounts made available by ATS and the local governments, prior to payments to class members.
- If valid claims are less than the combined amount from ATS and the local government, the local government pays only to the extent necessary to satisfy those valid claims.

- Each government entity and ATS will share the costs of notice and administration of the settlements in proportion to the amounts they make available for settlement.
- ATS will manage these processes through coordination with a company that specializes in class action claims administration.

Despite this opportunity to reduce potential exposure and avoid the expense of additional litigation, a local government entity may nonetheless choose to reject both of the foregoing settlement options.

### **Option C:**

- In the event that a local government opts not to participate in the settlements, the litigation against the local government will proceed.
- ATS will not continue in the litigation.

- The settlement is subject to negotiation and agreement with plaintiffs' counsel on supplemental and additional terms to be stated in definitive settlement documentation.
- Any of the above settlement options are subject to court approval, and the court must find that the settlements are fair, reasonable, and adequate.
- If the court does not approve the settlements, or the settlements are otherwise not concluded, the cases will revert to a litigation posture.