

**CITY OF CORAL GABLES, FLORIDA**

**RESOLUTION NO. 2017-61**

A RESOLUTION APPROVING SETTLEMENT OF REGULATORY MATTER RELATING TO VEHICLE STACKING ON SOUTH DIXIE HIGHWAY IN CONNECTION WITH THE STARBUCKS PARKING LOT AND DRIVE-THROUGH LOCATED AT 475 SOUTH DIXIE HIGHWAY AND 477 SOUTH DIXIE HIGHWAY, CORAL GABLES, FLORIDA; DIRECTING THE CITY ATTORNEY TO REVIEW THE TRANSCRIPT OF THE HEARING TO INCORPORATE INTO AN AMENDMENT TO THE LEASE AGREEMENT WITH INSCORE, LLC THE TERMS AGREED UPON BY THE PARTIES AND ALL OTHER TERMS CONSISTENT WITH THE COMMISSION'S INTENT AND PURPOSE; AND AUTHORIZING THE CITY ATTORNEY AND THE CITY MANAGER TO ENTER INTO AND EXECUTE THE AMENDMENT TO THE LEASE AGREEMENT.

**WHEREAS**, a regulatory concern arose regarding vehicle stacking on South Dixie Highway in connection with the design and operation of the parking lot and drive-through at the Starbucks store located at 475 South Dixie Highway (the "475 Property") and 477 South Dixie Highway (the "477 Property"); and

**WHEREAS**, Starbucks Corporation ("Starbucks"), as lessee, and Inscore, LLC ("Inscore"), as lessor, previously entered into a lease agreement (the "475 Lease") for the 475 Property; and

**WHEREAS**, Inscore, as lessee, and the City of Coral Gables (the "City"), as lessor, previously entered into a lease agreement (the "477 Lease") for the 477 Property; and

**WHEREAS**, Starbucks subleases the 477 Property from Inscore; and

**WHEREAS**, on July 13, 2016, the City issued a code enforcement citation to Inscore and Starbucks for vehicle stacking on the public roadway in violation of Section 5-115(A) of the City's Zoning Code, and, on July 26, 2016, the City Commission adopted Resolution No. 2016-168.1, ordering Starbucks to cease vehicle stacking in the public right-of-way and directing staff to order that the drive-through window be shut down if stacking occurs; and

**WHEREAS**, the City's position is that the 477 Lease with Inscore has expired and because Inscore was in default due to the code enforcement violation, the City disputes Inscore's ability to exercise extension options under the 477 Lease; and

**WHEREAS**, in connection with this matter, Starbucks has filed (1) a lawsuit styled Starbucks Corporation v. City of Coral Gables, Case No. 2016-024663-CA-01, in the Eleventh

Judicial Circuit Court in and for Miami-Dade County, Florida (the "Eleventh Judicial Circuit"), which was dismissed without prejudice; (2) a petition for writ of certiorari styled Starbucks Corporation v. City of Coral Gables, Case No. 2016-000418-AP-01, in the Eleventh Judicial Circuit, which is pending; and (3) a lawsuit styled Starbucks Corporation v. City of Coral Gables, Case No. 2016-029939-CA-01, in the Eleventh Judicial Circuit, which has not been served on the City, but is pending; and

**WHEREAS**, the City's Zoning Code requires compliance with Section 5-115(A); and

**WHEREAS**, Starbucks proposed a solution referred to as "Sketch 7" to address the vehicle stacking issue and the City Commission held a hearing on March 14, 2017 to consider whether the proposed solution, with certain modifications presented at the hearing, complies with the City's Zoning Code and is a workable solution that resolves the vehicle stacking issue; and

**WHEREAS**, the City Commission believes Starbucks' proposed solution, with certain conditions, will resolve the vehicle stacking issue going forward, but will reserve its regulatory authority to enforce its Zoning Code and to protect public safety; and

**WHEREAS**, Starbucks and Inscore have agreed to settlement of this matter upon the terms and conditions set forth at the March 14, 2017 hearing; and

**WHEREAS**, the City Commission finds that settlement of this matter is in the best interest of the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:**

**SECTION 1.** That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon the adoption hereof.

**SECTION 2.** That settlement of this regulatory matter relating to vehicle stacking on South Dixie Highway in connection with the Starbucks drive-through and parking lot located at the 475 Property and the 477 Property is approved upon the following terms and conditions, which have been agreed to by Starbucks and Inscore:

- (1) Starbucks will implement design and operation changes to its parking lot and drive-through as set forth in its "Sketch 7" with certain modifications presented to the Commission on March 14, 2017, including relocation of its menu board and installation of a traffic diverter at the exit to encourage a ninety-degree turn onto South Dixie Highway, subject to all regulatory reviews and approvals;
- (2) Starbucks will continue to employ, during the hours of 8:00 a.m. to 11:30 a.m., a "Traffic Facilitator," which may only be an off-duty officer from the Coral Gables Police Department, the Miami-Dade County Police Department, or the Florida Highway Patrol, to direct traffic within the parking lot, drive-through, and on South Dixie Highway in order to prevent vehicle stacking;

- (3) If after six months of implementation of its design and operation changes, the City is satisfied that the design and operation changes alone, without the assistance of a Traffic Facilitator, are sufficient to avoid vehicle stacking, the City may allow Starbucks to cease using a Traffic Facilitator, but shall reserve the right at any time thereafter, in its discretion, to require the use of the Traffic Facilitator be re-implemented;
- (4) The City will convert three (3) of its parking spots located closest to Starbucks in the parking lot on Ponce de Leon Boulevard to metered parking spots to make available, but not dedicate, additional parking for Starbucks employees or customers;
- (5) Subject to all governmental approvals, which Starbucks will exercise best efforts to obtain, including, but not limited to, approval from Miami-Dade County, Starbucks, at its sole expense, shall install a walking path from the parking lot on Ponce de Leon to its location (however, following such best efforts, should Miami-Dade County or any other applicable governmental entity not approve such walking path, the absence of a walking path will not adversely impact the enforceability or validity of this Resolution);
- (6) Starbucks will implement a reasonable educational program that will include displaying signs within its store and distribution of printed materials and communication with customers at the point of sale to encourage regular customers to park in metered parking available at the parking lot north of Starbucks along Ponce de Leon Boulevard and provide reasonable signage to inform and/or remind customers that vehicle stacking on South Dixie Highway is strictly prohibited;
- (7) The City will enter into an amendment to the 477 Lease with Inscore for a five-year period which will incorporate all terms agreed upon herein, and with the remainder of the renewal periods under the 477 Lease remaining available subject to the terms of the 477 Lease;
- (8) Inscore will enter into an amendment to its sublease with Starbucks for the 477 Property consistent with the terms of the amendment to the 477 Lease between Inscore and the City;
- (9) Inscore will enter into an amendment to the 475 Lease with Starbucks consistent with the terms of the amendment to the 477 Lease between Inscore and the City;
- (10) Starbucks and Inscore agree to indemnify, defend, and hold harmless the City from any and all claims arising out of Starbucks' drive-through and/or parking lot;
- (11) At all times, the City retains its regulatory authority and will enforce its City Code and Zoning Code and take all action necessary to protect the public safety;
- (12) Starbucks and the City will file a stipulation of dismissal with prejudice for each of the pending lawsuits; and
- (13) The City, Starbucks, and Inscore each release each of the other parties for any and all claims that were made or could have been made related to this matter and the pending lawsuits, and agree to bear their own fees and costs arising from the pending lawsuits.
- (14) Given that this is a settlement, the City, Starbucks and Inscore each agree to act in good faith in implementing the settlement.

**SECTION 3.** That the City Attorney is directed to review the transcript of the hearing held on March 14, 2017, a copy of which is attached as Exhibit A, to incorporate the terms agreed upon by the parties (including those terms set forth in Section 2 of this Resolution and all

other terms consistent with the Commission's intent and purpose) in an amendment to the 477 Lease.

**SECTION 4.** That the City Attorney and the City Manager are authorized to enter into and execute the amendment to the 477 Lease.

**SECTION 5.** That this resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS 14TH DAY OF MARCH, A.D., 2017.

(Moved: Quesada / Seconded: Slesnick)  
(Yeas: Quesada, Slesnick, Keon, Lago, Cason)  
(Unanimous: 5-0 Vote)  
(Agenda Item: I-2)

APPROVED:  
*Frank Quesada*  
For JIM CASON  
MAYOR

ATTEST:  
*Walter J. Foeman*  
WALTER J. FOEMAN  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:  
*Craig E. Leen*  
CRAIG E. LEEN  
CITY ATTORNEY

AGREED TO BY:  
*Albert E. Dotson Jr.*  
[NAME] ALBERT E. DOTSON JR  
COUNSEL FOR STARBUCKS CORPORATION  
*Laura L. Russo*  
LAURA L. RUSSO  
COUNSEL FOR INSCORE, LLC