

City of Coral Gables City Commission Meeting
Agenda Items G-1, G-2, J-1 and J-2 are related
August 27, 2019
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Raul Valdes-Fauli
Vice Mayor Vince Lago
Commissioner Pat Keon
Commissioner Michael Mena
Commissioner Jorge Fors

City Staff

City Manager, Peter Iglesias
City Attorney, Miriam Ramos
City Clerk, Billy Urquia
Senior Sustainability Analyst, Matt Anderson

Public Speaker(s)

Mark Trowbridge
Jackson Rip Holmes

Agenda Items G-1, G-2, J-1 and J-2 are related [0:00:00 p.m.]

A discussion regarding next steps relating to polystyrene and plastic bag litigation.
(Sponsored by Vice Mayor Lago)

A Resolution of the City Commission of the City of Coral Gables, Florida, urging the Florida Legislature to repeal Sections 403.708, 403.7033, and 500.90, Florida Statutes and reject any other Statutes that inhibit a local government's ability to regulate expanded polystyrene or single-use plastic bags, and requesting the support of Governor Ron DeSantis in those efforts.
(Sponsored by Vice Mayor Lago)

City Commission Meeting
August 27, 2019

Agenda Items G-1, G-2, J-1 and J-2 are related - Resolutions of the City Commission of the City of Coral Gables urging the Florida Legislature to repeal and reject any Statutes that inhibit a local government's ability to regulated expanded polystyrene or single-use plastic bags and a Resolution staying enforcement of City Code Chapter 34, Articles IX and X in response to the ruling by the Florida Third District Court of Appeal.

Update regarding Florida Retail Federation, Inc. et al v. City of Coral Gables.

A Resolution of the City Commission of the City of Coral Gables, Florida, staying enforcement of Chapter 34, Articles IX and X of the City Code in response to the ruling by the Third District Court of Appeal in Florida Retail Federation, Inc. et al. v. the City of Coral Gables, Florida, continuing enforcement of Sections 2-730, 62-262, and 62-263 of the City Code, and encouraging businesses to continue complying with Chapter 34, Articles IX and X, by not resuming the use of products made with expanded polystyrene or single-use plastic bags.

Mayor Valdes-Fauli: The next item is time certain 11:15, G-1, G-2. Vice Mayor Lago, your issue.

City Attorney Ramos: We have G-1, G-2, J-1 and J-2 that are related. I'll let the Vice Mayor begin.

Vice Mayor Lago: Thank you, Mayor. I mean, this is pretty much self-explanatory. I don't think we need to go into much detail, unless my colleagues want to have a conversation. I was very disappointed, obviously, with the findings from the Third DCA. I think it's been incredibly fruitful, the steps that we took years ago. The business community has been lockstep in supporting this legislation. They see the importance of being sustainable. And we've built a culture here in the City of Coral Gables where we're accountable and we're setting in motion something that many other cities not only in the state of Florida but in the country and internationally are now following in our footsteps because we see this outcry for sustainability, for consideration, for stewardship towards the environment. And I'm very proud that the City of Coral Gables was the first city in the state of Florida under the legislation that I wrote, and my colleagues supported me to ensure that we stepped up in regards to polystyrene and plastic bags. Now, I'd like to see my - the appetite that my colleagues have to move forward. As always, this is a team effort. And I think that we need to have just a discussion and see what the appetite is.

City Attorney Ramos: Also, you had asked, Commissioner...

Vice Mayor Lago: Under the leadership of our City Attorney.

City Attorney Ramos: Also, sir, you had asked Mr. Trowbridge to speak. I don't know if you want him to speak now or later.

Vice Mayor Lago: Yeah, I just didn't want to put him on the spot because I just got him an e -- I got an email from him. I had requested for him to be here. And I just want to say one thing in regards to Mark. Mark and the Chamber have played a major role. Mark and the Chamber sat down with me and this Commission, not the day before implementation, they sat with us over a year and a half, when this was an idea, and they worked explaining to the business community, to the -- how many restaurants do we have now in the City of Coral Gables?

Mark Trowbridge: We have about 150...

Vice Mayor Lago: A hundred and fifty.

Mr. Trowbridge: Different restaurants here.

Vice Mayor Lago: So, over 150 restaurants who, again, complied. There were some hiccups. There were some, you know, bumps in the road, but they were minor. Everybody understood the importance of taking a step forward and setting an example, not for us; I mean, for future generations. And I want to commend the Chamber for being progressive, understanding that we can always find an answer. And just, when we asked for your support, you came in strong. And I think that's why we had such a smooth rollout because of the efforts of Mark and your team, so thank you again.

Mayor Valdes-Fauli: Go ahead...

Mr. Trowbridge: Thank you.

Mayor Valdes-Fauli: Mark.

Mr. Trowbridge: Thank you, Mr. Mayor. Good morning, Commissioners. Mark Trowbridge, with our Coral Gables Chamber of Commerce. As I mentioned to both the Vice Mayor and to our City Attorney a couple weeks ago after the ruling, you know, I think it is our hope that the business community that has already migrated over to some different business practices, that they will continue to do that. I think there's two reasons. One is what you talk about in terms of a sustainable future. But I think the second is that their clients, their customers, their loyal fan bases support that, something that many of them employ in their own personal and professional lives. And I think, to your point, in terms of the original rollout specifically related to polystyrene, many of those businesses, specifically restaurants, had already done that. They had already begun those business practices. It took a little longer, I think, with plastic bags. I think, one, there weren't as many suitable alternatives at the time that were both affordable and accessible, but that changes over time. People see an opportunity in an industry. And so, the City worked with the Chamber and the businesses to, again, give them some time to get through their existing inventory and find some suitable products. We saw that at events as well. When you go to the farmer's market. Finally, I think this year was the year we saw a really good, strong product that folks could use if they didn't bring their own bag. So, you know, my feeling is, in talking with some of our businesses, this is already an adopted business practice. They don't necessarily think that they're going to be any regression related to that. You know, the larger chains I think need to be reached out to because they may look at the fact that they had to adopt a specific business practice just to Coral Gables. And so, to be encouraged to continue to do the things that their customers are and be good stewards, but I think that can happen going forward. I also mentioned to Miriam that I think we can go back -- and I think you know with Matt and his team, we rolled out the Green Business Program back related to Earth Day in April. And to go back, amend that and put into that incentives related now to, obviously, polystyrene and the plastic bags to give you some bonus points, if you will, that you're continuing to do that and honor that legacy of the original intent. So, I think if we can do that, I don't think we'll need to bring that back necessarily to the

Commission, but we can add those as additional ways to qualify as a certified green business. Matt, I don't know if you want to offer anything with that, but I think you've already had one business come before this Commission and be honored. We have others in the pipeline, and this may be an additional encouragement because these are high-level things that folks are already involved in and they would already be halfway there in terms of their ability to be recognized.

Senior Sustainability Analyst Anderson: Yeah. And currently, in the Green Business Program, as Mark alluded to, we've already been recognizing businesses. We actually had UM just submit their application for the entire University of Miami, so we're going to be working with them, exciting. And as part of the application now, it is, you know, a requirement or a baseline to be able to be approved that you're not using Styrofoam or plastic bags or anything like that to be able to qualify to be a green business in Coral Gables.

Vice Mayor Lago: That's great.

Mr. Trowbridge: And I think any time that we can incentivize businesses, whether it's polystyrene, plastic bags, or other types of opportunities, I think you see the businesses really buy in quickly and thrive, and that's really what we're about, not only the Chamber. But I was with the Mayor last night at the opening of a new restaurant. Amazing to see the energy, to see an older building that had had a different purpose be repurposed with a number of businesses that will eventually come in there. But to have that restaurant that's not only based here but around the community and around the world...

Mayor Valdes-Fauli: Around the world.

Mr. Trowbridge: Choose Coral Gables -- and I think a lot of that has to do with the practices that we're employing, the way we support the business climate and support our businesses. So, I appreciate that opportunity to turn that into an additional incentive.

Mayor Valdes-Fauli: Thank you, Mark. And we have somebody that wishes to speak, but this goes -- it's a huge issue, but it's an even bigger issue, the assault by the Legislature on our Home Rule Charter and the ability of people to be governed by those elected officials that are closest to them versus Tallahassee and people that may not have anything to do with us. I'd like to -- I'll continue with those comments later. But Mr. Rip Holmes wishes to speak. Mr. Holmes.

Jackson Rip Holmes: Thank you, Mayor Valdes-Fauli. Y'all know my name is Rip Holmes. I live at 35 Sedonia Avenue, here in Coral Gables. And I'm really grateful to you for mentioning the home rule issue because the Styrofoam ordinance is of importance. Home rule and our ability to protect ourselves or to try to protect ourselves against rising sea levels is a matter of survival for our city. So that I don't think we should -- I think we should fight this as if our life depends on it. This issue can we make our decisions about not only Styrofoam but fighting sea level rise. The -- if you'll allow me to digress just for a second. Climate scientists have made -- have said that the first city to go underwater in the United States will be Miami Beach by 2060. Miami Beach is living on borrowed time; 40 years, it'll be mostly under water. How long behind that is Coral Gables? We are fighting for our survival. And to be honest with you, I don't trust the state or their decision making or their feelings about these issues. If our survival is at stake, I hope the City will fight this as if our lives depend on it.

Vice Mayor Lago: Thank you.

Mayor Valdes-Fauli: Thank you, Mr. Holmes. Anybody else wishes to speak?

City Attorney Ramos: So, with that, sir, if we can turn to J-1. As we all know by now, the Third District Court of Appeal, about two weeks ago, reversed the lower courts ruling on this case and expressly found the three statutes that we had previously been successful in declaring unconstitutional in fact to be constitutional. I have asked Ms. Lopez Castro to attend today. She was lead counsel on this case and did an exceptional job representing the City of Coral Gables, in case you have any particular questions for her. What I'm asking for today aside from two

resolutions we need to address is direction from this Commission as to whether you will approve our moving forward with an appeal either for a rehearing in back at the Third DCA or to the Supreme Court, whichever our team decides makes more sense strategically.

Vice Mayor Lago: You want to address G-2 first, the resolution?

City Attorney Ramos: We can. Aside from any efforts at the judiciary, of course, we can push, urge, move encourage our elected officials in Tallahassee to do the right thing. This last legislative session, these preemption statutes were looked at, these particular ones with plastic bags and polystyrene. And there was some consideration to repealing them. That did not happen. So, Resolution G-2 essentially urges the Legislature to look at all three statutes and to essentially reject them and repeal them. In addition, it asks for Governor DeSantis, who has shown some real leadership in the area of the environment, to assist us in doing so. And I think it's important, if we're going to talk about this resolution, to look at some language that Governor DeSantis added when he vetoed House Bill 771, which dealt with plastic straws. And he said -- and I quote -- "a number of Florida municipalities, including Sanibel, Fort Myers Beach and Miami Beach have enacted ordinances prohibiting single-use plastic straws. These measures have not, as far as I can tell, frustrated any state policy or harmed the state's interests. In fact, the Florida Department of Environmental Protection has encouraged Florida residents, schools and businesses to reduce plastic straw use. Under these circumstances, the state should simply allow communities, local communities, to address this issue through its political process. Citizens who oppose plastic straws just should take recourse by electing people who share their views." Exactly, Governor DeSantis. It should be our decision, not the state legislature's.

Vice Mayor Lago: So, I think that opens the door to...

Commissioner Mena: Yeah, I...

Vice Mayor Lago: To this resolution.

Commissioner Mena: I agree.

Mayor Valdes-Fauli: Will you make the motion?

Commissioner Mena: Yeah. No, I agree wholeheartedly. Look, I think there is two aspects to this. There is obviously the sustainability aspect of it, which I think we've discussed. You know, I think when you hear Mark talking about how businesses have bought into this, I think there's two aspects of that. One is I think, you know, they're being good corporate citizens and they care about the environment. But the second part is, I think it's partly market driven. I think people want to see these sorts of initiatives. I think people like when businesses implement them. And I think that dovetails into the second part of this issue, which is home rule, and that is precisely why it should be local government to make these decisions. And so...

Mayor Valdes-Fauli: That's very important.

Commissioner Mena: As far as what we should do next, I think we should appeal it to the Supreme Court. I think that, you know, in considering that I discussed it yesterday with Miriam, you know, my only concern there was, okay, there's a cost to the City obviously associated with that. Is it worthwhile or not? My -- as I thought about it last night, if I'm correct -- and Cori can correct me if I'm wrong. In this instance, the Supreme Court's jurisdiction would be discretionary, right?

City Attorney Ramos: That's correct.

Commissioner Mena: So, they would have to evaluate whether or not to take jurisdiction of this case. That part of the appeal is not a very expensive process. If they do take jurisdiction over the case, it's probably because the case has piqued their interest in some way. If they don't, well, then, you know, we're at the end of the road on it through the legal process. But again, if they do, then I think the investment is worthwhile because then I think there's a chance of winning it. Because

otherwise, the court wouldn't take jurisdiction over the case. It's not a shoe-in. There's no guarantees, but at least we would have some insight into whether or not the find the case interesting enough. And so, because I think that first aspect of this appellate process -- and obviously, your office can decide whether or not you need to move for some sort of rehearing at the appellate level first -- but because that subsequent aspect of it, again, is, in my opinion, a relatively inexpensive process to ask the court to take jurisdiction, I would be in favor of appealing it and continuing to pursue this. I think it's what most of our residents want. I know there's some that don't agree, but I'd like to think that most people would agree that home rule is an important thing. Because, again, if you disagree with whatever we're doing -- even if you disagree on this issue, it's much easier for you to elect two, three, four new people up here who reflect the values of this community than it is for you to reelect the many dozens of members in our State Legislature who it would take...

Mayor Valdes-Fauli: Which we have no opportunity of voting for them, none.

Commissioner Mena: So...

Mayor Valdes-Fauli: Right.

Commissioner Mena: So, you know, I think it's -- I think that's important. And so, whatever people think about the actual underlying issue, I think it's important for us to continuing having this fight and to continue pursuing it.

Mayor Valdes-Fauli: Good. Will you make a motion?

Commissioner Mena: I don't know if anybody else...

Vice Mayor Lago: So moved.

Commissioner Mena: Yeah, sure.

Mayor Valdes-Fauli: Will you make a...

Commissioner Mena: Second.

Mayor Valdes-Fauli: Second. Will you call the roll, please? This is G-2, resolution.

City Clerk Urquia: Commissioner...

City Attorney Ramos: Actually, I think this is on whether to appeal...

Commissioner Mena: We have to break it up, right?

City Attorney Ramos: Which is not G-2.

Commissioner Keon: Yeah, this...

Vice Mayor Lago: Yeah.

Commissioner Mena: You could take it one by one.

Mayor Valdes-Fauli: No, no.

Vice Mayor Lago: Why don't...

Mayor Valdes-Fauli: We're taking G-2 first, alright?

City Attorney Ramos: I don't believe that was your motion. Was that your motion, sir?

Commissioner Mena: No, no.

Commissioner Keon: That's not his motion. His motion is to...

City Clerk Urquia: J-2.

Commissioner Keon: Is on the other item...

Commissioner Mena: On G-1, what the next steps are, right?

Commissioner Keon: As to whether we move forward with the lawsuit.

Mayor Valdes-Fauli: G-1 was a discussion.

Vice Mayor Lago: Yeah, a discussion.

Mayor Valdes-Fauli: G-2 is a resolution.

Vice Mayor Lago: The item that Commissioner Mena was discussing was J...

Commissioner Keon: It's J.

City Attorney Ramos: J-1.

Vice Mayor Lago: J-1.

City Attorney Ramos: If you'd like me to state it, it would be a resolution giving the City Attorney's Office the authority to appeal...

Mayor Valdes-Fauli: Alright.

City Attorney Ramos: Up and through the Florida Supreme Court.

Vice Mayor Lago: And before we move any further, I just -- I know that we've got a lot of things on the agenda today. Can you just tell my colleagues the amount of cities that have approached us in the entire state that have been interested not only in helping us in this case amicus briefs. I think that's important for people to understand we put it on the record...

City Attorney Ramos: Agreed.

Vice Mayor Lago: That we're not fighting this alone.

City Attorney Ramos: In the last year and a half, I have received weekly calls from different municipalities through the state of Florida from city attorneys saying my Commission wants to do this. Where is your case? You know, how long -- how much longer before we get a decision? Please help me tell them that they can do this. It's really what they want to do; one. Two, at the Third DCA level and I've -- we've received much support in the way of amicus briefs from different groups out there. And I've already gotten many emails and calls of groups that want to support us in this effort as well, if we move forward with an appeal.

Vice Mayor Lago: So, what I ask you to do, please, obviously, maybe you can do it through Naomi, who I know is not here -- she's not here, correct? I just want to make sure.

Mayor Valdes-Fauli:

Vice Mayor Lago: We can send this -- send G-2 and our decision in regards to moving forward with an appeal to as many municipalities not only in Miami-Dade County but throughout the state of Florida using the League of Cities or any vehicle that we have...

City Attorney Ramos: Certainly.

Vice Mayor Lago: At our disposal to make sure that we make an impact and that the Governor, you know...

Mayor Valdes-Fauli: We're not...

Vice Mayor Lago: Really hears our voice.

Mayor Valdes-Fauli: We're not discussing G-2. We're discussing J-1, as I was corrected.

City Attorney Ramos: That's correct, sir.

Mayor Valdes-Fauli: Will you call the roll on J-1, please?

Commissioner Keon: Wait.

City Clerk Urquia: Vice Mayor Lago?

Commissioner Keon: Could I ask one question? You -- what you had asked was -- or what you -- the motion you asked for was to authorize the City Attorney's Office to move forward until -- and you will make a decision if the Supreme Court is willing to take jurisdiction of this. Can we do -- I'm not an attorney, so I'm asking you...

City Attorney Ramos: I understand the motion...

Commissioner Keon: I'm not an attorney.

City Attorney Ramos: I understand the motion to mean that I can proceed with the appellate process through the Supreme Court.

Vice Mayor Lago: Yes.

City Attorney Ramos: I think what Commissioner Mena was saying was that what gave him a level of comfort was that we would be expending some resources to initially obtain jurisdiction. But that if they, in fact, chose to take the case...

Commissioner Keon: Then we'll go forward.

City Attorney Ramos: There was at least likelihood...

Vice Mayor Lago: There's a...

City Attorney Ramos: That we would do okay.

Commissioner Keon: Okay, okay.

Vice Mayor Lago: There's an interest. There's an interest.

City Attorney Ramos: But it would not need...

Mayor Valdes-Fauli: Alright.

City Attorney Ramos: To come back for a vote.

Commissioner Mena: If the court doesn't take jurisdiction, well, that's the end of the road.

Commissioner Keon: That's the...

Commissioner Mena: Then that was...

Commissioner Keon: End of the road.

Commissioner Mena: Yeah.

Commissioner Keon: Okay. I just wanted to make sure and have it clear.

Mayor Valdes-Fauli: Will you call the roll, please?

Vice Mayor Lago: Yes.

Commissioner Mena: Yes.

Commissioner Fors: Yes.

Commissioner Keon: Yes.

Mayor Valdes-Fauli: Yes.

(Vote: 5-0)

Mayor Valdes-Fauli: Okay, now...

Vice Mayor Lago: Thank you for your support.

Mayor Valdes-Fauli: G-2.

Vice Mayor Lago: G-2, again, we discussed this. It's a resolution. Just...

Mayor Valdes-Fauli: Will you call the roll, please? The motion's been made and seconded. G-2.

Commissioner Mena: Second.

Commissioner Mena: Yes.

Commissioner Fors: Yes.

Commissioner Keon: Yes.

Vice Mayor Lago: Yes.

Mayor Valdes-Fauli: Yes.

(Vote: 5-0)

Vice Mayor Lago: Please, Mayor...

City Attorney Ramos: The last related item...

Vice Mayor Lago: As I requested, just make sure that this gets disseminated to as many municipalities throughout the state, League of Cities, chambers, whatever resources we have available to get this out there and have people, you know...

City Attorney Ramos: Of course.

Vice Mayor Lago: Give us the support. Thank you.

City Attorney Ramos: The last related item is J-2, which is a resolution, where the City Commission is staying enforcement of certain sections of the Code. Basically, the ones that require the businesses to cease using polystyrene and plastic bags, but to continue enforcing the other three sections, which are the ones that I believe are not part of the preemption which allows us to continue regulating them for special event permittees, for our own use, and for...

Vice Mayor Lago: Yes.

City Attorney Ramos: City contractor use. And aside from that, urging the businesses located within the City to continue to do the right thing, to continue to not use these items, and asking the Chamber and the BID officially to please work with us to encourage them to do the right thing.

Vice Mayor Lago: And if you may add, can you add some special language, if you recommend it, that basically shows that this Commission has taken action moving forward with this case so that people understand that, you know, we're not stopping.

City Attorney Ramos: Sir, and we...

Vice Mayor Lago: That we're moving...

City Attorney Ramos: Will add that to the whereas clauses.

Vice Mayor Lago: Just a simple statement that shows that we're moving forward and we -- you know, we're going to take this to the highest court.

Mayor Valdes-Fauli: Alright.

City Attorney Ramos: Yes, sir.

Vice Mayor Lago: So moved.

Commissioner Mena: Second.

Mayor Valdes-Fauli: Will you call the roll, please?

Commissioner Fors: Yes.

Commissioner Keon: Yes.

Vice Mayor Lago: Yes.

Commissioner Mena: Yes.

Mayor Valdes-Fauli: Yes.

(Vote: 5-0)