

City of Coral Gables City Commission Meeting
Agenda Items K-1 thru K-4
November 14, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Raul Valdes-Fauli
Vice Mayor Pat Keon
Commissioner Vince Lago
Commissioner Frank Quesada
Commissioner Michael Mena

City Staff

City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)

City Attorney Items K-1 thru K-4
Agenda Item K-1 [12:26:50 p.m.]

K-1: A Resolution of the City Commission of the City of Coral Gables, Florida, directing the City's Administration to make support of House Bill 439 and Senate Bill 560 part of the City's 2018 Legislative Agenda; and urging the Florida House of Representatives and Senate to adopt House Bill 43 and Senate Bill 560 or similar legislation.

K-2: A Resolution of the City Commission of the City of Coral Gables, Florida in support of Florida Constitution Revision Commission Proposal 61.

K-3: A Resolution by the City Commission of Coral Gables recognizing substantial concerns regarding the constitutionality of certain recent amendments to the Florida Statutes and directing staff to construe and apply those statutory provisions in a manner consistent with the First Amendment to the U.S. Constitution.

K-4: A Resolution of the City Commission of the City of Coral Gables, Florida, directing the City's Administration to make opposition to Senate Bill 574 part of the City's Legislative Agenda and urging the Florida House of Representatives and Senate not to adopt Senate Bill 574 or similar legislation. (Sponsored by Commissioner Lago).

Mayor Valdes-Fauli: City Attorney Items.

City Attorney Leen: Thank you Mr. Mayor. Item K-1, I'd ask the City Attorney Designate to do K-1.

Mayor Valdes-Fauli: You'll ask who?

City Attorney Leen: The City Attorney Designate that you designated today. I have to show her great respect now. I always have shown her great respect, OK. I want to be clear, even greater respect.

Deputy City Attorney Ramos: K-1 is pending at the state level to add the pending litigation exception to the Executive Session rule to read the same as it does for the public records...

Mayor Valdes-Fauli: That's a wonderful, wonderful addition.

Deputy City Attorney Ramos: So, this is just a resolution in support of that.

Commissioner Quesada: So moved.

Deputy City Attorney Ramos: Thank you.

Commissioner Lago: Second.

Mayor Valdes-Fauli: All those in favor.

All: Aye.

Mayor Valdes-Fauli: It's a resolution; we have to call the roll.

City Attorney Leen: Item K-2 is...

Commissioner Lago: Call the roll.

City Attorney Leen: Oh, sorry.

Vice Mayor Keon: Yes

Commissioner Lago: Yes

Commissioner Mena: Yes

Commissioner Quesada: Yes

Mayor Valdes-Fauli: Yes
(Vote: 5-0)

Mayor Valdes-Fauli: K-2

City Attorney Leen: So K-2, – The Constitution Revision Commission meets once every 20 years, Mr. Mayor and members of the Commission, and they can propose amendments to the Constitution, they go right on the ballot. We were very worried this year that the CRC would be trying to restrict Home Rule and instead one of the Commissioners has actually proposed that Home Rule be protected more by requiring that any attempt to preempt a local government require the vote of two-thirds of each House of the Legislature and only be on one subject. So that actually has a chance of getting on the ballot. So, I thought it would be useful if the City Commission adopted a resolution and we sent it to each member of the CRC to let them know that...

Mayor Valdes-Fauli: Do I hear a motion?

Commissioner Quesada: So moved.

Commissioner Lago: Can we also send this resolution to any other cities, so they can jump on the band wagon and help us out.

Commissioner Quesada: And let the League of Cities know.

Commissioner Lago: Yes.

City Attorney Leen: Yes, definitely. They informed us of this actually, the League of Cities, we'll send them the resolution.

Commissioner Lago: But, I mean if they see we passed this resolution maybe other cities will get on board also.

Mayor Valdes-Fauli: It's been moved and seconded, will you call the roll please.

Commissioner Lago: Yes

Commissioner Mena: Yes

Commissioner Quesada: Yes

Vice Mayor Keon: Yes

Mayor Valdes-Fauli: Yes

(Vote: 5-0)

Mayor Valdes-Fauli: K-3.

City Attorney Leen: Mr. Mayor Item K-3. This is an important resolution and one of the things that I've tried to do as City Attorney and this Commission has stood for is to look for situations where there is an attempt at preemption by the state, but that preemption may be illegal. This particular attempted preemption is quite dangerous. What it does is, it's a recent statute that was enacted where it says that gasoline signs get added protections under the law. Basically they can be as large as they want and they don't have to comply with our zoning code, so they are sort of giving a license to gasoline advertising signs; and in addition to that there is another provision that gives again basically, attempts to prevent any regulation of franchises, national franchises that have a franchise in the City, we can't apply our sign code to them, according to this law and they can do whatever they want with their site plan in order to maintain uniformity with that franchise.

Commissioner Quesada: This resolution...

City Attorney Leen: Well this resolution what it does is, I've given a City Attorney opinion that those statutory provisions are unconstitutional under the First Amendment, because the First Amendment and a recent case of the U.S. Supreme Court indicates that when you are regulating signs in particular, but any sort of expression and these both statutes relate to expression here, logos, identity, brand identity, and signs, when you regulate signs based on content in favor of one content over another that that is unconstitutional. What's interesting about this is that it is favoring a very specific type of commercial sign over non-commercial signs, which is unconstitutional. Now if you take a look at the opinion, which is in the record, another issue that comes up as well, someone may argue, but why then don't you not apply your zoning code or sign code to anyone, that's another way you could conceivably address this. That's not the case here, because what the state has not done here is preempted sign codes or zoning codes generally. There is no intent to do that. There is a recent Supreme Court Case, Dogastino, out of the Florida Supreme Court, which says that any sort of preemption has to be clear that the general presumption is against preemption. So, in the end these statutory provisions should be very narrowly construed and only applied where it can be applied in a content neutral legal way, and so that's what we are saying here. We are not saying we are going to ignore them; every time a case comes up we are going to take a hard look at the application, we are going to see whether we can apply these provisions in a way that doesn't run a fowl of the First Amendment and 42 USC 1983, which is the Civil Rights Act, we will do our best to apply them in that way, but if we can't in the end we are going to follow federal preemption over state preemption, in federal government under the supremacy clause takes precedence over the City and we would be

exposed to a suit potentially, if we followed state law to the exclusion of federal law and the U.S. Constitution. I have conferred with Abby Corbit, our outside First Amendment Counsel on this; she helped me draft the opinion. In addition to that, I have spoken with the County Attorney's Office and I don't believe they've taken an official position, so I don't want to overstate that, but I've spoken with them and they share my views, the ones that I've spoken with on this.

Mayor Valdes-Fauli: Do I hear a motion?

Commissioner Quesada: So moved.

Mayor Valdes-Fauli: Second.

Commissioner Lago: Second.

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

Commissioner Mena: Yes

Commissioner Quesada: Yes

Vice Mayor Keon: Yes

Commissioner Lago: Yes

Mayor Valdes-Fauli: Yes

(Vote: 5-0)

Mayor Valdes-Fauli: K-4.

City Attorney Leen: Madam City Attorney Designate.

Deputy City Attorney Ramos: K-4 is preemption, thank you Naomi; there is a companion Bill 521, along with Senate Bill 574. It is an initiative at the state level to preempt our municipality's ability to regulate the trimming, removal, or harvesting of trees on private property. And, so this resolution is obviously asking them not to do that, and that we are startling in disfavor of them moving forward in that regard.

City Attorney Leen: Its sponsored by Commissioner Lago, I'm not sure if he wants to say anything?

Mayor Valdes-Fauli: Do I hear a motion?

Commissioner Lago: It's very simple. So moved.

Commissioner Quesada: Second.

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

Commissioner Quesada: Yes

Vice Mayor Keon: Yes

Commissioner Lago: Yes

Commissioner Mena: Yes

Mayor Valdes-Fauli: Yes

(Vote: 5-0)

City Attorney Leen: Mr. Mayor one other thing I would like to request an Executive Session, before I do though I just want to thank Naomi Levi Garcia for helping with K-1 and K-4. She is doing great work as our Government Affairs Manager and as a Special Counsel in my office and I really appreciate that. I know the City Manager does as well.

[End: 12:33:29 p.m.]