

City of Coral Gables City Commission Meeting
Agenda Item E-6, E-7 and E-10 are related
November 18, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Pat Keon

Commissioner Vince Lago

Commissioner Frank Quesada

City Staff

Interim City Manager, Carmen Olazabal

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Assistant Director Development Services, Charles Wu

Public Speaker(s)

Susan Trevarthen, Outside Counsel for the City

Agenda Item E-6, E-7 and E-10 are related [Start: 11:02:34 a.m.]

E-6: Zoning Code Amendment. An Ordinance of the City Commission of Coral Gables, Florida providing for text amendments to the City of Coral Gables Official Zoning Code, amending Article 8, "Definitions", by providing definitions related to medical marijuana uses; amending Article 4, "Zoning Districts", to restrict the location of medical marijuana uses; amending Article 5, "Development Standards", by providing development standards for medical marijuana uses; affirming that the City will only approve uses that are legal under federal and state law; and providing for a repealer provision, severability clause, and providing for an effective date. (Passed on First Reading October 28, 2014).

E-7: City Code Amendment. An Ordinance of the City of Coral Gables, Florida, providing for text amendment to the City of Coral Gables Code of Ordinances, amending Chapter 14, "Businesses", by creating Article V, "Marijuana Sales", to

provide regulations, restrictions and procedures for the operation of Medical Marijuana Retail Centers; amending Section 38-6, to prohibit the public consumption of marijuana; affirming that the City will only approve uses that are legal under Federal and State Law; and providing for repealer a provision, severability clause and providing for an effective date. (Passed on First Reading October 28, 2014).

E-10: A Resolution of the City Commission of Coral Gables amending Resolution No. 2013-89, known as the Fee Ordinance, by adding a Medical Marijuana Permit Fee in accordance with Section 14-162 of the City of Coral Gables Official Code of Ordinances; affirming that the City will only approve uses that are legal under Federal and state law.

Mayor Cason: Next we have Items E-6, 7, and E-10. E-6 is a Zoning Code Amendment; E-7 is a City Code Amendment.

[Note for the Record: Commissioner Quesada asked the Mayor to digress for a moment to discuss a non-agenda item pertaining to restrictive covenants and remote parking. The Commission resumed Agenda Items E-6, E-7 and E-10 at 11:07:55 a.m.]

Mayor Cason: Continuing on E-6, 7, and 10. Again, E-6 is a Zoning Code Amendment; E-7 is a City Code Amendment; and E-10 is a Resolution. City Attorney please.

City Attorney Leen: Mr. Mayor E-6 is Zoning Code Amendment it's on Second Reading. An Ordinance of the City Commission of Coral Gables, Florida providing for text amendments to the City of Coral Gables Official Zoning Code, amending Article 8, "Definitions", by providing definitions related to medical marijuana uses; amending Article 4, "Zoning Districts", to restrict the location of medical marijuana uses; amending Article 5, "Development Standards", by providing development standards for medical marijuana uses; affirming that the City will only approve uses that are legal under federal and state law; and providing for a repealer provision, severability clause, and providing for an effective date. This was passed on First Reading October 28, 2014. In addition on Second Reading is a City Code Amendment. An Ordinance of the City of Coral Gables, Florida, providing for text amendment to the City of Coral Gables Code of Ordinances, amending Chapter 14, "Businesses", by creating Article V, "Marijuana Sales", to provide regulations, restrictions and procedures for the operation of Medical Marijuana Retail Centers; amending Section 38-6, to prohibit the public consumption of marijuana; affirming that the City will only approve uses that are legal under Federal and State Law; and providing for repealer a provision, severability clause and providing for an effective date. This was passed on First Reading October 28, 2014. In addition, there is Item E-10, which is a

Resolution. This is a Resolution of the City Commission of Coral Gables amending Resolution No. 2013-89, known as the Fee Ordinance, by adding a Medical Marijuana Permit Fee in accordance with Section 14-162 of the City of Coral Gables Official Code of Ordinances; affirming that the City will only approve uses that are legal under Federal and state law. All three items will have a public hearing together and each would be voted on separately.

Commissioner Quesada: Any changes since last?

Mr. Wu: Yes sir.

Commissioner Quesada: OK. What are they?

Mr. Wu: First we have an update for you, I'll give you an update since the referendum and why it's relevant today and then I'll cover the changes.

Ms. Susan Trevarthen: Good morning Mayor, members of the Commission, as you know because you read the paper, there was a vote on the Constitutional Amendment and while 58 percent of the voters of the State of Florida expressed their support for the idea of the amendment to medical marijuana, it did not in fact pass. We do however still have a statute in place that creates a limited right to medical marijuana. I'm also told by everybody whose part of that Tallahassee legislative matrix is that it is guaranteed that there will be more legislative activity this spring, because in part the challenge to the Charlotte's Web Statute rulemaking, there was a decision from the court just this weekend or I guess the end of last week on that, and those challenges go to in part the distribution system, the decision by the Department of Health to have a lottery rather than judge the value and the appropriateness of each applicant to be the five providers in the state and other issues related to the state system. So because of this continued statutory presence as well as likely future legislative activity, I do not find this to be a mute activity, it is your choice whether to proceed, but at this point you've done 99 percent of the work and it has meaning and it's there to protect you and it could be amended in the future should events change such that it's appropriate to amend it.

Mayor Cason: And it will be back on the ballot most likely in 2016.

Ms. Trevarthen: By all of the accounts, yes, the people who are in support of this are saying they are not going to go away, they'll be back.

Commissioner Lago: First off, just really quickly. You mentioned something you touched on a certain element that I wanted a little more clarification on. I want to say thank you for your hard work, staff, and Weiss Serota for all the hard work in putting this together. My question is you

touched on protect us, protect the residents. Can you explain to me how this ordinance will protect the residents of the City of Coral Gables?

Ms. Trevarthen: Yes. The basic issue is what is the status of this new use under your Zoning Code if you don't say anything?- and there is a recent set of events that we can look to for guidance. When vacation rentals arose some cities took the position that because they weren't explicitly allowed within single family residential areas, by definition they were not allowed and they litigated on that, they spent a lot of time and they ultimately were unsuccessful. Only those cities who actually wrote something specifically about that use were ultimately able to regulate it. So rather than take the position that we can just read into our Zoning Code how these uses should be treated, working with your staff, working with your City Attorney, we felt it best to be explicit because there are some very unique things about this use. By putting something in the Code, yes we are authorizing it, but we are also constraining it and defining it. We are only authorizing the retail component, not the full growing production and refining aspects of creating this product, and we are only allowing it through zoning and spacing requirements at a very small number of locations in our community that are judged to be the least impactful as opposed to having them in the middle of your CBD. At this point, if you'll let me, I'll like to let Charles interject because we did make a change that affects that particular issue between First and Second Reading, it affects the spacing.

Mr. Wu: I do want to add that as the attorney mentioned last time, this is a de facto moratorium, because the federal law doesn't allow it today, our Code specifically says, if federal doesn't allow it we will not allow it, and all three request the attorney's opinion even if someone applies. So it's a de facto moratorium, federal has to change; Florida has to change, for this to start taking to effect. The one change I'd like to bring to your attention that we made between First and Second Reading is that the Code does say, the existing separation between medical marijuana uses are 1,000 feet. Typically, when Zoning Codes are written that way it implies within the City 1,000 feet, since the only eligible locations we have borders the City and the City of Miami, specifically Salzedo and 8th Street, I'd like for your consideration the 1,000 feet also applies for some of these outside the CBD. For example, if one is located right adjacent to the City in the near future and that is within the 1,000 foot, it will preclude someone going right next to it but located inside the City. So that change is reflected in lines 189 through 193, to clarify the distance separation applies for those similar uses outside the City as well.

Commissioner Lago: So what you are saying there just to see if I'm the only one that's not 100 percent clear. If you have a medical marijuana retail center which opens up in the City of Miami adjacent to the City of Coral Gables...

Mr. Wu: Within 1,000 feet.

Commissioner Lago:...within 1,000 feet, obviously the criteria would not be met that establishment would not be given the ability to open, correct?

Mr. Wu: Within the City, our City. So it makes it even more restrictive.

Commissioner Lago: Let me ask you a question. Also, I know we had discussed this in the First Reading. Anyone that applies for a license, let's say this passes on a federal level, excuse me, on a state level, I apologize, not on a federal level, and then obviously we have these constraints in place, this ordinance in place, does the Commission as a whole have the final say in regards to whether that establishment is granted the ability to open in the City of Coral Gables even if they do meet the constraints that have been put forth as you so stated, located only in commercial zoning districts, be located outside the CBD, located at least 500 feet from SFR or M-1 zoned district, so on, does the final say come before the Commission?

Mr. Wu: Yes sir because the conditional use goes to Planning and Zoning and City Commission for final authorization.

Ms. Trevarthen: If I could add on to that answer. You phrased the question correctly because of course we have levels going on here. I was talking about our ultimate regulation if and when the federal system ever makes this legal, that's your first line of defense in the City, but beyond that if it becomes legal under federal as well as state law then, yes, you do have the conditional use, the spacing, the zoning, and the other protections that are written into this ordinance.

Mayor Cason: And we are grandfathered in, in case anybody tries to...

Ms. Trevarthen: That's the theory, yes.

Commissioner Lago: Let me tell you why and I just want to - because I was the lone dissenting vote on the first go around. Let me explain to you why I voted no. The reason why I voted no was due to the simple fact that I saw a great 60 Minutes Special, which detailed the hardships that certain entities are having in regards to a cash transaction business, like what we see here, have seen detailed in Denver, Colorado. They also interviewed many of the residents and the businesses that abut these facilities - crime is up, because it's a cash business. You are not going in there....

Ms. Trevarthen: But that's exactly why yours is structured the way it is. The reason it's a cash business is because the feds still have this as an illegal activity.

Commissioner Lago: Even though they are not prosecuting.

Ms. Trevarthen: That's true. Just through enforcement discretion they are not, but the way your ordinance is structured that would have to change. It would have to be illegal under federal law in the opinion of your City Attorney before the first one ever walks through the door here. So a lot of the major problems that come from being a cash only business are likely to be ameliorated at that point because there is no longer a need for them to be cash only, because they are legal under federal law.

Commissioner Lago: But we are hinging on the fact that certain states it is legal to have these types of businesses but obviously the federal government is turning a blind eye, so currently the businesses can move forward.

Ms. Trevarthen: That's correct.

Commissioner Lago: But if the federal government does enact or legalize medical marijuana use then....

Ms. Trevarthen: That would be the first moment that somebody could actually apply to be in our City and then at that point the zoning and the commercial, not in the CBD, the spacing, that kicks into play at that point.

Commissioner Lago: Still a little nervous about approving something even though it's as tight as it gets, it's very, very tight...

Ms. Trevarthen: One of the tightest I have.

Commissioner Lago: It's probably the tightest but at the end of the day I feel, I'm a little nervous in regards to when you mentioned North Gables, because it is an issue that hopefully we'll never have to face it, but if we do have to face this they will feel the brunt of increased traffic, potentially some sort of increase...

City Attorney Leen: Mr. Mayor if I may, I just like to put on the record that I do have an opinion regarding obviously the legality under federal law and that it's not legal, it's a schedule 1 substance, so it is illegal. So my opinion and stated for the record is that they are not allowed in the City, so if someone were to apply after you pass this ordinance it's not allowed, so it could not be considered by our Planning and Zoning Department or by the Board or by you. Now ultimately – and that's the way this ordinance is drafted, so based on that opinion it can't be done in our City. Now if one day federal law changes and I'll ask for an opinion again, and I give a

different opinion, however the City Attorney gives a different opinion then it could be allowed, but it would have to be both under federal and state law and it would have to be legal, and it doesn't matter – and the way that it is written it doesn't matter whether the President or the Department of Justice is enforcing it or not. It matters what has Congress passed this legislation or what has whatever the administrative agency decided under federal law, is it presently legal or illegal, and if it's illegal it won't be allowed in this City.

Commissioner Lago: Thank you Craig, I appreciate it.

Mayor Cason: Alright. On E-6 do we have a motion?- and we've closed the public hearing on this.

Commissioner Keon: I'll move it.

Mayor Cason: Commissioner Keon makes the motion.

Commissioner Quesada: Second.

Mayor Cason: Commissioner Quesada seconds.

City Clerk

Commissioner Quesada: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Mayor Cason: Yes

(Vote: 4-0)

Vice Mayor Kerdyk: (Absent)

Mayor Cason: Alright. On E-7?

Commissioner Quesada: So moved.

Mayor Cason: Commissioner Quesada makes the motion – second?

Commissioner Keon: I'll second it.

Mayor Cason: Commissioner Keon seconds it.

City Clerk

Commissioner Keon: Yes

Commissioner Lago: Yes

Commissioner Quesada: Yes

Mayor Cason: Yes

(Vote: 4-0)

Vice Mayor Kerdyk: (Absent)

Mayor Cason: E-10.

Commissioner Keon: I'll move it.

Commissioner Quesada: Second.

Mayor Cason: Commissioner Keon makes the motion, Commissioner Quesada seconds.

City Clerk

Commissioner Lago: Yes

Commissioner Quesada: Yes

Commissioner Keon: Yes

Mayor Cason: Yes

(Vote: 4-0)

Vice Mayor Kerdyk: (Absent)

Commissioner Keon: Thank you for those...

Mayor Cason: Thank you.

[End: 11:20:50 a.m.]