

City of Coral Gables City Commission Meeting
Agenda Items J-4, J-5, and J-6
July 11, 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)

Agenda Item J-4, J-5, and J-6 [2:56:08 p.m.]

J-4: Presentation by the City Attorney and the ACM/Building Official regarding statutory changes, including First Amendment concerns relating to corporate logo requirements and City Attorney Opinion regarding permissibility of change of color pallet zoning permits/approvals for residences as an aesthetic matter.

J-5: A Resolution of the City Commission of Coral Gables implementing Chapter Law 2017.149 as it relates to painting permits, recognizing that Coral Gables has a long history of regulating color pallets as a zoning matter independent of building code requirements relating to painting, continuing to require color pallet zoning permits under its home rule authority as changes in the color pallet of a residence have not been pre-empted or otherwise addressed by Chapter Law 2017.149, removing any administrative fee related thereto, recognizing authority of the City Architect to grant administrative approval where color pallet is the same or pre-approved and recognizing the administrative process to appeal or seek review of decisions related to the color pallet zoning process, including ultimately to the City Commission.

J-6: A Resolution of the City Commission of Coral Gables, Florida issuing a Zoning in Progress in accordance with Article 3, "Development Review," Division 7, "Moratorium," Section 3-703, "Zoning in Progress Request" and 3-704, "City Commission Zoning Code Text Amendments to Article 5, Division 20

“Telecommunications,” addressing Wireless Communication Facilities, and Article 8, “Definitions,” to implement recently passed Florida Legislation known as the “Advanced Wireless Infrastructure Development Act” addressing access to the Public Rights-of-way for Wireless Communication Facilities, providing for an effective date.

City Attorney Leen: Mr. Mayor if you want, I know that there is a time crunch. I can just tell you J-4, J-5, and J-6, I can consolidate all of them. For J-6 I just need a vote, it’s a zoning in progress resolution related to telecommunications. What this basically says, in the right-of-way, what is says is in the right-of-way the state has passed a law that allows for potentially very large towers to be put in the right-of-way. We want to take a hard look at this, open to Home Rule, etc., and so we are doing a zoning in progress which has an effect of a moratorium. We’d ask that you put that in effect consistent with its terms. I would need a vote on that.

Mayor Valdes-Fauli: OK. Do I hear a motion?

Vice Mayor Keon: I’ll move it.

Commissioner Quesada: Second.

Mayor Valdes-Fauli: 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)

City Attorney Leen: I was just going to get them all so that we can spend the rest of the time on those. I can do these in a minute, is that OK?

Mayor Valdes-Fauli: Yes.

City Attorney Leen: J-4 and J-5, briefly what I want to say about J-4 and J-5 is that the state has adopted a couple of laws, which in the last legislative session there was a concern that they could try to greatly reduce Home Rule. The main concern which was HB-17 was not passed, but there were other Bills or other acts that were adopted that are becoming statutes that went into effect July 1st and the City has significant concerns about them. Briefly, I was going to give this presentation with the Building Official, but he and I see 100 percent eye-to-eye on this. The first

one is painting permits – Coral Gables, in my view, we do not do painting permits. What we do are zoning permits related to color pallet that is something that we've done for decades. It's attached to our Board of Architects process, which has existed for decades. We even have an old Charter provision that talks about that. That's something that's very basic and central to the City of Coral Gables to the Mediterranean design standards, so my view and my opinion and what I'm asking you to do today, and there is a resolution that was drafted by Naomi Levi-Garcia, I think it's an excellent resolution, it would be a model for other cities, I believe, and I plan to raise this with the Florida League of Cities, but what this resolution does is it allows the City to continue requiring color pallet permits, the City Manager has agreed that there would be no fee, but you would still be required to get a permit to ensure that people cannot just change the colors of their house to pink or a bright purple or sand might be permissible, but you know there are different things that we allow, but there are colors that we don't. So, we want to make sure to be able to preserve that ability. If you want one of these colors that is not allowed you have to go through a quasi-judicial process, to the Board of Architects, etc. So, that's what the resolution does it preserves that and we believe it's consistent with the state statute.

Commissioner Lago: Second.

Mayor Valdes-Fauli: Mr. City Clerk

Commissioner Mena: Yes

Commissioner Quesada: Yes

Vice Mayor Keon: Yes

Commissioner Lago: Yes

Mayor Valdes-Fauli: Yes

(Vote: 5-0)

City Attorney Leen: And Mr. Mayor, the second issue is with corporate trade mark, corporate logos. The state has adopted a law, which says that corporate logos are not subject basically to zoning requirements, sign codes, etc. We believe that this is a significant violation of the First Amendment, because what the First Amendment says and this is as recently interpreted by the Supreme Court of the United States in the Town of Gilbert case is that you are not supposed to look at the content of the sign generally to determine whether it gets favor or favorable treatment or not. That's considered a content based restriction, those are illegal, those are subject to strict scrutiny. What this statute does is it favors corporate logos of franchisees, such as a franchise such as McDonalds, I'm not targeting them, I'm just give you examples, McDonalds, Burger King, gas stations, anyone that has a franchise and that has this logo could be the golden arches, it could be Burger King, they would not be subject to our zoning requirements, which means for example, you could put a very large one of these in violation of our Zoning Code or you could

conceivably put it into our right-of-way. The City is very concerned about that for several reasons; one, we don't allow that as a matter of our Code. In addition, that is a content based restriction which means that we would be treating those corporate logos differently than other commercial logos that are not franchises, and also the non-commercial speech, and it's a tenant of First Amendment Law that you cannot treat non-commercial speech worse than commercial speech. So, we believe that it is Unconstitutional; our plan is to proceed and continue to enforce our Code and if we are challenged to defend our Code and to argue that that statute is Unconstitutional under the First Amendment. But, I wanted to make you aware of it, because it is possible we will be challenged and there is a possibility of a lawsuit.

Mayor Valdes-Fauli: That's very good.

City Attorney Leen: I don't need any action related; I just wanted to make you aware. That's all my items.

Commissioner Lago: Thank you – good work.

Mayor Valdes-Fauli: Thank you.

[End: 3:01:03 p.m.]