

CITY OF CORAL GABLES, FLORIDA

RESOLUTION 2017-_____

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.

WHEREAS, the Florida Legislature recently adopted certain changes to the Florida Building Code, codified at Section 553.79(20), Florida Statutes, which purport to preempt building, design, and sign restrictions by local governments to the extent those restrictions apply to two limited types of commercial messages: specifically, “signage advertising the retail price of gasoline” and building designs and displays that reflect the “corporate branding identity” of certain corporate franchises such as their trademarks and color patterns; and

WHEREAS, after analyzing this statute, City Attorney Craig Leen has issued, contemporaneously herewith, a legal opinion pursuant to section 2-201(e)(1) and (8) of the City Code and section 2-702 of the Zoning Code, which advises that these new statutory provisions, as written, appear to potentially violate established U.S. Supreme Court case law which interprets the parameters of the First Amendment’s Free Speech Clause – in particular, the decisions of *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015) and *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 506 (1981) – by impermissibly treating certain types of commercial messages, based on their content, more favorably than all other signs, including non-commercial messages; and

WHEREAS, the Coral Gables City Commission, like many local governments around the country, has taken painstaking efforts in recent years to revise the portions of the City’s Zoning Code that govern non-commercial signs in order to comply with this body of federal case law (*see* Coral Gables Ordinance No. 2015-33); and

WHEREAS, there is nothing in the text or legislative history of this new statute to suggest that the Florida Legislature actually intended to effectively eviscerate local sign codes by forcing local governments into the position of either not enforcing any sign regulations whatsoever or else violating First Amendment case law (which takes precedence over state law where there is a conflict, under the Supremacy Clause in Article VI of the United States Constitution); and

WHEREAS, under the Miami-Dade County Municipal Home Rule Amendment to the Florida Constitution and the Municipal Home Rule Powers Act, any such broad preemption would have to be clear from the statutory text. *See D’Agastino v. City of Miami*, 220 So. 3d 410, 423 (Fla. 2017) (noting that implied preemption involving a municipality’s home rule powers is disfavored); and

WHEREAS, the City of Coral Gables is committed to continuing to enforce its Zoning Code in a manner that is consistent with the First Amendment to the U.S. Constitution and that does not expose the City to claims for constitutional violations under 42 U.S.C. § 1983.

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

SECTION 1. 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 adoption hereof.

SECTION 2. The City Commission recognizes the City Attorney’s substantial concern that the new state statutory provisions, codified at Section 553.79(20), Florida Statutes, are inconsistent with the First Amendment and federal case law, as written, because they are not content neutral and favor certain types of commercial speech over non-commercial speech.

SECTION 3. The City Commission directs City staff to narrowly construe and apply Section 553.79(20) of the Florida Statutes in a manner consistent with federal law.

SECTION 4. The City Commission urges the Florida Legislature to contemplate an amendment to, or repeal of, Section 553.79(20), Florida Statutes, to address this concern.

SECTION 5. Said Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS _____ DAY OF NOVEMBER, A.D., 2017

RAUL VALDES-FAULI
MAYOR

ATTEST:

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

CRAIG E. LEEN