

City of Coral Gables City Commission Meeting
Agenda Item F-4
December 10, 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

Public Speaker(s)

Gary Resnick, Attorney with Gray Robinson

Agenda Item F-4 [11:01:12 a.m.]

An Ordinance of the City of Coral Gables, Florida amending the Code of Ordinances of the City of Coral Gables by amending Article III, Chapter 70, Sections 70-76 through 70-91, the “Coral Gables Communications Rights-of-Way Ordinance;” providing intent and purpose, applicability and authority to implement; providing definitions; providing for registration; providing for the requirement of a permit; providing application requirements and review procedures; providing for a performance bond to place or maintain communications facilities in the public rights-of-way; providing for construction methods, providing development and objective design standards providing for severability clause; providing for conflicts; and providing for an effective date.

Mayor Valdes-Fauli: F-4 – time certain. Madam City Attorney.

City Attorney Ramos: F-4 is an Ordinance of the City of Coral Gables, Florida amending the Code of Ordinances of the City of Coral Gables by amending Article III, Chapter 70, Sections 70-76

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through 70-91, the “Coral Gables Communications Rights-of-Way Ordinance;” providing intent and purpose, applicability and authority to implement; providing definitions; providing for registration; providing for the requirement of a permit; providing application requirements and review procedures; providing for a performance bond to place or maintain communications facilities in the public rights-of-way; providing for construction methods, providing development and objective design standards providing for severability clause; providing for conflicts; and providing for an effective date. This is a Second Reading item. It is a public hearing and Mr. Resnick is here to walk you through the changes.

Mr. Resnick: Thank you City Attorney. Gary Resnick from Gray Robinson.

Mayor Valdes-Fauli: I have here some letters from various law firms, etc. and e-mails that we have received which I would like for the City Clerk to enter into the record. Thank you. Go ahead. I’m sorry.

Mr. Resnick: Thank you. No, that’s totally appropriate. Gary Resnick from Gray Robinson. Mayor, Commission, I have the privilege of representing the City with respect to communication matters. As the City Attorney mentioned, this is an ordinance on Second Reading. In 2019, the City Commission adopted Ordinance No. 2019-08, to implement amendments to Florida Statute, including the Florida Advance Wireless Infrastructure Deployment Act, also known as the small cell statute. That became effective July 1, 2018. There were changes to the Florida Statutes based largely on ordinances that were adopted by municipalities and counties throughout the state. So, in 2019, Florida passed SB 1000, which further amended Section 337.41, Florida Statute effective July 1, 2019. The proposed ordinance implements further changes to the City Code, consistent with the 2019 amendments to the Florida Statute. And I can just briefly summarize some of the changes that we are making pursuant to the changes in the statute. As indicated in the first hearing in the ordinance, there were further revisions before this hearing based on comments of the City staff and the industry stakeholders; and I actually wanted to thank City staff, they have been very instrumental in providing input and providing suggestions for language for this ordinance. The revisions include, we added language to implement the statutes preemption of the City’s ability to require maps of facilities and inventories. There is new preemption language that was adopted pursuant to the changes in the statute, so the City is preempted from certain regulations by the new changes to the statute, that became effective in July. There are new notice requirements as well, so we added language requiring notice and work done without City permits and requiring photographic and video documentation of all underground work. The new statute allows for more work to be done without permits issued by the City. So, your staff wanted to make sure that work was copied and provided appropriate documentation to the City staff, so the ordinance requires photographic and video documentation of the work that’s done without permits in the rights-of-

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way. There are technical requirements that were added for sidewalk closure and making some traffic plans. The statute extended the shot clock, not only for small wireless facilities, but to all communication facilities. So now your staff has to process all applications for all communication facilities within 14 days to review the application and 60 days to grant or deny the application, otherwise the application is being granted. But there are different requirements that are still maintained to actually have those applications for review. So, the City staff has much more flexibility with respect to reviewing applications for fiber, for example, than for reviewing applications for actually small wireless facilities that are placed in the rights-of-way. We addressed ancillary permits, such as permits for elected facilities that are installed in conjunction with these facilities. The industry objects highly to the requirement of a permanent performance bond, so we added legislative intent to justify that requirement in the ordinance. And there are also clarifications with respect to the process. We are seeking approvals to install facilities on historic properties. That's something that the industry had a lot of concerns about and we clarified the requirements for installing facilities underground. So just want to note, in addition to the ordinance, the Florida League of Cities and a few individual cities in Florida are challenging portions of the statute. That remains pending in Circuit Court up in Leon County; and in addition, one of the additions to the statute that became effective in July 2019 is that, the industry added a private cause of action, actually in federal court, which is unconstitutional, but its added in the statute providing that any party aggrieved by a violation of a statute can sue a local government in court, and if successful, based on there argument that the action is preempted may recover attorney's fees and costs. That's not addressed in the ordinance, but we believe that that provision added to the statute is unconstitutional as well. That's one of the claims that the Florida League of Cities is raising in its lawsuit. And I'm available to answer any questions.

City Attorney Ramos: Mr. Mayor do you have any speaker cards?

Mayor Valdes-Fauli: No, I don't have any speaker cards.

Commissioner Keon: I started to read all of those documents and got totally lost and so, I would trust your judgement.

Mayor Valdes-Fauli: Tell us your recommendation.

Commissioner Keon: Yes. How do you respond to what they are saying?

Mr. Resnick: Well the industry as you saw. The industry submitted letters with their proposed revisions to the ordinance. We had an in depth conference call, first of all we received these industry comments about a month ago, and then we had an in depth conference call that lasted

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over an hour with the industry attorneys, and we went through their objections, basically one by one and we didn't feel that – we made some revisions to the ordinance based on the input from the industry stakeholders of course, especially some of the technical requirements in the ordinance, but overall we feel that the ordinance is consistent with the statute. The statute is very inconsistent itself; on one hand the statute says that you are not allowed to require maps or inventories or anything for any purpose whatsoever, but then later in the statute it says that your staff can require maps of inventories to confirm certain things that providers of communications are supposed to provide to the City. So, there is an internal inconsistency with the statute, but we feel that the ordinance – first of all, it protects the City and it protects the City rights-of-way, which is the number one goal. We believe that its consistent with the statute and that it is lawful. Our recommendation is to adopt the ordinance.

Mayor Valdes-Fauli: I've read most of these letters, except for that last one, came to us through e-mail, etc., and it is our duty to protect the citizens and the City of Coral Gables and these companies whether its in this area of ordinances or other areas. These companies want to get as much as possible on everything and we had to stand firm to protect our residents and to protect our quality of life and to protect our environment. And I'm very much for adopting this on Second Reading. Do I hear a motion?

Commissioner Keon: I'll move it.

Mayor Valdes-Fauli: Second?

Commissioner Mena: Second.

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: Thank you very much sir.

Vice Mayor Lago: Thank you.

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[End: 11:09:32 a.m.]

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[Date]

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*Agenda Item F-4 – Ordinance amending Code of Ordinances, Amending Article III
Chapter 70, “Coral Gables Communications Rights-of-way ordinance.”*