

City of Coral Gables City Commission Meeting
Non-Agenda Item
February 14, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick

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)

Non-Agenda Item [10:00:48 a.m.]

Mayor Cason: Let's move to a City Attorney Item, because I think we have some good news and this will be, it's not on the Agenda, but why don't you go ahead and give the good news.

City Attorney Leen: Thank you Mr. Mayor and I'd like to ask Special Counsel Corali Lopez-Castro to come up too. Yesterday, Judge in the Circuit Court, Judge Cueto, issued an order in our polystyrene case, where the City was sued and its polystyrene regulations were challenged and the City counter-claimed and challenged three statutes, the constitutionality of three statutes, including the purported polystyrene preemption statute, as well as the plastic bag purported plastic preemption statute; and by purported I mean they attempted to preempt or stop the City and other municipalities and local governments from regulating polystyrene or plastic bags; and the City received a wonderful order, an excellent order, we believe extremely well-reasoned, and that looked at the text of the statute, the text of our polystyrene regulations and also looked at Sovereign Immunity, looked at the Miami-Dade Home Rule Amendment, looked at a doctrine called the Non-Delegation of Legislative Power Doctrine, looked at the doctrine that states

cannot act arbitrarily and capriciously, and in fact, looked at probably seven or eight doctrines, which Cory can talk a little bit more about in a moment, but the long and short of it is the court ruled that the City's polystyrene regulations were valid, that it was within the police power. What that means is that the City had the authority to regulate polystyrene, which for those in the audience and at home is Styrofoam, that the City had the authority to regulate that as part of its police power, which is to protect the environment, and that the statutes that are at issue, one of the statutes simply said that the regulation of polystyrene is preempted to the Department of Agriculture, but gave no regulations related to that. The court found that that statute violated Non-Delegation of Legislative Power Doctrine and was therefore unconstitutional. In my view that would apply, that just doesn't apply to the City that applies to everyone in the state. In addition, regarding the City there was a retroactivity provision and remember a grandfathering provision that left out Coral Gables and included every other City that had adopted a polystyrene regulation, because of the use of a date, January 1st that left out Coral Gables or attempted to leave out Coral Gables, and the court found that that violated the Miami-Dade Home Rule Amendment, as well as other legal doctrines, and that was unconstitutional for that reason and that the City's polystyrene regulations would continue. In addition, the court found two other statutes were also unconstitutional, including the plastic bag statute, which the court did not come in favorably on, because all that that statute does is it basically ask the department that the state agency involved to come back with a report and then the state is supposed to take action on it and the state hasn't done anything; and the way that it is worded it is very ambiguous. So, the court found that it was...for vagueness essentially, it's unconstitutional. Anyhow, I'll turn it over to Cory to give more detailed analysis, but I just wanted to say, I think this was an important case for Coral Gables to take, and it's not over by any means, it's very possible there could be an appeal, it's possible there could be an attempt at rehearing, but I think that this order establishes very important principals and rules in favor of the City on many different grounds, all of which are quite compelling, and recognizes the City's ability to act for its residents to try to protect them and to protect the environment. So, I think it's an extremely important and frankly a major decision that was issued by the Circuit Court, and with that, I'll turn it over to Cory. Cory was our lead trial counsel and she worked substantially on the motion, we worked together. Look, this is not over, so I'm not congratulating people at this point, but I wanted to also recognize Miriam who put a tremendous amount work into these regulations. Obviously, the Commission and this was Commissioner Lago's item that he sponsored, the polystyrene regulations, but the entire Commission has been so supportive of this issue, and every time it's come before the Commission, unanimously has supported this issue. So, with that I would turn it over to Cory.

Ms. Lopez-Castro: Cory Lopez-Castro from Kozyak Tropin and Throckmorton, a proud resident of the City of Coral Gables. First of all I'd like to say, I had the best co-counsel, the best law firm, the City Attorney's office. Everyone in the office worked with my firm to get this right. Second of all, we had a perfect storm, I think, we had a great Judge, Judge Cueto is a Judge is a

hard working judge who reads everything, is very well prepared, will have motion calendar, I mean we'll have special sets at 7:30 in the morning to make sure that cases move along. Initially when the complaint was filed by the Florida Retail Federation and by Super Progresso, I think it's a 7/11 on Eighth Street. We filed a very comprehensive motion to dismiss. We don't always file a motion to dismiss, but we thought we had grounds for it; and the Judge said, you know what, come back on a motion for summary judgement that's more appropriate. We came back on a motion for summary judgement on February 2nd, we submitted proposed orders on February 22nd and we got the order last night at 5:18, a very, very hard working Judge. There will likely be an appeal. I don't think I need to add anything else to the grounds, because I think the City Attorney did an excellent job on describing all the grounds that the court found in his order, but I would add, you know one of the reasons why this makes sense and it comes back to, I remember when Craig Leen made a presentation to the Coral Gables Bar Association and said, why does it make sense to have this at the local level, because you get things done. He made a very, very effective presentation regarding Home Rule Amendment, why does it exist, and I will tell you this, he mentioned that report that one of the other statutes had that said, they will come back with a report and then based on that report action will be taken. That report was issued in 2010 and nothing has happened in Tallahassee, 2010, there is a complete vacuum and this is exactly how local law should work. So anyway, I do expect an appeal, but it was very gratifying to get that order last night at 5:18.

Mayor Cason: Thank you very much and I think this would be important to send this around to the League of Cities, to all the other municipalities, so that if it does move they may be wanting to join us in going to the Supreme Court, is that right?

Ms. Lopez-Castro: So, I think they are very interested, we did consult with them; just very generally, because they were involved at the state level, so we'll definitely send that around to them.

Commissioner Lago: Mayor if I may just very briefly. I want to give a few thank you's and I just want to give a brief statement. There is a level of importance to what we achieved here, I know that we are probably going to get appealed, but I think that by achieving this first step, I think like you mentioned before, having this report in existence since 2010 and having no action by our state leaders is disappointing, and I think its reason why I along with my colleagues on this Commission, I know Commissioner Keon has played an essential role in this, made the decision that are going to fight this, and I think that we have, like I mentioned before, we have an incredible Sustainability Advisory Board, we have a great team between Jessica and Matt, who not only guide this Sustainability Advisory Board, but lead us in efforts in regards to sustainability in the City. We have an incredible City Attorney and his team, along with our out counsel, and I just want to make sure that everybody here who I've mentioned is aware that we

are grateful for your efforts. It's a tough stand to stand alone sometimes even though you are right, because somebody may not want to stand with you, because they don't want to take on a juggernaut like "special interest", but this is important, because if you allow and you stand up for certain issues you get run over, over and over and over again. So, I know some people may think what's the big deal about plastic bags and what's the big deal about polystyrene?- it's a huge deal. Those are issues that have incredible detrimental effects, not only on the environment, but on our way of life and when you are a City that brands itself as a "City Beautiful" and has over 40 miles as the Mayor has personally counted himself, of coastline, you can't be the City Beautiful if you don't take stands like you are today. So, I'm very proud of my colleagues and of our staff who are doing a great job and if we do get appealed we'll keep fighting, because that's what we do. So thank you.

Ms. Lopez-Castro: You are welcome.

Mayor Cason: Thank you very much.

Vice Mayor Quesada: I want to say congratulations. I'm reading the order for the first time, it's a big deal, that the state statute is unconstitutional, you don't see that often. So congrats.

Mayor Cason: Great job and this would be good Segway into I-1, which is House Bill 17, because it is somewhat related.

Vice Mayor Quesada: Thank you so much Cory.

Commissioner Lago: Great work.

City Attorney Leen: Thank you Cory and please thank Mindy and Rachel and the people at your firm and I also should thank Craig Coller, he's a scholar on issues related to Miami-Dade County. He used to work at Miami-Dade County and we raised the Miami-Dade Home Rule Amendment as a City on our behalf and I've been arguing for a long time that we, the City can benefit from the Home Rule Charter, because it allows us to have a higher level of regulation, zoning and service, and in this particular case we were also able to avail ourselves of the Home Rule Amendment, which I think is very clear that we can do that, but a lot of cities don't think about that.

Commissioner Lago: Just add one last thing just to dovetail on what the Mayor said and this is for the City Clerk. I'm going to write a memo with all this information, all the necessary documents like the Vice Mayor had mentioned, the findings, and I want to make sure that every municipality in South Florida either Miami-Dade, Broward, especially Monroe and Palm Beach

that they get this information, because I think that once they've seen a municipality that has taken the stand and we've gotten positive results and they are aware, because a lot of people, again, I'll be very honest with you. I wasn't aware when I got into public office that this document from 2010 existed. I want to make sure these municipalities are aware and they see that we have a court that has sided with us and that we push forward on this issue and that we hopefully allow them to stand up and make a resolution or an ordinance to join us in this fight. Thank you.

[End: 10:04:04 a.m.]