

City of Coral Gables City Commission Meeting
Agenda Item I-1
February 28, 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)

Agenda Item I-1 [10:12:05 a.m.]

Discussion regarding House Bill 17

Mayor Cason: Craig.

City Attorney Leen: So Mr. Mayor, House Bill 17, and I would like to preface my remarks by thanking Naomi Levi, who did some research for me and sent it to me regarding this particular House Bill that's within her work as our Governmental Affairs Manager, and she is very on top of this issue, so was Fausto Gomez, our Lobbyist, and what House Bill 17 does and it's something that should be a concern to the City and all local governments in Florida, is that it seeks to in a very general way and broad way preempt cities from being able to regulate businesses, in a very broad way. Right now, it's gone through a House Committee and gotten support. It's my understanding from Naomi and from the memo that she provided me that it's a priority of the House Leadership. Right now, there is no companion Bill in the Senate and there is a general sense that this will not pass, because it will not be supported by the Senate, but we have to be very vigilant; and why I say that is because Coral Gables is known for good sense

regulation and we have a lot of regulations, we are known for our zoning regulations, but we also regulate businesses, we regulate a lot of things, and we do so in a common sense way and we work with our Chamber of Commerce in doing so, and they often come forward and support us.

Commissioner Lago: I'm glad you brought that up, because I forgot to mention someone who's played an instrumental role in really guiding us through this and that was Mark Trowbridge from the Chamber. And, I want to make it very clear, we didn't just pass this legislation arbitrarily without consulting with the businesses in this community, Mark Trowbridge from the Chamber, we met with him, I think probably three or four times. We sat down we explained to the businesses the ramifications of this ordinance and what we were expecting from them and the extended amount of educational time that we are going to offer people and allow them to use their back stock in reference to polystyrene and hopefully the future of plastic bags if we do implement it. So, there has been a lot of effort in reference to the City working with the business community through the Chamber, so I want to thank Mark for that help.

City Attorney Leen: So, what House Bill 17 does, it tries to return the state to a condition that existed before Home Rule, it's called Dillan's Rule, and that was a rule at common law, which said that cities could not act, they did not have the police power unless they were given specific authority by the state, so the state would say, OK, you could regulate this, you can regulate that, and they did that through Special Acts, and that was abolished in the 70's through the Home Rule Amendment to the Constitution and the Municipal Home Rule Powers Act. What this statute attempts to do is restore Dillan's Rule. The problem with the statute and the reason why I believe is Unconstitutional and I will come to you and ask you and ask you for authority to seek to block it, if its ever enacted, is because even though the state does have authority, if they do it appropriately and correctly to preempt cities and to adopt their own regulations in certain areas. What they can't do is categorically deny, in my opinion, cities the ability to exercise Home Rule, because that violates the Florida Constitution, this is statute, the Florida Constitution takes priority over the statute, the Florida Constitution establishes Home Rule. It allows the state to adopt specific statutes that can preempt, if they are done appropriately. For example, in our polystyrene case they were not done appropriately and they violate a host of Constitutional principles what the state did, but an attempt to generally restore the State of Florida Home Rule, pardon me, to Dillan's Rule, which is again that cities don't have general police power; it has to be provided by the state. To do that to a statute in violation of the Florida Constitution, in my opinion, is clearly unconstitutional. We would have to advance that position and I'm very hopeful, I'm very hopeful that the State Legislature will see that, and it will not try to categorically preempt cities where a lot of work is done, this is where a lot of the work is done where we are trying to address the citizens' concerns, the Commission does it every two weeks, and that's something that we need to preserve.

Commissioner Keon: Can I ask a question? It suggests it abolishes Home Rule?- or it affects Home Rule?

City Attorney Leen: In my opinion for business regulation it abolishes Home Rule and re-establishes, attempts to re-establish Dillan's Rule, which is that the state would specifically say cities can regulate polystyrene and would give some limitations to that. Cities can specifically regulate the hours of operation of businesses, and they may try to do it through Special Acts where they give specific cities that authority, that's the old regime before Home Rule, that's what everyone, almost every legal scholar, most people who look at this issue champion Home Rule, whether you think that sometimes it can be excessive, there is a debate over that, I don't think it's excessive, but no one thinks that we shouldn't have it, what that would mean is that cities couldn't regulate in these areas. Well what's the purpose of having elected representatives then?- it's a really significant issue; it's like an existential issue for cities and counties. So, it's something that we have to be strongly against.

Commissioner Keon: I understand how it affects the issues of polystyrene and plastic bags and whatever, would this also have affected ability to ban hourly rentals from some hotels along Eighth Street?

City Attorney Leen: Yes, it could have. I mean we would have tried to carve it out, we'll always take a look at it, but yes, by saying regulation of businesses those are businesses.

Commissioner Keon: It also allows us...would it affect our ability to regulate where you can place medical marijuana distribution centers?

City Attorney Leen: It may, it may end up carving out zoning regulations, but the problem is a lot of zoning regulations tie into business regulations, and in fact, it's a very good example medical marijuana, because Coral Gables adopted two ordinances; one, which was a zoning one and one which was a business regulation one, and by the way its protecting public safety. One of the big issues with medical marijuana is that it's a cash business, and so you have to be very careful that it doesn't attract crime. So, we had a lot of provisions in place in that business regulation ordinance to ensure the protection of the people of Coral Gables and that sort of thing could be limited through this statute.

Commissioner Keon: Not only does it ban sort of the big general statewide issues with regard to the environment and these things, it also would affect our ability as a City to regulate the operation of businesses that would directly affect the quality of live within our City.

City Attorney Leen: Unequivocally yes, yes.

Mayor Cason: And we have an opportunity, I think we are going to have sessions with our elected representatives, right, so this is something we can make sure...

City Attorney Leen: Yes – and Mr. Mayor I would like to thank, I know the City Manager raised this issue with me as well, she wanted me to remind you and I would like to remind you that the Sustainability Advisory Board asked us to take this up, they passed a resolution and we believe that the City should also adopt a resolution that urges the Legislature not to adopt this Statute, because it's not a good statute and also because it's unconstitutional.

Commissioner Keon: Can we do that now?

City Attorney Leen: Yes.

Commissioner Keon: Can we make a motion? I'd like to make a motion.

Mayor Cason: What number is that, it's on the agenda here.

Commissioner Keon: Its I-1.

Commissioner Lago: Can we talk about it right now?

Mayor Cason: Yes, I-1.

Commissioner Keon: It's a resolution that the City...

City Attorney Leen: That the City oppose House Bill 17 in the Legislature as part of its Legislative Agenda and also that you are urging the Legislature to not adopt House Bill 17 or anything equivalent to that, one, because it's not good public policy, and two, because it's unconstitutional – one, because it's unconstitutional, and two, because it's not good public policy.

Mayor Cason: Commissioner Keon made the motion and Commissioner Lago seconded it – City Clerk.

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Mayor Cason: Yes
(Vote: 5-0)

[End: 10:20:30 a.m.]