



To: Cynthia Birdsill

From: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Adult Activity Center Item

Date: June 9, 2015

I am providing this opinion, interpretation, and ruling pursuant to section 2-201(e)(1) and (8) of the City Code, and section 2-584 of the Procurement Code, which authorize the City Attorney to issue final opinions and interpretations, as well as rulings on Procurement matters.

At the upcoming City Commission meeting, the Commission will be asked to review and approve a number of documents that collectively allow the City to obtain use and control of space that is currently leased to the Palace as part of a long-term ground lease (the City is already the owner, but would now hold this space free and clear of the Palace's leasehold interest). The space would then be used by the City for an Adult Activity Center, which is a top policy priority of the City Commission. The proximity of the Adult Activity Center to the Palace allows for shared uses of the Palace's facilities as part of these agreements.

The question I have been asked is whether this can be approved by resolution, or whether it requires an ordinance. I have also been asked whether this can go directly to the Commission or must first be reviewed by certain designated advisory boards. The question has arisen because of the potential applicability of sections 2-2011 – 2-2019 of the City Code relating to the purchase, sale, or lease of public property.

As an initial matter, the long term ground lease and subsequent amendments were already approved by ordinance (a 2007 ordinance, followed by a 2009 resolution, and a subsequent 2010 ordinance). The 2010 ordinance (Ordinance No. 2010-17) expressly indicates in section 3 that further amendments may be done by resolution, and does not include a requirement that the procedures in sections 2-2011 – 2-2019 of the Procurement Code be followed. Ultimately, the action being taken by the City is an amendment to the ground lease, as it removes certain space from the leasehold interest. Accordingly, such action may be taken by resolution pursuant to the express terms of Ordinance No. 2010-17. [I would also simply note here that Ordinance No.

2010-17 more specifically addresses the long term ground lease and the Adult Activity Center than the general provisions in sections 2-2011 – 2-2019 of the Procurement Code, and it was also adopted more recently in time than those provisions. In such circumstances, canons of construction indicate that Ordinance No. 2010-17 takes precedence over the general provisions in the Procurement Code.]

In addition, I would emphasize that the Procurement Code allows the Commission to act directly by resolution if determined to be in the best interests of the City, as the Commission may waive this portion of the Procurement Code by a four-fifths vote under section 2-2011 (a similar provision provides this authority in section 2-583) . As a prudential matter, I am going to recommend that the City Commission apply this provision and waive this portion of the Procurement Code in order to further ensure that the matter cannot be challenged at a later time. A waiver would be warranted here, if the Commission so determines, as there is an already established contractual relationship between the City and the Palace relating to the long term ground lease, and the Palace is thereby uniquely situated to provide this space for the Adult Activity Center by amending the already existing ground lease. I would also note, however, my opinion that the Commission could act by resolution (majority vote) even without a waiver, and even if the four-fifths vote were to fail, based on the analysis in the prior paragraph

For all of these reasons, it is my opinion, interpretation, and ruling that the City Commission may approve this item by resolution and without presenting the matter to any advisory boards. The City should seek to approve the matter through a four-fifths waiver vote in an abundance of caution. If necessary, however, the Commission may approve a resolution by a majority vote consistent with section 3 of Ordinance No. 2010-17.

Herbello, Stephanie

From: Leen, Craig
Sent: Tuesday, June 09, 2015 11:38 PM
To: Herbello, Stephanie
Cc: Ramos, Miriam; Figueroa, Yaneris; Chen, Brigitte
Subject: FW: City Attorney Opinion, Interpretation, and Ruling Regarding the Adult Activity Center Item

Importance: High

Please publish on an expedited basis.

Craig E. Leen, City Attorney

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From: Leen, Craig
Sent: Tuesday, June 09, 2015 11:36 PM
To: Birdsill, Cynthia
Subject: City Attorney Opinion, Interpretation, and Ruling Regarding the Adult Activity Center Item
Importance: High

City Attorney Opinion, Interpretation, and Procurement Ruling

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Craig E. Leen, City Attorney

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From: Leen, Craig
Sent: Thursday, May 07, 2015 12:52 AM

To: Swanson-Rivenbark, Cathy
Cc: Birdsill, Cynthia
Subject: Palace/Senior Center - Resolution
Importance: High

Cathy,

I have reviewed the Senior Center matter, and it is my opinion that the item can be voted on by resolution in one Commission meeting and without consideration by other boards. In an abundance of caution, I am going to recommend a four-fifths waiver be done under sections 2-2011 and 2-583(d) of the City Code, although it is my opinion the resolution can also be done pursuant to Ordinance No. 2010-17, Section 3, as well.

I am preparing an opinion explaining my analysis to include with the agenda item. The opinion would be given pursuant to section 2-584 of the Procurement Code, as well as sections 2-201(e)(1) and (8) of the City Code. I am sending this email to you now so you are aware of my opinion for your planning as to timing.

Craig

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