



To: Tucker Gibbs Esq., Peter A. Gonzalez Esq., and Laura L. Russo Esq.

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

RE: Legal Opinion Regarding Postponement of Appeal

Date: October 27, 2015

Pursuant to sections 2-201(e)(1) and (8) of the City Code, as well as section 2-702 of the Zoning Code, I hereby provide my opinion and interpretation related to this matter as follows:

As you know, the appellant requested that the City Manager grant a 90-day postponement of the appeal. The request was made on Friday in the late afternoon before the Tuesday Commission meeting. The request was made after the appeal had been placed on the agenda by the City Clerk pursuant to standard procedure and released to the public (which occurred Thursday evening according to the City Clerk's office). The appellee objected to the requested postponement on various grounds, which will not be restated here. Before beginning, I would note that this situation does not involve a legislative or administrative item sponsored by the City Manager or other City official. Instead, this situation involves an appeal of a quasi-judicial matter, which is subject to rules of due process and procedure, and is listed on the agenda as a Commission Item.

The legal issue is whether the City Manager must grant an automatic postponement of an appeal for 90 days under section 3-608(A)(1) of the Zoning Code. The answer is no. Because the matter had already been placed on the Commission agenda as a Commission Item when the request for postponement was made, it is my opinion that the City Manager is not required to grant an automatic postponement. This is because section 2-69 of the City Code governs the Order of Business as to matters on the agenda. Subsection (j) expressly indicates that the deletion of a matter from an agenda is done by a vote of the Commission. Likewise, under subsection (h), a departure from the order of business, as "set forth in the official agenda," may only be done by the Mayor (Chair) or the Commission.

These rules, as they relate to an appeal, make perfect sense. The City recognizes that residents, local businesses, and interested parties rely on the published agenda in determining the matters to be heard, including by making plans to attend the hearing on Tuesday. The Commission also devotes time to reading the materials in preparation for the meeting, and attorneys representing both parties expend time and resources preparing. It would not be just to allow one party to unilaterally require a postponement without cause once the matter has been placed on the agenda, and any contrary determination would lead to illogical and unreasonable results.

For example, if a party could unilaterally require a postponement even after the agenda were released, could the party then request an automatic postponement from the City Manager at the end of the Commission hearing itself (if the party were unhappy with how the hearing went), thereby depriving the Commission of the ability to act. That would not make sense. Fortunately, such an outcome could not occur, as the City Code is clear on this matter, and governs this issue. When the appeal is being administratively reviewed and prepared by City Staff, section 3-608(A)(1) of the Zoning Code applies. Once the matter is placed on the Commission agenda, however, the more specific provisions in the City Code relating to the Commission's agenda and jurisdiction apply and govern.

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Cc: [Ramos, Miriam](#); [Figueroa, Yaneris](#); [Chen, Brigitte](#)
Subject: FW: Denial of Request for Postponement Re: Appeal
Date: Tuesday, October 27, 2015 1:23:00 AM

Please publish.

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-----Original Message-----

From: Leen, Craig
Sent: Tuesday, October 27, 2015 1:23 AM
To: Tucker Gibbs; Peter A. Gonzalez; Laura L. Russo Esq.
Cc: Swanson-Rivenbark, Cathy; Ramos, Miriam; Figueroa, Yaneris
Subject: RE: Denial of Request for Postponement Re: Appeal

Pursuant to sections 2-201(e)(1) and (8) of the City Code, as well as section 2-702 of the Zoning Code, I hereby provide my opinion and interpretation related to this matter as follows:

As you know, the appellant requested that the City Manager grant a 90-day postponement of the appeal. The request was made on Friday in the late afternoon before the Tuesday Commission meeting. The request was made after the appeal had been placed on the agenda by the City Clerk pursuant to standard procedure and released to the public (which occurred Thursday evening according to the City Clerk's office). The appellee objected to the requested postponement on various grounds, which will not be restated here. Before beginning, I would note that this situation does not involve a legislative or administrative item sponsored by the City Manager or other City official. Instead, this situation involves an appeal of a quasi-judicial matter, which is subject to rules of due process and procedure, and is listed on the agenda as a Commission Item.

The legal issue is whether the City Manager must grant an automatic postponement of an appeal for 90 days under section 3-608(A)(1) of the Zoning Code. The answer is no. Because the matter had already been placed on the Commission agenda as a Commission Item when the request for postponement was made, it is my opinion that the City Manager is not required to grant an automatic postponement. This is because section 2-69 of the City Code governs the Order of Business as to matters on the agenda. Subsection (j) expressly indicates that the deletion of a matter from an agenda is done by a vote of the Commission. Likewise, under subsection (h), a departure from the order of business, as "set forth in the official agenda," may only be done by the Mayor (Chair) or the Commission.

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For example, if a party could unilaterally require a postponement even after the agenda were released, could the party then request an automatic postponement from the City Manager at the end of the Commission hearing itself (if the party were unhappy with how the hearing went), thereby depriving the Commission of the ability to act. That would not make sense. Fortunately, such an outcome could not occur, as the City Code is clear on this matter, and governs this issue. When the appeal is being administratively reviewed and prepared by City Staff, section 3-608(A)(1) of the Zoning Code applies. Once the matter is placed on the Commission agenda, however, the more specific provisions in the City Code relating to the Commission's agenda and jurisdiction apply and govern.

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-----Original Message-----

From: Leen, Craig
Sent: Monday, October 26, 2015 12:17 PM
To: Tucker Gibbs; Peter A. Gonzalez; Laura L. Russo Esq.
Cc: Swanson-Rivenbark, Cathy; Ramos, Miriam; Figueroa, Yaneris
Subject: Denial of Request for Postponement Re: Appeal

Tucker, Peter, and Laura,

In consultation with the City Attorney, and in reliance on his opinion, the City Manager has denied the request for a 90-day postponement. This information is being provided to you now because of the time sensitive nature of the request (the hearing is tomorrow and the City only received the request on late Friday afternoon after the agenda posted on Thursday). You will be receiving a written opinion later today from me explaining the legal basis for the denial, which is based on the fact that the request came after the matter was placed on the agenda and released to the Commission and the public.

Craig E. Leen
City Attorney

Sent from my iPhone