

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, July 09, 2018 1:13 PM
To: Sanchez, Rodzandra (COE)
Subject: INQ 18-164 Thomas Pepe, City Attorney, City of South Miami, (Citizen's Bill of Rights and Demand for Public Hearing)

INQ 18-164 Pepe

From: Pepe, Thomas F. [mailto:TPepe@southmiamifl.gov]
Sent: Tuesday, July 03, 2018 3:48 PM
To: Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>
Cc: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: RE: Bill of Rights and Demand for Public Hearing, Thomas Pepe, City Attorney, INQ 18-164

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Thank you.

Very truly yours,

Thomas F. Pepe

City Attorney, Board Certified by the Fla. Bar
in City, County and Local Government Law.
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From: Perez, Martha D. (COE) [Martha.Perez2@miamidade.gov]
Sent: Tuesday, July 03, 2018 3:12 PM
To: Pepe, Thomas F.
Cc: Centorino, Joseph (COE); Murawski, Michael P. (COE); Diaz-Greco, Gilma M. (COE); Turay, Radia (COE)
Subject: RE: Bill of Rights and Demand for Public Hearing, Thomas Pepe, City Attorney, INQ 18-164

Dear Mr. Pepe,

You inquire whether a business owner in the City of South Miami who is a party to pending litigation against the city has a right to request a public hearing pursuant to the Citizens' Bill of Rights (CBOR), Section 8, *Right to Public Hearing*, to discuss the proposed settlement offer in the case.

Background

The City of South Miami has a pending lawsuit with a property/business owner over zoning and land use issues involving variances, changes to the Land Use City Map, changes to the City's Land Development Code, etc. The trial on this matter is imminent. A shade meeting took place in order to discuss a settlement proposal in this case. The business owner/litigant wants to schedule this matter before the Commission for a public hearing to discuss the proposed settlement offer. You advise that the settlement proposal in this case would require future legislative review and hearings before the City's Planning Board and the City Commission.

Analysis

Section 8 of the CBOR, *Right to Public Hearing*, states, "Upon a timely request of any interested party, a public hearing shall be held by any County or municipal agency, board, department or authority upon any significant **policy decision** to be issued by **which is not subject to subsequent administrative or legislative review and hearing...**" The issue to be presented or discussed by the Business Owner/Litigant involves a legal matter pending before a court of law which, depending on the conclusion of the case, may require subsequent legislative review and hearings before city boards. Consequently, Section 8 of the CBOR is not applicable and the petitioner is not entitled to set a public hearing on this matter.

However, Section 5 of the CBOR, *Right to be Heard*, states, "So far as the orderly conduct of public business permits, any *interested* person has the right to appear before the Commission or any municipal council....for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the government entity involved; provided nothing herein shall prohibit the Commission or any municipal council from referring a matter to a committee of each of their respective bodies to conduct a public hearing, unless prohibited by law...." This section affords any interested person the right to address the Commission regarding any matters within the city government's jurisdiction, presumably during the "Public Comments" or "Right to be Heard" section of the Commission Agenda. I am presuming, for purposes of this opinion, that the business owner/litigant in this matter is an *interested person* who may address the Commission pursuant to Section 5 of the CBOR. In this instance, the CBOR does not prevent the business owner/litigant from appearing before the Commission to address the proposed settlement offer.

As I indicated to you over the phone, if the business owner addresses the Commission on the proposed settlement or any other matter involving the pending litigation during the "Public Comments" portion of the Commission meeting, you may wish to advise the Commission members whether it is appropriate or advisable to address or speak on this matter at the time the Business Owner/Litigant makes his comments.

This opinion is based on the facts as presented. If any of these facts change, please contact us.

Sincerely,

Martha D. Perez

Staff Attorney

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]
Sent: Tuesday, July 03, 2018 11:49 AM
To: Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>
Cc: Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: FW: Bill of Rights and Demand for Public Hearing

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Thank you for speaking with me today. I am forwarding the email that I sent to Ms Diaz-Greco. In addition, in speaking with you, you asked about our ordinance concerning public comments at Commission meetings. The following is the section that we discussed.

Section 8A

H) ADDRESSING THE COMMISSION. Any person desiring to address the commission shall first secure the permission of the presiding officer so to do; provided, however, that under the following hearings of business, unless the presiding officer rules otherwise, any qualified persons may address the commission without securing such prior permission.

(1) Written communications. Interested parties or their authorized representatives may address the commission by written communications in regard to matters then under discussion.

(2) Oral communications. Taxpayers or residents of the city, or their authorized legal representatives, may address the commission by oral communications on any matter concerning the city's business, or any matter over which the commission has control; provided, however that preference shall be given to those persons who may have notified the city clerk in advance of their desire to speak in order that the same may appear on the agenda of the commission.

(3) Reading of protests, etc. Interested persons or their authorized representatives may address the commission by reading of protests, petitions, or communications relating to zoning, sewer and street proceedings, hearings on protests, appeals and petitions, or similar matters, in regard to matters then under consideration.

(I) ADDRESSING THE COMMISSION AFTER MOTION MADE. After a motion is made by the commission, no person shall address the commission without first securing the permission of the commission so to do.

(J) MANNER OF ADDRESSING COMMISSION; TIME LIMIT.

(1) Commission: Each commission member shall have eight (8) minutes to address the commission and the public at large and the total time shall not exceed forty (40) minutes. A member may transfer all or any portion of his or her time to another member.

(2) No person shall address the commission from the audience.

(3) Each person, before addressing the commission, shall:

- (a) First legibly print their full name and their residential address and sign in the space provided on the speaker list;
 - (b) Step up to the podium;
 - (c) Speak into the microphone; and
 - (d) State the person's name and city of residence and, if not a resident of the city, state whether the person has a business interest in the city and its address.
- (4) The person shall speak in an audible tone of voice for the public record, and unless further time is granted by the commission, shall limit his or her address to five (5) minutes, or less for public comments and stakeholder shall have five (5) minutes and non-stakeholders shall have two and one-half (2.5) minutes to address a matter during a public hearing. The amount of time allowed may be shortened due to the number of speakers according to the formula set forth below, or when statements appear to be repetitive or obstructive as determined by the presiding officer.
- (5) All remarks shall be addressed to the commission as a body and not to any member.
- (6) No person addressing the commission shall be permitted to ask questions of or to enter into any discussion with any member of the commission, or any city officer, while they are seated on or beside the dais and while a commission meeting is in progress, either directly or through a member of the commission, without the permission of the presiding officer.
- (7) No person who wishes to speak about an item that is subject to a quasi-judicial procedure shall speak during the time set aside for public comments and shall only address the city commission on such item or subject matter after the applicant has made his/her presentation and after the applicant has presented all of his/her witnesses and evidence.
- (8) The extension of the time for the meeting after 11:00 p.m. shall only be for city business.
- (9) The total time for public comments is limited to sixty (60) minutes. Both the city clerk and the mayor shall keep a timer to keep track of the total time to ensure that ample time is allotted for city business. The mayor, or another person designated by the mayor, will keep track of time for individual speakers and notify the speaker when his or her time has elapsed. No one shall speak more than once at public remarks. The mayor or the presiding officer shall adjust the time per speaker so as not to exceed the allotted time of sixty (60) minutes for public comments. If the meeting is run efficiently and if speakers do not use their total allowed time, additional new speakers may speak so long as the total time does not exceed sixty (60) minutes and the speaker's individual time does not exceed the individual time allotted for the previous speakers. It is also recommended that the mayor provides a visual reminder to the speakers when thirty (30) seconds is remaining.
- (10) The commission, at a meeting, may change any of these requirements by a motion, duly seconded and approved by three (3) affirmative votes.

Thank you.

Very truly yours,

Thomas F. Pepe

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in City, County and Local Government Law.
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From: Pepe, Thomas F.
Sent: Tuesday, July 03, 2018 11:22 AM
To: Diaz-Greco, Gilma M. (COE)
Subject: RE: Bill of Rights and Demand for Public Hearing

Upon further reading of the County's Bill of Rights, I am not sure that the Plaintiff in the case in question has a right to demand a public hearing.

Subsection 8 states that the interested person has a right to a hearing if the matter is not subject to subsequent legislative review and hearing. The Settlement proposal that the Plaintiff has made will require land use and development regulation amendments to the City's Comprehensive Plan and its Land Development Code. Thus, there will be a need for "subsequent legislative review and hearings" before the Planning Board and the City Commission. Also, subsection 8 states that it does not apply to the "law department of ... any municipality". Does this mean that it does not apply to litigation involving the City's Legal Department?

8. Right of public hearing. Upon a timely request of any interested party public hearing shall be held by any county or municipal agency, board, department or authority **upon any significant policy decision** to be issued by it **which is not subject to subsequent** administrative or **legislative review and hearing**. This provision **shall not apply to the law department of** the county or of **any municipality**, not to anybody whose duties and responsibilities are solely advisory.

Thank you.

Very truly yours,

Thomas F. Pepe

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in City, County and Local Government Law.
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From: Pepe, Thomas F.
Sent: Friday, June 29, 2018 12:49 PM
To: Diaz-Greco, Gilma M. (COE)
Subject: Bill of Rights and Demand for Public Hearing

The City has been in litigation with a property owner concerning zoning and land use and the property owner wants a public hearing on its proposed settlement offer. Is this the type of thing that is governed by the Miami-Dade County's Citizens' Bill of Rights and if so, does paragraph (A)(8) apply?

8. Right of public hearing. Upon a timely request of any interested party public hearing shall be held by any county or municipal agency, board, department or authority upon any significant policy decision to be issued by it which is not subject to subsequent administrative or legislative review and hearing. This provision shall not apply to the law department of the county or of any municipality, not to anybody whose duties and responsibilities are solely advisory.

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