



Cover Memorandum/Staff Report

File #: 19-1123

Agenda Date: 11/19/2019

Item #: 6.C.

TO: Mayor and Commissioners
FROM: Lynn Gelin, City Attorney
DATE: November 19, 2019

RESOLUTION NO. 199-19: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, DIRECTING THE CITY ATTORNEY TO SEEK LEAVE OF COURT TO APPEAR AS *AMICUS CURIAE* AND FILE A BRIEF IN SUPPORT OF THE PLAINTIFFS IN ANY APPEAL OF A TRIAL COURT ORDER IN *YANES V. O C FOOD & BEVERAGE, LLC* (CASE NO. 18..CA- 003554-0), WHICH FOUND THAT THE ORANGE COUNTY HUMAN RIGHTS ORDINANCE WAS PREEMPTED BY THE FLORIDA CIVIL RIGHTS ACT.

Recommended Action:

Motion to Approve Resolution 199-19 directing the City Attorney to seek leave of court to appear as *amicus curiae* and file a brief in support of the plaintiffs in an appeal of a trial court order in *Yanes v. OC Food & Beverage, LLC*.

Background:

On April 6, 2018, Plaintiffs, Anita Yanes and Brittney Smith ("Plaintiffs"), filed a complaint in Orange County Circuit Court against OC Food & Beverage, LLC., d/b/a/ Rachel's and West Palm Beach Food and Beverage, LLC, d/b/a Rachel's Adult Entertainment and Steakhouse ("Defendant"), alleging unlawful discrimination on the basis of sex pursuant to Orange County's Human Rights Ordinance and seeking injunctive relief and compensatory damages. The lawsuit was initiated after the Plaintiffs were denied entry to the Defendant's adult establishment unless they were accompanied by a male companion. In their Complaint, Plaintiffs argued that the Defendant's policy was in violation of Orange County's Human Rights Ordinance, which prohibits discrimination in a place of public accommodation on the basis of sex. Delray Beach has a similar ordinance.

Defendant filed a motion to dismiss, arguing that the complaint should be dismissed for failure to state a cause of action because the lawsuit should have been filed under the Florida Civil Rights Act ("FCRA") rather than the local human rights ordinance, which, Defendant alleged, is preempted by the FCRA. On May 20, 2019, the Circuit Court entered an order granting the dismissal of the Plaintiffs' complaint, finding that the FCRA preempted Orange County's Human Rights Ordinance, and that the FCRA provides a complete structure for litigating discrimination cases.

This Resolution asserts that the dismissal is erroneous and jeopardizes the validity of local human ordinances across the State of Florida, including the City's own Human Rights Ordinance and directs the City Attorney to seek leave of court to appear as *amicus curiae* ("friend of the court") and file a brief in support of Plaintiffs and in defense of Orange County's Human Rights Ordinance.

City Attorney Review:

Approved as to form and legal sufficiency.