CITY OF DORAL
NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **VIRTUAL COUNCIL ZONING MEETING** on **Wednesday, May 13, 2020 beginning at 11:30 AM,** to consider the following amendments to the City of Doral Public Arts Program established in Chapter 75, Article 1, Division 100-125 of the City's Land Development Code. The City Council will consider this item for **First Reading.** The meeting will be held with the elected officials, administration and City staff participating via video conferencing.

Governor DeSantis' Executive Order Number 20-69 suspended the requirements of Section 112.286, Florida Statutes and the Florida Sunshine Law, that a quorum to be present in person, and that a local government body meet at a specific public place. The Executive Order also allows local government bodies to utilize communications media technology, such as telephonic and video conferencing for local government body meetings.

Public Comment: members of the public that wish to provide comments may do so by emailing the City Clerk at cityclerk@cityofdoral.com. Comments must be submitted with your name and full address by **Tuesday, May 12, 2020.** The comments will be circulated to the elected officials and administration, as well as remain as a part of the record for the meeting.

The meeting will be broadcasted live for members of the public to view on the City of Doral's website (https://www.cityofdoral.com/government/city-clerk/council-meetings) as well as Channel 77 and Facebook Live.

The City of Doral proposes to adopt the following Ordinance:

ORDINANCE No. 2020-10

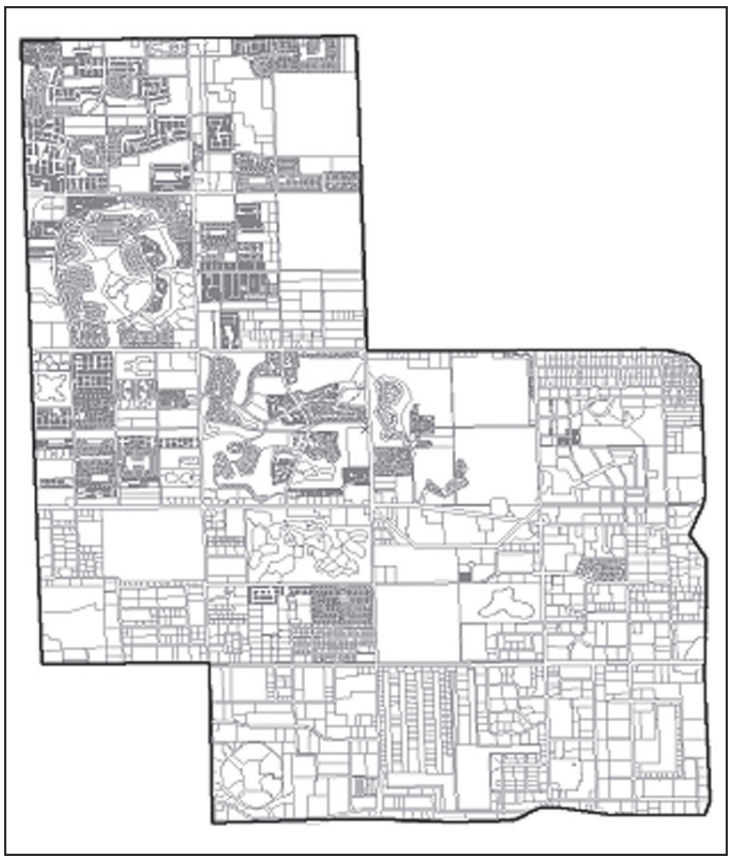
AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING/DENYING A TEXT AMENDMENT TO THE CITY OF DORAL LAND DEVELOPMENT CODE, AMENDING CHAPTER 75 "PUBLIC ARTS PROGRAM", SECTION 75-103, "ADMINISTRATION OF THE PROGRAM", SECTION 75-104, "MEMBERSHIP IN THE PUBLIC ART PROGRAM ADVISORY BOARD", SECTION 75-107, "APPLICABILITY", SECTION 75-108.1, "CERTIFICATE OF OCCUPANCY"; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 20-05-DOR-11

APPLICANT: City of Doral

REQUEST: The City of Doral (The "Applicant") is requesting Mayor and City Council approval of several amendments to the City of Doral Public Arts Program established in Chapter 75, Article 1, Division 100-125 of the Land Development Code.

Location Map



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC
City Clerk
City of Doral

4/29 20-08/0000468326M

BUSINESS LAW

Will COVID-19 Result in a Material Adverse Effect Under M&A Acquisition Agreements?

Commentary by Joseph Chase

Chase

The COVID-19 pandemic has caused a significant slow-down in mergers and acquisitions (M&A). As this situation's seriousness has become apparent, many M&A transactions have been called off. Others have been put on hold, as parties seek to better understand the pandemic's impacts on acquirers, target companies and the economy as a whole.

But what about transactions that were signed prior to this pause in deal making? Will buyers still be required to close these deals? The answer is transaction-specific. However, in attempting to answer this question, parties to M&A acquisition agreements are likely to look first to whether COVID-19 constitutes a "material adverse effect."

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To simplify a complex topic, most M&A acquisition agreements make the buyer's obligation to close conditional upon no material adverse effect occurring prior to closing. The buyer is typically entitled to terminate these agreements if a material adverse effect occurs following signing and prior to closing. At this point in time, the COVID-19 pandemic probably does not constitute a material adverse effect under most M&A acquisition agreements. However, this is a transaction-specific issue and requires an understanding of both the law governing each specific transaction's acquisition agreement and of the terms of the acquisition agreement itself.

Courts have been very hesitant to find that material adverse effects have occurred. In fact, prior to the Delaware Court of Chancery's 2018 *Akorn v. Fresenius* decision, no Delaware court had upheld a buyer's termination of an M&A acquisition agreement on the basis that a material adverse effect had occurred. *Akorn* reiterated that, in determining whether a material adverse effect has occurred, "The important consideration ... is whether there has been an adverse change in the target company's business that is consequential to the target company's long-term earnings power over a commercially reasonable period, which one would expect to be measured in years rather than months ... Put differently, the effect should substantially threaten the overall earnings potential of the target company in a durationally significant manner.'" Although we do not yet know what the long-term impact of the COVID-19 crisis will be, based upon what we currently know it seems unlikely to satisfy this high standard.

Of course, parties to complex M&A transactions do not simply rely upon the underlying law in determining whether a material adverse effect has occurred. Indeed, the definition of "material adverse effect" is among the more complex and heavily negotiated provisions in most acquisition agreements. This definition typically contains two parts. First, it defines "material adverse effect." Next, it lists various types of events that the parties agree will not constitute a material adverse effect.

A "middle of the road" definition of "material adverse effect" might start by stating that "any result, event, occurrence, fact, condition, circumstance, change, development or effect that is, or would reasonably be expected to be, materially adverse to the business, results of operations, financial condition or assets of the target company; or the ability of seller to consummate the transactions" constitutes a material adverse effect. Arguably, because this definition requires that something be "materially adverse" in order to constitute a "material adverse effect," it incorporates courts' high bar to determining whether a material adverse effect has occurred. However, the fact that this provision is forward looking (that is, it includes items that "would reasonably be expected to be" material adverse) probably increases the likelihood that a court could find that a materially adverse effect has occurred. Also, some pro-buyer acquisition agreements provide that a material adverse effect includes events that impact a target company's "prospects". This and similar concepts that permit speculation as to what may or may not constitute a material adverse effect likely increase the chance that a court could find that a materially adverse effect has occurred.

Regardless of how an acquisition agreement defines "material adverse effect," a seller's best argument that a material adverse effect has not occurred often lies in the list of types of events that the parties agree will *not* constitute a material adverse effect. Of course, if this list includes "epidemics or pandemics," "public health emergencies" or words of similar import, then it will be clear that the impacts of the COVID-19 pandemic do not constitute a material adverse effect. However, most acquisition agreements negotiated prior to the last few weeks do not include these specific concepts. Some other common carve-outs that may be helpful to a party seeking to establish that a material adverse effect has not occurred include carve-outs relating to changes that generally affect the industries in which the target company operates, changes resulting from laws, regulations or governmental actions (which would likely include the various shut-downs that have been ordered in connection with the coronavirus pandemic), any natural or man-made disaster or act of God (although courts have historically been reluctant to find that events constitute acts of God) or (d) the failure of the target company to meet any projections, forecasts or estimates, including projections of revenues or earnings for any period. With that said, many acquisition agreements further provide that some or all of these carve-outs do not apply to circumstances that have a disproportionate effect on the target company compared to other participants in the industries in which the target company conducts its businesses.

In any event, the COVID-19 crisis remains highly fluid. As we have seen, when it comes to a global pandemic, such as this one, much can change in a matter of days. It appears, at this point, that this crisis will likely not constitute a "material adverse effect" under most M&A acquisition agreements. However, material adverse effect provisions—and the underlying law—are complex and create uncertainty in a situation such as this one. As such, parties to pending M&A transactions should work closely with their legal counsel in order to understand their rights and obligations.

Joseph Chase is a business and corporate attorney and shareholder at Gunster in West Palm Beach.