

FROM THE COURTS

Epic Claims Apple's Proposed Sanctions Are Unwarranted



JASON DOIY

Epic Games asserts that Apple is "overreaching" in its attempt to issue pretrial sanctions against the game developer for allegedly failing to disclose third-party witnesses ahead of next month's antitrust trial in front of U.S. District Judge Yvonne Gonzalez Rogers of the Northern District of California.

by Alaina Lancaster

Epic Games Inc. has asserted that Apple Inc. is "overreaching" in its attempt to issue pretrial sanctions against the game developer for allegedly failing to disclose third-party witnesses from Microsoft, Facebook and a yoga app developer ahead of next month's antitrust trial against the tech giant.

Apple claims that it is not able to conduct a fair cross examination of three third-party witnesses, because Epic did not disclose names of the witnesses until fact discovery had already ended, according to the motion for pretrial sanctions filed Friday.

Epic and Apple are set to argue a bench trial May 3, which is expected to last several weeks, in front of U.S. District Judge Yvonne Gonzalez Rogers of the Northern District of California. Epic sued Apple and Google in August after adding an alternative payment option for in-app purchases to its Fortnite game, spurring Apple and Google to remove Fortnite from their app marketplaces for violating license agreements.

Epic claims Apple and Google's response is evidence that the companies have been monopolizing their app distribution stores and in-app payment processing markets, but the tech companies claim that the litigation amounts to a marketing campaign for Epic.

Apple's attorneys from Skadden, Arps, Slate, Meagher & Flom in New York and McDermott Will & Emery in Los Angeles assert that "Epic has created a procedurally unfair situation in which Apple is unable to adequately prepare to address the potentially sweeping scope of testimony that Epic

apparently plans to elicit from these witnesses."

In a court filing Monday, Epic says that Apple's proposed sanctions are an "attempt to deprive the court of important third-party proof at trial" and that the arrangement did not give the company an unfair advantage. Epic's counsel from Cravath, Swaine & Moore in New York and Faegre Drinker Biddle & Reath in San Francisco allege that the companies agreed that they would bring previously unspecified third-party witnesses to trial.

"Had Apple listed third-party witnesses on its own trial witness list (as it indicated it would), Epic would be in exactly the same position as Apple," the filing states. "There has been no gamesmanship by Epic. ... Apple is trying to re-trade the parties' deal, mere weeks before trial, because it has not disclosed any additional third-party witnesses of its own and thus sees a tactical opportunity to disadvantage Epic."

Apple's motion also contends that Epic is "assisting these third parties' efforts to resist discovery," after attorneys from Facebook, Microsoft and Yoga Buddhi Co. refused to hand over documents Apple requested ahead of their employees' cross examinations. Epic says that the dispute is between Apple and the third parties and the court should not penalize Epic for the parties' unwillingness to produce additional documents.

Apple did not immediately respond to a request for comment regarding the proposed sanctions Monday afternoon. Epic declined to comment on the filings.

Alaina Lancaster covers disruptive trends and technologies shaping the future of law. Contact her at alancaster@alm.com. On Twitter: @a_lancaster3.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL ZONING MEETING** on **April 28, 2021 beginning at 10:30 AM**.

General Public Comments: members of the public that wish to provide comments in writing may do so by emailing the City Clerk at cityclerk@cityofdoral.com. Comments must be submitted with your name and full address by **Tuesday, April 27, 2021 at 5:00 pm**. The comments will be circulated to the elected officials and administration, as well as remain as a part of the record for the meeting.

Public Hearing Comments (Pre-Registration): interested parties that wish to speak on the Public Hearing item(s) **ONLY**, must register by **Tuesday, April 27, 2021 at 5:00 pm** via this link: <https://attendee.gotowebinar.com/register/2550983937261710605>

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. 2021-09

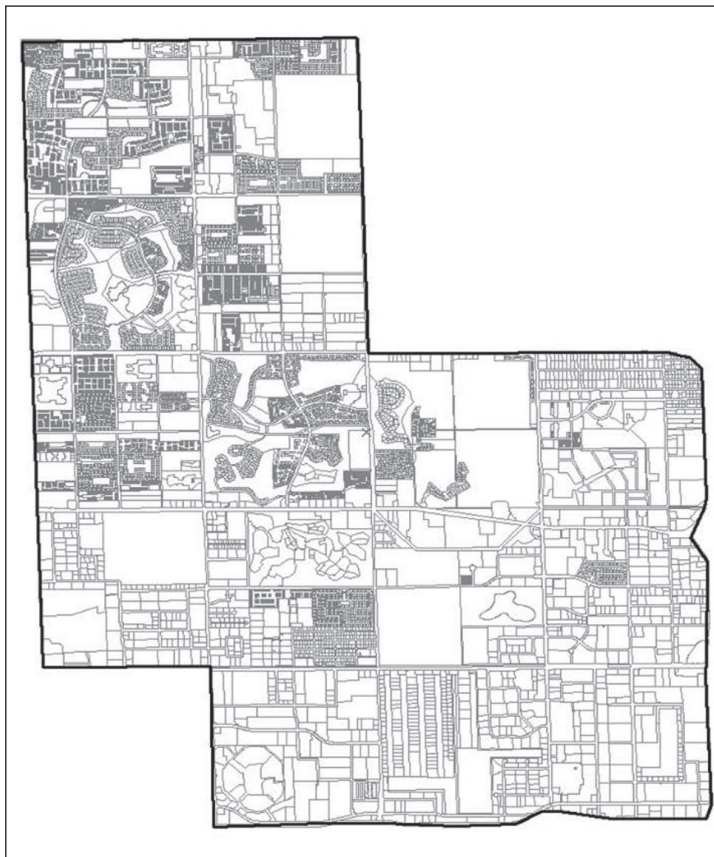
AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING/DENYING TEXT AMENDMENTS TO THE CITY OF DORAL LAND DEVELOPMENT CODE, CHAPTER 71 "LANDSCAPING AND BUFFERS," REVISING SECTION 71-114 "MAINTENANCE OF RIGHT-OF-WAY"; ELIMINATING THE REQUIREMENT OF A COVENANT OR THE CREATION OF A SPECIAL TAXING DISTRICT TO MAINTAIN TREES, PLANTS AND/OR SOD WITHIN THE RIGHT-OF-WAY; AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 21-04-DOR-11

APPLICANT: City of Doral

REQUEST: The City of Doral (the "Applicant") is requesting Mayor and City Council approval of an amendment to Chapter 71 "Landscaping and Buffers" of the City's Land Development Code, revising Section 71-114 "Maintenance of Right-of-Way," eliminating the requirement of a covenant or the creation of a special taxing to maintain trees, plants and sod within the right-of-way.

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 City of Doral