

City of Coral Gables City Commission Meeting
Agenda Item E-2
August 22, 2023
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Vince Lago

Vice Mayor Rhonda Anderson

Commissioner Melissa Castro

Commissioner Ariel Fernandez

Commissioner Kirk Menendez

City Staff

City Attorney, Cristina Suárez

City Manager, Peter Iglesias

City Clerk, Billy Urquia

Public Speaker(s)

Maria Cruz

Agenda Item E-2 [12:26 p.m.]

An Ordinance of the City Commission amending Section 105-28 of the City of Coral Gables Code to clarify prohibitions on construction at night and on weekends and holidays and criteria for issuance of special permits, providing for repealer provision, severability clause, codification, enforceability and providing for an effective date. (Sponsored by Vice Mayor Anderson)

Mayor Lago: Moving onto E-2.

City Attorney Suarez: E-2 is an Ordinance of the City Commission amending Section 105-28 of the City of Coral Gables Code to clarify prohibitions on construction at night and on weekends and holidays and criteria for issuance of special permits, providing for repealer provision, severability clause, codification, enforceability and providing for an effective date. There have been no changes since first reading and this is also a public hearing item.

Mayor Lago: Madam Vice Mayor.

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Vice Mayor Anderson: I brought this in order to have clear guidelines. They weren't clearly written in the existing code and therefore, it made it much more difficult for Code Enforcement to enforce what the requirements were. Its noted there are no changes since first reading. Any other comments from you.

Commissioner Fernandez: There was one comment, something that came up in our staff meeting with the pre-agenda. I think all of us received a couple of complaints about construction at night, the possibility of maybe having a requirement of notification to surrounding properties. Obviously, I'm not expecting if it's a high-rise, to give notification to every unit, but maybe to the HOA, of upcoming night work, so that those folks aren't caught off guard and they can plan accordingly as well.

City Manager Iglesias: And Commissioner, we are already doing that. Night work is limited, is very limited to sanitary sewer or water, paving and things like that where there is a very heavy impact to do it during the day. When we do it, we actually in our building, in our Minorca Garage, we communicate with everyone when we ask WASA and we actually do that, surprises are not good, so we have no issue doing that, we currently have that practice.

Mayor Lago: It already exists.

Vice Mayor Anderson: Yes, that was mostly the city's practice of doing it. I've observed them doing it on Valencia at night. The lights are on pointing down to the manhole. The noise level is not banging type noises that people complain about with construction or drilling or pounding type work. You know they are down in the pipes and doing what they've got to do.

City Manager Iglesias: We actually review what construction work is being done to make sure it doesn't generate noise, except of course, sanitary sewer, and those things, that has to be done at night, but other work we work very closely with Tony Silio to make sure that if there is any issue it comes to me, what kind of work is done to make sure it doesn't generate noise. We try to balance that to minimize construction time because construction always impacts, but if you want to do painting is one thing.

Mayor Lago: Sheet piles that was going on Ponce.

City Manager Iglesias: Pile driving, absolutely not. So, we always look at the type of work to make sure that its acceptable.

Mayor Lago: That already exist though, on the record already.

Commissioner Castro: Vice Mayor, if its okay with you, if we could please add some language that has the City Manager address any complaints from residents and should have the authority to revoke the special permit.

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Mayor Lago: That already exists.

Vice Mayor Anderson: That already exists.

Commissioner Castro: That's what happens, but it's not...

City Attorney Suarez: So, language is not expressly in the code provision or in the ordinance, but we can certainly add that language that just further clarifies what the process is.

Mayor Lago: But I want to be clear, that already exist because we had two complaints over the last few months in regard to construction that was happening on Ponce. It was driving sheet pile and they had a permit to work on the weekends and the permit was revoked by the City Manager and they were only brought back into – once they came back into compliance was when the Manager basically provided them with a weekend permit that allowed them to do everything except for anything that made noise.

City Manager Iglesias: Yes Mayor, they were not supposed to do sheet piling, they did it and we removed their permits for five or six weeks, so they understood that that could not be done, and that resolved the problem. If something like that happens, we just remove the permitting.

Mayor Lago: By the way, that is only, and correct me if I'm wrong, I know the answer to this already, that power lies within the Manager. The Manager is the only one that has the ability to do that, to revoke a permit.

Vice Mayor Anderson: Just like the Building Director can red tag a development even though they have a permit, they can red tag it, if they are not following the code. Here, if they are not following the code, its inherent that you have the power to revoke that permit, if they are not following the guidelines. I found this confusing for Code Enforcement is, you have noise being made by, not only night work, but day work, as well, this now clearly defines where you measure the noise level to. It was very unclear before for Code Enforcement to deal with it. City Attorney, I'd like you to weigh in on the necessity of additional language.

City Manager Iglesias: May I say Vice Mayor also, that we do not give these permits for long periods of time. It has to be very exceptional to go beyond two weeks, and the reason we do it is, we keep control of the job site at that time, and you have to reapply to make sure that there is a control of that job site. So, this is done very carefully with looking at time, type of work, hours, etc.

Mayor Lago: So, Mr. Clerk, are there any.

City Attorney Suarez: So, the language could be added, Vice Mayor.

Vice Mayor Anderson: Where would you add it?

City Attorney Suarez: We can add it under the section that authorizes the Manager to issue the permits and we can just basically make it expressly – the Manager has the authority to also revoke the permit. He issues it and of course he imposes reasonable conditions. As has been said, the practice is that part of that condition is the Manager can already revoke it. We can make that express, it's a change that can be made, if its amenable to you, of course.

Mayor Lago: Madam Sponsor, what would you like to do?

Vice Mayor Anderson: We can amend it accordingly.

Mayor Lago: Perfect.

Commissioner Menendez: Sounds good.

Mayor Lago: Moving on. Mr. Clerk, do we have any public comment?

City Clerk Urquia: Yes, Mr. Mayor, we do.

Mayor Lago: Awesome.

City Clerk Urquia: Maria Cruz.

Mayor Lago: Ms. Cruz.

Ms. Cruz: Mrs. Maria Cruz, 1447 Miller Road. I discussed this with the sponsor and I'm glad that we're kind of tightening the stuff here, but I think there is a difference between can revoke and shall revoke, because when you can you don't have to do it. I think if there's enough complaints about the noise, it should not be can, it should be, shall remove the permit, shall revoke it. I think what we have, one of the things that we have in the city is that we're very clear that nights, Sundays, holidays, are sacred. We do not do anything that disturbs the peace. When we start giving permits and I'm sorry that I have to mention this sacred word, UM, they were working around the clock and you know, because I called you in the middle of the night one day when I could hear the banging on the ground trying to, I don't know what its called anymore. Remember when and I called you that I could hear from my house. So, the issue to me is, give a little more direction, okay, number one; number two, when we're talking about noise, you have to realize that they noise is not just what they are doing while they are working. Is the noise getting the concrete mixers there; is the noise getting the workers there in the big humungous trucks, especially when they decide to play music in or out, okay; and also, the staging. We have construction going on sometimes and there's no staging plan. They can park anywhere they want to. I'm sorry. Whoever supervises that should have a staging plan, so I don't have to see this going on. You know, we've

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discussed this many times. So, I do like the idea of timing the stuff and making it clear, so Code Enforcement can do their job, but I would like to say instead of can revoke, shall revoke, so there's no argument. When you tell the company, whoever is doing the construction, listen, if you violate this, I won't have a choice but to revoke it. That is a little stronger than, I can revoke it, because that gives you too much power. I'm sorry, okay. So, I do support it, but make sure please, that there is staging and that they know what they can do coming in and out, not disturbing the neighborhood, and of course, nights, Sundays, and holidays should remain sacred in our city.

Vice Mayor Anderson: Be happy, Ms. Cruz, to see that the word shall prohibit any noise is in there. I don't have any problem changing the word can to shall.

Ms. Cruz: I think it adds power to him. You know when you talk to those people and you say, I will have a choice. I have to revoke it.

Vice Mayor Anderson: It does anyway.

City Manager Iglesias: We are very adamant about that Ms. Cruz. They call me at night; I walk by, stood on San Amaro and didn't hear anything. So that's a whole separate issue, and so, I reserve the right to do that. If there is anyone violating - I have closed projects many times. I have no issue doing that, none whatsoever. I think the construction industry knows me well enough that I will do that, but there has to be - I have to be able to look at, to monitor, and where there's a complaint, we look at every complaint. I have Tony Silio monitoring every complaint with Code Enforcement. If there is any violation of that permit, its closed. There are no ifs and or buts about it. That is a privilege, that is not a right, we have working hours and I take that extremely serious.

Mayor Lago: Mr. Clerk.

City Clerk Urquia: Yes, Mr. Mayor.

Mayor Lago: Do we have any further comments?

City Clerk Urquia: No sir.

Mayor Lago: Please close the public comment.

City Clerk Urquia: Yes sir.

Mayor Lago: Thank you. This is simple. This is semantic. It already exists in the code. She's willing to add that additional language, I guess, to make it a little bit more warm and fuzzy, if that's what they want. This is ready for a vote. The Manager has every authority to shut down any project based of life safety, based on noise and a few other items that are important. That is at his disposal. I've seen him do it many times where I've had developers call my office to complain and

then spoken to residents and the residents have told me, yes, you're driving sheet piles on a Saturday morning at 8 o'clock. Its not allowed. Just like when I passed the legislation that does not allow exterior construction on Saturdays. That is the law. You're not allowed to do exterior construction. You can do construction in the interior of the house. So, this already exist. We are getting really lost in the weeds. We have a big agenda, big agenda.

City Manager Iglesias: Not only was this stopped immediately, Mayor, but they weren't granted another permit for five to six weeks.

Mayor Lago: This already happens, but we can talk about it all day.

City Manager Iglesias: There needs to be a penalty involved in doing that.

Commissioner Menendez: So, I have a comment.

Mayor Lago: Go ahead Commissioner.

Commissioner Menendez: I'm a big believer of zero tolerance and I support the legislation. My only question is for the City Attorney, because I know the City Manager is just like elected officials has certain powers granted to them by the Charter and I just want to make sure that we don't go to a point where we limit the discretion of the Manager's authority the way its written in the Charter. I'm for zero tolerance and I prefer shall myself, but I just want to make sure that legally we may not be going into a gray area where we're tinkering with the authority of the Manager as written.

City Attorney Suarez: So, this is not specifically addressed in the Charter. This is a special permit that is issued pursuant to the specific code section and it's a special permit to authorize the work at the discretion of the Manager at night or on weekends or holidays; and as the ordinance reads, there are time limitations that can be associated with these permits. Its my understanding as a general matter, these are not permits that are issued for a long period of time, rather they are usually short periods of time. So, the Manager does have discretion. Of course, if there's violations of that permit or it turns out that this work does present a disturbance that the Manager can revoke that permit. Adding language buttressing that is, I think would be fine. If we make it shall then I think it does take some discretion from the Manager, because shall under what circumstances. Is it when he receives the complaint? I don't think that's what the intent is, because there's complaints that could come under different various circumstances that may not warrant the revocation of a special permit.

City Manager Iglesias: Rarely Commissioner, we generally go on a week-by-week basis, and that gives us control of that job site. You must ask for that permit on a weekly basis. Very, very rarely do we go to a two-week period. It has to be extremely benign work, and so that gives us control. Those that were sheet pile on a Saturday, did not receive another permit, I think for five or six

weeks, because if you violate it there has to be some penalty involved for actually doing that. So, I have no problem shutting down a job. I've done this many, many times. Again, that is not a right, that's a privilege, but I also want a little discretion to make sure that whoever is providing the complaint that is a valid complaint.

Mayor Lago: Can I get a motion.

Commissioner Menendez: I'll move it.

Vice Mayor Anderson: I'll second it, noting that we're not going to be putting that shall be taken away as noted by the City Attorney.

City Attorney Suarez: But you are incorporating the amendment to add language just expressly stating that the Manager has the authority to revoke the permit.

Mayor Lago: Of course.

City Attorney Suarez: Okay.

Mayor Lago: Which is exactly what we have now.

Commissioner Menendez: Unofficially, well officially but not in the legislation, we have a preference for zero tolerance when it comes to disturbing peace and quiet of our neighborhood.

City Manager Iglesias: There is zero tolerance in violating the permit.

Mayor Lago: Mr. Clerk.

Commissioner Menendez: Yes

Vice Mayor Anderson: Yes

Commissioner Castro: Yes

Commissioner Fernandez: Yes

Mayor Lago: Yes

(Vote: 5-0)