

City of Coral Gables City Commission Meeting
Agenda Item F-2
March 15, 2016
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Commissioner Pat Keon

Commissioner Vince Lago

Vice Mayor Frank Quesada

Commissioner Jeannett Slesnick

City Staff

City Manager, Cathy Swanson-Rivenbark

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

Agenda Item F-2 [4:02:39p.m.]

Discussion regarding neighborhood disputes resulting in Code Enforcement complaints as well as the use of video and other evidence in Code Enforcement proceedings. (Sponsored by Commissioner Keon)

Mayor Cason: Alright, we have two items left that is – let’s start with F-2, that’s neighborhood disputes and the use of video and other sorts of evidence.

City Attorney Leen: If I may just introduce it. This is sponsored by Commissioner Keon and is a discussion regarding neighborhood disputes resulting in Code Enforcement complaints, as well as the use of video and other evidence in Code Enforcement proceedings. Do you want to start or you want me to start?

Mayor Cason: Yes. Let’s start with F-2 and then we’ll do F-1.

City Attorney Leen: So Commissioner Keon raised this issue with my office, I know she’s raised it with the City Manager. I know that each of you individually have raised this issue at one time or another while I’ve been City Attorney. And that is that sometimes there are neighborhood disputes that occur where the neighbors will make complaints, Code Enforcement complaints

against each other repeatedly, and in a sense seek to use Code Enforcement in a private dispute. And the reason the issue comes up is that there are some violations in our Code Enforcement, in our Zoning Code, or in our City Code where Code Enforcement will only cite if there is a complaint. So the idea is not to – there are some things that Code Enforcement goes around and cites all the time. Something that causes a deterioration of the community, people putting things on the swale when its not permitted, things like that that people can see that affects property values, things like that. There are other types of violations that Code Enforcement will only cite where there is a complaint, basically, or every once in a while there may be, the Commission may ask or the Manager may ask, we want to enforce this issue because we are seeing too much of it, and they may go out and do a sweep and do it in a certain area and enforce that provision. The concern is that in these neighbor disputes we've seen, and in fact there is a dispute going on right now where the residents will be very savvy and they will read the Code and they will find a violation that may be of a technical nature, it may not be typically cited, and then will make the complaint against the other side. And Code Enforcement is in a difficult position of having to go out there and they see a violation, although its one they may not typically cite, and they cite it because there is a complaint. So ultimately, what the idea here is, and I'll turn it over to Commissioner Keon, because she can talk more to the substance of it, but what I was asked to do, and I know that Code Enforcement looked at this, our municipal prosecutor, our Code Enforcement Prosecutor, Miriam Ramos, who has prosecuted for the Code Enforcement Board, Yaneris Figueroa, who is the Prosecutor before the Special Master, and myself, we've all looked at this; and there are two sort of ideas we are coming forward with, although there are many different ways to address this. One, is a statement from the Commission to Code Enforcement saying, we don't want you getting involved in neighbor disputes to the extent possible; two, and there is no blame toward Code Enforcement here, they are put in a very difficult position. Now a lot of times, the Code Enforcement Officer receives a lot of negative feedback through no fault of their own, its just because the two sides are angry at each other and they want the Code Enforcement officer to cite, cite, cite, and it puts the Code Enforcement officer in an impossible position. To give that general statement to Code Enforcement – two ideas that we thought of and there could of course be other, would be one, maybe establishing that once there has been a back and forth, maybe two times, three times, that at some point Code Enforcement is authorized not to issue the citation, but only for life safety issues, or alternatively, if you always want to allow some mechanism for a citation to be issued, you could say that once a neighbor dispute is established that in order to issue a citation other than life safety, they have to bring it to the Code Enforcement Board, and maybe the Code Enforcement Board has to authorize it, and in fact, maybe both sides have to go before the Code Enforcement Board, maybe a summons could be issued to address this issue to make sure that Code Enforcement is not being used, which is really a public resource, Code Enforcement, is being used in a private dispute.

Mayor Cason: Didn't we pass something where they can summon?

City Attorney Leen: Yes. In fact, the City Attorney can and also Code Enforcement can. So that's the issue and I'll turn it over to Commissioner Keon.

Commissioner Keon: And we've all seen this back and forth between the same parties over and over again, and then it results in complaints about the Code Enforcement officer and they are entering a job and whatever else, and it takes a tremendous amount of staff time to deal with the issues, when in essence they are very minor infractions, they are not related to the deterioration of the neighborhood, they are not life safety things there, and they begin to be used as just a tit for tat and it's the dispute between neighbors. So, is it once, we would assume that the City Attorney's office can make a determination whether this is with Code Enforcement, whether this is turned into a neighborhood dispute, or is it a legitimate Code Enforcement issue. If its determined to be a neighborhood dispute, I would think we could summon them both and ask both parties to come before the Code Enforcement Board and explain at this point what we are going to enforce for. We are going to enforce for life safety issues, we are going to enforce for maybe there are issues that are major issues, we can make some determination, but somehow to sort of put an end to using Code Enforcement as a neighborhood dispute. Two people just don't like each other and they just...

Mayor Cason: I know the case you are talking about because we've had them over the last five years and they are never going to go away, and they are always going to find something, one was like the side of the house had mud on it, so you know they cited them.

City Attorney Leen: It could be things in the setback, sometimes not substantial things, but small things. They could be not enough grass coverage in the backyard, not the front yard where people see, but the backyard. It can be different things like that. I know Will Ortiz is here, the Code Enforcement Director, who helped with this.

Mayor Cason: What's the audio-video part of this, was that on this one?

Commissioner Keon: No, that's a different issue.

City Attorney Leen: So we just wanted some direction from the Commission. Do you want a resolution?- do you want to give direction to me, to the City Manager and staff? What would you like to do? How would you like to resolve this issue?

Mayor Cason: Its seems to me your office ought to tell us, to make the determination that its reached the level that it is a tit for tat, and there is no good purpose of Code Enforcement getting dragged in, and then send them before the Code Enforcement Board and let them...

City Attorney Leen: So what I'll do, I'll have Miriam, she prosecutes these. I'll have Miriam work with Will, keep the Manager and I informed. We'll prepare a policy, we can bring it back to you at a future meeting just to at least have you accept it, we can approve it and you could accept it just so its known publicly. Will that be OK, Madam Manager, on your end?

City Manager Swanson-Rivenbark: I think that will...[inaudible].

City Attorney Leen: OK. So that's what we'll do.

Mayor Cason: Anybody disagree? So we should go ahead and do it.

Commissioner Keon: So we will give you direction to do that. The other thing was on video, the video issue. I know the people have asked with dog barking particularly, is its time stamped and dated and continuous with dog barking, because sometimes they call Code Enforcement officer, could be on the weekends or they can call the police, you know its certainly not a life safety issue, so they are not going to rush there, but it still is a very difficult thing for the homeowner to have to listen to that they could submit video evidence that is time stamped and dated.

City Attorney Leen: There is something we could do is, we could prepare a policy, same thing we just did, we could do it for this too, and bring it back to you to accept it. Work with Code Enforcement, City Manager. The goal will be to prepare – we want to make sure that the evidence is reliable, which it can be, like you said. Usually you can at least get an affidavit or someone to swear to it. We also don't want to put the Code Enforcement officer in the position as public officials where they have to come and swear to something they haven't seen. So there needs to be a prosecutorial element. What they do in criminal law and I know the Vice Mayor knows about this, sometimes the prosecutor is given the ability to do an information, or go before a Grand Jury or something like that. What we could do is, maybe there could be certain circumstances where my office could accept the evidence, we could evaluate it and we could bring the violation, but of course that puts on my office the duty, we need to make sure that that resident is present to prosecute, that is reliable, and that we've done our due diligence, but perhaps there could be some sort of prosecution that we could do in those circumstances. That would only be for egregious cases.

Mayor Cason: Some of this tend to happen on holidays, Saturdays and Sundays after Code Enforcement goes home, three in the morning, so that's the only kind of evidence you can present, so most of the phones have a date-time on them.

City Attorney Leen: The other thing we could do is when we take that evidence, sometimes these issues are resolved through a lawsuit, we do a cease and desist letter, which is more common. What my office will do is we'll issue a cease and desist saying look, we've become familiar with

this evidence, we issue you a cease and desist to stop and then if you don't do it, we bring a lawsuit. We did that actually with, I recall with Azucar, remember there was a restaurant that was being very noisy over and over and we issued them a cease and desist and they eventually did cease and desist and then they stopped operating, as I recall. So, I think you also brought Code Enforcement citations too, as I recall Will, but we acted jointly. Or the other thing is too, we could bring a Code Enforcement violation and just make a finding that this is satisfied and then we will prosecute the case.

Mayor Cason: So what do you need from us now?

City Attorney Leen: Just the direction to come up with a policy, same thing, I'll work with everyone and we'll bring it to you to accept.

Mayor Cason: Everybody agree to come up with a policy.

City Attorney Leen: Yes.

Mayor Cason: OK. Thank you.

[End: 4:12:27 p.m.]