

City of Coral Gables City Commission Meeting
Agenda Item H-3
May 8, 2018
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Raul Valdes-Fauli
Vice Mayor Frank Quesada
Commissioner Pat Keon
Commissioner Vince Lago
Commissioner Michael Mena

City Staff

City Manager, Cathy Swanson-Rivenbark
Assistant City Manager, Peter Iglesias
City Attorney, Miriam Ramos
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)

John Baublitz
Osi Rind
Maria Cruz
Terence Connor

Agenda Item H-3 [0:00:00 p.m.]

An update on investigation into the author of anonymous letter.
(Sponsored by Commissioner Lago)
(Sponsored by Commissioner Mena)

Commissioner Mena: H-3, then.

City Commission Meeting
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Agenda Item H-3 – An update on investigation into the author of anonymous letter.

Commissioner Keon: We're on to H.

Mayor Valdes-Fauli: Okay, H-3, update on investigation into the author of anonymous letter.

City Attorney Ramos: So...

Mayor Valdes-Fauli: And this is a matter that's been going on for -- well, since October 31. I have a letter here, request for investigation from Phillips Richard Rind (phonetic). Then, I have another letter from the Fraternal Order of Police dated August 8, 2017. Then I have another letter after that and -- to Craig Leen, August 25 and various emails, October 26, October 2, October whatever. And Vice -- Commissioner Lago mentioned this at the last time demanding an investigation, and Commissioner Lago, take it on.

Commissioner Lago: Thank you. Commissioner Mena and myself, you know, we were discussing, along with the entire Commission -- because I don't think this is an issue about one Commissioner. I think it's a...

Mayor Valdes-Fauli: Yeah.

Commissioner Lago: It's an issue about the entire city as a whole. And I've been having conversations -- again, this is what the great part about the Sunshine law. You can't have conversations with your colleagues. You have to wait until you have these Commission meetings. I'm being -- I'm frustrated, I'm sorry. So, I can only speak to my City Manager and my City Attorney, which sometimes is laughable, you know, in our inability to have a group conversation over certain issues that could have been dealt with, like the Mayor mentioned, a year ago and now are being dealt with now. Cathy -- excuse me, Miriam, can you give us a little bit of background in regards to where we are right now...

City Attorney Ramos: Certainly, sir.

Commissioner Lago: And what do we have at our disposal? What do you think?

City Attorney Ramos: So...

Commissioner Mena: Yeah.

City Attorney Ramos: I'm sorry. Go ahead.

Commissioner Mena: Yeah, go ahead.

City Attorney Ramos: So, the update is the following. As you know, at the end of last year, there was a determination made and had been made for a couple of months not to look into -- the posting had been looked into by IA and is still being looked at by IA who potentially posted the anonymous post. And I say anonymous because there's some code attached to the person, but we don't know who that person is. The decision was made not to move forward with investigating the letter because at the time the transparency matters investigation was still going on into the allegations that were made in the letter and there was fear that it would create a chilling effect on the writer of the letter if they were reporting conduct that was inappropriate, and I certainly agreed with that view. Since then, the transparency matters investigation has been concluded and it has found that the allegations made in the letter were unfounded or there was no evidence to conclude that those allegations were supported. For that reason, it's now appropriate to look at the writer of the letter as presumably they are the bad actor since the underlying allegations have not been found to have any support. Given what the Commission discussed at the last meeting, I have reached out to the union. I have given the union a choice to have Internal Affairs look at this matter or to have an outside investigator or agency look at this matter. I have contacted the Florida Department of Law Enforcement, also known as FDLE. They have declined the investigation because they only look...

Commissioner Lago: If I may interject just for one second. I brought that up to Miriam, and that's what I would have preferred, and I think it would have been the appropriate route. But I was saddened to hear that, obviously, FDLE was not willing to undertake this current task.

City Attorney Ramos: So, I spoke to several people there and received an email response from their chief counsel explaining that they are, in fact, a law enforcement agency and unless there is an underlying criminal allegation, they are not able to look at the -- undertake the investigation. So, at this time, the union has stated to me that they preferred to have it done by an outside party, and we are in conversation to determine the specifics of how that's going to be done.

Commissioner Mena: And -- yeah. And so, Commissioner Lago, I had -- it sounds like you and I had a similar conversation with...

Commissioner Lago: Yeah.

Commissioner Mena: Miriam because I had also asked her about the possibility of the FDLE doing it, and she advised me that they couldn't do it. And you know, what I had -- my thought, at this point -- and again, I don't want to sort of relitigate, you know, today what did or didn't happen before. I want to figure out how to move forward. And I want to figure out how to do something that these women and their representatives...

Mayor Valdes-Fauli: Talk about the investigation, not...

Commissioner Mena: Are on board with.

Mayor Valdes-Fauli: Yeah.

Commissioner Mena: Correct.

Mayor Valdes-Fauli: That's all we're talking about.

Commissioner Mena: And so, you know, that was why when Miriam and I spoke, I had mentioned we have them suggest some names to us that they would be comfortable with and discuss and negotiate a process that they would buy into and be on board with. And let's move forward with an independent investigation into it because there's no reason at this point not to.

Mayor Valdes-Fauli: Miriam, what do you suggest?

Commissioner Lago: Yeah. And I agree with you 110 percent.

City Attorney Ramos: That we continue to move forward, sir, as I...

Mayor Valdes-Fauli: Okay.

City Attorney Ramos: As I have mentioned, the union's on board.

Commissioner Lago: There's a few questions that I would like to see where we get addressed within this investigation. I don't know if you all want me to pass them along to you or you want me to memorialize them now, and then we can have them...

Mayor Valdes-Fauli: Yeah, go ahead.

Commissioner Lago: Given to the firm.

Mayor Valdes-Fauli: Go ahead.

Commissioner Lago: No, it...

Commissioner Keon: Go ahead.

Commissioner Lago: No, they're just simple. I mean, I want to find out, for example, when the 14 officers were approached by staff. I want to file a complaint about being harassed or that the situation was a hostile -- at work, very simple. The reason why I'm asking that is because I think it's important that -- we have over 800 employees in the City, and when this situation happens, for example, what happened, in my opinion, which is damaging to these women, it can't be reversed. Like I mentioned in the previous Commission meeting, you have Channel 4 and you have Miami Herald printing or televising stories that state that these women were topless, and the video that they had showed actually had pixelated bodies when they weren't pixelated because the female officers were wearing clothes and there were children in the pool. So, that's one question I think that's critical to get -- to really get our hands around. Does the City have a requirement to offer counseling for these employees who are subject to workplace harassment or hostility? That's the second question I want to understand. And if it -- if they do, then why didn't we address it on that issue? I think that's critical. Were these officers who complained ever offered this counseling? I understand you said that IA reached out to them, but it's not about IA. It's -- they should have received the same treatment that we -- that was given to the matter of Mr. Hudak -- Chief Hudak. Why didn't you -- why didn't we speak or obtain any outside investigator to look at the source of the letters on social media? That's a critical question to ask.

City Attorney Ramos: So, the social media piece is being looked at by Internal Affairs.

Commissioner Lago: And I think that's important, and it should have been looked at from a while back ago.

City Attorney Ramos: And it has been since, I want to say, October. We're almost done with that investigation.

Mayor Valdes-Fauli: Okay. And so we...

Commissioner Lago: And finally...

Mayor Valdes-Fauli: Will hire -- go ahead.

Commissioner Lago: You know, have we been briefed by investigators about the status of the investigation?

City Attorney Ramos: Internal Affairs investigations are confidential until they're complete, so...

Commissioner Lago: I know, but I haven't...

City Attorney Ramos: Unfortunately...

Commissioner Lago: These are questions that I'm asking because I don't have questions for it, obviously.

City Attorney Ramos: Unfortunately, until it's complete, we -- you cannot be briefed. But once it's complete, it's all public record.

Commissioner Lago: And I got it. So, we have to be careful. And the reason why I'm asking is like Commissioner Mena stated, I want to discuss these 14 women, and I think they deserve their day, and I think that we kind of could have done a better job of handling the situation. But we're moving on from that and we're going to address this issue and we're going to get to the bottom of it, and were going to make sure that they have their day in court, and that their issue and their concerns are given the same light and the same responsibility and the same importance as what

occurred in reference to Chief Hudak. Because we spent \$50,000, we spent countless hours in regards to staff. I think these employees, especially women, who dedicate themselves to public safety deserve that, if not more.

Mayor Valdes-Fauli: Alright.

Commissioner Keon: I don't...

Mayor Valdes-Fauli: Thank you very much.

Commissioner Keon: What does that mean, their day in court? I don't understand what you mean.

Commissioner Lago: No, day in court is a figure of speech. I'm not an attorney.

Commissioner Keon: Oh, what does it mean?

Commissioner Lago: It's day...

Mayor Valdes-Fauli: (INAUDIBLE) to be heard.

Commissioner Lago: You know, they deserve...

Commissioner Keon: Pardon me?

Mayor Valdes-Fauli: So, Miriam, we're going to continue...

Commissioner Lago: They deserve...

Mayor Valdes-Fauli: And have an outside party investigate...

Commissioner Keon: Oh, okay.

Mayor Valdes-Fauli: The anonymous letter.

City Attorney Ramos: Correct, so I will continue to speak with the union.

Commissioner Lago: That's what I mean. That's what I mean. There's no -- let me...

Commissioner Keon: They deserve the same courtesy.

Mayor Valdes-Fauli: No, it's a figure of speech.

Commissioner Lago: Courtesy.

Commissioner Keon: Okay.

Commissioner Lago: I mean, it's...

Commissioner Keon: Okay.

Commissioner Lago: A courtesy. You know, and also...

Mayor Valdes-Fauli: Alright.

Commissioner Lago: And let me -- since -- and I just ask you for this one moment, Mayor, please.

Mayor Valdes-Fauli: Sure.

Commissioner Lago: Because you asked me about the day in court.

Commissioner Keon: Yeah -- no. Yeah, I'm...

Commissioner Lago: I met...

Commissioner Keon: Kind of wondering what you were anticipating.

Commissioner Lago: Okay, I met with -- no, no. I'm not anticipating anything.

Commissioner Keon: Okay.

Commissioner Lago: I mean, just -- I will never tamper with an investigation or request anything. I leave that up to the professionals. That's why we have a City Attorney and a capable staff. My question -- the reason why I made that statement is very simple. I've met with the 14 female officers, not all of them. I've met with probably 6 or 7 of them. And once you hear their side of the story, you know, it's kind of tough. It's kind of tough to turn your back, and I think that we...

Commissioner Keon: No -- yeah (INAUDIBLE).

Commissioner Lago: And it's kind of a tough situation. And as a father of two young girls, if my daughters were in that situation -- and I don't bring this in lightly -- I would expect that this Commission and this City take the appropriate action to make sure that, you know, they get their just due.

Commissioner Mena: And as far as appropriate action -- and that's where I want to make sure that -- and that's why I want this process going forward to be something that they are on board with and if either Mr. Baublitz or Ms. Rind, that, you know -- what I want to confirm is that the discussions that we're having at this point, that you're having with the City Attorney, as far as having somebody -- some names provided by you guys for potential investigators that we'll then agree on and then the process that we'll work through the logistics on, the main thing is I want to make sure that the women officers, you know, through you, their representation, are on board with that approach at this time.

John Baublitz: Yes, we are. I appreciate this Commission taking the step. I know the female officers feel that way. But what we do ask is that whoever we decide on to do this investigation, this outside person, that they have access to the whole investigation, that they be able to look at the social media post -- because it is a lead. It is a process. So, I would ask the Commission to take that step and inform the City Attorney that whoever this investigator is has access to the whole case.

Mayor Valdes-Fauli: Very, very, very much so.

Commissioner Mena: And I think...

Mayor Valdes-Fauli: I think you've heard us...

Commissioner Mena: And I think...

City Attorney Ramos: Actually, sir, if I can...

Commissioner Mena: But let's clarify something there. I agree generally. I think the point that Miriam is probably about to make is that, obviously, the IA needs to finish their report for it to be public, and then they will have access to that information. That doesn't mean that the

independent investigation cannot commence and proceed separate from that already, you know, as soon as possible. And then, obviously, as soon as the IA report is complete, they'll have access to that and to that information. But I think...

City Attorney Ramos: Correct. Because it would certainly not be appropriate to stop an IA without having a conclusion. So, we...

Commissioner Mena: What's...

City Attorney Ramos: Need to let the IA finish, and then turn -- we can turn it all over to the investigator.

Commissioner Mena: What is the ETA on that being concluded? I understand that...

City Attorney Ramos: I understand that we're very close to the end. I would say, in the next month, it should be done.

Mayor Valdes-Fauli: Alright.

Commissioner Keon: The IA -- into the posting.

City Attorney Ramos: Correct.

Commissioner Keon: So...

Mayor Valdes-Fauli: Okay. Thank you very much.

Commissioner Mena: She has...

Mayor Valdes-Fauli: Thank you. Yes?

Osi Rind: Well, I was just going to say I appreciate that and the City Attorney has been...

Mayor Valdes-Fauli: Your name, please?

Ms. Rind: Osi Rind, the attorney for the FOP.

Mayor Valdes-Fauli: Thank you.

Ms. Rind: The City Attorney has been very cooperative, very open with us in these discussions. It is -- it has been frustrating, as you know, that we've been asking for this investigation for now 10 months. Hopefully, that has not prejudiced the process of the investigation because, as you know, investigating something sooner rather than later is important when you're talking about recollection and people's testimony. And here, although we appreciate what the City Attorney has raised, it certainly would not be inappropriate if the City hired someone to look at this -- to conduct the investigation to have access to that Internal Affairs file. And we raise this only because we -- thank you -- only because we were told many months ago that the other investigation was almost concluded and it took months and months and months for that investigation to be concluded, which then spawned the one that's being done now. So, it has -- we would just appreciate some, you know -- for you to reconsider that aspect of it and let the investigator, whoever he is, have access to that information. These women have now been subjected to...

Mayor Valdes-Fauli: And it will be done.

Ms. Rind: Two sworn statements.

Mayor Valdes-Fauli: It will be done, and you've heard the sentiment of the Commission.

Ms. Rind: Okay.

Mayor Valdes-Fauli: And I think that the City Attorney buys into it, so it'll be done. Thank you.

City Attorney Ramos: Sir, but I have to clarify that I can't give an outside person, at this point, access to an open IA.

Commissioner Keon: Right.

City Attorney Ramos: I need to wait for the IA to be concluded...

Mayor Valdes-Fauli: Okay.

City Attorney Ramos: And then I can turn it over.

Mr. Baublitz: That...

City Attorney Ramos: I think that there's a specific -- an important distinction we have to make.

Commissioner Mena: I also think...

Mr. Baublitz: Okay, but that wouldn't preclude...

Commissioner Mena: I also think it's important to note that Mr. Reyes is participating in that IA investigation...

Mr. Baublitz: And I...

Commissioner Mena: At your request.

Mr. Baublitz: Yes.

City Attorney Ramos: Correct.

Commissioner Mena: And so, it's not this totally sort of foreign investigation that's ongoing that...

Mr. Baublitz: Right.

Commissioner Mena: You all don't have somebody involved in. You have...

Mr. Baublitz: Right.

Commissioner Mena: Mr. Reyes there. That was the whole idea, I think, behind that. And so, that persons' going to get that information. And you know, as far as your comment about recollection. You know, I'm not an investigator, but this strikes me as much of a forensic investigation as a investigation into recollections because it's about who either wrote an anonymous letter or posted an anonymous post. It's not about somebody at the party remembering something. I think it's more about -- you know, a lot of those statements have already been taken and are memorialized as part of the other investigation. So, you know, I don't see any prejudice. I think we should be able to get this done quickly, the IA. We should be able to start this independent investigation as soon as possible, as soon as we get the names...

Mayor Valdes-Fauli: Yeah.

Commissioner Mena: And agree on that process. And let's move forward and get this done.

Mr. Baublitz: Right. What I would ask is if, for whatever reason, the IA investigation is prolonged, the investigator wouldn't be precluded in looking into the social media aspect on his own. He doesn't have to be given the Internal Affairs file, but he can do his own investigation and look at things without interfering with Internal Affairs.

Commissioner Mena: I don't see a problem with that.

City Attorney Ramos: So, that's a request...

Commissioner Mena: Right.

City Attorney Ramos: That the Commission wishes that that's how it be done, then that's fine. They just -- I just can't...

Commissioner Mena: Yeah.

City Attorney Ramos: Give them access to IA before IA's done.

Mr. Baublitz: That's fine.

Mayor Valdes-Fauli: Alright.

Commissioner Lago: Okay, perfect.

Mayor Valdes-Fauli: Thank you.

Mr. Baublitz: Thank you.

Mayor Valdes-Fauli: We have two members...

Commissioner Mena: Thank you both.

Mr. Baublitz: Appreciate it.

Mayor Valdes-Fauli: Two members of...

Commissioner Lago: Thank you.

Mayor Valdes-Fauli: The public that wish to be heard. Maria Cruz.

City Attorney Ramos: Sir, I understand that this was not a discussion item. We're only going to be providing an update.

Mayor Valdes-Fauli: What?

City Attorney Ramos: I understand that this was not a discussion item, and we were only...

Mayor Valdes-Fauli: Maria, you have...

City Attorney Ramos: Going to be providing...

Mayor Valdes-Fauli: One minute.

City Attorney Ramos: An update.

Maria Cruz: Okay. I am very happy that we are dealing with this. I'm hoping that we're not doing this for the good of the City, that we're doing it for the good of the 14 female officers. And I think it's long overdue. I know that with the previous cause we did not offer an apology,

but I think it'd be nice if we, our elected officials, were to say to those women -- you don't have to wait for the investigation -- we're sorry that you've gone through this. I think you owe them an apology. We do not have to keep them waiting for the result of the investigation. We know it happened. We know what they've gone through. What's wrong with saying we're sorry, okay? I know we didn't do it to the Chief, because we did it for the good of the City, but you know what, this is not for the good of the City. This is for the good of those 14 female officers that put their lives in danger for us. What's wrong with apologizing?

Mayor Valdes-Fauli: Maria, I don't think I have to apologize for anything as the Mayor of the City. I didn't do anything. I don't think -- I think we're taking now the right action, and let's see what happens after this.

Commissioner Mena: There's a difference...

Ms. Cruz: You're...

Commissioner Mena: Maria, between an apology, okay, and obviously, everybody's sorry that these people have had to go through this.

Mayor Valdes-Fauli: Yeah.

Commissioner Mena: But we're also not...

Mayor Valdes-Fauli: An official apology is...

Ms. Cruz: No, but I'm saying...

Mayor Valdes-Fauli: Out of order.

Commissioner Mena: Responsible for the fact that somebody posted something...

Ms. Cruz: No I'm saying...

Commissioner Mena: Anonymously.

Ms. Cruz: The apology needs to be that you've taken this long to investigate it.

Mayor Valdes-Fauli: Yes, we are doing that.

Ms. Cruz: Not that -- what happened. We know what happened.

Mayor Valdes-Fauli: Maria, we're doing that.

Ms. Cruz: But this City should have investigated -- you know what? Ten months ago, I could have had a baby on this time.

Mayor Valdes-Fauli: That's right.

Ms. Cruz: If I could.

Mayor Valdes-Fauli: I would like to see that, yeah.

Commissioner Keon: Whoa.

Mayor Valdes-Fauli: Terence Connor.

Terence Connor: Good afternoon, Mayor, members of the Commission...

Mayor Valdes-Fauli: Good afternoon, sir.

Mr. Connor: Former colleagues.

Commissioner Mena: Good afternoon.

Mr. Connor: I have come across this case repeatedly, and I have used it several times in my class at the University of Miami Law School because of the methods that were taken. Right now, as I understand it, what you're looking at is piercing the anonymity of a complaint of discrimination, correct?

Commissioner Keon: Yes.

Mr. Connor: And is that -- what purpose -- the only purpose that you could have for that is to do something to the person once you find them, which is a classic case of retaliation under Title VII Civil Rights Act. So, it is entirely appropriate in an investigation of this sort to try to find who is making the anonymous complaint. But all over the country, the company employers who have been put in the position of having to investigate these claims under -- was that for me?

Commissioner Lago: Keep going.

Commissioner Mena: That's okay.

Commissioner Lago: I'm interested.

Commissioner Mena: Go ahead, go ahead.

Commissioner Keon: I'm interested in what you have to say.

Mayor Valdes-Fauli: Finish up.

Commissioner Keon: Could you...

Mayor Valdes-Fauli: Go ahead.

Mr. Connor: The Supreme Court decisions in Faragher and Ellerth, they provide the employer great incentive to do -- to have a policy against harassment and to show that it's effective and the procedures are available liberally to the employees. Now, at the point when you begin to investigate one of these, it's entirely appropriate for the investigator to try to encourage the anonymous complainant to come forward. But all of the Fortune 500 companies, for example, provide for anonymous complaints as part of the program. And the reason for that is so that people will come forward and investigations can be made. But to come after the fact, after an investigation is complete and now to spend money and time in an effort to find out who it was that gave the anonymous complaint, you're asking for another lawsuit.

Commissioner Mena: I think, sir, the distinction that I would make is that the complaint at issue here has been investigated partly, the substance of the allegations was investigated and was...

Mayor Valdes-Fauli: (INAUDIBLE).

Commissioner Mena: Cleared and found to be unsubstantiated. In fact -- and I don't have the complaint in front of me at the moment, but if I recall correctly, the author of the purported complaint claimed to be one of the women at the party, and we have the 14 women at the party telling us it was not them and asking us to investigate the source of it because the -- because those false allegations have caused them humiliation and embarrassment and a lot of turmoil. So, you know, I -- and I think that's precisely the distinction that our City Attorney would make in terms of this is why it wasn't started back when it was originally asked for to avoid what

you're describing now. After we've had an investigation that has found that those claims are false, now we feel the circumstances have changed.

Mr. Connor: You had a credible complaint in its face that you investigated. And if you now find out who it was that made the complaint and you take action against them, you are dead square in the middle of a retaliation case.

Mayor Valdes-Fauli: I think it was very much of a bad faith complaint.

Commissioner Mena: Right.

Mayor Valdes-Fauli: Very much of...

Unidentified Speaker: Yeah.

Mr. Connor: But even if...

Mayor Valdes-Fauli: A bad faith complaint.

Mr. Connor: You could show that it was...

Mayor Valdes-Fauli: Yes, we did. And there was a thorough investigation, and all of the allegations in the complaint were false, lies, falsehoods, and our Chief was cleared. We're not discussing the merits or not merits of the complaint. And I want to avoid that type of discussion. But the investigation is going to go forth, and thank you for your opinion.

Vice Mayor Quesada: Can you -- do you mind emailing us some of those case -- that case law? I'd like to peruse it. Or what was the name of the case again?

Mr. Connor: It's too long to peruse, but I'd be happy to send you a...

Vice Mayor Quesada: There's -- if there are...

Mr. Connor: (INAUDIBLE)

Vice Mayor Quesada: Cases that are applicable and on point, if you don't mind emailing it to us, that'd be great.

Mayor Valdes-Fauli: Will you send them to Commissioner -- to Vice Mayor Quesada, please?

Vice Mayor Quesada: Frank@CoralGables.com.

Mr. Connor: I know.

Mayor Valdes-Fauli: Thank you.

Vice Mayor Quesada: Thank you.

Mayor Valdes-Fauli: Thank you very much, sir.

Commissioner Mena: Thank you, sir.

Mayor Valdes-Fauli: Thank you.

City Attorney Ramos: And so, I'm happy to meet with you as well to...

Mayor Valdes-Fauli: And I also have...

City Attorney Ramos: Discuss retaliation cases, if you wish.

Mayor Valdes-Fauli: I also have...

Vice Mayor Quesada: Thank you.

Mayor Valdes-Fauli: A card here from Bobby and Richard Litt (phonetic) supporting Cathy Swanson, the City Manager.