

City of Coral Gables City Commission Meeting
Agenda Item E-5
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
Police Chief, Ed Hudak

Public Speaker(s)

Abby Corbett, Special Counsel

Agenda Item E-5 [9:31:53 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida amending the Code of the City of Coral Gables, Florida by revising Article V (“Noise”) of Chapter 34 (“Nuisances”), to establish quantitative noise level measurements with respect to certain categories of noise; providing for a repealer provision, severability clause, and providing for an effective date. (Sponsored by Commissioner Lago).

Mayor Cason: E-5, this is also an Ordinance on Second Reading.

City Attorney Leen: Thank you Mr. Mayor. Item E-5 is an Ordinance of the City Commission of Coral Gables, Florida amending the Code of the City of Coral Gables, Florida by revising Article V (“Noise”) of Chapter 34 (“Nuisances”), to establish quantitative noise level measurements with respect to certain categories of noise; providing for a repealer provision, severability clause, and providing for an effective date. This is sponsored by Commissioner Lago. It’s an Ordinance

on Second Reading and a public hearing item. Also, there are going to be two additions to the proposed item. There will be a “Whereas” clause added that says, the City Commission finds that the City has a population of over 50,000 residents based on a 2014 census report, and then there will be a provision added, pardon me, it’s going to be 34-127(c), and what it will say is, notwithstanding subsections A and B above, a fine of up to \$15,000 per violation may be imposed at the Code Enforcement Board or Special Magistrate finds, the violation to be irreparable or reversible in nature, in determining the amount of the fine, if any, the Enforcement Board or Special Magistrate shall consider the following factors: One, the gravity of the violation; two, any actions taken by the violator to correct the violation; and three, any previous violations committed by the violator. It’s my opinion that this is within the scope of the ordinance as scope of the title, and it’s appropriate to consider on Second Reading. The reason it’s coming before you right now is because, over the weekend the City Manager and I learned of an incident through the Police Department, where there was something called “The Mansion Party” that was occurring in Coral Gables where there was a commercial renting of a mansion in Coral Gables and people were coming into downtown and getting on buses and being brought to the mansion, and it was extremely noisy and I’ll turn it over to the City Manager to add to this, but it was extremely noisy and it took the Police Department till 3 a.m. to have it completely shut down, and it’s my understanding that this may have happened a couple of other times, although the Police Department is specifically knowledgeable of this one time. In addition, when we looked at the advertisement for this, the commercial advertisement for this mansion party, when you looked at it, I believe it was on twitter, but it was on some sort of social media, you could see in the comments the promoters said that they believe that they basically have the right to do this, and they would be looking at their legal options, which indicated to me that they might do it again, and with that I’ll turn it over to the City Manager.

City Manager Swanson-Rivenbark: Mr. Mayor this is obviously an evolution of the noise ordinance, but we fully support this addition. We think that the \$5,000 fine which we previously had does not warrant the amount of aggravation that that neighborhood had as a result of this assault. We also believe there was a cover charge, we view this as a commercial operation that happened, and we think that it takes this kind of action to make sure that it doesn’t happen in that neighborhood, or any other neighborhood in Coral Gables.

Mayor Cason: What was the neighborhood?

City Manager Swanson-Rivenbark: Gables by the Sea.

Mayor Cason: OK. Alright, this is on Second Reading, right?

City Attorney Leen: Yes Mr. Mayor.

Mayor Cason: Do we have any speaker cards?

City Clerk Foeman: No Mr. Mayor.

Mayor Cason: Close the public hearing.

Vice Mayor Quesada: Yes, just one quick item, Police Chief any thoughts on this?- can you brief us a little bit. I'm assuming you are in agreement with all this, but obviously your team is the one that has to enforce it.

Chief Hudak: Yes sir, we are in agreement obviously with the Code recommendations as far as the noise on an ongoing basis. I believe the enhancements, although I'm not fully up to speed on what happened over the weekend, but I do agree that we need to have the ability to go after any commercial entity that were to do something like this, even if it went to a warehouse, if it went outside residents. So if somebody were to rent another vacant business and do the same thing, I believe this gives Code Enforcement and the City the ability to definitely send a strong message.

Vice Mayor Quesada: When an officer responds to a noise complaint my biggest concern is, because I've been on both the requesting and the receiving end of it, depending on my age where I was on that scale. It's very at times subjective for the officer.

Chief Hudak: Very much so. There are a couple of different ways that the officers respond; one, if there is an off-duty officer, some residents hire off-duty officers. Initially, I should say, we would actually if we get a phone call complaint, we talk to the resident as far as lowering the noise and it is, it is subjective on the officer of what it can be. It can go anywhere from music to loud talking at the next door neighbor's. Some of our zero lot line homes that are bothering them. We respond usually to give a warning the first time; the second time a report is written on average, and we send that to Code Enforcement to follow up on that, as far as if we were going to cite them. I believe that the process with Code Enforcement, at least as long as I've been here is, if we write a report then they are getting a citation from Code Enforcement, or a noise ordinance violation. Some of the other issues that we've had to tackle lately when we get into the measuring and the decibels and everything else like that, if it's a City permitted event, such as special events then we respond with the noise measuring devices. We record that either in our CAD notes or in a report, and we subsequently follow up with the promoters. On average, I would say these calls come in between 12 and 3 o'clock in the morning, that's when we are getting the loud parties. We have a very good relationship with the University of Miami Dean of Students Office, where if those parties, by the officer's assessment is that of students then we

will have the University of Miami Police are contacted, the Dean's office for subsequent disciplinary issues from the university retains jurisdiction.

Vice Mayor Quesada: That makes sense.

Chief Hudak: It's like a moving target. We don't have anything cut and dried, we are going to walk up and cite right away.

Commissioner Lago: Let me ask you a quick question Chief, just to go off what the Vice Mayor said. The Mayor had brought up a very good point, which I've never encountered, but I imagine some other individuals have, in reference to barking dogs. Is this ordinance going to aid you in potentially trying to resolve those types of disputes? They are not too common, but they happen.

Chief Hudak: The barking dog issues that rise to the level of the awareness of the Commission is pretty much the incessant barking dog that goes on over a period of days. We get barking dog calls at night, we pretty much – it's a good burglary deterrent. We actually tell people get a dog, get a yappy dog, that's fine. But if people are not engaged in bringing the dog in, I believe this is going to give us the ability to do that. As we spoke previously, the officer's subjective is if somebody has a video of a dog and it's not egging the dog on, something to give evidence for you all or for the Code Enforcement Board, we fully support that to tell people to go out and do that. But again, if the officer pulls up, here's the dog barking, one time maybe the car did it, or the police officer arriving did the car, but if it continues – our officers are pretty intelligent. They'll sit down a few blocks away to hear if it continues, and in the middle of the night you can hear a lot of dogs barking or a dog barking, I should say, from a long distance.

Vice Mayor Quesada: One last item for me is the Carnival on the Mile.

Chief Hudak: Yes sir.

Vice Mayor Quesada: So I don't live too far off of Miracle Mile, I'm probably, I'm on Alesio, I'm five blocks from Bird Road, so about twelve blocks from Miracle Mile. We heard, I don't know, eight o'clock at night, nine o'clock at night; I could hear it in my neighborhood. What controls do we have in place for the noise for events like that? Do we have any in place? Is this a conversation I should bring up during Discussion Items, so you can think about it a little bit more?

City Manager Swanson-Rivenbark: Mr. Vice Mayor, first of all, we are glad you are no longer causing noise in the neighborhood so you've grown up. So now that you are commenting about noise in the neighborhood...

Vice Mayor Quesada: Actually it's the other way around. I hated it when I was young, now I'm the loud one.

City Manager Swanson-Rivenbark: And so, we had Code Enforcement on site. Code Enforcement used the decibel reader, we can ask them to come and explain that to you. It was within the range of a loud noise, based on that decibel reader. So if that needs to be revisited we are interested in knowing that, but the Carnival on the Mile was following the protocol that has been established in terms of the measurement of noise.

Vice Mayor Quesada: I'd just like to discuss it maybe at a future meeting with Code Enforcement...

City Manager Swanson-Rivenbark: Understand.

Vice Mayor Quesada: ...sort of thoughts on that, just because of the nature of where I live, it was a Sunday, Sunday night I was out with my daughter walking around and a number of neighbors came up to me and were concerned about that issue.

Commissioner Lago: Just because you brought up Carnival on the Mile, maybe it will be a discussion point later and we'll save it, but I have some other ideas in regards to the future of Miracle Mile and where that's headed, obviously we are about to commence a construction project on the Mile and I want to see – I like Carnival on the Mile even though I haven't attended it in a few years, it really bring a different look to our City, but I think we need to...

Vice Mayor Quesada: Oh, I love the event.

Commissioner Lago: I think we need to start planning for the future of where is the Carnival on the Mile going to go?- and whether it should continue...

Vice Mayor Quesada: Commissioner Keon first brought that up of potentially moving it to Alhambra...

Mayor Cason: Why don't we have a discussion at the end on that?

Commissioner Lago: I think we should have a discussion on that and start planning for that now before it catches us by surprise.

Vice Mayor Cason: So Madam City Manager, if you don't mind putting that on a future agenda, so we can discuss that fully.

City Manager Swanson-Rivenbark: Absolutely.

Mayor Cason: Anything else on that E-5?

Commissioner Keon: I have a question also, because in Section 34-124, “Prohibited Acts” where it talks about amplified sound, which is probably what you are hearing. I don’t think it was the ambient sound of the crowd, I think it was music as the amplified sound, it states for person or persons who are in the room, vehicle or chamber in which set music or device is operated. You need to add there too, you don’t include outdoors, it’s a room, vehicle or chamber, and I think you need to maybe we could include outdoor in this also, instead of a room, vehicle or chamber. Is there a section that deals – I didn’t see a section that deals with outdoors.

City Attorney Leen: Abby Corbett is the Special Counsel who put this ordinance together, along with Police and Code Enforcement and Miriam, could you comment on that?

Ms. Corbett: Good morning. So that’s in the existing Code, we haven’t changed that, but I hear you which is that it’s possible somebody would have set up a speaker outside.

Commissioner Keon: Now there is one that says loud speakers used for operation in the public streets and alley, loud speakers...

Ms. Corbett: And honestly, this is not an actual issue for Enforcement because there are so many other – these are numerated...if somebody is basically allowing or themselves creating unreasonably loud noise, they would be captured by the catchall anyway, but I don’t disagree with you with the idea...

Commissioner Keon: I would think that you could include in this under amplified sound, outdoor whatever. I don’t know the language you would use, but you know.

Ms. Corbett: Yes, I would just say on the property.

Commissioner Keon: Yes, public owned property, whatever, but its outdoors, it’s not just noise it’s contained within a particular room or chamber, whatever; and it also says, plainly audible at a distance of 100 feet from the building structure or vehicle, that’s why it should be outdoor also, because you are clearly more than 100 feet, Commissioner Quesada, from where the noise is and it’s plainly audible to you.

Ms. Corbett: Yes. I do want to comment on that because we would be having, we are going to be presenting you with a draft proposed rewrite of the Special Events chapter. The Special Events chapter may very well if you all so decide, may have decibel level restrictions that are in the Code, if not definitely the Code will provide – the face of permits will have decibel levels the permit can then be revoked, so special events are sort of a different animal.

Commissioner Keon: But I think that the ordinances should be consistent.

City Attorney Leen: Yes, we would add a provision.

Commissioner Keon: The noise ordinance....

City Attorney Leen: We do have the number nine for loud speakers...

Commissioner Keon: Right.

City Attorney Leen:...which I think we typically use for outdoors, but I agree with you, I don't see any reason why we wouldn't apply...

Commissioner Keon: I just think nine should be wrapped into two.

Ms. Corbett: Yes. We could just change who are in the...

City Attorney Leen: I do like a separate nine because nine is used a lot when we have demonstrations, because we actually have people with loudspeakers, so it's good to have a specific provision, but we should add outdoor.

Commissioner Keon: But it should include amplified, you can add it and then deal with it.

Commissioner Lago: I just have one simple comment that was...by two different neighbors in reference to exemptions for generators and I notice that Section 34-125 on exemptions you put, noise generated by emergency backup generators, a reasonable noise generated and the testing of devices used for purpose of alerting persons to the existing emergency, so I appreciate that.

City Attorney Leen: So what we would do then, we'll change this to say, person or persons who are on the property or in the room, vehicle or chamber where such machine or device is operated.

Ms. Corbett: Yes. I want to think, the only thing is that that may imply that you are allowed to use amplified sound outdoors, and there are circumstances where you might not be able to do it

at all, but there may be circumstances, it's not a loudspeaker but it's a television, or a radio. Let's say somebody is sitting in their front yard with a radio. It doesn't happen very often, but that would theoretically be permissible as long as the radio can just be heard on the property. I think that's the example, probably unusual, but that's the type of example.

Commissioner Keon: But even if they do like during the soccer tournaments where they set up a big screen and they are playing the tournaments, it could be "March Madness," I don't know, there are lots of sporting events where they can get loud. But what's interesting is, we use a decibel level, so it may be within the decibel level, but this provision here you are prohibiting in such a manner just to be plainly audible at a distance of 100 feet. So even though the decibel level may be OK at the site, you can still hear it very clearly at a distance of 100 feet, so what takes precedence?

City Attorney Leen: It also has to be between the hours of 11 p.m. and 7 a.m. or midnight and 7 a.m., so I don't think you have to be so worried that it would be heard at those times. I don't see any sort of legitimate use at those times, so we wouldn't want to restrict.

Commissioner Keon: But I think that there is some value to restricting noise from decibels that are within or close proximity to residential neighborhoods in the amount of noise that you are creating, because of that I think it's an issue. So I don't know that deals with that and where you allow, when you do your events, where you allow events to happen or you change the decibel levels when it is in close proximity to a residential neighborhood. This is on First Reading, so on Second Reading – I'm very happy to see this ordinance before us and give us the opportunity to deal with this.

Commissioner Lago: This is another opportunity, as always, to protect the neighborhoods and make sure that their voices are heard and give the police the necessary tools so that they can achieve their goal.

Mayor Cason: And you can address it further in the special ordinance for events.

Ms. Corbett: I also wanted to explain to Commissioner Keon that that 100 feet audible standard is mutually exclusive and separate from the decibel levels. Decibel levels would apply not to amplified sound unless it's in the context of a special event – sub-section 2 does not apply and that's the last sentence that we added to sub-section 2. So decibel levels apply to amplified sound at special events and specific decibel levels apply also pursuant to other change made in here to mechanical, steady mechanical sound that can be measured by Code Enforcement. This 100 feet audible standard during these late night hours is for amplified sound and there is no specific decibel level for non-special event, non-mechanical noise, amplified sound...

Commissioner Lago: Because that will be covered later.

Ms. Corbett: It will be covered later in special events, yes.

Commissioner Keon: OK. But you'll note in this ordinance that there is also a special events ordinance.

City Attorney Leen: It does...

Commissioner Keon: It's only that you want them to be consistent.

Ms. Corbett: Yes.

Commissioner Keon: We have enough inconsistencies in our Code that create problems for us, because when we change one, we don't always go back and change all of them. Sometimes somebody will say yes, but this one allows me to do it and then that one prohibits me from doing it, and it becomes a very difficult issue when it comes to enforcement when we don't have consistency.

Ms. Corbett: I've seen that with my own eyes. Yes, that's what that last sentence in sub-section 2 is about. We did not exclude special events altogether from the entire Code, because there are situations outside of amplified noise context where you still want these provisions to apply even to special events, but we did add that sentence on sub-section 2...

Commissioner Keon: OK.

Mayor Cason: Thank you.

Commissioner Lago: Thank you very much.

Mayor Cason: So do we have a motion on E-5?

City Attorney Leen: So two things. The Mayor wanted me to mention about generators during emergencies, in states of emergency or a major storm event or something like that, the Code does exempt them. I want to be clear about that, it's in the exemption...

Commissioner Lago: I mentioned that before. The item number is Item 43 under Section 34-125 Exemptions.

City Attorney Leen: Thank you Commissioner. And then 34-124(2), we would add a reference to property.

Commissioner Lago: So I'd like to make a motion.

Mayor Cason: Commissioner Lago makes the motion – second?

Vice Mayor Quesada: Sounds good

(Laughter)

Mayor Cason: Vice Mayor made the sound that he seconds it. City Clerk.

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: Let's see if we can do E-6 before the time certain at 2:30, that's the Ordinance permitting putting up "No Trespass" signs on construction sites.

Mayor Cason: One thing I wanted to raise, Mr. Mayor, regarding the noise ordinance is, we did add the decibel levels to air conditioners. We did go out and test whether – because there was a concern that maybe, we didn't want people not to have an air conditioner, particularly when its hot. So in the enforcement of this, one other issue that came up is, Code Enforcement would likely give them a warning and give them a few days to fix it, so they don't have to have a heat emergency or something in their house, and we would address that. But I do believe that we went out there and we believe the decibel level is high enough that it would not affect most air conditioners, any air conditioner unless it was broken.

Ms. Corbett: Yes. I'm confident that these decibel levels are appropriate. They are very consistent not just throughout the State of Florida in terms of noise ordinances that do measure mechanical sounds, but across the country, these are the decibel levels. We actually had a little bit of mechanical problems utilizing those sound meters, we are going to order a couple new ones. Sounds like staff is going to order a couple new ones, get better training, so we can make

sure that we are very confident that we are measuring precisely, but we are confident in these decibel levels being appropriate.

Vice Mayor Quesada: I downloaded a free decibel reader right now and I was just going through it, and we are wavering between 60 and 70 decibels as we are speaking here.

Mayor Cason: Keep it down.

(Laughter)

Vice Mayor Quesada: Which I think is a good thing, because it puts the power, it gives the power to the residents if there is a concern, because it's a relatively low number.

Ms. Corbett: It is, it is. It is measured from the real property line of the person complaining, so it wouldn't be like standing right next to the machine.

Vice Mayor Quesada: But as the Chief mentioned the zero lot line homes are those situations.

Commissioner Lago: Like North Gables.

Vice Mayor Quesada: It's good. Thank you.

Mayor Cason: E-6, City Attorney. If we can do E-6 before our time certain.

City Attorney Leen: But the idea, Mr. Mayor, the idea that this will not affect general air conditioners and frankly, if it does it will be brought back to you to change, because we want people to have air conditioners.

[End: 9:53:17 a.m.]