

City of Coral Gables City Commission Meeting
Agenda Item F-1
March 22, 2011
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Donald D. Slesnick, II
Vice Mayor William H. Kerdyk, Jr.
Commissioner Maria Anderson
Commissioner Rafael “Ralph” Cabrera, Jr.
Commissioner Wayne “Chip” Withers

City Staff

City Manager, Patrick Salerno
Interim City Attorney, Lourdes Alfonsin
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia
Chief Procurement Officer, Michael Pounds

Public Speaker(s)

F-1 [Start: 9:54:42 a.m.]

Discussion Regarding the Procurement Code
Commissioner Rafael “Ralph” Cabrera, Jr.

Mayor Slesnick: And the next thing is Commissioner Cabrera, F-1 on the Procurement Code.

Commissioner Cabrera: Thank you. What I'd like to do this morning in discussing my item, which incidentally as Mr. Slesnick pointed out, I have a personal discussion item in our City Commission agenda which deals with the Procurement Code, but it actually deals with a sub-heading of that Procurement Code; and what I'd like to do at this time is ask the Commission, I'd like to have the Commission refresh their memories, recent memories of our last Commission meeting, and the best way to probably accomplish that is to ask you to look at if you want the minutes of that meeting. We approved them earlier this morning, and specifically if you look at page 27 at the very bottom of page 27, and if you don't want to go through it I'll sort of review what happened, and then anyone that wishes to correct me please do so. But again, this comes from the minutes of the Discussion Items of March 8, 2011. At the end of our meeting we were

going across the dais to talk about certain informal discussion commentaries. Mine had to do with the fact that, that past weekend I had run into some friends whom I'd known in the industry for many, many years, and for those that are not familiar with the industry I am part of, I'm part of the employee benefits insurance industry; and I ran into these friends over the weekend and both of these gentlemen advised me that the City of Coral Gables was currently out to bid for its health insurance program; and subsequently I spoke to a professional that following Monday, a Humana professional that I happen to be in conversation with about an unrelated item, and that individual made me aware that they had given the City "a no increase." I just went along with it, didn't say anything more because I had nothing more to say, and then on Tuesday of the Commission meeting and that's the part of the minutes, I shared this with you. I shared this with you because I thought it was important to share it with you for a couple of reasons; number one, I think we should all know these kinds of things, given the fact that it's a fairly, fairly large contract, it's a substantial contract; and number two, I didn't know whether you had been advised by someone that we were out to bid and so I didn't want to see any of you fall into any kind of pitfall; and I will share with all of you, and I'm not afraid to say this publicly. You know I got in trouble a few years ago with the Ethics Commission over the fact that I got involved in an RFP for the health consultants services; and I went through a fairly painstaking process with the Ethic Commission where I was investigated, my Board appointment that was part of the selection committee was investigated, Liz Hernandez was also involved in the process, Mr. Brown was involved, Marj Adler had an involvement, and it was really very unsavory for me, and if you all recall nothing came out of it. We rejected the RFP and then we started over again, I think, no actually what we did was we stayed with Mr. Shafer. So I share this with you because it was a personal uncomfortable position for me that I took on, and immediately following that Tuesday's meeting, and incidentally when I was speaking to all of you in the minutes it reflects that I had one sentence where I said, "*And so just wanted you all to be aware of it, there was no increase on the insurance for the employees but we are out to bid and I guess there is a Cone of Silence in all of this.*" This is where I take you back to the Procurement Code. I went back to the Procurement Code shortly after the meeting of the 8th, and I decided to go through it, and I specifically wanted to look at a section of the Procurement Code and dealt with the Cone of Silence, and so I did that; and incidentally, I have a copy of Section 2-1059 of the Procurement Code, and I don't need to pass this out because obviously I didn't get this out to you 72 hours before the meeting, and I don't want to go against the Charter;; but this is not new information, this is simply informational because this is part of our Procurement Code, I didn't make this up. I went to our website and by the way, those in the audience and those who are watching you can go onto our City's website and literally look at anything from our Charter to our Procurement Code to our Code, our Zoning Code. If I may, and I'll have these copies for you so you can look at them later, let me read you a couple of sections of this Code that really caught my eye. I'm again reading from our City's Procurement Code, Section 2-1059 where it deals with the Cone of Silence, contracts for the provision of goods and services. Let me read you the purpose and intent

of this section. It says, *“It is the intent of this article to prevent City Commissioners, potential vendors, bidders, offers of service providers from communicating with City department heads, their staff or selection and evaluation committee members during the period of time in which the Cone of Silence is imposed on the Request for Proposals, Request for Qualifications or Invitations for Bids.”* And further down into the section 2-1059, there is a procedural item, and I’d like to read that to you, and the procedural item deals with imposition and this is the section that caught my eye, it says, *“Imposition: A Cone of Silence shall be imposed for each Request for Proposals, Request for Qualifications, Invitations for Bids and any other solicitation when advertised. At the time of imposition of the Cone of Silence the City Manager shall provide public notice of the Cone of Silence and shall advise the affected departments in writing. The affected departments include, but are not limited to selection committee members, user departments, department heads, City Attorney, City Manager, Assistant City Managers, and the City Commission.”* This is the part that really got to me, because as I read this document I realized that I had received no written information as to the fact that we were out to bid for a fairly substantial contract, and put aside my personal comments about being in the industry, any one of us could have been put in a very awkward position of talking to someone not knowing, I mean, I’ll give you one example, and forgive me for using you as an example, but Don I’m aware of the fact that you serve on a Board, an Advisory Board to AvMed Health Plan, which is a company I represent, and that’s the way I know that you do this work. You could have been out to lunch with the CEO of AvMed, you could have been out to lunch with the Vice President, you could have been at one of the meetings, and you could have been asked to talk about this, because the vendors don’t know, they are not supposed to know how our Cone of Silence works. So it’s a very uncomfortable position for us to be put in; and I think the irony and I guess the part that irks me is, we all receive every week from the City Manager’s office what he entitles, Report from the Manager, I’ve got two copies of it; I’ve got the Friday, March 11th, and I got the Friday, March 18th; and those two reports, the Friday, March 11th, we were told about a swearing in for the new Police Chief and special events attachment; for March 18th we were told about the Ponce de Leon median and that Don Nelson’s in the DROP and that the recruitment process to hire a new Finance Director is now underway. That’s the only professional communication I’ve received from the Manager during a period of time that we were out to bid for a fairly substantial contract; and let me take you a step further. If you look at the second page of what I’ve read, the penalty for this is the following: *“Violation of any provision of this ordinance by a City employee shall subject said employee to disciplinary action up to and including dismissal.”* I’m going to tell you what I’m going to do with today’s discussion, I’m going to memorialize it in a memorandum, I’m going to have it inserted in the City Manager’s permanent personnel file, unless someone here has an objection to me doing that; and I’m going to publicly ask for an apology because I do not appreciate being put in this kind of position as a public official in this City; and I was put in that position and I don’t have anyone else to point my finger at than the City Manager because it’s part of the Cone of Silence provision. So therefore, it’s not something

I enjoy doing on our last time together, but nonetheless I was not going to let this feedback go without warrant, especially knowing that this occurred recently, and therefore I'm also going to request that from this point forward this Commission be given every indication of when we are out to bid, based upon the provisions of this Procurement Code. Do you all have any questions?

Mayor Slesnick: Well, I certainly think one is – you said you had copies.

Commissioner Cabrera: I do.

Mayor Slesnick: So let's pass those out so we could become more self-aware.

Commissioner Cabrera: I read directly from the Code.

Mayor Slesnick: Yes, I know, but I meant I'd like to have it.

Commissioner Cabrera: And the sections that I read from are Number 1, Number 4, and Number 5. Number 1 was the Purpose and Intent, Number 4 was the Procedure, and letter (A) was the Imposition, and Number 5 is Penalties for the lack of – the violation for not following this procedure. Ladies and gentlemen, I thought this was important enough to bring it to all of our attention, specifically based upon what took place. I will be copying you on my memo, all four of you, and I do intend on ensuring that it becomes a permanent part of the personnel file of Mr. Salerno.

City Manager Salerno: Mayor, can I respond?

Mayor Slesnick: Yes Mr. Salerno.

City Manager Salerno: Thank you. Couple of things – Mike can you come on up. Let me first say that our purchasing ordinance is a document that is in need of, still in need of significant overhaul. I might just for reference bring you back one of the three finalists for the City Attorney's position had approached me during the selection process just to get to know me, an experienced City Attorney, and said that she had reviewed a number of ordinances in the City and one that she wanted to ask me about was the Procurement Code of the City; and she asked me and she said, what do you think of the Code?- and I said, well you've reviewed it and you thought it was important enough to bring to my attention and I said, so why don't you tell me why you are bringing it up?- she said, well this Procurement Code is, I'm paraphrasing, a problem. It is a document that is hard to understand, hard to follow, never seen one so detailed before. I responded and said, I agreed with her, it's a document that frankly needs to be totally rewritten, and I was impressed by the fact that she had gone through our Code and looked at

significant ordinances of importance to her and found that our Procurement Code was lacking in many ways. It is a maze of process that is at best difficult to follow. You may recall that in the Fall of '09, I felt it was so in need of being addressed that we made immediate changes to it at that point because I felt it was almost extremely difficult for us to even proceed in any fashion reasonably, particularly when I would ask the Chief Procurement Officer questions and they could not give me a straight interpretation, they just didn't know what the Code meant or implied. I'm just giving that to you as background to let you know that the overall Code here, this Procurement Code needs an overhaul, a total rewrite in that regard because it is much too detailed, and in many instances I don't believe from a practical standpoint the Procurement Officer can follow it as written. Would you agree with that Mike?

Mr. Pounds: Yes, I do agree. There are a lot of pitfalls in the document.

City Manager Salerno: But with that said as a background and it needs to be overhauled, and it is something that we will get to. Commissioner you raised that Code, that section has been there, it's not one that I have focused on, but it's one that's been there for years, I don't know for how long, 5-6 years, who knows how long?- the City has never followed it, this is not the first example, I don't believe that the practice has been in the City to follow that. Mike have you ever seen it?- I don't believe the Interim Manager before me or the Manager before that has ever followed that provision of the Code, and certainly Commissioner you could have raised this in the past how many years you've been in office and pointed out that you haven't been following or receiving that document. But this is not probably the only provision in this ordinance that needs to be looked at. The Manager – and this is not, the Manager is over the entire staff operations, and as I pointed out to you there are a lot of things that we are currently not doing right. You acknowledged Commissioner, months ago that many aspects of this organization using I think your words are, dysfunctional.

Commissioner Cabrera: I think you need to stop doing that. I think you need to stop doing that because you take that phrase out of context, you took it out of context during the general employees Impasse Hearing, you are taking it out of context today, that needs to stop. We have not had a personal conversation with one another since May 20, 2010, and I doubt you will remember what that conversation was all about because you yourself had said that you don't recall that conversation, many aspects of it. So let me allow you to continue, but when you quote me Mr. Salerno, when you quote me I'm not going to sit for it because you are incorrect sir, and you are taking my comments about the dysfunctional level of this City out of context, and this is now the second time, and as your Manager it is my duty and responsibility to correct you, and that's what I'm doing and with that let me allow you to continue with your excuses.

City Manager Salerno: Commissioner, call it whatever you'd like. You know, you are characterizing now what I'm doing, I'm trying to explain the history that, that particular Code provision hasn't been followed for years, maybe never, that provision maybe never had been followed, and for you to pick on it as an isolated item and say well, the Manager hasn't been following it, I rely on the Chief Procurement Officer to follow that; if you think the Manager is managing the day-to-day operations of the Procurement then frankly I don't think you have a very clear understanding of how municipal government operates.

Mayor Slesnick: Mr. Manager.

City Manager Salerno: May I – and in that regard, Mike would you like to add anything? The point here I'm trying to make is, this is a provision that has, my opinion, never been followed, never been followed in the City, and only now after however many years you've been in office you decide to raise that as an issue....

Mayor Slesnick: Mr. Manager, Mr. Manager....

City Manager Salerno: Yes sir.

Mayor Slesnick: Let's do this. There is no need – you've raised the point that the Code needs to be looked at for revision. Commissioner Cabrera has raised a good point that whether we followed it or not there is a provision in the Code which requires notification of the Commission, and I would presume that our position has to be as well as your position and our position that as long as the Code reads that way we need to be following the Code. It's the law of the City. I was just going to say, I just think we need – Commissioner Cabrera has brought forward a point that we need to follow, if we haven't been following it, then shame on us; and I think he has raised a point that we all could have been caught up in, we could have, each of us could have been caught up in a situation where we could have entered into discussion with possible vendors that were bidding and not known that we were breaching the law; and of course the Cone of Silence has implications far beyond the City of Coral Gables Code. So therefore, I appreciate the fact that you want to look the Code for revision, that's fine, and I'm certainly sympathetic to Commissioner Cabrera's sensitivity to the fact that he was put in an embarrassing situation and the rest of us might have been. So, I just think until we take a look at the Code, and until we take a look at revising the Code that we need to abide by it, it is the Code.

Commissioner Cabrera: But let me just add. I don't know where Mr. Salerno gets off telling people, me and the audience, that this has never been followed. Mr. Salerno wasn't here when Mr. Brown was here or when Ms. Jimenez was here, now Ms. Menendez, when Mr. Eads was here, Mr. Pounds wasn't here that long. I don't recall one time that any of the people that I had

just mentioned had taken the City out to bid for a major contract and we, the City Commission was not notified, and how he can sit here and say that and then to also insinuate that I don't have a clear understanding. You know Mr. Salerno, if one of your employees said that to you privately you would have their heads on a platter, but here you are talking to one of your superiors in a public forum in a matter that is unbecoming of a professional such as yourself. It's no wonder that the ICMA (International City Manager's Association) censured you, it really is, it's no wonder.

Mayor Slesnick: Lets....

City Manager Salerno: Well Mayor, I'm going to respond to that. I was censured Commissioner as you know for nothing at all related to this, I was offered a position to manage the 50th largest city in this country, the 20th largest city that has a Commission-Manager form of government, and for a variety of reasons I turned that position down, that's what I was censured for, you know that.

Commissioner Cabrera: No, you were censured for Tenant 3, which has to do with being dedicated to the highest ideals of honor and integrity in all public and personal relationships.

City Manager Salerno: Well Commissioner, I take exception that you are distorting that situation. You know the facts of that matter....

Commissioner Cabrera: Its public information.

City Manager Salerno:...it is public matter, you can go online and look at the newspaper and read it for yourself.

Mayor Slesnick: Can we stick to...

City Manager Salerno: Let me point out, the reason I know that those documents hadn't gone is because when I got here one of the first things I asked Ms. Menendez was, what things go to the Commission?- how regular?- how often?- – they didn't go to the Commission.

Mayor Slesnick: Let's do this...

City Manager Salerno: You send notices...

Mayor Slesnick: Let's do this. Please. Let's do this. I have acknowledged and unless the Commission wishes to acknowledge something else, that I think that Commission Cabrera has

brought up a valid point about our current Cone of Silence provisions of the Procurement Code. I have also said that I think in my own humble opinion that we should follow our Code, that we should follow the law, and that if we haven't been, then we should do so in the future. I think that the Manager has said that he wants to look at the Code and make revisions to the Code, I think that this Commission has always stood ready, has ever since getting together the five of us, we have reviewed almost every Code in the City, and have almost rewritten every Code in the City, including the Procurement Code. If we did a sad job, then it should be pointed out to us, but I think that's going to be done. I think Commissioner Cabrera has outlined where he intends to go from here, the Manager has outlined where he intends to go from here, and unless there is some other person that thinks that we should move in a different direction.

Commissioner Cabrera: I just wanted you to know that this section of the Code is not unique to Coral Gables.

Mayor Slesnick: I don't think it is.

Commissioner Cabrera: No, I'm just letting you know, this is not unique to our City. So if some applicant for the City Attorney's position found that there was something wrong with the Code and it needed an overhaul, so be it. But I can point out a number of municipalities that adhere to the section as I have read it to you. You can now try to criticize it and say that it is a flawed document and it needs to be overhauled, I'm not saying you said that, I'm not suggesting that for a minute, but the point is this is well documented; this is a document that exists in many municipalities throughout Florida. So I don't get it.

Mayor Slesnick: Well I didn't suggest that this particular portion would be part that we would change even if we changed some portions.

Commissioner Cabrera: I didn't think you did.

Mayor Slesnick: This may be required by...

Commissioner Cabrera: It really is. I had some conversations with the Ethics Commission and I had conversations with other municipal attorneys, and I was lead to believe that this is a standard operating procedure as part of the Cone of Silence, so. Again, if I'm mistaken and it needs to be overhauled so be it, but the point here is it wasn't followed. It's not about who did it, when they did it, when they didn't do it, that's the point of this discussion.

City Manager Salerno: Mayor I've just been brought one item from Mike that I think you should know, the Code is the Code and we're going to follow it. My point in giving you that historical

perspective of another candidate that you chose to consider in your top group is only that she reviewed the Code, I didn't ask her to, she brought it up to me and said, what do you think about it?- because I see it's a problem.

Mayor Slesnick: Listen, that's fine...

City Manager Salerno: I need one more thing Mayor.

Mayor Slesnick: ...But I think that Commissioner Cabrera brings up a good point, that as we criticize the Code in general, we don't know that we are criticizing this particular piece of it, so I wouldn't know what her comments or thoughts were on this piece, and this may be required by higher authority. So I just want to leave it at the fact that we are going to move forward and we are going to look into the Code, and I think as it currently exist our Procurement Director needs to understand that this is what it says, and this is where we are headed.

City Manager Salerno: What Michael just brought to me was, and again the Cone of Silence that the Commissioner was concerned about was going to impact on him, Michael is telling me that the Cone of Silence does not apply to the City Commission.

Commissioner Cabrera: It does.

City Manager Salerno: You are not covered by the Cone of Silence.

Commissioner Cabrera: I am covered by it, yes sir.

Mayor Slesnick: OK. Now wait a minute, before we get into this.

Commissioner Cabrera: I lived through that one.

Mayor Slesnick: Hold on stop, Michael. Before we get into this...

Commissioner Cabrera: But that's the tactic to defend his deficiencies.

Mayor Slesnick:....before we get into this, I will refer this to the City Attorney, wait excuse me, if that is in contention of the Procurement Director, I will ask the City Attorney and the Procurement Director to get together and I will personally hereby ask for an opinion from the City Attorney as to whether or not the Cone of Silence applies to the City Commission. We are not going to have a public debate over a legal issue.

Commissioner Cabrera: No, we are not, but let me just say for the record that this document says the requirement of Section 2-11.1, Cone of Silence Ordinances of the Code of Miami-Dade County, Florida as amended, shall not be applicable to the City of Coral Gables Commission. So maybe Mr. Salerno in all fairness to him, he might have a point, but I was put through...

City Manager Salerno: Commissioner, I agree with you. That is an example of how this Code is confusing. You thought it applied to you; the Procurement Director just told me it does not apply to Commissioners.

Commissioner Cabrera: Sir, I was investigated by the Ethics Commission, maybe it doesn't mean a whole lot to you and the rest of the folks up here, but it was a troubling time for me. I did not enjoy being investigated, my integrity being questioned, and now I'm put in a very, very awkward position that you put me in, nobody else did, you did, you put me in it.

City Manager Salerno: You are in that position as I've been saying for years and...

Mayor Slesnick: The time that you went through that Ralph was a troubling time for all of us because we had asked you as a Commission to be participative in the process, and so we set you up for failure and that's our fault and we are going to ask the City Attorney and the City Manager's office to come up with an interpretation of this, if there is an interpretation that we need to know, I want a thoughtful interpretation not argued about in public. I'd like to have a – I'm sure the citizens would like a thoughtful interpretation too.

Commissioner Cabrera: And I don't mind the interpretation and I didn't ask for one because I thought this was important enough that it be discussed in a public forum and that's the reason why I didn't have a previous conversation with the City Attorney, because I'll tell you what happens, anytime I have conversations with any of the staff members about an item that I'm about to bring to the table there is a questioning process that goes through the City Manager's office to try to figure out what I'm going to talk about on that day. So it's a very uncomfortable situation for me, it's one that you know, I've got my ten year pin, it's been a rollercoaster ride, and in this part of the ride it's not a whole lot of fun because of the secretive nature of the way that business in this City get conducted, the lack of transparency, the lack of openness from the City Manager's office, not from any of you, you've been the best part about this process, but it's just been very unfortunate. And here I am, a boss, I'm one of the managers up here that sets vision for this government and I'm being told and given excuses by one of the people that report to me, it's a very sad situation to be in, but it is what it is. This too shall pass.

City Manager Salerno: Mayor, Mayor, I would have liked you know, the only conversation I had was with the Procurement Director. When I see an item on the agenda that says Procurement

Code, I ask the Procurement Director as anyone would logically, do you know what that is referring to?- and he said, really I don't. That's the discussion that I had with any normal reasonable person would have when you have an item that is as broad as the Procurement Code. Perhaps if I had some more detail and if we are talking about transparency here, an item saying what the item is, we can be prepared at that time to present the item.

Commissioner Cabrera: Madam City Attorney did the City Manager ask you what the Procurement Code item was before this meeting?

Interim City Attorney Alfonsin: Yes.

Commissioner Cabrera: OK.

Mayor Slesnick: OK.

Commissioner Cabrera: Mr. Clerk, did the City Manager ask you what the item on Procurement Code was prior to this meeting?

City Clerk Foeman: No.

Commissioner Cabrera: OK. So, one out of two.

Mayor Slesnick: OK. Listen, we are going to come back with an interpretation of the current Code as it applies to us, that's number one; number two, Mr. Cabrera has outlined his actions that he is taking to, he believes, protects himself and position in this whole item; and number three, the Manager has said that he is looking at the City Procurement Code for future revision. I've been asked by two Commissioners that if we can take a five minute break, and we'll be back in five minutes.

[End: 10:25:32 a.m.]