

**City of Coral Gables City Commission Meeting
Agenda Item F-13
May 30, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

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

City Staff

**City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia
Deputy City Attorney, Miriam Ramos**

Public Speaker(s)

Agenda Item F-13 [11:56:14 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida, amending the Code of the City of Coral Gables, Florida by repealing Article IX, entitled “Nuisance Abatement” of Chapter 34 “Nuisances,” to create a process by which the City can address public nuisances in the City of Coral Gables; providing for a repealer provision; severability clause, codification and providing for an effective date. (Sponsored by Vice Mayor Keon)

Mayor Valdes-Fauli: Next if F-13.

City Attorney Leen: So Mr. Mayor, F-13 is an Ordinance of the City Commission of Coral Gables, Florida, amending the Code of the City of Coral Gables, Florida by repealing Article IX, entitled “Nuisance Abatement” of Chapter 34 “Nuisances,” to create a process by which the City can address public nuisances in the City of Coral Gables; providing for a repealer provision; severability clause, codification and providing for an effective date. This is sponsored by Vice Mayor Keon. Before we begin, I wanted to hand out to you just an amended; I provided this to

you by e-mail. The amendments to the Nuisance Abatement Ordinance were to expand it a little bit beyond its scope. This was based initially on the Miami Nuisance Abatement Ordinance, Director Fernandez had suggested that the Nuisance Abatement Board was very effective at addressing situations where there may or may not be a violation of a City Code provision, but there could be a violation of state law or some other harm that was being caused, and it gives the Nuisance Abatement Board the ability to issue orders for that property owner or to the individuals that are residing in that nuisance property to abate the nuisance. So, I believe it was very useful. What the amendment does is essentially broadens the ordinance that I provided to you, two additional issues that could come up, including one which may come up at the next meeting, which is, we don't have to talk about it today, but there is an issue related to parking on Ponce, what's the address again?- 760 Ponce. So, that will be coming before you next time, but this is the type of ordinance that can address those situations where they may not be a violation of the Zoning Code or the City Code, because there may not be a parking requirement for a certain property, but nevertheless they may be causing an impact on the community through the use that is at that particular property that those impacts will create an externality, a harm, to the surrounding properties that can be addressed as a public nuisance, so this will allow the Nuisance Abatement Board to address those sorts of issues. In addition, we expanded to make sure that the City Manager can refer matters to the Nuisance Abatement Board, the City Commission, the City Commissioners can, City Attorney, so there is a little bit of broadening there; and finally, we also added a little bit of language and allowed for prosecutorial discretion, the ability to settle matters, and immunity. Because, whenever you take action related to nuisance abatement that is a police power action that's protected by sovereign immunity, wanted to make sure that we incorporated that into the ordinance. I think this would be a very useful ordinance. I would ask Miriam Ramos who drafted it to come up and speak on it.

Mayor Valdes-Fauli: Vice Mayor Keon.

Vice Mayor Keon: Thank you. There are a number of issues that we find arise in neighborhoods for different reasons that don't always rise to the level of a real code violation, but create some real disagreement maybe between neighbors over different issues; and we have a dispute resolution process also, but sometimes when we are looking at this and know that it does not meet the exact requirements of a code violation, but yet it is creating problems, it gives us an opportunity to have a forum that this can be discussed in some..., and hopefully a resolution to those issues within the neighborhood, so you don't have this ongoing contention between neighbors, either one neighbor or another neighbor, a neighbor and a business or whatever else. You know it seems when I first wrote it, there were items in here about drugs and a bunch of other things that whatever, but Miriam will explain it and it actually tracts state law, so it sounds much broader than what our intent was, but to do our intent it is better to have it written in this manner.

Deputy City Attorney Ramos: That's correct Vice Mayor. Good morning everyone. There is a statute on point, as far as nuisance abatement and the ordinance essentially tracts the statute, that's why it's so specific as to the different items that it states. However, as the City Attorney said, we amended it to make it much broader. If you look at H, I, J, and K, basically it explains how broad this ordinance is. It incorporates anything that's detrimental to health, or which threatens danger to persons or property within the City. It incorporates anything that annoys or disturbs another in a free use possession or enjoyment of their property, and it incorporates offensive or nauseous by reason of emission of odors, gasses, dust, smoke, vibration and noise, or which constitutes an eyesore or nuisance to adjacent property owners. As you can see, in those three we incorporate a large amount of concerns that may have come up in the past and I think it's relevant to this discussion we've been having about that particular property. The rest of the ordinance basically tracks what the process will be. The Code Enforcement Board can serve as a Nuisance Abatement Board and will for the most part; they will not be a Nuisance Abatement Board that is separate. It will either be the Code Enforcement Board or the City Commission. And, the rest of the process is very similar to Code Enforcement processes in the way that complaints are put forth, the appeals process, the quasi-judicial hearing that occurs before either Board. If you have any further questions, I'm happy to answer.

City Attorney Leen: And, if I could add one thing. One interesting thing about the ordinance as the City Prosecutor mentioned is that it allows the Commission at its own election to serve as the Nuisance Abatement Board. In some sense it's like the old town counsel where there's an issue that comes up that needs to be addressed in the City, you will have the full power to be able to address it, it is based on the common law nuisance. Even before we had zoning codes, I teach this to my students as well for local government law, the ability to address nuisances is a core power of a City or a government, its part of the police power. So, I think that this ordinance will basically perfect all the other ordinances we've been adopting, the lead to this which will allow you now to address situations where they may not be a violation to the Code, but where there is a severe harm. Now it will still be a quasi-judicial hearing, you are not just going to say, Oh, we are concerned about this house and issue some orders to that house, you will have a quasi-judicial hearing, people will be noticed, they will come here and will allow you to resolve that dispute in front of the Commission, you'll make findings, and then you'll issue the order based on those findings. So, there is full due process provided, it protects property rights; it's a very useful ordinance.

Vice Mayor Keon: Thank you. But generally, it will go to the Code Enforcement Board unless requested by the Commission to be heard by the Commission.

Deputy City Attorney Ramos: That's correct –, and it provides for compliance to be requirements of compliance, as well as \$500 per day as far as a fine.

Vice Mayor Keon: OK. The other thing I really like about this is, so often there will be an issue within a neighborhood or we'll hear it over and over, and then we pass a resolution to deal with this one little specific thing that maybe only happened in this neighborhood, whatever, among these people and we start creating policies that are so specific to items that I think by having a Nuisance Abatement Board instead of going that route and creating all these little tiny things, we just identify it as a nuisance and deal with it as a nuisance, and allow it to move forward, so that the Code is not cluttered with, you know filled with little tiny items.

Mayor Valdes-Fauli: Very good suggestion, thank you Vice Mayor. Do I need a motion?

City Attorney Leen: It's a public hearing, public hearing sir.

Mayor Valdes-Fauli: Public hearing, is there anybody?

City Clerk Foeman: No.

Commissioner Lago: So moved.

Mayor Valdes-Fauli: Commissioner Lago moves, second?- second Commissioner Quesada. Will you call the roll please?

Vice Mayor Keon: Yes

Commissioner Lago: Yes

Commissioner Mena: Yes

Commissioner Quesada: Yes

Mayor Valdes-Fauli: Yes

(Vote: 5-0)

[End: 12:04:15 p.m.]