

City of Coral Gables City Commission Meeting
Agenda Item E-4
December 6, 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
Assistant City Manager, Peter Iglesias

Public Speaker(s)

Agenda Item E-4 [11:46:12 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida, amending Section 105-26 of the City of Coral Gables Code to prohibit all exterior construction on Saturdays (Along with Sundays and Holidays) in residential zones or within 100 feet of residential zones, providing for a repealer provision, severability clause, codification, enforceability and providing for an effective date. (Sponsored by Commissioner Lago).

Mayor Cason: E-4 also on Second Reading.

City Attorney Leen: Mr. Mayor Item E-4 is An Ordinance of the City Commission of Coral Gables, Florida, amending Section 105-26 of the City of Coral Gables Code to prohibit all exterior construction on Saturdays (Along with Sundays and Holidays) in residential zones or within 100 feet of residential zones, providing for a repealer provision, severability clause, codification, enforceability and providing for an effective date. This matter is sponsored by

Commissioner Lago. In addition, it's on Second Reading and it's a public hearing item. There has been a change, which has been provided to you. It's very similar to the one for E-1, same situation. There are now restrictions on construction on Saturdays, exterior construction at all times, but it does allow for interior construction, pardon me, there are limitations on the exterior construction on Saturdays. Anyway, the issue is there was a concern that when you have very large properties that there may be exterior construction on Saturdays that won't affect residential areas or things like that, because it may be far away within the property from a residential zone. So the same sort of language has been added to essentially address that situation and to make sure that that sort of construction can continue. In addition, there is very specific language allowing an exception to be made by the City in situations. In fact, the situation is it actually applies directly; there is an emergency that occurs. A property owner can address that situation and then what they are supposed to do is alert the City, so essentially the Building Official or the Development Services Director regarding the emergency repairs that they've addressed, then it's a form of ratification. Those are the changes that have been made between First and Second Reading, but these additional changes were made and were sent to you by e-mail and I know that the Building Official is here in case you have any...

Mayor Cason: Yes. I got an e-mail and I think we all got one this morning in terms of homeowners that do construction that doesn't make noise, in other words if you are laying a paver, if you are doing something that's minor exterior, even minor exterior – it was a very thoughtful, I thought e-mail that pointed out some, perhaps some exceptions we could make, because this sort of says that construction produces significant noise. Well the question is what about minor construction done by a homeowner on a weekend that doesn't cause any noise and we've exempted painting, but if you are putting a paver down. Also we don't have a definition of construction here. So what about if you black top, you go to Home Depot and get that black top. In other words, there are certain things that don't produce noise that homeowners that work all week, how do we handle that?

Commissioner Lago: If I may Mayor. I think this is a two-step answer. Number one, the reason why I came up with this ordinance and I told you before it's about the neighborhoods in trying to calm down the neighborhoods a little bit just because of the intense activity that's been going on in reference to people remodeling their homes. So what I want to do is, not only is it about noise, but it's also about the amount of people that are coming into neighborhoods. For example, you may have ten cars parked in front of a home while they are building an addition. So those ten cars also are a nuisance, because you have ten people coming in and out, it's a problem. I don't have an issue at all allowing residents who are going to perform construction themselves on a Saturday, they are going to paint, they may fix a paver that is broken that doesn't make any noise by fixing it. The purpose of this ordinance is to really stop commercial residential construction.

Mayor Cason: How do we tweak this?

Commissioner Lago: Where you have 30 individuals laying block or pouring concrete on a Saturday, you have five days during the week to do that type of work. So what I want to try and do is, interior construction we'll allow, it's not a problem, you are making noise and it's not being heard outside of the four walls of your residence. What we can try to do is tweak it and I trust staff's ability to tweak it. We are going to approve it today if my colleagues deem so, but we can move in a direction where we allow homeowners, homeowners, that doesn't mean a homeowner will hire a construction company as owner-builder. A homeowner can go and paint his house, fix a window that may need to be re-caulked, or like you said, do some black top, or work, or fix a paver that may be broken, things that do not make noise. But what I want to try to do is the exterior contractors out of the neighborhoods on Saturdays.

Assistant City Manager Iglesias: We can exempt owner-builders, which would be the homeowner himself; however, the owner-builder can legally hire as a subcontractor a licensed contractor to do the work.

Mayor Cason: This should be homeowners – this should be Fred who goes out and he bought a new door and he wants to put it on and he wants to put some tile by the swimming pool.

Commissioner Lago: And if I may Mayor, I'm sorry to interrupt you. I'm going against my own profession here, OK. I'm in the design and construction industry so I want to make sure that people are aware that I'm going against, and I've gotten a lot of flak from industry professionals who have called me and told me, Vince, why are you doing this?- because again, it goes back to what I think this Commission as-a-whole and what I've seen is in favor of, and that is returning some civility, quietness to the neighborhoods, about quality of life. So, if staff can figure out a way to meet, I think we all got that e-mail, to meet those concerns, which are just, which I think we shouldn't punish residential owners of homes who want to do minor work on the exterior.

Assistant City Manager Iglesias: We can exempt owner-builders when they are doing the work themselves.

Mayor Cason: That's the point.

City Manager Swanson-Rivenbark: Peter hold on one second, just with respect. We did not get the e-mail you did. We are glad that you did. I would like the authority to develop some appropriate exceptions, but I wouldn't want to propose right now what those exceptions are. We absolutely understand your intent; you want peace and tranquility in the neighborhood, so if you

would give us the authority to develop appropriate exemptions and then we can follow up with you by memo.

Commissioner Lago: And if I may say one last thing Mayor. We need to do an intensive educational campaign. Every single contractor that comes into the City or every single e-mail that we have they should be made aware with the sign. Every time a permit is signed for residential work there has to be a statement that says, the following construction will not be allowed on Saturdays – exterior construction, they know what it is.

City Manager Swanson-Rivenbark: We can stamp it and condition a permit on that.

Commissioner Lago: And there has to be some ramifications for entities that are working on Saturdays and not following the rules. Maybe we can have a grace period of a few months, but I want to make it very clear.

City Attorney Leen: Mr. Mayor, I'm looking at the item that was circulated and there is language right now which we could tweak a little bit to address what was just raised by the City Manager. It says right now that the City Manager may issue special permits for exterior construction on Saturdays within 100 feet of residential zones on Sundays and holidays for specific projects as necessary. City Manager may also allow for exterior construction on Saturdays and residential zones for emergency situations and in exceptional circumstances and it provides a list of those. I think that already gives you the authority to do that, but we could also add exemptions to that. So the City Manager may – it could say the City Manager may provide for exemptions and issue special permits, and so that would give you that authority.

Mayor Cason: But I wouldn't want to have the homeowner who goes out to do something and have to get a permit and get cited for not having a permit...

City Attorney Leen: Mr. Mayor the exemption would be established by a policy of the City, so that would be – she would adopt that through her implementation authority under the Zoning Code. So there would be some things where you probably would want people to come to you and there may be other things that are just clearly every time you can do it. Perhaps the owner-builder situation and you can just establish that in a rule.

Assistant City Manager Iglesias: You can Mr. City Attorney, but I would like to do as the Manager said, give more time to address the...

City Attorney Leen: Of course, you don't have to do it today. I'm just saying we could add the word that you can establish exemptions. The other two points that I wanted to make is

construction, although not defined, there is a doctrine called Eiusdem Generis what that is, is when you have a list of words that's what it means. So construction here, we have a list of words – pile driving operations, demolition, excavations, concrete pours, etc. So this is talking about significant construction and I believe it would be interpreted that way and I don't think the intent is to address these smaller things. We have the person who oversees Code Enforcement right here, so I know that he could tell them that. The last thing I wanted to make – I just want to read into the record, we did include a sentence that says, notwithstanding if we are going, emergency repairs affecting life and/or safety on Saturdays, Sundays or Holidays, shall be permitted in accordance with the requirements of the current Florida Building Code.

Mayor Cason: So that takes care of hurricane damages and so on.

City Attorney Leen: Yes.

Commissioner Lago: And that's critical. If there is a gas line that breaks, for example, you know I live right across the street from the University of Miami, if there is a gas line that breaks the last thing you want to do is endanger any of the students that are there or endanger any of the teachers and faculty and staff. There has to be a little bit of wiggle room to make sure that our partners are not hurt.

Assistant City Manager Iglesias: The Florida Building Code, which is the state statute, considers emergency work and we would look at the emergency work per the Florida Building Code.

Mayor Cason: OK. Do we have any speaker cards on this one?

City Clerk Foeman: No Mr. Mayor.

Mayor Cason: Close the public hearing. Anymore discussion?

Commissioner Keon: Yes. I know that the intent and the desire are to bring peace and tranquility to the neighborhoods, but I think we can do that without being as restrictive and regulating to the extent that we are. I think it's a bit of over regulation. What does evacuations mean?-excavations, I'm sorry, what's excavations?

Assistant City Manager Iglesias: Excavations mean digging in the ground.

Commissioner Keon: Digging into the ground. So it would be like digging....

Assistant City Manager Iglesias: Be like backhoe digging.

Commissioner Keon: Right – digging footings.

Assistant City Manager Iglesias: Footings, foundations.

Commissioner Keon: Planting trees?

Mayor Cason: Bulldozers.

Assistant City Manager Iglesias: Any time of excavation which would have heavy equipment.

Commissioner Keon: I think that and we already have a ban on Sunday and we should ban all of this work on Sunday. I think Saturday is often a weekday, I mean people don't work Monday through Friday. I worked for years as a nurse, I have to tell you, I don't work every other weekend and there are lots of people that work weekends and there are people that are on call that work weekends and whatever else, so it's hard to sort of establish what day of the week is somebody's day of rest, so traditionally on the weekends it is. But I also think that you have homeowners, you know, and it's a shame, because I am being – and thinking too a lot of the spec homes and those things that are being built and don't have as much sympathy to that, as to a resident that's coming home – a potential resident that is building their home in the City or is someone that is remodeling their home. You know by not allowing them to work on Saturdays you are taking about 50 days out of the year out of their ability to work, and I think for the most part, you know time is money. I think they want to try and get through the construction as quickly as they can. I think contractors, to keep a contractor on your job and coming to your site and having a crew available to work on that site they need to work as many consecutive days as they can. I think there are some things we can prohibit on Saturdays. I think we can prohibit demolition; we can prohibit pile driving, things that make extraordinary amounts of noise or create extraordinary amounts of dust or dirt. I think we can do those things, but all of the other, there are too many types of things that people could do and if you don't spell it out it's not in here and then you have a neighbor calling Code Enforcement, because they don't like the neighbor. I think it's far more regulation than we really need. You can prohibit the types of extraordinary construction activities that are terribly disruptive on a Saturday and we can limit the hours of construction on Saturday. We can tell you, you can't start before 9 (a.m.), you have to finish by 5 (p.m.), or you have to finish by 4 (p.m.), so that you don't have heavy equipment at 7 o'clock in the morning driving up and down your street or banging next to you. But I think to exclude it, I think it makes it – it's a burden on the individual that is remodeling or building their home. I think it is a burden on the contractor that is attempting to get through a project, and I think a lot of days, particularly this time of year, I think people are trying to get things done before the holidays and so they are working harder, they are working more; and I think we

should really look at and set out periods where we don't have demolition and it could be. I know I've had people talk about the period from right before the Christmas Holiday to New Year's, that week when people are home and people are around, whatever, but you know, we also have all holidays are not just Christian holidays, you know we have the Jewish community that we need to consider what their holidays are, and there are other people within the community whose holidays need to be equally as respected if we are going to look at it in terms of holiday time. I notice the University of Miami is here and was wondering why you are here, and I'm assuming this is why you are here. On the University of Miami and a campus as large as it is, they have periods of time, particularly during the summer when their students are not on campus that they need to get things done. I think they need to be respectful and you can work with them on what they are going to do, but the likelihood that they are building and they are trying to build and get things done in the summer when people, not so many people are on campus, they need to be allowed to do that. Do it respectfully and we can talk about that, but I think that this prohibition is just a little more regulation than I really think is necessary in order to do what we want to do. So there are some things I think absolutely you can prohibit and I think you can regulate hours on Saturdays to make it more livable, but the way it's written I couldn't support it for all of the reasons I just discussed, but I understand, but I certainly understand why.

Commissioner Lago: We get along so well, because I respect every single comment you make. Let me give you a few examples of a few things that have happened recently in my neighborhood. I get a phone call from neighbor about two blocks away saying, Vince is there anything we can do, by the way 9 to 5 is currently the timeframe for construction.

Commissioner Keon: They can't assemble before 9 o'clock?

City Manager Swanson-Rivenbark: That's for weekend but for weekdays.

Commissioner Keon: No, I'm talking about weekends. I'm talking about Saturday.

Commissioner Lago: 9 to 5. At 9 o'clock in the morning certain people who work Monday through Friday want to have a little peace and tranquility on Saturday. They were nailing down a roof next to this person's home and you know how it works with a roof, they use a nail gun, which is by pressure, so the amount of noise for probably four or five hours was unbearable. I have two young children and I pray that on Saturdays I get to sleep in a little bit. It never happens, they are always up at 6:30 in the morning anyway, but it is what it is. Maybe the Vice Mayor will tell you, I think he has the same situation – right?

Commissioner Keon: I assure you they grow up.

Commissioner Lago: And then you don't want them to leave. And I agree with the Commissioner on many points. The point of this ordinance is to incorporate some of the issues that we heard from that resident in reference to residents doing their own exterior work, painting like we talked about, but I have big issues with doing roof work on a Saturday, I have big issues with concrete trucks and now since our lots in our City; our City is designed in a certain way that every single time there has to be a concrete pour in the City they have to get a pump. The pump has a hose and they pour walls, so you have holes all over the sidewalk, you have a concrete truck, you have a concrete pump, you have people obviously forming, a lot more noise. My point is that I don't have an issue modifying the ordinance and if you want to limit certain construction and allow certain construction to happen, maybe commercial painting on the exterior, I'm flexible, but I think issues like concrete work, issues like roof work should be limited, should not be allowed on Saturday mornings.

Mayor Cason: I think the essence of it is noise-making construction. The ways you could do it, you could put a decimal level in, but basically it's pretty clear the kinds of things; you've excluded homeowners themselves doing things, not contractors, but you've got to remember there are an awful lot of people that when it comes to the weekend they want to rest, they want to sleep and they don't want to hear boom, boom, bang. So if there is a way to write this to put noise-making construction.

Commissioner Keon: You know to me there are not bright lines in this ordinance. I would like ordinances that have bright lines, or much brighter lines than exist here.

Mayor Cason: Craig can you think of a fix for this that would get to the essence of this?

City Attorney Leen: Well one thing, I did want to mention that we also are including a prohibition on any music or programming that is plainly audible at 100 feet from a construction site that can no longer be allowed, and that was something that you had raised Commissioner. So I think that when you look at this as-a-whole, we use the 100 feet as you probably all remember, our noise ordinance uses the plainly audible standard. Certain times when you look at decibel levels, but generally it uses the plainly audible standard at 100 feet, so that may be a good way to address this. I'm neutral obviously as to the item itself, but in terms of the way it's written, I do think that providing a list such as pile driving operations, demolition, excavations, concrete pours, etc., the Commission's intent is clearly...

Commissioner Keon: What is etcetera?- that bothers me.

City Attorney Leen: You can take out etcetera and say such as pile driving operations, demolition, but the thing is that's not a complete list either. The idea is that it should be things similar to that.

Commissioner Lago: Like roof work, like for example, if you are framing, you are framing prior to a pour; you are dealing with wood, you are dealing with thousands of nails that is again, you are preparing for a pour on a Monday or a Tuesday.

City Attorney Leen: Or I could just say construction that creates noise that is plainly audible at more than 100 feet.

Mayor Cason: That's the way to get it.

City Attorney Leen: Which is similar to our noise ordinance. You could also grant exemptions, the City Manager as she believes is appropriate.

Commissioner Slesnick: Commissioner Lago would you like a time period, would that help?- if you are pouring concrete its more than an hour or two. I pressure clean my driveway on Saturday mornings.

Commissioner Lago: That's perfectly fine, so do I. The issue with concrete is that there is already a timeframe from the moment its mixed and it travels to your house and it has to be used, if not...

Mayor Cason: Because this is construction not maintenance.

Commissioner Lago: You have to order a pour. I think that we should head in the direction....

Commissioner Slesnick: Major construction.

Commissioner Lago: Yes, which will be a hybrid of what Commissioner Keon just stated and I think what we all agreed on is, let's make a list of ten items, for example, roof work there should be no roof work allowed on a Saturday; there should be no block work; there should be no concrete work; there should be no framing in the residential neighborhoods; there should be no bulldozers, massive landscaping work. Instead of doing it with a small company, a landscaper, or yourself, you have a Bobcat or a bulldozer making a ton of noise in the neighborhood.

Mayor Cason: Suggestion – why don't we....

Commissioner Keon: You have done a very good job when you did the permitting, you know items in the permitting ordinances that you sponsored; you did an excellent job in meeting with the people that were involved to...

Commissioner Lago: Mark takes a lot of credit for that too – Trowbridge.

Commissioner Keon: But you did a great job in meeting with people and coming to consensus where we are. I think maybe if you along with Mr. Iglesias, you can meet with, I don't know, there is a handful of contractors and go through and say to them, you know what are the kinds of things, what can you do, what can't you do. I know a lot of times the issue with a pour is you have to wait until you get the inspection on the footings and everything else then you can order the pour. So a lot of times it's like just get this thing poured, you know so you can move on with the thing, so that's why on a Saturday morning it's a pour it takes two hours.

Mayor Cason: But also have the truck backing up going beep, beep, beep, beep, it's all related to the...

Commissioner Keon: Saturday generally for not in the Jewish community, in the non-Jewish community, Saturday tends to be a work day – people work on their homes, people work in their yards, they work, that's why I think it's a difficult think. So I'd only ask that you would, you can do whatever you want, it's yours.

Commissioner Lago: But it's not my ordinance, it's our ordinance. I'm going to heed your advice as always and what I'm going to do is I'm going to defer, if you don't mind, let's get together and let's get a delineated list of items which will encompass what exterior construction is.

City Manager Swanson-Rivenbark: Commissioner Lago rather than defer would you be willing to continue to the January 10th meeting and that would give us ample time to meet and resolve those issues, proffer the changes and we would not have to readvertise.

Commissioner Lago: Certainly.

Commissioner Keon: Do we also in our newsletter that we send out, could we maybe include an item in our newsletter about we are looking at the holidays are coming, we want you to enjoy – however you would frame it, but to ask for resident input on this and then you could direct it to Mr. Iglesias or whoever, you will decide who you want to direct it to...

Assistant City Manager Iglesias: Mr. Mayor, Commissioners, I think I have a good idea of what you are looking for.

City Attorney Leen: Mr. Mayor one point then, just so the university doesn't have to come back. The point that they are here on which is the 100 feet from a construction site, as opposed to an entire property, is the Commission generally OK with that?

Mayor Cason: Yes. Yes.

City Attorney Leen: I thought that you would be.

Mayor Cason: That won't be an issue, so do we need to take a vote on the continuation?

City Attorney Leen: Yes, there should be a motion.

Commissioner Lago: So moved.

Vice Mayor Quesada: Second.

Mayor Cason: Commissioner Lago makes the motion, the Vice Mayor seconds to continue this till the next meeting in January. City Clerk

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

Commissioner Lago: Thank you. Thank you for all your input.

Commissioner Slesnick: Just a note of clarification since UM is here. UM's not zoned residential, so if UM wanted to do major construction in the middle of their campus on Saturdays there's no problem.

City Attorney Leen: The concern was that because they were within 100 feet in one part of their campus to a residential area, if it applied to their entire property then it would apply to the entire campus which is not the intent of this ordinance and that would not be fair.

Commissioner Lago: For example, I live 100 feet from the University of Miami in certain buildings...

Commissioner Slesnick: So don't do it near Commissioner Lago.

Assistant City Manager Iglesias: Commissioner, we will be looking at the site plan to determine what that site plan is and that would be the boundaries of that construction site instead of the actual perimeter of the university, so it's a quasi-property line.

Mayor Cason: OK – great.

[End: 12:10:56 p.m.]