

City of Coral Gables City Commission Meeting
Agenda Item F-2
January 22, 2008
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Slesnick 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, David Brown
City Attorney, Elizabeth Hernandez
City Clerk, Walter J. Foeman
City Clerk Staff, Billy Urquia
Police Chief Hammerschmidt

Public Speaker(s)

Fernanda Wanderley, Coral Gables Resident

F-2 [Start: 10:31:02 a.m.]

Discussion regarding special events adjacent to 10 Aragon Avenue
Mayor Donald D. Slesnick, II

Mayor Slesnick: Item F-2 – I don't know if the other Commissioners have received complaints along the way, but I continue to get a stream of complaints from the residents of 10 Aragon about the noise issues that occur when there are outside activities at the bordering restaurant, and the fact of the matter is that the issues are not so much the noise, but how late they continue, and how long they go, and whether or not we are enforcing our noise ordinance, and these have continued, and continued, and continued, and I thought that it would be good to go ahead and publicly air this issue. We have Fernanda Wanderley from 10 Aragon Avenue, Fernanda.

Ms. Wanderley: Hi, good morning. I'm here representing not only myself, but the one hundred and eighty-four (184) residents of 10 Aragon. This issue has been going on since we moved to the building two years ago. They've been selling alcohol after hours, after last call; people are outside up until 4:00 a.m. drunk, and screaming, and shouting; not only that but there is this noise coming from the live band every Friday, it stays up until late at night; but the greatest issue here, I think, there is not any help from the Police Department; there is no enforcement being done; as a matter of fact last Friday we called to complain at two in the morning because there were drunk people outside. I saw – they were selling alcohol again after hours; and I called the Police and the officers Basir Blondstien Smith told me that they had all the right to be doing this. So I would like to get some resolution from the City of Coral Gables; I know that we have exchanged e-mails for a while right now; and I see that nothing has been done so far. I know

that's its also a matter of the City has been issuing permits for them to do festivals and keep on doing what they are doing, and I'd like to know what you guys have to say about this.

Mayor Slesnick: I know that I have been getting e-mails from your condo association, and you're a part of that condo association...

Ms. Wanderley: Yes.

Mayor Slesnick: OK.

Commissioner Cabrera: But I'm not sure what her question is to us. I don't recollect any special permits being approved.

Mayor Slesnick: We did the Jazz Festival, Octoberfest.

City Manager Brown: When they do Octoberfest or the Jazz Festival, they will go to special events and get permission to utilize the courtyard or move alcohol around on that premise.

Commissioner Cabrera: Then let's establish some guidelines; the reality is that the noise is not going to go away; this is smack in the middle of concrete jungle, and the acoustics in the area are very, very loud; my office happens to be right around the corner from it and I hear it. So this problem is not going to be going away anytime soon. Surely when you moved into 10 Aragon, you must have realized that you were moving into a downtown area with bustling, hustling restaurants, and retailers, and traffic.

Ms. Wanderley: Yes, but isn't there a Code; isn't there a time that they should end? Are they allowed to do whatever they want?

Commissioner Cabrera: Excuse me, excuse me, let me answer you. We need to abide by our Zoning Code, and if we are not doing our job then shame on us; we need to fix that problem.

Ms. Wanderley: Exactly.

Commissioner Cabrera: But the reality is you will still continue to get lots of noise, lots of drunks in the immediate area, people that will be attending events there and recreating for whatever reason they choose to do so; for the problem to be eradicated I think, that what we can do is begin by enforcing our Zoning Code and any other regulation that we may not be enforcing, Mr. Manager.

City Manager Brown: This Commission brought this issue to my attention several months ago, and I brought together a group of people from Code Enforcement, Police, and Fire and we actually went out and sat on, not just this restaurant in question, but many restaurants to make sure that the Zoning Code was being adhered to; and Chief Hammerschmidt is here, and he is prepared to tell the Commission, since we are publicly airing it, exactly what we've done with the Fritz and Franz issue, Mr. Mayor...

Mayor Slesnick: David, week after week when I hear complaints about after hours selling of liquor, and after hours music, and after hours this, and after hours that, I mean, we either have as Commissioner Cabrera said, a Code or we don't, and we need to enforce the Code, and someone needs to...

Commissioner Withers: What is, what is the Code?

City Manager Brown: 2:00 a.m.

Commissioner Withers: 2:00 a.m. for liquor and music?

City Manager Brown: Yes – liquor and music.

Commissioner Withers: Every night of the week?

City Manager Brown: No, no – liquor is 2:00 a.m., music is midnight, Fridays and Saturdays and 11:00 a.m. Sundays.

Ms. Wanderley: I was told eleven (11); I was told by a Code Enforcement officer it was eleven (11).

Commissioner Withers: Eleven (11)?

Ms. Wanderley: Yes.

City Manager Brown: That's not true.

Commissioner Anderson: Certain days, right? I think there are some days that it's early and some days that it's later.

Mayor Slesnick: Well we can figure that out.

Commissioner Cabrera: Chip, that's a great question...

City Manager Brown: Can we bring up Chief Hammerschmidt?

Commissioner Withers: Let's find out what it is.

City Manager Brown: Chief Hammerschmidt. I want the Chief to know...

Mayor Slesnick: David, before we get to the Chief, I'm asking you a question, I'd like to know for the citizens who can they call to get effective service?- I mean, it sounds like every complaint I've gotten, and this is not an attack on the department, but it sounds like the Police probably give the answer that I would expect them, that they are not that interested in closing down bars, they are more interested in crime fighting; so may be if we are going to be licensing and having

downtown events we need to have Code Enforcement officers that are contactable that people can call, and who have a concern with this.

City Manager Brown: This lady in those after hours should be contacting 442-1600.

Mayor Slesnick: Well David, I have contacted 442-1600, and I've tried to ask for Code Enforcement and they don't...

City Manager Brown: Code Enforcement is not on, Mr. Mayor; the Police are those people who are supposed to assist the resident.

Ms. Wanderley: But the Police don't care. Like I told you, I have the name of the Officers that told me that these people have to right to be screaming, and shout, and drunk in the middle of the street at 2:30 a.m. in the morning.

Chief Hammerschmidt: If I may? We've responded to over twenty requests at this location. Every single time that we've gone with the exception of a couple of the first initial ones, in which we had to contact the owners, nothing but nothing was being done that violated the Code; they are allowed to operate and sell liquor until 2:00 a.m. in the morning. What you have and what our officers have found is people sitting outside eating, conversing, laughing, joking, and as the Commissioner alluded to, this noise carries. We have not found them violating Code on any of our occasions, except those first couple of times. Just as an example, from last weekend, what we do now, every Friday and Saturday night between 1:30 a.m. and 2:00 a.m., a supervisor is required to go and be there until they close to ensure that they are following the Code. Last weekend Lieutenant Claughton was there, Saturday morning at 1:14 a.m.; we just had a call here to a complaint regarding a loud party. We found no music and only a small group of people eating at an outside table talking. There was nothing that even closely amounted to a noise violation, and this is what we found.

Ms. Wanderley: That is your word against mine sir.

Chief Hammerschmidt: The ordinance allows them to operate until 2:00 a.m....

Mayor Slesnick: Maybe what we should look at is if we have a noise ordinance then its twelve; maybe we should look at closing outside tables at twelve, too.

Ms. Wanderley: That would be really appreciated.

Mayor Slesnick: I mean, maybe we should stop service outside, we can't stop people from loitering outside, I mean.

Commissioner Cabrera: I can't support that.

Commissioner Anderson: I can't support that either, that's part of the downtown experience. What we can do is...

Mayor Slesnick: Well past midnight – part of a downtown experience past midnight, I don't know that that's something that we guarantee people.

Commissioner Anderson: It is.

Ms. Wanderley: I don't agree with that; I don't agree with that at all.

Commissioner Anderson: I don't believe that people should – we should abide by our Codes, absolutely, but as far as... there has to be a balance, I mean, these are businesses that are allowed to operate within certain parameters; it shouldn't go beyond those parameters. But I wouldn't support that; I support upholding our Codes.

Mayor Slesnick: Why would you need to have outside activity till 2:00 o'clock in the morning?

Commissioner Anderson: Because that's part of a downtown experience.

Mayor Slesnick: What downtown experience do we guarantee till 2:00 in the morning?

Commissioner Cabrera: Well many other communities guarantee those...

Commissioner Anderson: Other communities that have a vibrant downtown.

Commissioner Cabrera: ...those kinds of downtown experiences, and if we want to continue attract a younger group of adults, then to eliminate it to midnight this place will be a ghost town.

Mayor Slesnick: No, no, no, I didn't say eliminate activity; I said outside table service.

Commissioner Cabrera: OK, outside tables – it would become literally a ghost town for many – Hey Don listen, this is just philosophically a disagreement...

Commissioner Anderson: Yes, just philosophically.

Commissioner Cabrera:...and the bottom line is as much as she's upset and as much as her homeowners association is upset, they decided to move into a bustling downtown area that's inviting residential locations like her building, and if you can't accept that then maybe, and if we can't adhere to our Zoning Code then shame on us, OK, and I mean that sincerely.

City Manager Brown: We have an officer at Fritz and Franz every Friday and every Saturday night.

Commissioner Anderson: Maybe we can also do some outreach to the condo association; explain what the rules are and what we found and some objective data that we found, and see if we can work, I mean, through some of the things that have happened.

Chief Hammerschmidt: We'd be glad to get with – especially with crime watch; you get crime watch and we can put together a meeting.

Commissioner Anderson: Sure – I think it would be goodwill to explain what the rules and regulations are, and what you have done, and what you might do that you haven't done, you know, if there are errors that have been made, then maybe you can work those things out as well. I do agree with Commissioner Cabrera when unfortunately – I live in an area that's right under construction all the time, so I have to live with all the construction, and unfortunately in a downtown the good thing is that you are in a beautiful building, but the downtown reality is that you have – that's even going to increase as more buildings come online, you are going to find that more and more, and what we're going to have to do as a government is try to do more outreach through our crime watch, through our Police and Fire to explain what the rules are and to enforce them when they are violated.

Commissioner Cabrera: Wait till 55 Merrick Way, wait till that's up.

Commissioner Anderson: Yes, there are more coming your way, that's not going to stop, and I'm not being...I'm all for abiding by the rules, but you live in the downtown.

Ms. Wanderley: Well, I know, but the rules are not...

Commissioner Cabrera: That's what we are trying to do is to make sure that we...

Mayor Slesnick: Let's go back to you all objections, wait a minute, excuse me, objection – remember this is not their space; this is public sidewalk we let them use, so this is not space that they are using as private space; this is public sidewalk

Commissioner Cabrera: Don, I understand.

Commissioner Anderson: That's part of the experience.

Mayor Slesnick: And that's owned by the citizens including these citizens.

Commissioner Cabrera: OK, well I understand; so listen, I understand your point, and your point is well taken, so why don't we go ahead and make a legislative decision here or quasi judicial decision, and move forward with it, because it's obvious from the discussion that Mrs. Anderson and I have articulated that we feel strongly about continuing this.

Mayor Slesnick: We haven't publicized any such change, we are not going to make any legislative – I'm only talking about it.

Commissioner Cabrera: You know, the process needs to begin today if that's something you want to do, OK. So, I'm OK with your recommendation; I don't support it, I will strongly advocate against it, but let's move the legislative process to, if that's the wish of this collective body, let's move it forward; but to sit here and try to police this thing...

Mayor Slesnick: Ralph, Ralph, let's don't take it too far because I just came up with that thought and you've expressed yourself...

Commissioner Cabrera: It's not a bad thought; it's a good thought...

Mayor Slesnick: And I don't know if that I want to...

Commissioner Cabrera: OK, well, I want to come up with a resolution. Chief, I'll tell you, if I get complaints about this issue I'm going to go to the Manager, and I'm going to share with the Manager my strong displeasure in the department's inability to enforce the laws, and that's all I can do. I can't do anything more and I certainly can't expect you to do anything other than uphold our laws, so that's going to be my track on this one.

Commissioner Anderson: And my support is to do outreach and educate and hear what these folks have got to say.

Mayor Slesnick: As Commissioner Withers has suggested, maybe a Public Safety Committee could be involved.

Commissioner Anderson: That could be something.

Vice Mayor Kerdyk: Chief, the music stops at 11:00 or 12:00 o'clock; could I get some clarification please.

Chief Hammerschmidt: Monday through Thursday its 11:00 o'clock, Friday and Saturday is 12:00 o'clock.

Vice Mayor Kerdyk: So we moderate the music; we understand that the serving of alcohol stops at 2:00 o'clock, pretty much I wouldn't be for restricting people from eating outside after those hours, so I would not be able to support that initiative should that come forward.

Commissioner Withers: We had a similar issue with blowers and lawn mowers, and we wrestled with trying to figure out what acceptable decibel levels were, and we could never come to grips with sound; that's the issue we can do activity, but as far as sound we were never able to come up with any type of legislative action as to what acceptable decibel level there is; and I think that's still a challenge; we don't expect officers to go there with a decibel reading machine to determine if they are over so – I don't know. I think restricting activity is the only way to handle it, but I don't know if I can support cutting off outside dining because I think of La Palma, I think of other properties that have outside dining.

Vice Mayor Kerdyk: Miracle Mile.

City Manager Brown: We do sell outside patio permits or sidewalk permits for people to do that.

Commissioner Withers: Do you face – obviously you don't face Miracle Mile.

Ms. Wanderley: I face Aragon.

Commissioner Withers: You face Aragon.

Ms. Wanderley: And Merrick Way.

Commissioner Withers: And is it because you like to have your windows open at this time of year?

Ms. Wanderley: No, the windows are closed, that's how high the noise is, and I'm four months pregnant, so I have to go through this with my situation, I don't think that's fair; and not only me another one hundred and eighty-four (184) residents have been having issues with that as well.

Commissioner Cabrera: Can I make one recommendation, obviously your organization, your homeowners association choose to reach out to our Mayor; I would strongly recommend that you reach out to all five of us, so that we can then turn around and take the appropriate steps to ask the City Manager to ensure that you are at least being protected by our laws, because I'll tell you very candidly, I've never heard from any of you at 10 Aragon, this is the first time I hear about 10 Aragon; and if you had Mr. Slesnick, Mrs. Anderson, Mr. Withers and Mr. Kerdyk, and myself involved there may be a greater importance given to the situation. Not to say that there is not a greater importance given to Mr. Slesnick's actions but if all five of us are fully aware of what's going on then...this is just the way it works, you know. I have heard, and with all due respect to the Manager, that you know, it's tough for him sometimes to make decisions just because one Commissioner wants it that way, as much as he enjoys pleasing all five people, its very hard sometimes for him to just do something because one member of this Commission wants it done that way. If you get all five of us on the bandwagon, then perhaps it will get the priority that it may or may not be getting, I don't know. I have to respect the Chief and his staff for their professionalism and the way they go about doing what they do, which is to protect and serve, but you give me no other choice to then ask you to reach out to all five of us so we can stay attuned to this problem.

Commissioner Withers: Maybe this isn't the time to say this.

Vice Mayor Kerdyk: What?

Commissioner Withers: You know, we bent over backwards to – maybe because I lost a vote, we bent over backwards to keep a sleep center from happening because we are worried about doors slamming in a parking lot, yet...

Commissioner Cabrera: A sleep center in a residential neighborhood, in a single family residential neighborhood.

Commissioner Withers: It wasn't in a single family neighborhood...

Vice Mayor Kerdyk: It was abutting.

Commissioner Withers: It was abutting, but this is a residential neighborhood right across the street.

Commissioner Cabrera: OK. A sleep center in a residential – no, no, no, - a sleep center in a residential neighborhood that was well established; OK, this restaurant was well established before 10 Aragon, or may be they were simultaneously established, and the people that moved into 10 Aragon knew what they were getting themselves into; when you move to downtown San Francisco you know the trolley is going to go all night.

Commissioner Withers: I understand, but I'm saying the amount of noise from a sleep center is probably a lot less than the amount of noise...

Commissioner Cabrera: You know what we need to talk about at this juncture; I think we need to talk about the black roof.

LAUGHTER

Commissioner Anderson: What about metal roofs.

LAUGHTER

Mayor Slesnick: I would like to say though that we do, I think, need to keep an eye on this and decide as we go forward; it was us and our predecessors who encouraged people to move to downtown Coral Gables, it wasn't their own – they didn't strike out in covered wagons, we encouraged people to build condominiums; we encouraged them to move, and I think its worth our continued...and I think you've said that.

Ms. Wanderley: It's a very expensive area and we pay our taxes like everybody else.

Mayor Slesnick: And Chip, I see a difference between some of the restaurants that have, you know, their own private areas, and those who use our areas to carry on their business. Thank you for coming, and I hope that as Mr. Cabrera asked, that you'll stay in touch with the entire Commission, and stay in touch with the Chief and see what we can do.

Commissioner Anderson: Think education is really the key in this and understanding, reaching out.

Mayor Slesnick: Yes.

Ms. Wanderley: Thank you.

Mayor Slesnick: Thank you and good luck with your pregnancy.

[End: 10:50:24 a.m.]