

City of Coral Gables City Commission Meeting
Agenda Item E-7
February 23, 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

Public Speaker(s)

Agenda Item E-7 [12:23:37 p.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-7 – noise.

City Attorney Leen: So Item E-7 is Ordinance on First Reading. 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. Two additions that are going to be discussed that were proposed by the Mayor are one, to include language of barking dogs; and two, to include language providing for basically relief for

emergency backup energy generators during a state of emergency. This came up during our individual discussions, so we didn't have one being proposed to you, but I'm going to hand out the proposed language. Its up to the Commission whether to include it. We had special counsel here today, Abby Corbit, who put a lot of work into this, and we also have a number of members of City staff who worked on this and have some views on it and they are all here, thank you Madam Manager. So with that I'm going to hand this out and have Ms. Corbit come up and talk to you about the ordinance. One other thing, there was a correction to the ordinance. You can just tell them. I didn't hand it out to you because I didn't want you to have two ordinances and get confused by it, but would you just tell them what that correction would be between First and Second Reading?

Ms. Corbit: Sure. Good morning, Abby Corbit from Stearns Weaver. Yes, well its page 8, I believe of the red line, the exemption section, there were a few typos, so we corrected those, nothing substantive.

Mayor Cason: How much in line with other noise ordinances is what you've come up with?

Ms. Corbit: What we've come up with here is not that much of a deviation from our current Code. Originally, Mr. Leen came to me and said that what we are considering doing is a strict decibel level, decibel base restriction for all types of noise in the City. We looked around, to your point, we looked at other municipalities just to get a sense of whether people were doing that, and very few if any municipalities have a strict decibel level across all different types of noise; and I slowly figured out category by category why that is. There are so many instances in which noise is reasonably very loud; a crying baby, your kid yells, your dog barks once, there is just so many noise incidents in a City that do rise above that level, but would not to the average person seem unfair or unreasonable. However, there are certain categories of noise where a decibel base restriction does make more sense. One category of noise is amplified sound during a special event or public assembly, bullhorns, the speakers out at a big special event. We are actually separately proposing a redraft of the special events, parade and public assemblies code article right now, and we are going to propose to you decibel level restrictions for amplified noise in that context, and that is when a lot of these issues from what I'm hearing, a lot of issues come up in that context, special events. This is the standard noise ordinance, which will exclude permitted events, so this is more typical everyday sound. You have proposed after speaking with Chief Hudak and Code Enforcement officials, we have still proposed a strict decibel level for what we are calling steady mechanical sounds, and we believe this is a category of noise that you can reasonably apply decibel level restrictions to. For one thing, it's a type of noise that continues over time. Chief Hudak said a typical thing that would happen if somebody is having a house party, is the music will be on loud, he'll show up and they'll turn the music down, end of incident. But a pool motor that's on the fritz, or an air conditioning system that's very old and

very, very loud, is a type of continuous noise that Code Enforcement can show up the next morning, measure it, and I mentioned Code Enforcement measuring it, because if we have a decibel level that has to be measured and enforced by the police officers in the middle of the night when there is a party, every single officer would have to be equipped and trained with that device which could, from talking to Chief Hudak, sounds like it could pose a logistical problem.

Mayor Cason: Does this include, I was just thinking, pile drivers along canals, that's going to be boom, boom, boom, you can't put the piling in without some noise, is that addressed in here?

Ms. Corbit: Construction noise would not be covered under, specifically excluded from the steady mechanical sound, construction noise...

Mayor Cason: OK.

Ms. Corbit:...Assuming it's pursuant to a permit. Now it still would be covered as is all noise, under this general catchall, it has to be reasonable, which is the common law standard for nuisance noise, which is still the prevailing standard. We did not change that in this app. We did correct some other smaller issues...

City Attorney Leen: Also construction noise can't be done during certain times.

Ms. Corbit: Correct. Correct, which is the same code. We haven't changed, we tried not to change anything that would affect a business; landscapers are still held by the same standard the same times, and we did clarify one particular issue after talking with Code Enforcement, which is commercial maintenance equipment was a term used in here to describe wind. For example, your landscaping company is allowed to use blowers and they cannot do it on Sundays, for example. But you can mow your own lawn on a Sunday, you can use lawnmowers and that wasn't clear, they were enforcing it that way, but it was not clear, so we just defined commercial maintenance equipment to explain that – not just lawn equipment, somebody else is using power tools, or something on your property versus you doing it on your own property.

Mayor Cason: The reason I wanted to put in barking, yelping, squawking, howling is that I've had people call me about the next door neighbor goes away, leaves their big dog out back and it barks all day long. I think you've seen parrots and macaws that are, whatever the word is for them, squawking, so I wanted to make sure that if we are talking about noise that we include something that is very likely to happen and hopefully a limited number of cases, but it does happen.

Ms. Corbit: Yes – and the current Code has a provision for animals, domesticated animals, but it's the more general provision, so it is still covered, police can enforce and they do enforce it. Sounds like there are some logistical issues sometimes because the police will show up and people will say, Oh my dog is only barking because your police car is out front, so there is some enforcement, somewhat difficult practically to enforcement it, but what Mr. Leen has circulated to you right now is a proposal and this is based roughly on what City of Ft. Lauderdale does. If you wanted a more specific, this is just a proposal for a more specific limitation on vocalizations by animals where its literally a count of vocalizations audible from certain distance per minute and there are two categories. There's one intended to restrict a dog that's barking a lot in a short period of time and one that apply basically a longer period of time, but a dog that's consistently barking....

Mayor Cason: Does a policeman or – a lot of times this happens at night, so a policeman shows up and the dog stops, can the neighbor tape it and say, here it's happened?- tape the barking, not tape him up, not tape the mouth up, but I mean...

Chief Hudak: I have parrots and a dog behind my house and I don't live in the City and I have...is I've got four macaws and a dog.

Mayor Cason: Oh my God.

City Manager Swanson-Rivenbark: Just be clear, you don't have them, but your neighbor does.

Chief Hudak: My neighbor does. I want them. I want them.

Commissioner Lago: Chief let me ask you a quick question. The reason why I proffered this ordinance is to really try to cure a lot of the ambiguous nature and some of the phone calls that I've gotten, and I know that all of us have gotten for events that are happening on the golf course or the barking dog, like the Mayor said. I know that your staff and outside counsel and some of the employees, City employees had their input, along with the City Manager and City Attorney's office in regards to molding this ordinance, and there is going to be a secondary ordinance, which is going to come out and its going to deal with events. Do you feel confident that this will address and be able to give you the necessary tools to go out there and combat some of these nuisances that the City is facing?

Chief Hudak: Yes...

Commissioner Lago: The last thing I want to do is throw another ordinance if it doesn't resolve anything.

Chief Hudak: It gives us – I’m confident with what we’ve drafted here that it gives my officers the ability to enforce when it gets to that level on a case-by-case basis. To the Mayor’s comment about dogs, and this is some of the recording issues. Just south of Bird Road there was an ongoing problem with a rear dog, the rear neighbor’s dog, and they were sending us videos of the dog. The homeowner would come out, send us videos of the barking dog, whose barking at the camera. So it comes to an issue and this is where the first concern that came up to us was, well the only reason my dog is barking is because the next door neighbor is out there videotaping and inciting the dog. What I do believe and what happens in 99 percent of our loud party calls, so to speak, is the officers respond, even if they have an off-duty officer, they respond, tell them to turn it down. That could go from music to loud talking in the back. We have partnered on several occasions with the University of Miami, so if it is a group that is having a party, then we refer to the Dean’s office which retains jurisdiction over the students that are living in the City. We found great success in handling those. If we go out once, if we go out twice, it’s a report written and we send the Code Enforcement as far as the loud parties. Obviously, if we get a third time, then we would actually write it and cite it, and I believe that we will get compliance when we actually get in front of somebody where we are charging them with a Code Enforcement issue. Some of the dog issues that have come up off of Lisbon where we have to get Animal Control involved and everything else, to make sure the dogs aren’t tethered, so there are a lot of other tools that we have. So in the short term, I think it does give the officers the ability to handle it the way we are handling it now, and also enforce if we have to. We’ve kept it to a straight decibel level, 100 feet in police jargon, has to be exactly 100 feet, or greater. How do we measure that at 2 o’clock in the morning?- and again, working with everyone else when we get to the special events, that’s when we can actually use, because this Commission approved the recommendations that you want us to strictly adhere to that. So, I look at the two totally differently. As far as the construction, Mr. Mayor, everything else outside the usual hours has got to be approved by staff. So whether it holidays or to go outside and it clearly states on that permit that any construction site can be shut down outside the normal hours from a permit, from Building and Zoning, if we get noise complaints. I mean, its in bold letters, so if we get a call on a Saturday where we’ve approved someone to have a concrete pour outside the hours, and if we get complaints on that, it clearly states that it can be rescinded by anybody from staff at that time.

Mayor Cason: Does this help you with the motorcycles with no mufflers? Occasionally, you’ll see people just roaring down. You have anything that can get them right now?- or is this covered?

Ms. Corbit: Right now its described as prohibiting mufflers that create unreasonably louder excessive or unusual noise. We could make that more specific by prohibiting any muffler that’s not properly or any motor that’s not properly muffled under state law.

Mayor Cason: Is that a problem that you've – is that rare or...?

Chief Hudak: What we get in the neighborhoods, other than an officer observing it driving down the street if they are working a traffic detail. We get those calls in the area if they are going around, we respond. Again, its not a priority call, when we get there we observe. Its still the officer's discretion as it was in any ticket to write those. That would be written under, that would be pretty much written under a state statute traffic violation than it would be the noise ordinance.

City Attorney Leen: I would just like to point out two things. Its up to the Commission, but I think that 3(b), if the Commission decides you want to do the barking dog, it probably should say, "such vocalizing is repeated an average of five times or more permit," because the way that Code Enforcement will enforce is, they'll go out and so they need to count 50 vocalizations within five minutes, because its an average. So that's easy for them to do. They just listen, one, two, three, four, five, they time it, that's done; and then 100 in 20 minutes and you have to determine if that's the numbers that you are comfortable with, those are the numbers that Fort Lauderdale is comfortable with.

Ms. Corbit: Actually, this is slightly different than Fort Lauderdale. So Fort Lauderdale had fewer vocalizations that were prohibited, this proposal permits more vocalizations and this is just obviously just a legislative decision, whatever you all think. But a certain number of vocalization, especially these small dogs that we have a lot of here in Miami, make a lot of rapid fire vocalization in one little burst, and I don't know if that's fair to compare it to the big dog.

Mayor Cason: Well generally – the problem is not like in the morning when somebody let's the dog out and it barks and wants to come back in, you can live with that. But its when they go away and leave the dog in the backyard and it just barks and barks and barks wanting to come in or somebody to pet it or whatever. So I'm sure you'll get your 100 vocalizations.

City Attorney Leen: Could you let the Commission what was Fort Lauderdale's numbers?

Ms. Corbit: Yes. I don't have that in front of me. It was significantly less, it might have been about half.

City Attorney Leen: Here's the other concern because this has come up. I know that the Manager has addressed these concerns, I have, I know several of you have, but what happened is they get called, and by the time the officer gets out there that dog may have been barking for 40 minutes, by the time they complain and come out there. So maybe its appropriate to have a lower number,

but its ultimately a legislative judgment, but I know it was your concern so I wanted to make sure that we were giving....

Commissioner Slesnick: We have a very fast response time in the City, so I don't think it would be 40 minutes.

City Attorney Leen: No. What I mean is, someone might wait 20 or 30 minutes before they even call. Code Enforcement and Police do respond very quickly.

Ms. Corbit: Two things, one that Mr. Ortiz mentioned that one way of measuring it without having the dog provoked by the Code Enforcement or police officer there is that sometimes Code Enforcement will stop a block away, roll their windows down before they even show up and just listen. But to Chief Hudak's point about the provocation, this assumes the animal is not unreasonably provoked, because obviously if you are standing there with a camera pointing, you kind of want your dog that why you have a dog to bark when it thinks someone is an intruder.

Chief Hudak: Then again, most of these 2 o'clock in the morning dog barking calls are a dog's response to a possum, the dog's response to a fox. Again, that's why some people have dogs in their backyards to alert them. Again, it's a balance of what we have to deal with going forward on that, so it is a tool. Its something that gives the officer's discretion. Now if its an ongoing thing, we are writing a police report, documenting it, sending it to Code Enforcement afterwards and we can document how many different calls we get on it. So if get a third consecutive call or second consecutive call on somebody that's complaining about a dog, we would actually document that and have the totality of the time that it was going on over a period of an hour we got three phone calls on this dog.

Mayor Cason: OK. Does anybody have a problem with hurricanes and people turning their generators on? That's reasonable to me.

Commissioner Slesnick: Abby, I wanted to ask you. Residents can use their lawnmowers, power washers or whatever on Sundays, but commercial people coming into the areas cannot use any electrical high-intensity sound machines, electrical machines or gas, that includes holidays too?

Ms. Corbit: Holidays are actually excluded for both categories.

Commissioner Slesnick: I just had Code Enforcement at one of my listings on Monday, because we had a holiday last Monday. So holidays are not included, maybe we should include holidays, but Code Enforcement was called because someone was pressure cleaning.

City Manager Swanson-Rivenbark: ...are included for not allowing construction, but I'm not sure about the...

Mayor Cason: Some people when holidays on a Monday and their gardening company comes on a Monday normally, but they shouldn't come on a Sunday.

Ms. Corbit: You are right, holidays are excluded, not just for construction, but also for commercial maintenance, but not excluded for home maintenance.

Commissioner Slesnick: For home maintenance.

City Attorney Leen: I think we are confusing including and excluded. Use another word.

Ms. Corbit: It is permitted, it is allowed using tools at your own home on a holiday or Sunday. Is not allowed for personal use; it is not allowed to use such equipment either on a Sunday, or on a holiday.

Commissioner Slesnick: No, no, like the Aloft Hotel, they were under construction last Monday using power equipment, but a resident was called, was using a power washer by a commercial entity at their home and they were called in Code Enforcement.

City Manager Swanson-Rivenbark: I think this is a really important question. Let us research it, because Development Services has the right to issue approvals for holiday work, and so let us peel through that and see what happened.

Chief Hudak: On that one specifically, because I sign off on those, the Aloft for holidays, that's a permit process that goes through...so the Aloft hotel on Monday was approved to do the concrete pour along with the conditions.

Commissioner Slesnick: And its better because there is not as much traffic. I'm just saying the same day, one of the residents was called because someone was power washing their sidewalks.

Mayor Cason: One of the practical problems you would have is if it is a holiday, Code Enforcement is probably not working and you've got the commercial lawn guys come, Jose comes and cuts your grass and blows the stuff and nobody would be around to catch him.

City Manager Swanson-Rivenbark: Mr. Mayor, its quite possible that some of our Code Enforcement officers will be working on a holiday, so we hope that all of our residents honor the regulations.

Ms. Corbit: To the point of the current ordinance, Commissioner Slesnick, the Code itself is subsections 11 and 12, makes that distinction, so if you have a policy concern with that distinction, this could be a time to change it, but as a practical matter how its enforced. But that is correct that the waiver by the City Manager or the City Manager's designee applies to holidays for construction noise does not apply to commercial maintenance equipment by the language in the Code, which we are not changing that.

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

City Clerk Foeman: No Mr. Mayor.

Commissioner Lago: But we need to get that clarified, because I've got to speak to my lawn man, David O'Connell, who comes on Saturdays and I just want to make sure that he doesn't get into trouble.

Mayor Cason: OK.

Commissioner Slesnick: Only on Sundays.

Mayor Cason: Close the public hearing part. Anymore discussion?

Commissioner Keon: It was over the issue of recording. I do understand that if you are standing in the backyard with your camera up against the fence, but I think that there had been issues, I know personally with residents, where there is this repeated dog barking and by the time somebody comes out they tell them to take the dogs and they take the dogs in. But I don't know why your iPhone can record sound, I mean if you are sitting in your house recording the sound and the video is dated and time stamped why you couldn't use that?

Ms. Corbit: It would be an evidentiary question.

City Attorney Leen: I have given opinions that it could be used. That person – I see you're nodding, but I have in a Code Enforcement proceeding is under the preponderance of the evidence standard, if that person comes in and swears that they took that and authenticates that tape it can be used. It clearly can be used.

Commissioner Keon: No. I mean if the individual if the individual that the complaint is against, I can understand if they can say, well they were out there rattling a fence and my dog would bark, but there are instances where it happens a lot.

Commissioner Lago: Does it really? Does it really happen that much you think?

Commissioner Keon: Yes, dog barking.

Commissioner Lago: I know of two cases in the City where its pervasive, like the dog doesn't stop barking.

Commissioner Keon: It happens a lot and I'm going to tell you instead of doing something about the dog, the police arrested the homeowner.

Chief Hudak: We have a lot of barking dog calls, we call them disturbances.

Commissioner Keon: Absolutely. It happens all the time, but I mean that's why I think when it continuously happens and you are not always there when it's happening to say to a resident after the fourth or fifth time, if you record the sound from inside your home, inside your home and it has to be for whatever length of time is, I don't care if it's for 290 minutes, whatever it is, allow them to be able to submit that as evidence in a Code Enforcement hearing.

City Attorney Leen: I know that Code Enforcement's concern is that when they come they testify, so they'd like to be able to say that they saw it themselves otherwise the person has to come and testify. Now in the particular case we were talking about, that person would have come and testify and made that very clear. So I was comfortable with it. I think the matter ended up getting resolved. The other thing we can do is you could add a provision indicating that the use of video evidence is permitted by a resident, but they have to authenticate it. You could put it in the....

Mayor Cason: Well why don't you think about that between the First and the Second Reading and address this.

Commissioner Keon: I'd like you to find something else and in such a way that it has to be within your home, it can't be up against the fence annoying the dog or whatever it is.

Commissioner Lago: I'm going to make the motion on E-7.

Mayor Cason: Alright and the second?

Commissioner Slesnick: I'll second it.

Mayor Cason: Commissioner Slesnick seconds. City Clerk.

City Attorney Leen: Commissioner, are you including the two add-ons?

Commissioner Lago: I am.

City Attorney Leen: Thank you.

Commissioner Lago: To include the proposed additional language for noise ordinance provided in Section 124 and Section 125, subsection 4.

Mayor Cason: City Clerk.

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: Thank you.

[End: 12:46:21 p.m.]