

**City of Coral Gables City Commission Meeting  
Agenda Item H-2  
October 14, 2014  
City Commission Chambers  
405 Biltmore Way, Coral Gables, FL**

**City Commission**

**Mayor Jim Cason**

**Vice Mayor William H. Kerdyk, Jr.**

**Commissioner Pat Keon**

**Commissioner Vince Lago**

**Commissioner Frank Quesada**

**City Staff**

**Interim City Manager, Carmen Olazabal**

**City Attorney, Craig E. Leen**

**City Clerk, Walter J. Foeman**

**Deputy City Clerk, Billy Urquia**

**Public Works Director, Glenn Kephart**

**Public Speaker(s)**

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H-2: [Start: 11:49:52 a.m.]

A Resolution approving the implementation of a Residential Sidewalk Restoration Program

Mayor Cason: Let's move onto H-2, that's a Resolution approving the implementation of a Residential Sidewalk Restoration Program. Madam Interim City Manager.

Interim City Manager Olazabal: Yes. Glenn Kephart is here to present the program.

Mr. Kephart: Good morning Mayor and Commissioners, and if you remember we discussed this briefly at the September 23<sup>rd</sup> meeting that you had previously funded in the budget \$2 million for sidewalk restoration program in the residential areas of this City, and that's what this program does. We discussed the last time that we are talking about 10 miles total of City that we estimate need repair, 250,000 square feet. We believe that the \$2 million is a good start and should, I believe, pretty much fund that program based on our preliminary engineering surveys that we did, and we'll watch that as it goes along. As we discussed this the last time and as its presented

to you, this resolution provides the funding which relates to this program and the criteria of what we would repair is outlined in the program; and I'll touch on that in a second, but also we estimated about one-third of the repairs that are needed are not due to City trees or City sidewalks, and our City Code addresses that, that it is the abutting property owners responsibility to repair projects in front of their properties; and based on the discussion that was before this Commission on the 23<sup>rd</sup>, we drafted this resolution that would actually charge the residents hold them to their responsibility under the Code, if in fact the cause of the sidewalk was not a City tree or other City caused defect. Probably didn't discuss that fully, we can discuss that a little bit more this morning if you'd like to or I can answer any questions you have about the existing program. The discussion on the – I guess I ask your permission if you want to have further discussion on the implementation of the program, an alternative to requiring the citizens us charging the residents would be just to repair all the sidewalks on a onetime basis that we would move forward with, you can have a discussion on that with your permission.

Mayor Cason: I guess the thought last time, Commissioner Keon mentioned this I think, if we follow the regulations and require the citizens to fix what presumably they broke or somebody that visited. A lot of times is cars that park on the sidewalks and break them, construction and so on, that you could actually do more sidewalks the idea was to give them a break by them piggyback on our contract or contracts to not have the headache of having to figure out how you repair two or three squares and having to pay for a whole truck of cement.

Commissioner Lago: Permitting aspects.

Mayor Cason: Permitting and all that, so I think this gives the way you have it now allows us to probably most of the sidewalks or a good chunk more than if we give them a break and a really reduced cost. There may be some administrative headaches involved in it, but what do you think?

Mr. Kephart: The administrative Mr. Mayor, if I could address that is, however we go with this program staff is committed, we'll make it work and I do believe that the \$2 million is going to, I expect it to cover the City and part of the reason for that we are not going to replace all the sidewalks. If we have a sidewalk that's elevated a half inch or three-quarters of an inch and it's never been ground and otherwise is in good condition, it would be my recommendation we are going to do grinding, so we have some repairs that will cost us less, so I think we'll go far with this \$2 million. Administratively the existing Code requires that; first let me say how this program will work. We would start in a corner of the City, if we have a couple contractors perhaps we would start in a couple different areas. Let's say as an example we'd start at Red Road and 8<sup>th</sup> Street, and we just worked on through the neighborhood progressively. Consistently it makes sense for the contractor; we identify all the sidewalks that needs to be replaced, two-

thirds of that is City sidewalk, a third of it is resident sidewalk. Let's just say as an example, you are looking at Madrid between Venetian and Milan, my recommendation is we won't do any work on that street until we can do all the work, because you won't repair the City portion and leave another couple flags that are in disrepair, I think the City Attorney would recommend against that, as I would. I think when we leave that block we need to be done. In order for us to do that under the Code, we first need to identify the areas that are the property owners responsibility, then we have to send them a registered letter and in that registered letter includes property, legal description of their properties generally, and the cost estimate of the area that needs to be repaired, and then they have 30 days to remedy that, and if they don't, then the City can come in and remedy the situation after which we then need to file a public notice that we are going to place a lien against the property.

Commissioner Lago: Can we touch upon that. Just on that topic. I think that's something that we should, I don't know if this is the right moment to have this discussion, but where does our responsibility end and where does it start in regards to this issue?- because we are talking about potentially liening individuals' homes and we've seen, as the Mayor brought forth, we have about a \$3 million debt in regards to the trash pick-up, which has not been addressed. To what extent....

City Attorney Leen: We do have a proposed ordinance that I've gotten from Heather Encinosa that will address that. I need to run it through staff, we recently received it and we will address that. If I could address your comment, I just want you to be aware of at least what the Code says as to this responsibility. The Code – remember the City always has the responsibility for sidewalks within its jurisdiction, its what's called the non-delegable duty; however, case law indicates that the City can impose basically a duty on the residents as well, duty on the residents as well to maintain the sidewalk, which this City has, and by Code we place the burden on the adjacent property owner for the sidewalk whether or not a City tree caused the problem with the sidewalk. So basically what you are talking about doing today is more an act of discretion. By law you could impose the entire duty on all adjacent property owners, what's being proposed is that where the City tree is responsible for what's occurred the City would – we are still not waiving the Code, but the City as a matter of discretion would be fixing the sidewalk. In situations where it is the resident, and please correct me if I'm wrong Glenn, but in situations where it's the resident, the resident's tree, or the resident who has caused the vertical separation in the sidewalk, in those instances the resident would either, we would use this administrative procedure, which has not been used since I've been here or we give them this opportunity that's being talked about. That's the current status.

Commissioner Lago: If I may interject just for one second. I just want to be clear. I'm in 100 percent in support of this resolution in regards to the residents sidewalk restoration program, but

when I purchased my home and I moved from Edgewater to where I live now, I didn't really pay attention to the sidewalks. The moment I pulled the permit to do interior remodeling and exterior remodeling of my home, I couldn't close my permit due to the simple fact that one of the inspectors who was doing their job and I asked him to not take any leniency on me cited me for sidewalks that needed to be repaired. That was about an additional \$1,500 worth of cost after I had to repair a multitude of sidewalks that ran up and down Rovino, \$1,500 is \$1,500.

Mayor Cason: It was \$5,000 in my house.

Commissioner Keon: But I think that's because as a City...

Commissioner Lago: I'm sorry Commissioner and I'll be done, I will tell you, I did not break those sidewalks, I was not responsible for them, but at the end of the day I had no other choice because if I didn't fix the sidewalks I ran into two issues.

Mayor Cason: And that was under a different piece of the ordinance, which is if you have a construction over \$15,000 then you are responsible no matter who did what to whom for the sidewalks.

Commissioner Lago: That's what I was getting to, which I fell under that criteria, so I was put into a situation where I had to explain to my wife why we are going to spend \$1,500 on something which we didn't have budgeted for, which was something that I was not privy to. Again, the sidewalks got fixed, they were done accordingly, the cost was a little additional because it was as we had discussed before, it was....you only bought so much concrete, I didn't know anybody else needed any other sidewalks, so they charge you additional fees. So that's why when it goes to what Mr. Kephart was saying before, if we do this in a mass scale the fees are going to be significantly reduced, because you are not going to get a short-low fee from the concrete company, you are not going to get a short-low fee from the pump company, and so and so and so down the line. I'm just a little nervous when we start discussing and stating that we are going to be liening individual's properties. I think you are going to have people who are going to be very excited about getting this finally done, but you have certain people that's going to say, this tree was the reason why the sidewalk came up. I'm not going to pay for it.

Commissioner Keon: They won't be charged for the portion of the sidewalk that is related to the tree that is the City; the City absorbs that cost. It is when there is additional squares of sidewalk that they happen to be broken, whether its maybe someplace where there was a septic tank and they pull the truck in to clean out the septic tank, whether it was a moving van, whether it was a dump truck, whether it was whatever, they have been cracked over the years. Now the City practice – I've lived in the City for 40 years, for 40 years I've lived here, they used to do that.

The City used to – if the sidewalk was cracked in front of your home, if it was related, if the damage was as a result of a tree on City property they repaired it and if you had any other cracked squares they would do it at the same time and they would bill you for it, and you would pay for it. That was a practice in the City. At some point probably as well as not maintaining our public structures, we put really paying attention to our sidewalks. Mayor Cason did a great job with the Renaissance Program and the repaving of our streets and you know bringing that order and the...back into the City and I think it's a good time to reintroduce that to start doing it again. I think that there will be some instances where you may get, that there may be a resident that may object to paying for a sidewalk, but I don't know that most of them would, I mean I think most people will. This is the same issue; I remember sitting on the Code Enforcement Board and so often people would purchase a home, they would move into the home or whatever, and there would be code violations and either no one told them that particular whatever, the realtor or no one told them that something was either not according to Code or it was that there could have been open permits or whatever else, and then all of a sudden the person they go out to do something and a Code Enforcement Officer looks at it and says, whoever you bought your home from they did this without a permit or this is not in accordance with the Code and the problem now becomes that of the person who owns the home; and it's the same thing with sidewalks.

Mayor Cason: A couple of thoughts on that. One of the things when I would address the realtors at their annual meetings I always remind them that tell your clients that if you are going to buy a house tell them to check the sidewalk because you are getting that liability; and the other thing, there is sort of a crack in the sense on this \$15,000 construction. That's what happened at my house. I showed them that it was the City trees that did it, but it didn't matter because the resolution said \$15,000 or more you have to pay for the sidewalks, so we need to address that in here, that wrinkle.

Commissioner Keon: OK.

City Attorney Leen: And if I may Mr. Mayor, just as your legal advisor, we do need to fix problems with the sidewalks, whether or not the residents pay for it. We do always have that duty and if someone trips they always sue us. Now we always have – sometimes they will also sue the adjacent property owner, sometimes they won't. Generally we've been trying not to bring in the adjacent property owner, we have in the past, but we've been moving not to do that except for appropriate cases and we always have to talk about it, is this an appropriate case or not, but generally we've been trying not to bring in adjacent property owners because it exposes them to a tort suit and sometimes it's a City tree, for example that's caused the issue, but it is a laden issue, it's out there and the problem for residents is that the City has a cap, a sovereign immunity cap, so if someone trips we are ultimately capped at a certain amount of liability. The residents aren't though and generally that's covered by homeowners insurance, but that's an issue that at

some point needs to be addressed, but my legal opinion, which I think everyone agrees with and always has is that we do need to be fixing the sidewalks and then we have the choice whether to bill the residents or not and thus far we haven't, but it sounds like we may be moving in the other direction and that's a policy judgment.

Mayor Cason: And you could always have, I mean it's something maybe discussed at a later date, hardship exemption, if somebody comes and makes the case, I mean we've given a couple hundred homes a second Homestead that were below the \$26,000 annual income. You might be able to work something in if it's a real hardship, but I like the idea that by giving a break to the homeowners, everybody would like to see their sidewalks fixed, the problem is it's such an ordeal to do it yourself, to get somebody that will take out two slabs.

Commissioner Lago: There is no value – when you run the numbers in regards to material, the time, and the actual product that you are left over with, its completely inefficient, so you have to do this on a large scale, and when you take it like what staff is proposing, it just makes a lot of sense. I can't give you an exact number in reference to the percentage of savings, but its significant when you are doing it in this large of a scale.

Mayor Cason: That allows us to get – part of the property values are not only paved streets and trees, but sidewalks that are not all broken up, so I think it's something we have to do for the City. I'd like to see us move forward with the way it's written here, give a break to the homeowners, hopefully most of them will pay and if they can't we can look at some relief.

Commissioner Lago: And also hopefully it releases us from liability.

Mayor Cason: Yes.

Commissioner Lago: And that I think you should go ahead, you can build if that becomes a real problem you can come back and we can talk about it, we can talk with the Manager or the City Attorney about it, but I'd like us – I would like our practices and our policies to align, so you know going forward I would like that we would do that.

Mr. Kephart: Mr. Mayor if I could – and that's fine because that's the way this is written. I just wanted to make you aware of the timeline difference between the two methods so that full disclosure because if the program the way it's written, we need to shortly after this meeting we'll start assessing the first area and we'll start identifying the areas that are responsibility of the property owner and we'll prepare letters and send out those letters and then the residents have 30 days to respond by Code. Right now if we were to do that process they would be getting the letters about holiday season which would give them 30 days during the holiday season. I

wouldn't recommend that, so I would recommend probably the first letters go out right after the holidays in the beginning of January, then the 30-day time period begins, because it's hard to find a contractor in mid-December, and so we would limited areas we could begin. The full scale we probably won't begin that until about February.

Commissioner Keon: I would also like us to know when we go out to do these repair on sidewalks that 1) if it's an abandoned property or whatever, you know it's on the abandoned property list if you would just take care of it because there is nobody there that's going to. I don't know whether we talk to Craig as to how you do that. I was so surprised in running for office a year-and-a-half ago and walking the City, the number of elderly, frail, individuals that live alone throughout the City, particularly in the more urban section of our City, and they didn't always have the ability to maintain their homes. I hope that before we would tell someone we are going to lien them, we would really look at who owns this property and we would work with people. I really hate to frighten an elderly individual that thinks that something may happen to their property because we are going to repair a sidewalk. I think we have the ability to deal with all of those issues. I know Code Enforcement is very good about identifying the individuals and trying to help them, so I think in doing the sidewalks we need to be careful in doing that also.

Mr. Kephart: We will deploy that approach, the friendly helpful approach.

Vice Mayor Kerdyk: How long it would take you to assess the situation did you say and go through and assess what sidewalks...

Mr. Kephart: We'll do that on a moving basis. So as an example, what right now with one contractor on board, I'm suggesting we just started Eighth and Red, we know we've got an older part of the neighborhood and narrower swales, we have a lot of issues.

Commissioner Lago: May I ask you just a quick question just in regards to the mention of contractors. Are we going to be going to the street like in an RFQ or RFP of some sort or are we just going to use people we have on a continuing service contracts?

Mr. Kephart: Initially we have Metro Express on a continuing service contract, they have very good dedicated concrete crews who specialize in doing this work and we have a very competitive price from them.

Commissioner Lago: That's why I ask you when we are talking about money here, obviously you don't want to compromise quality, but I want to make sure since we only have such a set amount of money that we make that money last as long as possible. I've seen the way the County does it in regards – they cut up pieces of the City and they say, OK, we are going to – the



following 15 blocks or the following 20 blocks we are going to put this out to bid and they get 4 or 5 contracts who are specialty contractors come in and do it.

Mr. Kephart: I think with our experience right now our cost per square foot for a 4-inch sidewalk is about \$6 a square foot, that's removed and replaced and if you do the numbers on that. You have a tree root that's a 5-foot wide sidewalk and you need to replace 4 flags, 2 on each side is 20 feet, its 100 square feet, that will cost \$600. The cost of the concrete is \$150-\$175 for that area, you've got your forms, you have to take your concrete, you have to dispose of it. There is not a lot of margin there so we are doing well with the existing contract that we have and they are good at it, and they are fast at it. As far as the time of the assessment, we would begin walking, driving slow in the first neighborhoods until we get to a point where we feel that we want to get 2 to 3 weeks ahead of the contractor before we cut them lose, so our assessment can stay ahead of the contractor, but in a week's time we can assess a pretty good section of each quadrant and we'll keep moving and then over the next year this project if things go well we should be able to get through the majority of this, this fiscal year. We'll be assessing that whole time just a couple of weeks ahead of the contractor.

Vice Mayor Kerdyk: I'll be very interested to find out how much the total replacement of sidewalks is going to be, total replacement; and I don't want to turn a good thing into a bad thing, so we've got to be very careful when we send this letter if this is the option we are going to go to, because I had some trepidation about that. If you were to tell me, hey we can do everything for \$2 million, I'd be inclined to say one-time, go through the process, let's do it, let's make everybody happy and then the next time we come back and reinstitute that, that's how I honestly feel. I want to make this a very positive process. I think this is something that should be good for the residents and that's why I would like you say, stand up here and say, we can do it for \$2 million for everything, I'd say OK, go ahead let's do it and forget assessing it.

Mr. Kephart: I do believe with integrating the grinding in, when we have sidewalks that are raised three-quarters of an inch and haven't been ground before that we can cover the City with the \$2 million.

Vice Mayor Kerdyk: I think we should have that discussion then, if you think....

Mr. Kephart: And I have to be honest, that's based on a preliminary engineering survey where we did representative samples of the City and we took the amount of sidewalk that needed replaced in those areas times the total amount and multiplied that out to the City. It's a reasonable way to do it, statistical survey, we didn't account when we did that for the cushion factor there is, we are not going to replace all that sidewalk, we are going to integrate grinding into that.



Commissioner Keon: When you grind do you – I've noticed a number of areas where the sidewalk looks like asphalt, what is that?

Mr. Kephart: In some areas of the sidewalk that the City has filled in with asphalt and it's been done where we haven't been replacing a lot of sidewalk prior because this program was in the works and so we had some areas where you have a sidewalk that's elevated in...we have crews, in-house crews and we could even contract it out to do it more, but actually grind that off. There are some areas where the slabs were raised so much that the only way to fix it was take out the slabs and put in new slabs, but pending this program we weren't doing that at the time, so we would put in asphalt to take away the hazard.

Commissioner Keon: So the sidewalks that currently have asphalt fill are you going to replace those?

Mr. Kephart: Absolutely. Yes.

Commissioner Keon: No more asphalt.

Mayor Cason: Getting back to the Vice Mayor's question. This is such an important thing to fix our sidewalks; it's one of the worse things we have left in the City, the condition of our sidewalks. If we could do it for \$2 million, if you are sure we could do it for \$2 million, I would agree don't assess, but if we can't....

Vice Mayor Kerdyk: I think maybe do you want to drill down a little bit further and come back to us or you think you feel comfortable with the \$2 million number?

Commissioner Keon: I don't have a problem if we know it's the \$2 million, I'm just concerned that it won't be and I think once you do it then you are going to be expected to do it. So if we replace the sidewalks I'd like a letter to go out that says it is your responsibility – I don't think you want to tell people they have to maintain because of our liability, but going forward.

Interim City Manager Olazabal: Could I suggest something maybe? Could we start – we know we are going to embark on this project, we know sidewalks are a priority, so I think we would take that as a given and the fact that we have \$2 million for funding this, are you OK with us embarking on starting the survey, something a little bit more than just statistical, an area that's bigger and be able to come back to you with a more accurate estimate and then have that discussion then because I think it is an initiatively challenging and also I think we should end up with a project that should be, I don't know if we call it a "feel good" project, but a project that is

beautifying the City and making it beautiful and accessible and all that, and it could end up with becoming a process of appeals of arguments, something that doesn't leave necessarily a good taste or....taste for residents and all of a sudden we see, Oh now you have to pay for this when it's not a program expense, I'm very sorry, and it could be difficult depending on the situation.

Mayor Cason: Ideally, ideally if we didn't have to assess and we could do it with the \$2 million it's a no-brainer, but if we ended up after \$2 million and only done two-thirds of the City and then we are out of the budget cycle, we have to stop for five months or something and then start it again. So if you could drill down and come back and tell us can we do it for \$2 million?

Interim City Manager Olazabal: Let's drill down in a bigger area to have a better understanding of the cost and then we'll come back.

Commissioner Keon: Also in walking the City and Commissioner Lago could agree with me, the area of the Craft Section was probably among the worst that I saw and it's a very clearly demarcated area of our City, you know, so maybe you can start your project there and use that...

Mr. Kephart: We certainly can start our project anywhere you think is in the best interest. The only thing I request is we don't want to be jumping around the City.

Commissioner Keon: No. But the Craft Section is a very identifiable area and it's among the worst.

Commissioner Lago: One of the good things about holding off city-wide versus district is that you can make these types of decisions.

Commissioner Keon: Yes.

Commissioner Lago: It makes sense.

Mayor Cason: Would you be able by the next Commission meeting on the 28<sup>th</sup> to have what we need to move forward on this?

Mr. Kephart: Yes sir. We will come forward with a higher degree of probability that I have standing here today on the cost.

Mayor Cason: OK. Everybody agree we should defer then?

Commissioner Lago: Yes sir.

Commissioner Keon: Could we also – you and I had talked about this issue of vertical displacement, could you address that?

Mr. Kephart: Yes. I can. When it comes time to actually approve the resolution we'll correct this for the next meeting then. The vertical displacement, Commissioner Keon, giving her credit for pointing this out, exceeding one-half inch of vertical displacement between sections for more than 50 percent of the width and if you have straight lines that means it's going to be over one inch on one side and I looked at that and you were correct Commissioner Keon, it was not the intent, and I think the intent is captured better by saying, sidewalks averaging more than one-half inch in vertical displacement because we are really trying to – that half inch is a key threshold in the ADA consideration, so I'll modify that language.

Commissioner Keon: So any part of it that would be a half inch it would qualify to be replaced?

Mr. Kephart: You could do that. What I was suggesting is averaging a half inch for half the width or more, because you may have a little bump somewhere that's a half inch, and I didn't want to get too carried away with this.

Commissioner Keon: OK.

Mayor Cason: I think the key things is we want to make sure that our younger colleagues that are pushing baby carriages can get them down the street.

Commissioner Keon: The way this is written, it would allow for a much larger displacement of one end than what the intent was.

Mr. Kephart: That's correct.

Commissioner Keon: You will rewrite this.

Mr. Kephart: We will correct that.

Commissioner Keon: OK. Thank you.

Mayor Cason: Thank you.

Commissioner Keon: And you'll bring it back corrected.

City Attorney Leen: Mr. Mayor I'd recommend a continuance for this.

Commissioner Keon: We'll continue it.

Mayor Cason: We'll continue it. Yes. Alright.

[End: 12:19:51 p.m.]