

**City of Coral Gables City Commission Meeting**  
**Agenda Item E-3**  
**January 12, 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)**

**Abigail Corbett**

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Agenda Item E-3 [10:08:05 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida, providing for text amendments to the City of Coral Gables Code by amending Chapter 62 “Streets, Sidewalks and Other Public Places,” Article VI “Parades and Public Assemblies,” to promote public peace and order in residential areas and to promote the important value of tranquil and harmonious neighborhoods in the City of Coral Gables, by regulating picketing within a defined buffer area, regardless of the content of the communication; providing for alternative areas for protest and picketing; and providing for a repealer provision, severability clause, codification, and providing for an effective date.

City Attorney Leen: So, Item E-3 -- and I would ask special counsel to remain up because she also worked on this, and we’re very thankful for it. Item E-3 is an Ordinance on First Reading.

An Ordinance of the City Commission of Coral Gables, Florida, providing for text amendments to the City of Coral Gables Code by amending Chapter 62 “Streets, Sidewalks and Other Public Places,” Article VI “Parades and Public Assemblies,” to promote public peace and order in residential areas and to promote the important value of tranquil and harmonious neighborhoods in the City of Coral Gables, by regulating picketing within a defined buffer area, regardless of the content of the communication; providing for alternative areas for protest and picketing; and providing for severability, repealer, codification, and an effective date. This is a public hearing item. What I would say to this item before turning it over to special counsel is we have had a few incidents where there has been picketing in residential areas. And the wonderful thing about this ordinance is it has been already upheld, both in concept and principle, by the Supreme Court in the Frisby case, which is mentioned. Also, there’s a very similar ordinance that we based this on, I believe, out of Winter Park.

Abigail Corbett: Winter Park, Florida, yes.

City Attorney Leen: Which was upheld by the 11<sup>th</sup> Circuit. Abby -- Ms. Corbett did a significant amount of research on this ordinance. She believes that this is the fullest extent of what we could do to protect our residential neighborhoods, while also protecting free speech rights and the First Amendment. And so, I would like to turn it over to her, and I would like to thank her for all her work on this. And the Commission can ask her questions, and you could also fill in any additional information...

Ms. Corbett: Sure.

City Attorney Leen: You think is appropriate.

Ms. Corbett: Sure, yes. So, as Mr. Leen mentioned, the Supreme Court upheld a somewhat similar, less detailed ordinance in this many years ago, and then recently, the City of Winter Park had an ordinance that we’ve tracked largely. It’s not exactly the same, but in substance, it’s very

similar. And the 11<sup>th</sup> Circuit Court of Appeals, which is also our federal court of appeals, upheld it. It includes a buffer zone of 50 feet from an individual's residence. I'm sorry.

Vice Mayor Quesada: No, no. I don't want to interrupt you. Go ahead, finish.

Ms. Corbett: And the idea is, the reason the court upholds this restriction or holds that restriction on picketing a particular house -- and there's particular language describing what it means to be picketing basically at a dwelling unit. And the idea is that the person inside the house has a countervailing right -- just like the person speaking has a First Amendment right to protest -- the person living in a home has a constitutional right to quiet enjoyment of their home and to not be threatened or otherwise harassed. So what this does is it specifically prohibits what the Supreme Court has described as picketing -- that's the word we use as well -- at a residence with a buffered zone. What this does not prohibit is general protesting in residential neighborhoods. So, the limitation here is there still can be protesting in residential neighborhoods, assuming it complies with our public assembly ordinances, other provisions, some of which, you know, we may be coming back to you guys in the next month or two because...

Mayor Cason: Which means you have to keep moving.

Ms. Corbett: That's a good way of putting it is that if you are not picketing at a residence and you're moving about and you're directing your speech at the public versus at a particular house, that is much more protected, assuming you're not violating anything else; noise ordinances, blocking traffic, et cetera.

Vice Mayor Quesada: Two things. Mr. City Attorney, you know, when I look at the draft ordinance, when we cite case law in a draft ordinance, it concerns me a little bit. I understand it's US Supreme Court case law, because what happens if that case gets overturned? What happens to our ordinance? Maybe it's on something minor, but it's still a reversal altogether. Does that invalidate our ordinance? I'm not saying you have to change it this time around. It's a

consideration that pops into my mind. Maybe there's case law that addresses that. Maybe I'm off base there. Going to the substance of the motion, it says 50 feet from the property line. So, how wide is a typical residential Coral Gables street, if anyone up here knows?

Commissioner Keon: Well, we have a 50-foot setback, so it's -- I mean, a 25-foot setback, right...

City Manager Swanson-Rivenbark: Glenn, you can come forward and help with that.

Commissioner Keon: On most of them.

Vice Mayor Quesada: Well, they can stand on the street.

Commissioner Keon: So, it's 75 feet.

Ms. Corbett: Well...

Vice Mayor Quesada: Or they stand on the -- because I guess, here's the key...

Commissioner Keon: Right.

Vice Mayor Quesada: Question. If you're standing on the street, obviously, we don't want any kind of safety concerns, so they're not allowed to stand in the street for safety concerns. But if you're standing on the swale on the other side of the street, are they in violation because they're within 50 feet of the house on that side of the street? Is that the effect of it?

Ms. Corbett: Excellent question. We believe that -- depending on the circumstances, that may very well be an appropriate meaning of this ordinance.

Vice Mayor Quesada: Or is it 50 feet from the target protesting home?

City Attorney Leen: No, no, my -- I want to be clear. My view of this ordinance, the intent of the ordinance is that you can't be 50 feet -- you can't be camped out 50 feet in front of any house.

Commissioner Lago: Yeah.

City Attorney Leen: But what you could do is you can walk. You can still protest. You just have to walk.

Vice Mayor Quesada: Got it.

City Attorney Leen: You just have to walk.

Commissioner Lago: My next statement...

City Attorney Leen: And you can't burden a specific home.

Commissioner Lago: Yeah, because my next statement was going to be, if you're not 50 -- let's say you -- from what the ordinance states, you're 50 feet away from the targeted residence, but you're still standing -- there's a very good chance, very highly possibility that you're going to be standing in front of someone else's home.

Ms. Corbett: Exactly.

Commissioner Lago: You may not be there to, you know, obviously, make a statement in reference to the residence that you're in front of, but you're still standing in front of someone's home directing...

Ms. Corbett: That's right.

Commissioner Lago: Some sort of message at another residence...

Ms. Corbett: That's right.

Commissioner Lago: Which is 50 feet away. And we're not trying -- and I want to make this very clear. We're not trying to quell free speech at all. We just want to -- and the Commission as a whole will agree with this, we're trying to protect the neighborhoods...

Ms. Corbett: Right.

Commissioner Lago: You know, to a certain extent.

Ms. Corbett: I live here, too. I live on a street and there's -- I have neighbors all around me, so I get you, and we've talked about that. And the court has not directly addressed whether or not you could apply it in that situation where the house in front of which they're camped out is not the targeted house. I do think that may very well be a reasonable interpretation of it to apply it in that situation. And it's important in the actual cases that I have for that is the court said the alternative means here is they just move around the neighborhood. They direct their speech at the public. The court didn't say go next door and bother your neighbor.

Vice Mayor Quesada: It's a caravan.

Ms. Corbett: Right. And the definition even, you know, the operative language in here talks about the -- it doesn't use the word camped out, but it says, you know, basically being affixed or milling about a particular residence.

Commissioner Lago: Is there a fixed number in reference to the amount of individuals that can be involved in this carousel around the block?

Ms. Corbett: Under here -- well, there's separate law on that, separate ordinance on that. So, under here, this would be even one person, one or more persons who's actually falling under the definition of picketing in front of a residential neighborhood, it can be applied to them. There are separate rules in the Code, once you get a larger number of people. It becomes a public assembly, and that is a different issue than just picketing.

Mayor Cason: Craig, could you address the question I had asked you in our pre-brief about 50 feet from the swale or 50 feet from the house. You said there was a reason for that.

City Attorney Leen: It's 50 feet from the property line at this moment, and we believe that -- that 50 feet from the property line comes from case law, which is why we used it. We believe that will sufficiently protect the neighborhood. Also, I would note, you know, we have added a provision about alternative means, which you don't have to add. We did because we want to be -- Coral Gables wants to be protective of First Amendment rights. We do have protests in our City all the time. We always work with them. The Police Department does an excellent job, or working with them to make sure that they can have a peaceful protest. The purpose here is really to protect the residential neighborhood, which the Supreme Court has said that we can do. And the reason why we include the cases -- although, if the Commission wishes, we can take them out -- but the reason is because it is a Supreme Court case and an 11<sup>th</sup> Circuit case, so if they were reversed, we probably would have to retreat from this entire ordinance, first of all. But second, it's so that when a district court sees this, they see our intent and they'll construe the ordinance consistent with those two cases, which are binding under district court. So, in case, for some reason, you -- we think that this is a well-written ordinance. But if they look at it, like they did in *Frisby* -- in the *Frisby* case, the Supreme Court construed that ordinance, which was broad, narrowly in order for it to be constitutional, we're basically indicating the Commission's intent that we want it construed consistently with these two cases.

Vice Mayor Quesada: This is probably a bad example, and I'm just saying, I think generally we should try to stay away from citing...

City Attorney Leen: Agreed.

Vice Mayor Quesada: Case law and maybe citing key provisions in the case without citing the actual case, because if the case gets overturned for other reasons, or it gets vacated for other reasons...

City Attorney Leen: Right.

Vice Mayor Quesada: You know, because you don't know right now, there could be another U.S. Supreme Court case that comes out that doesn't -- you know, that changes the end results without completely overturning it, and it could call our ordinance into question. I'm just saying. Maybe that's not...

City Attorney Leen: That's a very good point.

Vice Mayor Quesada: A good example, but...

City Attorney Leen: Mr. Vice Mayor, it's a very good point, and we typically do not include case law.

Ms. Corbett: Right.

City Attorney Leen: We did here because...

Vice Mayor Quesada: Yeah, I've never noticed you doing that.



Ms. Corbett: Right. We typically do not.

Vice Mayor Quesada: That's why it jumped out at me.

Ms. Corbett: I don't, and neither does (INAUDIBLE).

City Attorney Leen: I asked...

Vice Mayor Quesada: You thought about it as well?

Ms. Corbett: Yeah. I was just saying I normally -- it's not my practice to do that. I normally would not do that. I included them here for exactly the same reason.

Vice Mayor Quesada: Because then what ends up happening is it forces us or you guys to continue monitoring every case that comes out to check -- you know, cross-reference it with our ordinances.

City Attorney Leen: We just...

Vice Mayor Quesada: Which is a little impractical.

City Attorney Leen: We can -- if the Commission's will is to remove it, we can. The thinking behind it, though, was...

Vice Mayor Quesada: I understand the rationale.

City Attorney Leen: We just wanted people to...

Vice Mayor Quesada: And I agree with the rationale.

City Attorney Leen: Okay.

Vice Mayor Quesada: So...

Commissioner Lago: The point is obviously to strengthen the ordinance.

Vice Mayor Quesada: Yeah.

City Attorney Leen: Yes.

Commissioner Lago: That we're putting forth today.

City Attorney Leen: And so that people will see that we are intending to protect First Amendment rights, that we're doing something that's clearly constitutional. That was the idea.

Vice Mayor Quesada: Therefor, I move to approve the item.

Mayor Cason: But first of all, it's a...

Vice Mayor Quesada: Okay.

Mayor Cason: Public hearing. Do we have any cards?

City Clerk Foeman: No, Mr. Mayor.

Mayor Cason: So, we'll close the public hearing.

Vice Mayor Quesada: So move.

Mayor Cason: Do we have a motion? Vice Mayor makes the motion.

Commissioner Lago: I'll second the motion.

Mayor Cason: Commissioner Lago seconds. City Clerk.

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: Thank you.

Ms. Corbett: Thank you.

Commissioner Lago: Thank you. Great work.

City Attorney Leen: Mr. Mayor, if I could take a point of personal privilege, I just -- I would just like to thank special counsel for her work on this. She has been working on a lot of First Amendment issues, and she's great. She really knows her First Amendment well. This is her area that she's studied a lot and worked on, and we just appreciate your help.

Ms. Corbett: Thank you, Mr. Leen.

Mayor Cason: Thank you.

[End: 10:18:00 a.m.]