

City of Coral Gables City Commission Meeting
Agenda Item E-2
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

Agenda Item E-2 [9:57:21 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida, amending the City of Coral Gables Code, by creating Section 38-12, entitled “Penalty enhancements for bias motivated violations of the City Code or Zoning Code”; providing for a repealer provision, severability clause, codification, and providing for an effective date.

Mayor Cason: So, E-2 is an Ordinance on First Reading, sponsored by Commissioner Keon.

City Attorney Leen: Thank you, Mr. Mayor. Item E-2 is an ordinance on first reading, sponsored by Commissioner Keon. It’s an ordinance of the City Commission of Coral Gables, Florida, amending the City of Coral Gables Code, by creating Section 38-12, titled “Penalty

enhancements for bias motivated violations of the City Code or Zoning Code”; providing for repealer, severability, codification, and an effective date. What this ordinance does is, it creates a new section of Chapter 38 of the City Code. It is based on another provision that’s presently in state law in the State Statutes, which prohibits basically hate crimes. And the way that it prohibits hate crimes under state law is that if there’s a misdemeanor or felony under state law and it meets the definition of a hate crime, or a bias motivated crime for one of the protected classifications, which are traditionally based on race, ethnicity, gender, national origin, et cetera - - and they’re put into the ordinance. If one of those bases is the reason for the criminal violation, i.e., if someone commits an act of vandalism and it’s targeting someone for bias based on one of these protected classifications, then what occurs is not only are they guilty of the underlying crime, they’re also guilty of an enhancement to the crime based on the bias. We’re taking that principle, that concept, and we’re putting it into our Code because a number of Code violations are not misdemeanors or felonies. They’re municipal ordinance violations. So, we’re bringing the same concept that if a municipal ordinance violation occurs for one of those reasons, it will also be enhanced. And with that, I would ask Abby Corbett, who’s our special counsel, to come and answer any questions from the Commission and to add anything that I may have missed.

Abigail Corbett: Good morning, Mayor Cason, members...

Mayor Cason: Hi.

Ms. Corbett: Of the Commission. Abby Corbett, from Stearns Weaver. Yes, as Mr. Leen said, our language here tracks the state statute language, but would apply to violations of the City Code that are not already enhanced under the state statute for which the penalty is not already enhanced. We set out an enhanced penalty for those violations. There are, you know, many instances that violations of the City Code would not apply here, but sometimes it might, and this allows, you know, an additional available penalty in the event that it does.

Mayor Cason: Any other municipalities have this incorporated?

Ms. Corbett: Good question. No. This is -- I wasn't able to -- I can't speak for every single municipality in the entire country, but we did a pretty thorough search, and I don't see anyone else doing this, probably because most hate crimes are violations of a -- are at least a misdemeanor under state law. It would be fairly unusual to have something -- even a vandalism would likely be a state crime. So, it's -- the circumstances in which this apply would be rare, I think, but it's available, you know, in the event that it does apply.

Mayor Cason: Mr. Clerk, could we have -- since this is a public hearing, do we have any speaker cards?

City Clerk Foeman: No, Mr. Mayor.

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

Commissioner Keon: I think we -- what I asked when it came when we did the -- we redid the signage ordinances to be compliant with the court rulings on First Amendment rights and we wanted to ensure that hate words or something made that is either directed at a neighbor or directed at anyone it's very clear that it is not covered by your First Amendment rights...

Ms. Corbett: Well, yeah...

Commissioner Keon: Or that we can take action when...

Ms. Corbett: Not necessarily, and Mr. Leen can speak to this as well...

Commissioner Keon: Yes.

Ms. Corbett: As I can. But, unless something rises to the level of unprotected speech, such as an obscenity or extortion or something to that level...

Commissioner Keon: Right.

Ms. Corbett: It is protected under First Amendment, even if the content is hateful. I know that's -- you know, none of us like that, but that's protected, unless the actions being taken is itself a crime. So, the sign ordinance is a good example. Even under this, unless the violation of the Code itself was itself motivated by bias under one of these categories...

Commissioner Keon: Right.

Ms. Corbett: You still can't consider the content of the sign, unless the content is one of those unprotected categories. So, for example, unfortunately, if somebody puts up a sign that contains something hateful, mean, but doesn't rise to the level of unprotected speech, the fact that the sign is too big won't make it a bias motivated event. However, their sign's too big, it needs to come down under the sign Code because it violates the...

Commissioner Keon: Right.

City Attorney Leen: Let me add one thing. Let's say, for example, someone put a symbol that was directed at their neighbor based on one of these protected classifications -- and maybe there's even evidence of that; for example, they've said that that's what they're doing or they've told the neighbor that and they put one of these hateful symbols -- and they put a huge sign, they intentionally violate the Code because of their racial bias or their religious bias, I do think that we could take action here, but we have to show not only is the sign itself, the content of the sign biased...

Commissioner Keon: Right.

City Attorney Leen: Which is protected because you can have a biased sign, we'd have to show that the violation, creating a huge sign and putting it right in the setback and pointing it at the neighbor was done because of one of these racially motivated or ethnically motivated or religiously motivated reasons. And if we could show that, we could act. If that ever happened, I do think we'd probably be able to show it. You know, hopefully, that will never happen in our City, and I think we're making it clear today, Commissioner Keon, through your sponsorship of this item and through the Commission's support, that that's something that will not be tolerated in Coral Gables.

Ms. Corbett: And I should also mention that the protected categories...

Commissioner Keon: Yes.

Ms. Corbett: Also track the state statute, so it includes sexual orientation and does not include gender identity. There's some debate about those classifications at the state level.

Commissioner Keon: Right.

Ms. Corbett: But we're just tracking the state statute.

Commissioner Lago: Just to discuss what the City Attorney just stated. I mean, it's not really the issue of the size of the sign because that falls under the Code, which we already have in existence. This is more about the content of what's trying to be delivered by the individual who put that sign forward.

Ms. Corbett: It's not about the content really. You're right that this would be a very unusual situation. You're right. That would be a violation of the Code. Now, what this would allow -- if

the example that Mr. Leen gave was able to be proven, you would enhance the penalty for that violation.

Commissioner Lago: Okay.

Ms. Corbett: More likely, somebody complies with -- I think the most likely event, if you have somebody with a hateful sign, is they probably haven't complied with the provisions.

Commissioner Lago: But I just want to clarify, just for the individuals who are listening at home, the residents, that there already is a -- there is already a Code in place which dictates the size of the sign that could be placed on your front lawn already.

Mayor Cason: So, a burning cross would be...

Ms. Corbett: A burning cross is an interesting example because there's actually some case law that suggests that that could be unprotected speech. Well, first of all, if you put it in somebody else's yard, you've trespassed. You've done all sorts of things. Let's say you put it in your own yard. Of course, it would violate the City Code and sorts of arson and just fire safety regulations, but as an example of regulating the content of that speech, that's sometimes used as an example of something that's not protected because it's intended to incite violence. That's the historical display of that particular symbol is intended to incite imminent violence. At least, there's some case law on that. There's some case law suggesting otherwise, but that's open to debate, but that would fall under the category in our sign ordinance that says we're not intending to permit any speech that would vio -- that is not protected in the First Amendment, such as speech that would incite immediate violence.

Mayor Cason: Okay.

City Attorney Leen: One other thing to add is I do know Commissioner Keon asked that there be a provision added at least allowing us to seek an injunction from a court because one thing that occurs is we may have a sign that violates the sign code, but it's on private property. We don't typically go on private property and remove the sign, so -- and, you know, there may be some issues with going on the property removing any sign, honestly. Although, if there's been a municipal ordinance violation, there's an argument we could do it. The safest thing to do is create an ability to go to court and to ask the court to order that it be removed, which we can do on an expedited basis. And we could put in there that it would be expedited that we would receive our attorney's fees for having to do so. At the very least, that allows me to go -- let's say someone puts seven signs, which violates the sign code and we fine them for it, but we actually want them to remove the signs because there's seven or eight signs and we can show that they're intended for bias and for hate and it qualifies under the ordinance for enhancement, there should be an ability to go to that person and say, look, we're hiring an attorney. We're going to ask for our attorney's fees, and we're going to have you ordered to remove this. And hopefully, that will get them to remove it. If not, we go to court and we get a court order. Then we can go on the property and remove all the signs. Would you be able to --? Commissioner Keon asked for that. That's why I'm raising it.

Ms. Corbett: Right.

Commissioner Keon: Yeah.

City Attorney Leen: Would you be able to...

Ms. Corbett: The City Code has a similar attorney's fees provisions for certain violations, a few violations of the City Code.

City Attorney Leen: Yes.

Ms. Corbett: That would be something we would be putting in the Zoning Code under the sign ordinance. Are you...

City Attorney Leen: We're putting it into this provision. There would be an additional section allowing us to seek court enforcement specifically for this.

Ms. Corbett: But only as it relates to signs or any violation of hate crimes enhancement?

City Attorney Leen: Any racially...

Commissioner Keon: Or any...

City Attorney Leen: The idea would be to stop any hate crime. Be able to stop the hate crime in addition to penalize them for it. So, you have the penalty, which includes potentially incarceration and a fine, and then you have separately the ability to go and seek an injunction, which is similar to what we did in the squatters ordinance.

Ms. Corbett: Yeah. I think to avoid vagueness concerns, you might want to specifically put that in the portion of the Code that had the underlying violation. This is the enhancement. I don't know if you'd want an injunction...

City Attorney Leen: I think we want it for the enhancement. We do want it for the enhancement so...

Ms. Corbett: We can talk about it, but -- and I can -- you know, I can look at it more carefully.

City Attorney Leen: We do -- we would want it in this ordinance. That's my understanding.

Ms. Corbett: It just -- potentially, you'd then have an injunction that applied to...

City Attorney Leen: That's okay. We'll put it in this ordinance.

Ms. Corbett: Alright, let's look at that.

Mayor Cason: You could do that between First and Second Reading then.

Ms. Corbett: We'll look at that, yes.

Mayor Cason: Okay.

Ms. Corbett: We'll look at that.

Mayor Cason: Any more discussion?

Commissioner Keon: No, thank you.

Mayor Cason: Have a motion?

Commissioner Keon: I'll move it.

Vice Mayor Quesada: Second.

Mayor Cason: Commissioner Keon makes the motion; Vice Mayor seconds. City Clerk.

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Mayor Cason: Yes

(Vote: 5-0)

City Manager Swanson-Rivenbark: And Mr. Mayor, if I can, we're not responding to an ugly incident in the community.

Ms. Corbett: Right.

City Manager Swanson-Rivenbark: We're hoping that that will never happen. But having this kind of language in place allows a very specific game plan. So, I don't want any of our residents to think what's happening in their community.

Commissioner Keon: No.

Ms. Corbett: Right. This is proactive.

[End: 10:08:04 a.m.]