

City of Coral Gables City Commission Meeting
Agenda Item G-4
September 22, 2020
Virtual Meeting
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Raul Valdes-Fauli
Vice Mayor Vince Lago
Commissioner Jorge Fors, Jr.
Commissioner Pat Keon
Commissioner Michael Mena

City Staff

City Manager, Peter Iglesias
City Attorney, Miriam Ramos
City Clerk, Billy Urquia
ACM, Ed Santamaria
ACA, Naomi Levi Garcia

Public Speaker(s)

Agenda Item G-4 [10:20 a.m.]

A discussion regarding whether additional enforcement actions or penalties can be imposed against construction permit holders who violate the City Code by polluting storm drains with construction site water waste.

Mayor Valdes-Fauli: Next item is G-4, Vice Mayor Lago, another one.

Vice Mayor Lago: Thank you Mayor. So, I wanted to see if we could get somebody from staff or Miriam or whoever would like to chime in on this. The reason why I'm bringing this forward is, because as many of you are aware, especially if you are on social media, I know some are not on social media, but there has been an onslaught as of late and I'm happy that Mr. John Thompson brought up the issue of the letter that I wrote to the Governor, along with the Mayor of Miami, in regards to water quality, in regards to our bay, and the billions of dollars that the bay spins off every year in economic development and economic responsibility that we have in this community, one of them being property values. So, my three items today have been G-2, G-3, and G-4 now, dealing with water quality, and see what we can do to ensure that our water quality is pristine and

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that, again, it doesn't affect our property values, because as we know, from my understanding is that 25 percent of our budget comes from properties, excuse me, our tax roll comes from properties on the water, and we have over 40 miles of waterway. So, as many noticed, there were certain instances that were happening in the bay, not in the City of Coral Gables, but were happening in our neighboring city, that dealt with construction debris and plumes of water that was running off into the bay, resulting in significant issues for seagrass, and for water quality, and we started monitoring that issue. The city, all the elected officials, a lot of the environmental organizations that saw it as a major issue that they didn't want it to spin out of control. I was then contacted by multiple environmental organizations that asked me to look into one situation that happened here in the city, and I'm going to put up a picture here now in a few moments, where we had some significant runoff from a neighboring project. Again, just to be fair, there was a torrential downpour that day, so you had a lot of this construction debris and concrete and sand that made it into our waterway, which again, should never happen, but it did. So after sitting down with staff and our ACM and our CM and our City Attorney, we wanted to find solutions, we wanted to find what we had at our disposal to ensure that contractors, kind of like what we did with no exterior work on Saturdays, the other different opportunities that we've taken and we've implemented to ensure that there is a certain level of quality and here we've put up some of the photos of the actual water and the runoff that we were seeing. And this is the actual text message that was sent out, not text message, excuse me, that was put on social media when they reached out to us. So with that being said, Miriam, I would like for you to address the issue and I want to make two motions if my colleagues will accept it, because I know that we currently have a little bit of our hands tied in regards to what we can do. I want to direct the Manager to commence a significant educational campaign, similar to what we do when somebody comes to pull a permit and we tell them that you can't work on exteriors in residential neighborhoods on construction projects. I wrote that piece of legislation and its paid significant dividends even though going against my own industry, because its an issue of quality of life. I want to do something that really educates people when they are building near waterways or case in point, myself, when you have a catch basin located on the two corners of your property, that's number one. It deals with retention, it deals with ensuring that the water, no matter how big of a rainfall does not leave your job site. We face this every single day, Ed and Peter are well aware of this, so is Hermes. And the other thing is, I want to bring back an ordinance to establish an increase in fine schedule, an issue of irreputable damage in that case, because right now what ends up happening is that a lot of construction companies see this as just a cost of doing business. Well it's a \$500 fine, it is what it is, I'll just pay it and I continue moving forward. Miriam, can you talk a little bit about that issue of establishing an ordinance which will increase a fine schedule and what do we have at our disposal as a result of the fact that we are over 50,000 residents, and then I want to hear from the ACM, also to chime in on that.

City Attorney Ramos: Of course, Vice Mayor. So, currently the city code has Chapter 5421, or Section 5421, which is what we cite under when there is a violation. But that only is used as you stated carries a \$500 fine. Municipalities over 50,000 residents, as you know we are, have the ability to adopt an ordinance by super majority vote that increases fine amounts. It allows for a fine of \$1,000 for violation, the first violation and then \$5,000 when you are a repeat offender. It also has a provision that allows for a \$15,000 fine for a violation that is either irreputable or irreversible in nature. We have a similar fine structure that we set forth in our ordinance regulating

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hourly rentals and we can put together an ordinance that specifically prescribes that type of fine structure for violations of 5421. In addition to that, there is the ability to currently, today, to issue stop work orders under both the Florida Building Code and under something called the NPDES, which Naomi did a lot of work on that. I'd like her to have the opportunity to address you on that.

Vice Mayor Lago: Thank you Naomi. By the way, Naomi, I didn't see you there. Thank you for your efforts on this. I know that you did a lot of leg work on this. So, thank you.

Mayor Valdes-Fauli: Go ahead Naomi.

ACA Naomi Levi Garcia: The only thing I would add to what the City Attorney already mentioned is that we can cite under Section 5421 for discharging liquid waste into the stormwater drains and across our public ways, but for discharging into the waterways, we would look to Chapter 86 of the Code, so if you can just give us a little bit more guidance. Do you want to increase the fees specifically for discharging into waterways or...?

Vice Mayor Lago: I want to do both.

ACA Levi Garcia: Okay.

Vice Mayor Lago: I want to do both. I don't want it to be just a slap on the wrist, which is considered just a cost of doing business. I'm in this industry. I know what basically a \$500 fine when you are talking about \$25, a \$15, a \$10 million-dollar project, it's not really a fine. What I want to have is, I want to have a robust educational campaign where people are made aware the moment that they pick up a permit, just like they are made aware that you are not allowed in residential neighborhoods to do exterior construction on Saturdays. If you violate that, there is a consequence. And then I want to move forward, again, someone gets a warning, if we see a situation. If it's as bad as what we saw and I put up online where the entire waterway was a plume of sediment, as a result of the runoff, that construction company did not take the necessary precautions to ensure that no matter the significant amount of water that fell that day, you have to contain it on your job site, and the ACM will tell you, that's one of the standard protocols of construction is required, just like putting a silk fence and putting up fences for safety. And this is critical, because you're seeing the seagrass die off to numbers that, again are critical, you are seeing our bay's health deteriorate, we are seeing algae plumes, and this has to do with massive amounts of nutrients that are coming into the waterways and affecting our water quality. So, I'd like to see like the City Attorney mentioned, for us to have an impactful fine structure. But I don't want to just hammer, I want to educate. I want to educate, and I want people to understand that there are consequences for not considering the environment and our natural resources.

Mayor Valdes-Fauli: Vice Mayor you want to call for them to present something along those lines to us at the next meeting?

Vice Mayor Lago: I would like to. You think – well, I haven't given Ed a moment to speak, but I wanted to hear from Ed and from Peter, if you have any other, and Hermes, do you think that we can put something together in a month, you think? What do you think?

ACM Santamaria: I think it's possible, but I defer to Miriam. There is going to be some legal research that needs to be done. We are stormwater utilities, certified stormwater utilities, we are subject to national pollution elimination discharge system requirements, that's a condition of our permit as a stormwater utility. We already have items in our code that allow for the enforcement, 5421 is one, there is also 86-1, as was mentioned by Naomi and Miriam, and there is also 78166. I reviewed these items and I think that we can do something to make them more specific to the condition that was described at that location, 301 Arvida, and so, if not in four weeks, perhaps six weeks we should be able to do something that would be, in my opinion, would close any other loop holes that we might have, and also allow for enhanced enforcement by way of increase.

Mayor Valdes-Fauli: That would be very helpful.

Vice Mayor Lago: You just said it right there, Mr. ACM, the issue here is enforcement, because I called you immediately when I saw this online. We sent out Code Enforcement, but we weren't able to cite at that moment. We didn't have the necessary, I guess, tools at that moment to be able to cite this site for violating.

ACM Santamaria: By the time we got there the plume was gone.

Vice Mayor Lago: The plume was gone. But it was so significant that, obviously you could see it in the photos that I just sent out there. So maybe in the next month or so, not in the next Commission meeting, but probably two Commission meetings from now, we can present something, which again, like you said, closes the loop hole and provides us the necessary guidance to really address these issues when they do arise. They are not that common, but I also want to make sure that in the part of the education campaign, that we educate people who live on the waterways, which is something that's really happening in the City of Miami, because they have those buildings in the bay, to contact a certain entity in the city, either be Code Enforcement, either it be Public Works, to just basically say, look, this is happening, please reach out and tell us so that we can take the necessary steps to address it.

Mayor Valdes-Fauli: Thank you very much Vice Mayor for your leadership.

Commissioner Fors: Mayor, I have a quick question. First of all, I do think its important if we are going to increase the fines that we don't continue trying to fit that behavior into pre-existing codes that aren't necessarily tailored to it.

City Attorney Ramos: I'll take the opportunity to fix the language also.

Commissioner Fors: Exactly. Secondly, are we, and I'm not familiar with these provisions of the code, are we going, is our approach going to be to tell these property owners who bought and hired

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construction companies that doing this will result in a violation, or are we going to go one step further, you figure out how not to do this, or are you going to go one step further and prescribe actual measures or do those already exist, to prevent that from the get-go, in other words, say from the get-go, you need to have this on your property if you are building on the water.

City Manager Iglesias: Commissioner, if you are a general contractor, this is part of what you should know, and PDS is followed throughout the entire nation in all sites over one acre, and the building code addresses sites under one acre. So, I think the enforcement issue and the fine issue is going to be very helpful with that, because if you are a GC, and you don't know about MPDS, then you have a problem. Let's continue educational requirements, so I think the construction industry knows this and I'm sure the Vice Mayor can testify, because he does it on his jobs.

Vice Mayor Lago: Yes, we have to – and by the way, your first comments, I'm so happy you made that, because that is exactly what we need; we need to find a new way, we just can't try to fit a square peg into a round hole. But in regard to what the City Manager was saying, you have to use silk fabric and cover up the drain holes and you have to monitor that on a weekly basis. You have to bring hay bales and make sure that those hay bales are placed in locations. We have to bring a silk fence. We have to ensure that if you are trenching, there are a lot of different things that are required that are basically standard and you cannot start a job site without ensuring that you protected the waterways; and sometimes I think we need to be a little bit more careful, a little bit more careful when we open these job sites up and allow people to commence the process of building whatever structure they may be building, and we need to crack down if you see a deterioration during, for example, the whole construction process. Like you know, when you drive by a construction process and you see the silk fence has come off and is blown away, that's a violation. The purpose of that silk fence is to stop dust from going into the neighborhood. So, you'll see the silk fence is torn up and you'll see the silk fence is basically blowing away, in some cases you won't even see a silk fence, because the project has been going on for two years and its no longer there. Those are the reasons why there has to be our team, our Code Enforcement team, which does a great job, our inspectors, they need to take the onus at that point and say listen, when they see something say something. Give a personal warning, say listen, fix that in a week, fix that in two days. Let's avoid a nightmare. There is already a long list its just that sometimes we have so many of these going forward trying to achieve...

City Manager Iglesias: And if you are working near the water, you should brim for runoff, you should have two...all kinds of issues like that which are all part of your requirements of the Building Code and also for sites over one acre in PDS. So, I think what we are going to do also is, have some internal continued education for our inspectors, we'll do an internal program to make sure that when they go by a job site, to triple-check those areas and make sure that we keep runoff from infiltrating into our waterways or into our drain systems.

Vice Mayor Lago: That runoff doesn't not only affect the water quality; it affects the level and the height. So you have all this water runoff, it eventually, boats struggle to get through those canals, especially when you are having all these runoffs, especially around the bridges, you are seeing that sediment buildup and continue to buildup and that becomes a problem. The numbers that we are

talking about, remember Hermes, we looked at this, they were talking about millions and millions and millions of dollars to remediate these issues of sediment buildup, especially around the bridges.

Mayor Valdes-Fauli: Thank you very much folks, very, very good.

Commissioner Keon: I want to agree strongly with Vice Mayor Lago on this issue. We had a very long discussion the other day about inspections, and issues with inspectors within the city, and the fact that a contractor knows and knows what the rules are and knows what the regulations are is not enough, and you can't rely on that. You can't rely on that they know. The job of government is to care for the general good and that's making sure that even though people may know that they do, so every single one of the things that we have talked about, they already know, and they've already been told, and they already exist. What we don't do as a government is make sure that they have those things in place and that they keep them in place, and that they are maintained in place so that those adverse effects don't occur. I'm very glad you brought it up. We had a very lengthy discussion about inspectors and inspections, and what they are supposed to do, and I think that you are very badly in need of some additional training and some additional education and some additional accountability on the part of all of those who are responsible for that work.

City Manager Iglesias: Let me say Commissioner that this doesn't happen very often, but it should never happen.

Vice Mayor Lago: And I want to make sure, because I deal with the inspectors.

Commissioner Keon: It happens enough that it needs to be acted on.

Vice Mayor Lago: I deal with the inspectors on a daily basis and we are blessed to have some of the best staff that work very hard. They are very well versed on the code, but sometimes these types of situations happen, and a lot of the time, hate to say this, because its my own profession, we are the ones to blame. We are the ones for cutting corners, we are the ones for not taking seriously and when we say cut corners, we save money, we save money. But with that being said, we need to incentivize people to make sure that people are following the code, and I'm not about dropping the hammer on somebody the first time but let me use City of Miami for example. I was very clear to the Manager and to our City Attorney and to our ACM, I do not want to pass the same law that Chairman Russell passed, because that has limited teeth. I want to go and do what Commissioner Fors said. He put it perfectly. I want to build it from scratch just like we did with the Saturday construction. Nobody does Saturday construction on exteriors. When they do it, they know they are violating the law and I hope, I hope that we are not warning people, because when you pull a permit, you know very well, if you are a roofer, if you are a shell contractor, if you are a contractor, you are not allowed to work on Saturdays on the exterior. You can work on the interiors and make all the noise you want inside, but Saturdays are a quality of life and Sundays here. And I've caught people doing it. I've called Code Enforcement and every single person I've talked to, even contractors understand the importance of that code. These waterways, like I told you, the moment it gets into the water, it dissipates and no one every sees it again, but its still an

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issue, it becomes sediment, and it piles on top of each other and eventually we have issues in our waterways, we have issues of devaluation of properties, we have issues with the mangroves are dying, our sea beds are dying, corals. This is a long-term project that we need to be stewards of the waterways.

Mayor Valdes-Fauli: Okay, so its six weeks, what is it, six weeks.

Vice Mayor Lago: Whatever staff needs.

Mayor Valdes-Fauli: Whatever time you need to bring it back.

City Attorney Ramos: We'll bring it on First Reading for October 13th, and then, perhaps on Second Reading you'll have the educational.

Vice Mayor Lago: You know, maybe we should do, and I'll be very brief with this, okay, maybe we should have an inspection, have a pre-inspection, if its allowed by the Florida Building Code, which basically insures that all the precautions for maintaining water on your site are – I know they have it, but sometimes, for example, this project that I just put up there, that project was bringing in sand and working on foundation. So how is it that they haven't even gone vertical yet and they already have a major issue with water runoff. That contractor doesn't know what they are doing. I know there was a lot of rain, I know there was a lot of rain, but they need to understand that if we are seeing that much rain in the forecast, they need to take the necessary precautions to ensure that the waterway doesn't become like it did.

Mayor Valdes-Fauli: Thank you folks. Thank you very, very much, and you've got your marching orders. Thank you, Vice Mayor for bringing this issue up and Commissioner Fors.