

City of Coral Gables City Commission Meeting
Agenda Item E-11
May 7, 2024
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Vince Lago

Vice Mayor Rhonda Anderson

Commissioner Melissa Castro

Commissioner Ariel Fernandez

Commissioner Kirk Menendez

City Staff

City Attorney, Cristina Suárez

City Manager, Amos Rojas, Jr.

City Clerk, Billy Urquia

Deputy City Attorney, Stephanie Throckmorton

Public Speaker(s)

Agenda Item E-11 [3:30 p.m.]

An Ordinance of the City Commission amending the Code of the City of Coral Gables, Florida, Chapter 2, entitled "Administration", Article III "Boards, Commissions, Committees", Division 3 "Trial Board" by creating Section 2-124 "Procedures" and amending Chapter 2 entitled "Administration", Article IV "Officers and Employees" by creating Section 2-255 "Employee Protection" in order to provide for an administrative procedure for handling complaints made in accordance with the Florida Whistle -Blower's Act, F.S. §112.3187; providing for a repealer provision, severability clause, codification, and providing for an effective date.

Mayor Lago: Moving onto E-11.

City Attorney Suarez: E-11 is an Ordinance of the City Commission amending the Code of the City of Coral Gables, Florida, Chapter 2, entitled "Administration", Article III "Boards, Commissions, Committees", Division 3 "Trial Board" by creating Section 2-124 "Procedures" and

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amending Chapter 2 entitled "Administration", Article IV "Officers and Employees" by creating Section 2-255 "Employee Protection" in order to provide for an administrative procedure for handling complaints made in accordance with the Florida Whistle -Blower's Act, F.S. §112.3187; providing for a repealer provision, severability clause, codification, and providing for an effective date.

Deputy City Attorney Throckmorton: Good afternoon again. I just wanted to let you know it didn't appear in some versions that this item is sponsored by Commissioner Menendez. So just wanted to give you a brief background about what this relates to. This relates to the State of Florida Whistle Blower Act. So, all employees of the city are covered by the State Whistle Blower Act as it stands today. The city has the option in state statute to adopt a local administrative proceeding to have sort of an interim step between whistle blower protection invocation and lawsuit. So, this creates a sort of in-between administrative step. The Whistle Blower Protection Act, as it's set forth in state law allows for certain categories of disclosures to be made to certain elected, I mean certain city staff, and once those disclosures are properly made, should there be any adverse employment action taken against that employee at another point, there are some protections involved, including this local administrative proceeding. When looking at this with the sponsor, we looked at utilizing our existing Trial Board, which is a Trial Board made up of five residents. Some appointed by the Commission, some by the employees, some by the Trial Board as-a-whole, which is already in effect and existing. So, this ordinance sets forth that the Trial Board would be the local administrative panel for purposes of an administrative hearing for those invoking Whistle Blower Protection Act. This is called employee protection which is what its called throughout Miami-Dade County and it provides certain procedures to whom disclosures need to be made to whom complaints need to be made, etc., all in accordance with state law. This does not change any of the Trial Board's existing rights and responsibilities and in fact, one other change in this ordinance provides that consistent with past practice and their ability. It just codifies the Trial Board's ability to create rules of procedure for the normal Trial Board proceedings, as well as these proceedings pursuant to the Whistle Blower Act. Happy to answer any questions. It's sort of a complicated area of the law, but we try to make this ordinance as simple as possible. Just to reiterate to the employees that those whistle blower protections are available and there is an administrative process here that should be followed.

Commissioner Menendez: I want to thank first off, the City Attorney's Office, both Cristina and Stephanie worked very hard and working through the jungle or weeds of county rules, state rules, federal. It's a little bit convoluted and I think this effort is basically, like everything we try to do as a Commission, to streamline and simplify so that people can better understand what our rules and regulations are; and I also want to thank the City Manager, who directly collaborated and worked very closely with the City Attorney's Office from the administration standpoint. Like I said before, other cities in the United States, starting with Miami Beach locally, enacted their own local whistle blower template and this to me, is basically a procedural template. Upon which over time, in the future, future Commissions can add perhaps language here and there, as we come across issues that come along, but I think its important to have at the very least a procedural template and I think we accomplished that, thanks to your work.

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Vice Mayor Anderson: So, I have a couple of questions for you. Having done some EOC work and done cases in front of other cities with trial boards, and we do already have a Trial Board. This is asking the Trial Board to make some rules. I do think there's some preliminary rules that we, as a body, should require, and I believe in and always have advocated for pre-suit mediation and pre-suit for everything, because having someone go before a Trial Board twice is illogical to me. And why is it illogical, because you've got to go there anyway. So, you're having someone pre-judge something and then come back and judge it again. If what we're really trying to accomplish is an intermediary to help resolve issues and make recommendations back and forth to the City Manager versus the employee and try to resolve difference, sounds like more of a role of a mediator than it does going in front of a Trial Board. It's a much more expensive process to go before a Trial Board for both sides, because you're litigating at that point. You're putting on evidence at that point and I think its easier to reach resolution with a mediation process.

Commissioner Menendez: We bounced around different ideas, and one was, not necessarily a mediator, but using a different individual, groups of individuals, but I think after research done by the City Attorney's Office, they gave back the reasoning behind using the Trial Board.

Deputy City Attorney Throckmorton: Sure. So, Vice Mayor, I'm happy to speak with you about, if you mean like before the Trial Board, what that would mean, but it does have to be a panel. It cannot be a mediator. Following state law, it has to be a panel of individuals, but if you're talking about like a pre-trial board step, that's a different situation and we're happy to discuss that with you all.

City Attorney Suarez: And I think if it's the will of the Commission, if the Trial Board is invoked for this purpose, certainly we can include a provision that mediation is an option and perhaps even encouraged.

Vice Mayor Anderson: That's basically what I'm saying. You're expecting the Trial Board to come up with rules that folks that are educated as attorneys would know how to do, but our Trial Board folks aren't necessarily attorneys.

Commissioner Menendez: I don't disagree with you.

Deputy City Attorney Throckmorton: So, it does provide that they should be done in consultation with the City Attorney's office, those rules and procedures that are adopted, so we can certainly look at that, or we can look at if it's the will of the sponsor, including something in here and making sure that those rules and procedures include the option for mediation.

City Attorney Suarez: We can certainly do that if it's the will of the Commission.

Commissioner Menendez: You'll be comfortable with that.

Vice Mayor Anderson: Yes. I would like a mediation option in there before we go on full throttle, I think folks should have this opportunity to sit down and talk.

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Commissioner Menendez: Between first and second reading, unless any of our colleagues disagree, I think that would be a good addition.

Commissioner Castro: I have a comment City Attorney. The Trial Board, is it part of the Charter or is it by ordinance?

City Attorney Suarez: The Trial Board is in the City Charter. Our City Code has certain procedures for the Trial Board. Certain general rules about its composition and so forth, but yes, Trial Board is in our City Charter.

Commissioner Castro: Okay. So is it possible – it's under my understanding that you told me that the Trial Board is established after there's a complaint.

City Attorney Suarez: Not necessarily. Perhaps its happened that way just by operation of the fact that Trial Board is rarely invoked, and so, we have convened Trial Board, and their terms are, and I have to rely on the City Clerk to remind me, but I think they have staggered terms for two or three years.

City Clerk Urquia: Its two years – the Commission gets two appointments, the employees get two appointments and then the Board as-a-whole appoints the fifth member, and then staggered terms of two years each.

City Attorney Suarez: Right. So, what happens is that since we haven't had matters come before them, their terms have expired. I think all of them have expired at this point.

City Clerk Urquia: Yes. All the terms have expired, and we haven't convened the board because there haven't been any cases that have come up.

City Attorney Suarez: Correct. So, it's not necessarily that it's convened just when there's a matter. It's just that we've convened them and then there hasn't been anything else and their terms have expired.

Commissioner Castro: So, I believe the optics of if there's a complaint and then we chose depending on who the complainant is, a new Trial Board, it really doesn't look good. My recommendation would be, if we're going to go forward with this, we need to go ahead and appoint the Trial Board.

Deputy City Attorney Throckmorton: That mechanism is certainly available to you all.

City Attorney Suarez: We can do that.

City Clerk Urquia: So, the Commission's recommendation would be to have the board, but they will still only meet when necessary?

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Commissioner Castro: Exactly.

City Attorney Suarez: Correct. So, they would have to meet at least once we have four members on that board, we'd have to have first an election for the employees, the Commission would appoint two of those members, and then once there's four members, we'd have to have one meeting so that they could, hopefully at that meeting or maybe sometimes it takes more than one meeting, appoint their fifth member.

Commissioner Castro: It just doesn't look good when there's a complaint or a complainant and then, according to that person then we're choosing the Trial Board.

Commissioner Menendez: It's a logical evolution.

City Attorney Suarez: But just so we're all clear, I think whoever is appointed to that board should know that, once we get through these organizational matters and we can adopt the rules of procedure and all of that, then they may not meet again for a period of time, because they would only be as needed.

Commissioner Castro: We have board like that.

Vice Mayor Anderson: Yes, Emergency Management is one of them.

Commissioner Castro: Exactly. Exactly.

Commissioner Fernandez: Emergency Management Board member was complaining for a year that he didn't have a meeting, and he was wondering why they hadn't called him for a meeting.

Commissioner Menendez: I describe it as the "Zombie Apocalypse Board."

City Attorney Suarez: So, it's probably a good thing when there's no meetings of the Emergency Management.

Commissioner Fernandez: Yes, exactly.

Deputy City Attorney Throckmorton: So, we can certainly work with the Clerk's office and advertise those positions, etc., to get you nominees for that ahead of time.

Commissioner Fernandez: I agree with all the comments made. I'm glad that you brought this up, this is something that I've been trying to get done since I started here, and I think it's important for our employees to know that they have the protections necessary, whatever the case may be. So, I'm happy to second.

Commissioner Menendez: By the way, in our discussions we said, why have a procedural template. My thought was that it's important, first off, for the employees to understand what the procedure is, because even when we started looking at it between county and state rules it was convoluted, even for folks with law degrees. But also, I think it's important to let the employees know that the Commission and the Administration, every opportunity they move things forward and try to make things better going forward in the future. So, thank you for your work.

Deputy City Attorney Throckmorton: Of course, and to the extent that any personnel rules need to be changed to comply with this, we'll certainly work with the Manager to make sure that that is effectuated.

City Attorney Suarez: Yes Stephanie, could you just clarify that this does not apply to the...

Deputy City Attorney Throckmorton: Yes. So that's very clear in the ordinance and I'll just make it clear for the record here, that this would have to be bargained for, so unless and until it is incorporated into any of the collective bargaining agreements, this does not apply to any employees covered by those collective bargaining agreements. As you all know, they have their own grievance procedures, etc., so this only applies to those non-CBA covered employees.

Commissioner Menendez: Thank you.

Commissioner Castro: Commissioner Menendez, I want to commend you for bringing this forward.

Commissioner Menendez: Thanks. It was mentioned it had been discussed before. I'm just happy for everyone that we're able to present legislation but thank you.

Vice Mayor Anderson: Its very good. Having been amidst of very stressful time for employees and the more that we can do it on a low-key manner, which is why I'm kind of poking you in a direction of pre-Trial Board mediation, I think it would be better for the city and it would be better for the employees.

Commissioner Menendez: I agree.

Mayor Lago: Okay.

Vice Mayor Anderson: I think we already have a motion and second.

City Clerk Urquia: Mr. Mayor, I have a member of the public requesting to speak on the item.

Mayor Lago: Yes, who's that?

City Clerk Urquia: Maria Cruz.

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Ms. Cruz: [Inaudible – declined to speak]

Commissioner Menendez: Yes

Vice Mayor Anderson: Yes

Commissioner Castro: Yes

Commissioner Fernandez: Yes

Mayor Lago: Yes

(Vote: 5-0)