

Memorandum



Date: April 7, 2009

Supplement to
Agenda Item no. 7(A)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name of George M. Burgess.

Subject: Supplemental Information on Legistar Item 083276, Ordinance Pertaining to Regulation of Signs

This report is to provide supplemental information requested by members of the Budget, Planning and Sustainability Committee during their March 10, 2009 meeting. The questions arose during discussion of item 1G3 which is a proposed ordinance to delete the sunset provision for the establishment of murals. The proposed ordinance was forwarded with a favorable recommendation by the Committee and is scheduled for second reading by the Board on April 7, 2009.

During the discussion, Commissioner Carlos A. Gimenez requested information about any mural sign violations found by Miami-Dade County within the City of Miami that have not been the subject of enforcement by the City of Miami. Commissioner Joe A. Martinez asked why the County has not sought to impose criminal sanctions upon mural sign violators. Commissioners Audrey Edmonson and Sally Heyman requested that the fine amounts be revisited and increased, if possible. In addition, Commissioner Heyman asked whether the County could stop issuing permits to sign companies that have outstanding violations and/or revoke their business license.

Overview

The Office of Neighborhood Compliance (ONC) is continuing its enforcement of unpermitted and illegal signs in unincorporated Miami-Dade County on a proactive basis as each city is responsible for its own enforcement. Enforcement for unpermitted and illegal signs in municipalities is handled on a complaint basis. ONC has provided enforcement reports to the Board of County Commissioners periodically. Reports dated June 7, 2005, January 17, 2006 and May 17, 2006 were provided to the Board.

Unincorporated Area Enforcement

It is important to note that ONC has been actively conducting enforcement of Class C signs in the unincorporated area for the past three years. Since starting this project in 2006, ONC has opened thirteen (13) mural and seventeen (17) other Class C signs for a total of thirty (30) Class C sign cases in UMSA. The department has closed twenty-six (26) of those cases. The open cases in UMSA are one mural case (Malibu Lodging Investments, LLC, aka City Inn) that has been referred for civil action and three Class C signs that have had liens recorded against the property and are under review for possible civil action. In addition, ONC and the Department of Planning and Zoning reviewed numerous Class C signs and met with industry representatives to determine the status of old permits and the current use on those Class C sign sites.

The enforcement process used by ONC for signs in the unincorporated area is to issue a warning to the sign company/erector and to the property owner. Failure of either party to remove the sign may result in either a citation or a request for civil action from the ONC department director to the County Attorney's Office. The current practice is to issue a citation. In egregious cases where there is non-compliance, ONC files the matter in the courts in the form of a civil action to seek an injunction that will require the parties to remove the sign and potentially pay fines of up to \$5,000 per day. The outcome of a civil action is controlled by the Court's ruling.

Process of Enforcement -- City of Miami

With respect to signs in the City of Miami, the City is primarily responsible for enforcement of the County's sign regulation. If the City does not take adequate enforcement steps, ONC issues warnings and will follow up with citations.

Since 2006, ONC has pursued twenty-eight (28) mural cases and one Class C sign case in the City of Miami. All of the cases were closed; however, a new mural has appeared on one of the structures where ONC had prior enforcement. This building is outside of the mural district. This new mural was referred to City's code enforcement staff for enforcement.

The Miami City Commission passed a sign ordinance on April 10, 2008 in order to comply with Miami-Dade County Ordinance 07-61. The City's Mural Ordinance controls mural permits in two ways. In order to apply for a mural permit, an applicant has to demonstrate that it is in good standing with the City and the County with respect to any pending matters related to mural violations. It is important to note that any other code enforcement matter with other types of signage, including Class C signs (billboards) does not prevent the applicant from obtaining a mural permit. The City's Mural Ordinance's enforcement provisions further state that in the event a permittee is found to be in non-compliance with the City or County's regulations on murals by a City special master or the County equivalent, any and all mural permits issued to the City of Miami permittee pursuant to the City's ordinance shall be rescinded. Violations of other sign code violations, including Class C signs that are not murals, do not impact a mural permittee's status. All but one of ONC's UMSA mural sign enforcement cases were closed prior to the compliance dates in the City's ordinance. As a result, none of the UMSA closed cases meet the criteria in the ordinance for City's mural enforcement.

Status of Enforcement

The table below indicates the numbers of cases open and closed for Miami-Dade County unincorporated area (UMSA) and the City of Miami.

ONC Enforcement Status as of March 2009

MURALS	UMSA	Miami	Comment
Mural Cases Opened	13	28	Includes all cases where a warning or citation was issued.
Mural Cases Closed	12	28	One open UMSA mural case is the subject of civil action.
OTHER CLASS C SIGNS			
Other Type Class C Cases Opened	17	1	Includes all cases where a warning or citation was issued.
Other Type Class C Cases Closed	14	1	Sign was removed, alleged violator was found not guilty at appeal or permit was verified by DPZ and/or the City of Miami. Three open cases under review for civil action.

The Department of Planning and Zoning (DPZ), which reviews and approves City of Miami mural applications for compliance with the County Sign Code requirements, reports that the City of Miami has complied with the mural sign ordinance as set forth under Section 33-107 of the Miami-Dade County Sign Code. The ordinance allows 35 mural signs. The City has notified the Department of Planning and Zoning of each location and has allowed DPZ staff to review the location and permit application sign off on each location before issuing a permit. The City forwards the permit numbers to DPZ for its records.

Enforcement Options and Strategies

Zoning Code Enforcement Methods

The Zoning Code provides for enforcement through the criminal courts, Chapter 8CC or through civil suits. The traditional option of enforcement has been through ONC filing a complaint with the State Attorney's Office who could then file the criminal charges and prosecute the case in criminal court. These relatively minor cases had to compete with more serious offenses for the time of the State Attorney and criminal court judges.

The second option under Chapter 8CC has been in place since 1985. It provides a forum where residents can appeal and have their cases heard by hearing officers. A person who disagrees with a hearing Officer's decision can appeal the decision to the Circuit Court.

The third option to enforce zoning violations is through civil suit. This option is reserved for extreme cases that are in non-compliance. The County Attorney's Office and ONC review the case and when there is a consensus of direction, a suit is filed. Cases of this nature have to rely on the Court's schedule and lengthy legal processes. If necessary, an emergency injunction request can be sought for a violator to cease-and-desist the code violation. Due to the long-standing nature of the violations at the Malibu Lodging Investments, LLC/City Inn, ONC had already requested the County Attorney's Office to file a civil suit against the responsible parties and we are awaiting a hearing date from the judge assigned to the case.

In the majority of cases, the issuance of a civil citation and the threat of continuing penalties up to twenty (20) times the face amount of the fine is enough to compel an alleged violator to eliminate the violation and pay the fine. In the case of an appeal, the Clerk of Courts holds regularly scheduled appeal hearings to accommodate the case load of ONC so that appeals can be resolved expeditiously. There is no such assurance through the criminal or civil courts. As an example of the effectiveness of the civil citation process, twelve (12) of the thirteen (13) mural violation cases in UMSA were resolved without resorting to criminal action or civil suit.

Increased Civil Citation Fines

The City of Miami's Mural Ordinance provides for fines of \$1,000 per day per violation. Class C sign fines have been raised to \$1,000 for violations of Section 33-107. It is recommended that a code amendment to Chapter 8CC be made to assess a fine of \$1,000 for any Class C sign that is erected without a permit pursuant to Section 33-86 of the Sign Code which regulates the issuance of all sign permits. The current citation amount is \$200 for Sec. 33-86 for failure to obtain a permit. Enforcement of code section 33-86 is more efficient when addressing complaints of all illegal Class C signs including murals. I plan to submit this amendment recommendation to the Board at a future meeting. The change would compliment the recent changes approved by the Board to Section 33-107 in Ordinance 07-91 which regulates the placement, location, allowed zoning districts, distances and other characteristics of Class C signs including murals.

Attachments



Assistant County Manager