

City of Coral Gables City Commission Meeting
Agenda Item E-7
June 14, 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)

Agenda Item E-7 [11:10:52 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida, amending Section 38-1 of the City of Coral Gables Code, adding a \$15,000 fine, when a misdemeanor is committed within the limits of the City, as specified under Section 162.09(2), F.S., providing for a repealer provision, severability clause, codification, enforceability and providing for an effective date.

Mayor Cason: Let's take up now E-7, Ordinance on First Reading.

City Attorney Leen: Mr. Mayor Item E-7 is an Ordinance on First Reading. It's an Ordinance of the City Commission of Coral Gables, Florida, amending Section 38-1 of the City of Coral Gables Code, adding a \$15,000 fine, when a misdemeanor is committed within the limits of the City, as specified under Section 162.09(2), F.S., providing for a repealer provision, severability clause, codification, enforceability and providing for an effective date. I'll briefly speak on this item. It is a public hearing item. What this item does is it provides another tool to public safety and the Police Department, and also to the City Attorney's office to be able to enforce the Code

in situations where there is not going to be a prosecution basically. So, if a misdemeanor is committed in the City limits of Coral Gables and for whatever reason it looks like there is not going to be a misdemeanor prosecution that goes forward, it gives the City the ability to issue a ticket to that individual up to \$15,000. There are a couple of cases where this could have been useful; one would have been reasoning with the large house party that occurred. We would have looked to see, obviously we would have had to determine if a misdemeanor was committed, but if a misdemeanor had been committed, it would have given us the ability to give a \$15,000 fine. In addition, a couple of years ago there was the issue related to the trespass that occurred in the Ray Allen household, which came up to this Commission and that would have been a wonderful opportunity for us to use this, and by wonderful opportunity I don't mean to say that was positive, it was an extremely negative event, and obviously the Commission dealt with it, but what it would have allowed us to do was to have this ordinance available and it would have been a very helpful ordinance to have, because we could have then issued a fine directly to the perpetrators of that crime, and they could have been fined \$15,000. Now in that particular case it ended up working out, my understanding is that the State Prosecutor did end up prosecuting so we may not have had to use it, but it would have given us that tool; and so I could imagine this would come up a couple times a year, once a year, but it would be useful to have, otherwise there is nothing really we could do in those circumstances, because the Code presently says that we can only fine for a misdemeanor \$500, and for someone who commits a crime in Coral Gables, particularly these quality of life crimes, which sometimes, I know the Commission's concern don't always get prosecuted, although I want to also say I've received assurance from the State Attorney that they take these very seriously, and they do intend to prosecute them, but every once in a while a case may come up where we do have to issue the ticket, and we would do that in conjunction with our Assistant City Manager/Director of Public Safety and the Police Department, so it's an additional tool.

Mayor Cason: We don't have a problem with the estimate of our population versus the...

City Attorney Leen: No. We have taken the position and the City Commission has made the findings that we have over 50,000 in population. We have an estimate of the census that indicates that, we believe it's very clear that we do. There is nothing in the statute that says that you have to have had a U.S. Census from the prior, basically the 2010 census has to say 50,000 for you to be over 50,000, you are making a finding. Assuming there is no evidence to the contrary that a court might feel like you are acting in a clearly erroneous way that would be deferred to that's a legislative finding. So in my view it's perfectly appropriate.

Mayor Cason: Any other cities have this?

City Attorney Leen: No, not that I know of.

Commissioner Slesnick: Mr. Mayor just a point of clarification, is that the \$15,000 fine for the misdemeanor or up to a \$15,000?

Mayor Cason: Up to.

City Attorney Leen: In our view, we've always interpreted these types of things where we are setting a limit as a maximum. We can always – we have prosecutorial discretion to go with less.

Mayor Cason: So would you come to the Commission for the \$10,000, \$15,000 or how would you...?

City Attorney Leen: So what would happen is, if someone committed, let's say someone did a car entry and for whatever reason we couldn't prosecute them, perhaps there wasn't sufficient evidence to basically meet the requirement of beyond a reasonable doubt, so we couldn't proceed with the prosecution, yet there was a lot of evidence and it was sufficient for preponderance or something like that; and let's say the Commission was upset about it, this person's been doing it a number of times, you could issue a citation to them for \$15,000, that would go before the Code Enforcement Special Magistrate, the person may or may not show up. Regardless, let's assume that they are guilty and they are found guilty, they would have a \$15,000 fine that would then be put as a lien...

Mayor Cason: Up to.

City Attorney Leen:...up to – and also the way that we are preceding with this ordinance there would be discretion with the Magistrate as well. Let's say though that they did a \$10,000 fine, for example, that then we could seek enforcement of the fine and that could be put as a lien on their property.

Mayor Cason: So if they fail to pay it the remedy is a lien.

City Attorney Leen: Yes.

Mayor Cason: OK. Any other cities do this?

City Attorney Leen: There are cities and there is a case that allows for the incorporation and misdemeanors into the Code. I don't know of any city that has used the ability to charge a \$15,000 fine to apply that to misdemeanors, but there is a Supreme Court case that allows the incorporation of misdemeanors into the Code, and there is a Statute that allows for \$5,000 fines

for violations of the Code as long as the population is over 50,000. So, I don't see this as controversial.

Vice Mayor Quesada: So the City Attorney and I discussed this quite a bit and it essentially gives us a tool, if something were to happen criminally within the City and for some reason the State Attorney's office did not prosecute or weren't successful, it gives us a shot of basically it's our way of saying that you know, we disagree with the actions of that person or entity that did something improper and we can also go after and for up to that amount. It's another tool that we can decide to use if we wanted to.

Commissioner Keon: Can I ask a question? In this whereas clause, the third whereas clause, it imposes fines up to \$15,000 for certain violations, are those types of violations defined somewhere or what does that mean, certain violations?- who determines what violations or is it under a criminal code that there are violations that are considered misdemeanor or what is that?

City Attorney Leen: Let me pull the Statute real fast. That may have just been a use of semantics, a use of a word, but let me double check before I...

Commissioner Keon: It says, I'm sorry, and the other thing it says by the laws of the state as a misdemeanor, so the state – you are already identifying you know what constitutes a misdemeanor, like you can't make it up as you go.

City Attorney Leen: So here's what the statute says and why we use the word certain. It has to be irreparable. Now typically when you commit a misdemeanor it's in the past, so our view is that would always be irreparable, you can't cure the crime that you committed; you committed a crime, you breached the peace, but also in determining the amount of the fine we are supposed to look at the gravity of the violation, any actions taken by the violator to correct the violation and any previous violations committed by the violator. So it would depend on the circumstances, so we would have to look. There are some misdemeanors that may not cause much of a breach of the peace, and it may be a very small misdemeanor, we may decide to use this. All crimes are bad, so we may decide to use this ordinance, but based on the fact that this person has no priors or something like that, may decide to have a much lower fine.

Commissioner Keon: How does it relate to minors?- are they – under the law?

City Attorney Leen: This applies to any misdemeanors; it doesn't make a differentiation between minors and adults. We could look at that if you would like.

Mayor Cason: What if it's a misdemeanor and they don't have property, so there is nothing to lien?

City Attorney Leen: If they commit a misdemeanor and they have nothing to lien, typically what happens is you would, so let's say they live in a particular residence and we can look at this too...

Mayor Cason: They are renters or something.

City Attorney Leen: If they are renters – look if we can show a nexus between – let's say they are renting a house in Coral Gables and they are using that to basically go out and commit these crimes, we probably would have a nexus to be able to lien the property, the homeowner, but it would be on a case-by-case situation. What Judge Reyes, Former Judge Reyes has said about this type of ordinance is it allows you to, basically if someone comes into the City and burglarizes or harms a person it allows us to come back and say, not only will that not be tolerated, but we are going to fine you and take the money back from you and don't come into our City and do that. It may not be enforceable in some circumstances to be perfectly honest, it may not, there may be nothing we can lien. It may just be a decision that this person has committed a wrong and they get a violation, they may not show up, and then it may not be enforceable.

Mayor Cason: But someday they may have property that could be liened.

City Attorney Leen: But someday they may and it would be like a judgement lien, and then you could record it.

Mayor Cason: Anymore discussion on this? Motion?

Commissioner Keon: I'll move it.

Vice Mayor Quesada: Second.

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

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

[End: 11:20:04 a.m.]