

**City of Coral Gables City Commission Meeting
Agenda Item I-1
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)

Agenda Item I-1 [11:49:50 a.m.]

Discussion of options related to enforcement of Guardhouse Ordinance.

Mayor Cason: Mr. Attorney, you want to do I-1 now?

City Attorney Leen: Yes. Mr. Mayor, Item I-1 is a discussion of options related to enforcement of Guardhouse Ordinance. I've asked Ms. Lopez Castro to remain because I've talked to her a little bit about the case. And if we end up getting in a dispute with the County, which we're hopeful not to -- we really are hopeful not to. We're hopeful to work this out. I want her to here to hear what's said. So, where's the issue with Item I-1. The City has one, two, three, four, five, six, seven, eight, nine -- eleven guardhouses that have been identified to me by the Police

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Department, which are part of special taxing districts that are controlled by Miami-Dade County. To the extent I know, there's only one, Gables Estates, that's privately owned and controlled that's enforcing the Guardhouse Ordinance. And let me tell you, they're extremely happy. Director Frank Fernandez went and visited. He went over there, and my understanding is, he was pleased with what he saw, that there was no issues. Then the Deputy City Attorney went over there and met and was told that they've had 100 percent success with zero incidents since its implementation. And I'd like to just emphasize again this is a very narrow ordinance. What it does is, between the hours of 11 and 6 a.m., if you drive up to a guardhouse in Coral Gables -- and I want to be clear. Every guardhouse in Coral Gables, these are not through streets. There's no reason to be there between 11 and 6 a.m., unless you're going to someone's house. It's dark. There's nothing to see. And so, this is a very narrow ordinance, narrowly tailored. It serves a compelling government interest, and I'm not admitting that that strict scrutiny would apply to this; I don't think it does. But even if it did, it serves a compelling government interest, public safety, and it's narrowly tailored, as narrowly tailored as it could be. And the Commission has made findings that this is important and that it serves a public safety purpose. So, in light of all that, it's my view, as your City Attorney, that the County should be enforcing this. And there's been an outcry from the public -- and I have three homeowners' associations in particular that I have their emails from would like this to be enforced. And my understanding is there's more than that, but there's three specifically that I have emails from.

Mayor Cason: No one is opposed? None of...

City Attorney Leen: Nobody's been opposed.

Mayor Cason: No opposition.

City Attorney Leen: We have not -- since the ordinance was passed, we have not received one objection to it. Remember, before the ordinance was passed, there were a couple objections that were raised and the Commission addressed them in the Second Reading. And so, everything's

been addressed. There's been no issue with this ordinance. From everything we know, it's working, but it's not being enforced in parts of Coral Gables. Now, there's a portion of the County Charter, 6.02, which says that local governments, in order to preserve their uniqueness, their -- you know, the City Beautiful for us, but this is true for any city that has unique qualities. They're able to -- in order to basically ensure local sovereignty, local economy, to be able to develop as you, the Commission, and the public believe the City should. It says that the City can have a higher standard of zoning, service, and regulation than the County provides and that you have the final say over those issues. And so, I've raised with the County that these guard -- this is a higher standard of service and regulation for these guardhouses. They're doing more than what the County is doing. And I should note -- I just want to note this for the record, the County is already allowing their guardhouse operators to stop people with a gate. They drive up and then basically someone that's an agent of the County, which is this operator because the County runs the guardhouses -- they oversee it. They have an operator they hire. My understanding is an independent contractor. I may not be -- that I don't -- I can't assure you of, but it's my understanding. They come out and they take the license plate and that information is provided to law enforcement. So, they already do basically a seizure and that seizure is fine because it's reasonable under the Fourth Amendment because they're -- no one's being targeted. Everyone goes through; everyone's license plate is taken. It serves an important purpose, and so it's not an issue. What we're doing, in my view, is much more narrowly tailored and it doesn't involve -- this information isn't going to law enforcement. This information is just being given to guardhouse operator so they can know you're going somewhere. Now, if you go somewhere -- and as you remember, we don't even stop people. We just get the information, and then they have to -- no matter what they say, the gate has to open. The benefit, though, is if that person drives somewhere and lies, well, that's a reason to call the police. There's reasonable suspicion there. If that person opens their window and you see something suspicious, as a guardhouse operator, like eight people in there or one of the concerns -- and I'm being honest. This was a concern that was stated to us, that someone could be kidnapped and could be in the car and being driven to their residence. If they see something like that, then they'll call the police. But otherwise, they're just going to let them through. So, we think that this serves an important

purpose. The Commission has already spoken on this. The issue is getting the County to follow it. So, I brought -- I'm bringing to you four options. Option one is we do nothing. That is one of the options. The County has indicated to us, the County Attorney, that they see legal issues with the Guardhouse Ordinance, and they are not recommending that it be enacted by the County, although they have told me I can send them a legal opinion, a City Attorney opinion, and if it convinces them, they may reconsider. Although, they've also told me they want a case directly on point. And let me tell you, we've looked. There's not much case law on this issue, so we're applying principles. But typically, our local government is given a presumption of validity in the acts that they take under state law. And this is -- and you are the regulator for Coral Gables, so everyone in Coral Gables should be following the laws that you pass. The second -- but so, if we did that, we would basically tell the different homeowner's associations that they need to petition the County and get the County to change their mind, or they need to revoke the special taxing district and make it private. Or the municipality would have to take it over, which my understanding, requires a charter amendment to the Miami-Dade County Charter, which is actually on the ballot in the fall. So, you know, there is hope. They could potentially seek to have that transferred to the municipality and then our Guardhouse Ordinance would apply. The second option is to post a sign, which your ordinance already does. And Mr. Mayor, you raised this in our discussion, posting a sign -- requiring that a sign be posted that states what the guardhouse operator's duties are that could be posted in the right-of-way of the City. We could mandate -- you could mandate that, that could not be removed and the fact that it would be a crime or a municipal ordinance violation to remove that sign. That would at least let people know this is the law in Coral Gables and your guardhouse operator's choosing and the County is choosing not to follow it. The third possibility would be to make the Guardhouse Ordinance mandatory and use Code Enforcement to enforce it, so essentially, provide a fine to either the operator or to the County for not enforcing the ordinance. It would be a daily running fine. The last option -- well, one option in conjunction with that would be to create a private cause of action, which basically says that if you have a Guardhouse Ordinance and you refuse, you willfully refuse to apply it, not mistakenly one time, but willfully refuse to apply it, that -- and if there is a property crime or something that occurs because of that that could have

potentially have been stopped by it, you could make them liable. And you could determine what the standard would be, and that could be for the guardhouse operator and the County. Now, the County would probably assert sovereign immunity. Although, I will tell you counties are liable to the same extent a private party is liable under Section 768.28 of the Florida Statutes. So, we would have an argument that they're not, and certainly, the guardhouse operator, we believe, would not be. So, that's another argument we could make. We certainly have a good faith argument of that, and I think we have a strong argument. And then, lastly, we can do Chapter 164. We could do a resolution saying that you should be enforcing our law and bring that up with the County Commission. So, you have a host of options and I need to hear from you because ultimately it's your decision. The guardhouse -- what you did originally, the Guardhouse Ordinance, has worked. Gables Estates is happy. We achieved our goal, but now you have this broader issue, and ultimately, it's a policy decision.

Vice Mayor Quesada: So, I just want to reiterate the conversation you and I had on this topic last week and I said whatever you felt is best, I would follow your advice. One of the options you proposed that we discussed pretty lengthy that I want the other elected officials to get the benefit of the thoughts that I had when you proposed this to me. Number one, if we were to impose some sort of, I don't want to say waiver to the sovereign immunity, but sort of put the onus on the County that if it's not imposed, all of a sudden, they could be liable, that's an incredible burden on the County. So, let's say that -- a hypothetical situation, you know, Pat Keon lives in one of those neighborhoods. Someone gets through; she gets burglarized. They steal all the family jewels, assuming there are family jewels there. She gets upset, or even worse, there's some sort of attack -- again, I'm trying to use an extreme example for clarity here. All of a sudden, she's upset. She wants to sue everyone because she's just upset. And now, all of a sudden, she realizes that the guard gate maybe did not read the entire narrative that we had written and so she sues us. And we say, well, hold on a second. The Code said, you know, it has to go to the County, so she ends up suing the County for all these personal injuries and pain and suffering and loss of everything. And let's escalate it even more. A serious crime is committed, you know, there's some serious bodily injury to someone in her family. Now, all of a sudden,

we've created a law that bypasses the sovereign immunity and goes to the County. If I'm the County depending that case, the first thing I'm going to do is I'm going to challenge our ordinance and I'm going to say it's invalid and you can't waive my sovereign immunity through this municipal ordinance. And all of a sudden, we're going to have a case that's going to get challenged at every different level, and that's a case that could go up to the Florida Supreme Court. And I know this is an extreme hypothetical and it's presupposing many different things that may or may not happen. I just don't -- I don't think this hypothetical is completely out of the ordinary, so putting that onus on the County and waiving that -- you know, in effect, waiving their sovereign immunity could create a legal battle for us in the future that could cost us hundreds of thousands of dollars to defend that position. Obviously, the goal of what we're trying to do -- I'm trying to think of the unintended consequence here. But the goal of what we want to achieve is obviously having a guard gate supervisor find that situation, you know, deter a crime from happening from putting a little bit of fear in someone who's thinking about committing a crime. But again, I still have issues with that approach with the County.

Mayor Cason: How about the second option though? You put the sign on City property, which most people can see it if it's at night and it's lit. It accomplishes the goal of having them roll down the window. Unless they say they're not going to roll down the window, then it's probably a reason for the guard...

City Attorney Leen: So something I would say that as you approach a guard gate, please roll down your window...

Mayor Cason: Right.

City Attorney Leen: And state where you're going...

Mayor Cason: What our ordinance says.

City Attorney Leen: Between the hours of 11 and 6.

Mayor Cason: Right. And then if they don't, then they'll have a grounds for a suspicion and will call. Probably most people will roll down the window and they'll look at it as a deterrent. We're requiring you -- even if the County says we're not going to put it up, we'll put it on our property.

City Attorney Leen: So, you know, one possibility to address the Vice Mayor's concerns, which are legitimate concerns -- and in fact, that could very well happen. You know, one thing -- if you wanted to go the route of a private -- creating a private cause of action, if I were you, I would cap it or I'd make it a liquidated amount, like \$5,000 period, each time something happens so that you don't run into sort of those catastrophic issues. Because, ultimately...

Vice Mayor Quesada: Even if it was capped -- maybe I'm just making the argument for the defense before it ever happens, but even if it was capped, if I'm the County, I'm always going to challenge it because I don't want to -- the moment I pay it, it's almost like I'm in agreement with it and any other municipality can create a similar ordinance without a cap. And the fact that they paid our \$5,000 once or whatever the number is, it makes it easier for any municipality to bring it in.

Mayor Cason: So, as an interim, if we were to put up the sign...

Vice Mayor Quesada: Okay.

Mayor Cason: And then see what happens. I mean, if the other 11 homeowner's associations are happy that people are actually rolling down their windows, crimes are not being committed, in essence, we've...

City Attorney Leen: Maybe what I could do is come back to you with an ordinance that requires the posting of a sign that makes it mandatory. You know, they may choose not to follow it, but that requires the posting of a sign and that it's a violation if you remove the sign. Do you want it to be a violation?

Vice Mayor Quesada: For the benefit of the other elected officials, if they think my hypothetical is valid...

Commissioner Keon: No, I agree with you.

Vice Mayor Quesada: You haven't responded the way you responded when we were -- (INAUDIBLE) discussing.

City Attorney Leen: Oh, no, no. I -- oh.

Vice Mayor Quesada: So, the City Attorney's...

City Attorney Leen: Okay.

Vice Mayor Quesada: Opinion is that the law is there to support -- that it would not be overturned by a court.

City Attorney Leen: Could I...

Vice Mayor Quesada: Yeah, please.

City Attorney Leen: Yes. Let me -- it's a legitimate concern, which I wanted you to know. My response to the Vice Mayor was that ultimately under Florida law 768.28(1) says that a County is liable to the same extent as a private party. So, if we make a private party liable for willfully not

enforcing an ordinance and that private party could be held liable, then the County should be able to be held liable as well. And this ultimately sets the standard of care for guardhouses in Coral Gables. So, I do think we would be successful in overcoming a sovereign immunity defense. The concern, obviously, is one, that may -- you know, we want to work this out with the County. That's obviously the goal; it's not to get in a lawsuit with them or to create liability for them; so that's one. Two, you know, it doesn't mean the County's not going to fight us, so your concern that it's going to cost us money to defend is still true. So, you know, it's something that has to be weighed. That may be something you could (INAUDIBLE)...

Vice Mayor Quesada: It's okay and worth the fight if we know we're going to win. I just -- I haven't looked at the case law or looked at the law to make a, you know, reasonable determination whether we would prevail or not, whether it would be all for naught.

City Attorney Leen: I think what the court would look at is -- I think the court would look at two things: first, is this an enforceable ordinance; and two, is the County, you know, willfully refusing to apply it even though it is required to. I think if the court found that, I think there's a good chance we would win.

Vice Mayor Quesada: Would the private cause of action also be applicable against the guardhouse...

Commissioner Keon: Operator.

Vice Mayor Quesada: Operator.

City Attorney Leen: Well, that's the alternative. We could just focus it on the guardhouse operator and require, either by Code Enforcement through a fine or through a cause of action, or an injunction. You know, there's different ways you can do it so that you don't create the huge liability.

Mayor Cason: But that puts them in an untenable position. I mean, they're a contractor.

Vice Mayor Quesada: Yeah, why would they want to...

Mayor Cason: The same contractor that's -- I mean, we're suing them. What can you do? It's like when they're putting the windows on the...

City Attorney Leen: Well, we did that.

Mayor Cason: School. I mean, like, you have me in the middle. What am I going to do?

City Attorney Leen: Well, let me tell you what happened. We did that with the schools and they didn't -- they respected the City Manager's red tag, which I -- and which I said that she could legally give, but they respected it and they did not do the work.

Vice Mayor Quesada: Would it cause it to be very difficult for us to find operators in guardhouses because they would not want to work in Coral Gables because of this cause of action?

City Attorney Leen: Maybe.

Mayor Cason: And it's the same company that works on the Gables...

City Attorney Leen: Estates. My understanding is it's the same company.

Mayor Cason: The same guardhouse company.

City Attorney Leen: That's what I've been told.

Vice Mayor Quesada: The same guardhouse just like all of them?

Mayor Cason: Yeah.

Commissioner Keon: Yeah.

Vice Mayor Quesada: I mean, same operator.

Commissioner Keon: Same company does...

Mayor Cason: Yeah.

Commissioner Keon: Same contractor provides all the guards.

Vice Mayor Quesada: So, is that operator now going to say, I don't want to be here?- or will they put in their contract with the homeowner's association that, that liability...

City Attorney Leen: We talked about this.

Vice Mayor Quesada: Is transferred over to the homeowner's association, so now we've just put a cause of action against their homeowner's association.

City Attorney Leen: One thing you'd have to do is you'd have to prohibit in the ordinance it being passed through, which you could do, and there's a specific way to do that, but you'd have to prohibit the fine or the (INAUDIBLE) being passed through.

Mayor Cason: And let's get the options. You said that three or four times a night somebody comes up and it's...

City Attorney Leen: That's what Gables Estates told us.

Mayor Cason: Right, okay. Is there any reason we have to do all of this right now? We take steps. Let's do a step maybe putting the sign up on City property.

City Attorney Leen: Okay.

Mayor Cason: See if that gets people -- and then we see -- come back to it later on and see if we...

Commissioner Keon: Yeah, I think that with the amendment that is anticipated to be on -- the County Charter amendment giving a municipality the right to operate or to -- what is -- how is it worded? The Charter Amendment, the County Charter Amendment.

City Attorney Leen: Oh, it allows...

Commissioner Keon: With regard to special taxing districts.

City Attorney Leen: I'm having an analysis done on it and we're going to have actually an analysis for all the charter amendments for you...

Commissioner Keon: Right.

City Attorney Leen: So you can -- but my understanding is right now the charter says that the County oversees these special taxing districts.

Commissioner Keon: Right.

City Attorney Leen: It will allow a transfer to a municipality. That's all I know right now. I'll get more information for the next meeting.

Commissioner Keon: So, if it allows the transfer of the special taxing districts within our city to the municipality, we can deal with them as an item then. I know it is a couple years, you know. It's not the answer today, but we know that there is a resolution to this that isn't going to go through all of the concerns that I think Frank has legitimately raised. And you know, we have to pick and choose what items we're going to battle the County on.

Vice Mayor Quesada: Yeah.

Commissioner Keon: You know, I really...

Commissioner Lago: They'll see that we're making a few too many and then...

Commissioner Keon: You know, I mean, I think at this point, you know, by posting the sign, we'll see if it works. If it doesn't work, then, you know, maybe we'll talk about something else.

Vice Mayor Quesada: And you're still going to have an issue with the posted sign, correct?

Mayor Cason: It's on our property.

Commissioner Keon: It's on the...

City Attorney Leen: It's on our property. I don't think they...

Mayor Cason: It's our property. There's nothing they can do about it.

Commissioner Keon: It's on our property. I mean, so...

Mayor Cason: And it's basically jawboning.

Commissioner Keon: You go ahead and post it.

Mayor Cason: It's basically saying we're trying to convince...

Commissioner Keon: And you know -- right.

Mayor Cason: People coming in to lower their windows, and they probably will, probably 99 percent of the time.

Commissioner Keon: Right, so you know, and by the same token, if the communities feel that strongly about wanting it right now, they can go the route that Gables Estates went, you know. They can, you know...

City Attorney Keon: So why don't we do this...

Commissioner Keon: Have it not declared a special taxing district. They can reimburse them for what the cost of the guardhouse was, and they can operate it themselves; the same way that Gables Estates does, you know, so...

City Attorney Leen: By resolution, you could direct that we put the sign. We don't even really need to do an ordinance with that.

Commissioner Keon: Yeah, Okay.

City Attorney Leen: Because it's the County's -- the City's right-of-way. And we could inform people that the City is asking that they lower their window and state where they're going

between these hours and that a failure to do so would be a municipal ordinance violation. And you know whether the County enforces that or not, that's ultimately up to them, but we are doing everything we can to protect these neighborhoods. It would require a vote.

Mayor Cason: Alright, does somebody want to make a motion on that resolution?

Commissioner Keon: I make the motion that we establish a -- we put up a sign on City -- in the City right-of-way with the information -- with that information on it and the, you know, ordinance number.

Mayor Cason: Okay, do we have a second?

Commissioner Lago: I'll second the motion.

Mayor Cason: Commissioner Lago seconds. City Clerk.

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

City Attorney Leen: And Mr. Mayor, if I could just say, we do have a lot of issues with the County, but we have worked every one out in the past, and I do believe we're going to work these out too, and that's our goal.

Commissioner Keon: If we are not effective, we'll go back to it, but...

[End: 12:10:27 p.m.]