

City of Coral Gables City Commission Meeting
Agenda Item E-1
August 26, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Pat Keon

Commissioner Vince Lago

Commissioner Frank Quesada

City Staff

Interim City Manager, Carmen Olazabal

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Planning and Zoning Director, Ramon Trias

Public Speaker(s)

Agenda Item E-1 [Start: 10:13:26 a.m.]

An Emergency Ordinance of the City Commission of Coral Gables, Florida, making it unlawful for any person or persons without being authorized, licensed, or invited by the property owner or his or her lawful agent, including renters, to willfully enter or remain in any dwelling; further making it unlawful to commit an invasion of privacy in someone's home; establishing a \$500 fine and imposing a term of imprisonment not to exceed 60 days for violation hereof; providing an exception for law enforcement officers and government officials acting under lawful process or other lawful authority; and urging the legislature and governor to adopt legislation related to unlawful entry into an occupied dwelling and providing for severability, repealer, codification and an effective date. (Placed on the agenda by Commissioner Vince Lago).

Mayor Cason: Let's if you don't mind, before we go onto 8-10 and others, I would like to ask the City Attorney to go to Item E-1 – E-1 you would take that up. E-1 is an Emergency

Ordinance of the City Commission of Coral Gables, Florida, making it unlawful for any person or persons without being authorized, licensed, or invited by the property owner or his or her lawful agent, including renters, to willfully enter or remain in any dwelling. City Attorney please read the title of Agenda Item E-1 into the public record.

City Attorney Leen: Yes Mr. Mayor. Item E-1 is an Emergency Ordinance of the City Commission of Coral Gables, Florida, making it unlawful for any person or persons without being authorized, licensed, or invited by the property owner or his or her lawful agent, including renters, to willfully enter or remain in any dwelling; further making it unlawful to commit an invasion of privacy in someone's home; establishing a \$500 fine and imposing a term of imprisonment not to exceed 60 days for violation hereof; providing an exception for law enforcement officers and government officials acting under lawful process or other lawful authority; and urging the legislature and governor to adopt legislation related to unlawful entry into an occupied dwelling and providing for severability, repealer, codification and an effective date. This is being presented on behalf of the Commission as-a-Whole. I know that Commissioner Lago placed it on the agenda. Commissioner are you OK if I speak on the item?

Commissioner Lago: Of course, please. I appreciate your insight.

City Attorney Leen: OK. Mr. Mayor what this item does is obviously there has been a lot of discussion going on about the Ray Allen case, and although this is a response to the Ray Allen case it's forward looking. What this ordinance does is three things: First, it clearly makes it illegal so the public knows this, it clearly makes it illegal for someone to go into a dwelling or structure, basically a dwelling or residence without permission. It's similar to the statute that exist for trespass of an occupied dwelling. What this does though is it also makes it a municipal violation and it allows us to prosecute this matter in the event that the State Attorney for whatever reason decided not to prosecute a trespass case under state law. Now in this particular case, the Ray Allen case, there is a trespass case going forward, so again, this is something in the future if the City wanted to prosecute a case it could. Second, one issue that came to our attention was, there was no law that made it illegal to snoop in someone's house and to walk around and take a tour of an individual's house, which I thought was very strange, and I know the Commissioners, you each individually thought that was strange, so one of the purposes of this is to also make that illegal. So whether you are in someone's house or you enter someone's house unlawfully, if you without permission go into someone's bedroom to look at it and to observe it that's made unlawful by this ordinance. The last thing it does is, it urges the Florida Legislature and the Governor to amend the law to allow police to arrest a suspect who commits a trespass of an occupied dwelling, whether or not it occurs in the presence of the officer by reclassifying trespass in an occupied dwelling as a third degree felony. It basically does two things. Just to explain this right now under Florida law, if someone commits a misdemeanor and it's not in the

presence of a police officer, so for example a trespass, which is a crime, but it's a misdemeanor, if that's committed in the presence of a police officer the police officer can arrest. If not though, then what happened in this particular case in the Allen case could occur, which is that the victims have to press charges, a summons is issued, but an arrest does not occur. This would change that. So even if trespass remains a misdemeanor now the police can arrest, if the trespass of an occupied dwelling, which we view, the City, as a very dangerous crime to go into someone's occupied dwelling at night. In fact, there is statutory law and case law indicating that if someone enters into an occupied dwelling at night that they can actually be shot. So you are entering someone's castle into their dwelling and there is a lot of law that allows it, and yet an officer cannot conduct an arrest and we view that as inconsistent. Second, what this does is it says that really in the end trespass of an occupied dwelling is very much like burglary and it should be a felony. So we are asking the Governor and Legislature to classify it as such. The other thing I would say is, I have received calls and I've spoken to residents, I know each of you have, who are concerned that if someone enters your house at night and you are there, or not there, but if you are there that, that's somehow not a crime, and I want to make this very clear because I know you all think this and I know our police think this, I just want to make this very clear. One, it is a crime, it's currently a crime. Two, as a general matter and I drafted an opinion so that in the future the police officer, the police can have this opinion, I've signed it, and I'm letting you know that I will defend them if they conduct an arrest in the future. We've looked at all the case law, both under federal and state law, it is my opinion in the future that if something like this happens the police should contact me or Izzy Reyes or Manny Guarch our police legal advisors, we will advise them. They don't need to directly contact the State Attorney because ultimately the State Attorney has a slightly different role than the police. The State Attorney is looking at charges that can be brought and what charge they can support, but what a police officer is looking at is, is there probably cause for an arrest. At the moment they are informed of that information that would support the arrest, the evidence. What I have found in doing a review of Florida law and I have a copy of the opinion for you, and this is going forward because it is permissible to contact the State Attorney and that's what the police did there, did in this case, and once you contact the State Attorney in my opinion is you should follow what the State Attorney's office tells you. In this case it was an Assistant State Attorney and they should follow what the State Attorney's office tells them, but they don't have to. They can come directly to their police legal advisor and City Attorney and what we would tell them in these types of cases, although every case is individual and that's why they should contact us, if it's a closed question, but generally entering into a structure, an occupied structure through a back door based on Florida law, particularly Section 810.07 of the Florida Statutes, as well as several cases in Florida law from the First District Court of Appeals, the Third District Court of Appeal, there is also Eleven Circuit case on point, several Eleven Circuit cases, they can assume by the entry itself at night through a back door that there is an intent to commit an offense therein; and in particular I would just like to draw your attention, it's on the second-to-last page, the United

States v. Everett, which is an Eleventh Circuit case from 1983, Scarborough v. Miles, Jordan v. Mosely. All these cases indicate that it's not for the police ultimately to be the prosecutor or the jury. By the entry itself you can presume the unlawful intent, and then once the investigation is conducted it's very possible the State Attorney will reduce the charges. Here everything happened at once. The whole investigation was already done and at that point they called the State Attorney, they received the instructions of the State Attorney and followed it. But I just want to make it clear to the residents of Coral Gables, and I know this Commission feels this way, if someone comes in your house at night and now it's perfectly clear and I put my name on it and I will defend this in court to the end of days these individuals can be arrested and we should proceed in that manner. So that is my opinion and I will turn it over to the Commission.

Commissioner Quesada: Mr. City Attorney, a few things. Thank you for that. I hate being given documents a day of a meeting, it makes it very difficult for us to read it at this moment. I understand you are probably rushing through it, even if you had it ready last night, just send it to us last night.

City Attorney Leen: I'm sorry.

Commissioner Quesada: No, not a problem. I appreciate the work and from your suggestions and from what I'm hearing is that you are suggesting we do everything within our power to address the situation. In other words...

City Attorney Leen: Yes.

Commissioner Quesada: ...What you are suggesting is the strongest violation that we can impose as a municipal body, is what your recommendation is today.

City Attorney Leen: I think every part of our government now has done everything we can to address this.

Commissioner Quesada: Well thank you. Thank you for that recommendation. I'm going to be in full support of it, and I think it's very important – we've seen a lot on the news, we've heard from a lot of our friends and neighbors and you know the biggest concern for me in this process was the characterization and I think we need to be better about how we handle these types of situations. Obviously, no one wants to feel that someone can come into their home and all of a sudden the charge is no big deal, it's a silly prank, that characterization. The quote said it came from someone in the Police Department saying that this was a prank by some kids which I think is wrong. I think this body would disagree with.

Mayor Cason: Can I say one thing?

Commissioner Quesada: Yes.

Mayor Cason: I've been asking if anybody in any position responsibility or not in the City characterize this ever as a prank. I'd ask the Chief, Acting excuse me.

Major Pedroso: In respect to the Allen case, I can assure you that no one in the Police Department in an official capacity in any way used the word prank. I can tell you that from the moment that crime, we were notified of that crime, we handled it as a very serious matter like we do all reports of crime. We received that call – with your permission I'd like to just walk you through a little bit of our response and I'll make it quick, so you'll have a better appreciation. That evening we received a call at 2:31 in the morning from the security guard at the gate leading into Tahiti Beach. He had received information from Mrs. Allen about what had just happened. Our 911 operator immediately obtained a phone number and made contact with Mrs. Allen and kept her on the phone as officers were dispatched. Our officers responded, they immediately started searching the area, they made contact with Mrs. Allen, her children, made sure everybody was safe, searched the residence and did everything that we would normally do, secured the scene. That evening we had members of the strategic initiatives team working and they were able to respond because we had actionable information from that guard that we felt we could follow up on immediately, so those officers also responded. And as a result we were able to identify the individuals within two hours, we had all of them and we had them back at the station, and I think that our response was on point and treating it as we should. At the point we had identified the seven offenders, we called in two on-call detectives, property crime unit detectives, they responded to conduct the interviews and the interrogations; and everybody was very cooperative and all the information we obtained was consistent from the seven people. Throughout that day detectives were working that case and at some point there was a question as to elements. There was a feeling on behalf of one of the detectives – I'm not sure if we are meeting all the elements that we need to sustain a burglary charge. So being responsible, as he is trained to do, he made contact with the State Attorney. The Assistant State Attorney, after reviewing the facts gave him the opinion that he did not have the elements of a burglary, he had a trespass. The leadership of the agency feeling we needed to go to another level, we took it to that person's supervisor at the State Attorney's office. They rendered the same opinion; and then we took it to the Division Chief and went over all the information, and again they supported the same position. So at that point we, based on that guidance and the fact that the case was where it was at, we made a determination where we were going to pursue it as a trespass. We maintained contact with the family – Mrs. Allen has expressed to me personally her appreciation for the officers that responded that night and the detectives that have worked this case from the beginning. Unfortunately, there was a couple of things that I attribute the negative attention to. One

obviously, we are letting people go that we have in our custody. It was very frustrating to everyone in the Police Department to have to do that. If it was my home I would have wanted and I would have demanded that those people would have been taken to jail just like everyone in the Police Department felt, but ultimately we had some guidance from the State Attorney's office and we acted on what we felt at that point was the responsible course of action. As far as the statement that it was a prank, it did not come from our Public Information Officer, it did not come from anyone officially in our department. My take on it from seeing it, one of the media outlets used the word prank and it just spread, and we worked throughout that weekend, along with Mr. Leen, our police advisors, the Chief of Police, everybody, we all worked together to address that message and try to put real information out; and the other issue, the last issue was that the Allen's had an attorney and he happened to be out of town, so we were unable to establish contact throughout that weekend as the story just got out of hand. But just so you know, we really treated it as it should have been treated, we responded as we would, not only to the Allen family, to anybody that's a victim of a burglary or trespass or anything of that nature where someone comes into your home, we are going to give that family the same attention and we feel that in the end the State Attorney has filed the charges and now we are working with them to make sure that this case has a successful resolution in court.

Commissioner Quesada: Mr. Mayor, I'd like to hear from our police legal advisor, Judge Izzy Reyes, if that's OK with you?

Mayor Cason: Fine.

Commissioner Quesada: And Judge Reyes just your experience, your thoughts, your analysis. I know you've been working hard on this with the City Attorney, if you could just give us your insight.

Judge Reyes: For the record, my name is Israel Reyes, I'm the Managing Partner of the Reyes Law Firm here in Coral Gables and I'm the outside counsel and police legal advisor to Coral Gables Police Department. As far as my experience, as you know I'm a retired Circuit Court Judge, I was also a County Court Judge, I would frequently hear these cases, both the trespass cases which are misdemeanors and of course the burglary cases, which are the felonies, I would hear those cases in my capacity as a sitting Judge and I was a police officer, detective with Miami-Dade Police Department for 17 years, so I investigated these case both as a homicide detective and as a detective in other areas. My feeling on this was that this was the rare aberration that hardly ever happens that I never saw in all my careers ever occur. Someone going into a location without the intent at that time without having any evidence that there was any intent to commit an offence within, which is the critical element of the burglary statute. Entering or remaining in a structure or conveyance with the intent to commit an offence within. Well there

was no intent to commit an offense within at that point. There was no evidence of that. Although an arrest could have been made for burglary and it would have been a very defensible case or defensible case rather, from the standpoint on what the State Attorney's office was looking at or from the standpoint that they were looking at it, they could not charge burglary. Then because it fell into the trespass world, the misdemeanor world, and because trespass is not one of the exceptions to Florida law that allows police officers to make an arrest for trespass that did not occur in your presence they were powerless to make an arrest that night. There are some exceptions under Chapter 901 that the legislature has created that says, these trespass or I'm sorry, these misdemeanor crimes are arrestable even if they did not occur within the officers presence, but this is not one of them unfortunately.

Commissioner Lago: Oh, its not one of them.

Judge Reyes: Its not one of them and that's why our position has been and when I gave my quote to the Herald, I felt and Mr. Leen felt that we need the Legislature and the Governor to address this to either make it one of those exceptions or escalate it or bring it up to the level of a third degree felony, so either one of those circumstances would have allowed the officers to make an arrest that night.

Mayor Cason: And as a municipality this legislation does the most we can do to fill the gap meanwhile.

Judge Reyes: For the time being. Yes sir. Yes Mr. Mayor for the time being. Absolutely.

Commissioner Lago: First off again, just what Commissioner Quesada said, thank you so much for your hard work, along with Mr. Leen. It's very difficult when you receive a multitude of phone calls and e-mails from residents who are irate on why these individuals were not prosecuted or arrested, forget prosecution more arrested. It starts – that action festers and what results is individuals in this community start becoming more and more scared and I want to make sure that the residents understand that this Commission has done everything in its power through this ordinance to shut the door on crime in reference to anyone trespassing on your property. And I have to be frank, you know because it's my job to be up here and be sincere with as many people as possible and that is that. I'm disappointed in the fact that we were not able to arrest those individuals for trespassing, even if a burglary did not occur, because it still leaves that door just cracked open for people to be concerned whether OK, well someone is in my house and they don't steal anything because they get caught in the act of being there and they run out of the house prior to the fact that a burglary can take place. The act of intent – were are not mind readers, but the act of catching someone in your door, in the front door of your house what are you doing here?- is mind-boggling in the sense of its concerning that someone ran out of the

house and we weren't able to arrest them because there is no law on the books that stipulates that a trespassing occurred, but a burglary did not. So that to me is why hopefully we can right that wrong with this ordinance. I'm going to look forward to speaking to several State Representatives, I know that Commissioner Keon will and the other individuals on this dais will hopefully do something at the state level, because we need to make sure that our residents feel that they are 100 percent secure and that no one, like our attorney said, can enter your castle. So again, I appreciate your work. I think this is just a band-aide and we need to make sure that we do everything in our power to protect the residents here.

Judge Reyes: I agree Commissioner.

Mayor Cason: Anyone else...

Commissioner Quesada: No, that's it. Thank you.

Mayor Cason: OK. Anybody else?

Major Pedroso: I just want to address one point if I may Commissioner. I think we have to understand that the evidence and I heard the tape, I heard the conversation, the recorded conversation with Mrs. Allen at the complaint desk. The way it was described is that they weren't in there, they were taking a tour, she used that term, it looks like they are taking a tour and then one of the individuals played the piano and that's something that burglars normally don't do.

Commissioner Lago: May I interject.

Major Pedroso: Of course.

Commissioner Lago: With all due respect.

Major Pedroso: I'm not defending, I'm not defending...

Commissioner Lago: With all due respect, with all due respect, because I see the crowd is --- if I catch someone in my house and I don't know you there is going to be a problem. There is going to be a problem in the sense of either there is going to be an altercation. First of all, I'm going to call 911, and then there is going to be an altercation, I'm going to ask you why you are in my house? This woman was in her house, I think with 3 or 4 children at 2:30 in the morning...

Major Pedroso: By herself.

Commissioner Lago:... By herself, again women can handle themselves, they don't need a man, but she was by herself...

Major Pedroso: That was a good save.

Commissioner Lago:...you don't know you haven't met my wife, trust me, but the bottom line is she is by herself with four children at 2:30 in the morning. We need to set the bar just a little bit higher, set it just a tab bit higher, and this is an anomaly like you said, but we need to make sure that everyone understands that Coral Gables does not put up with this type of behavior and that if we step on someone's property --- the door was open, the lock didn't work, whatever the excuse is, you are subject to arrest.

Commissioner Quesada: Commissioner Lago just let me clarify out there that I think Judge Reyes will say the same thing or echo my statements. With the ordinance that the City Attorney has recommended it's the strongest possible action that this Commission can take against these types of incidents in protecting the residents in their home. In order to make it any stronger it has to change at the State Legislature level. So just to be clear for everyone out there and hopefully the Miami Herald is listening to this, we are taking the strongest step that we can as a municipal body and that any additional strength has to come from the State Legislature, which we will be lobbying and with that I want to tell our lobbyist that we use, Fausto Gomez, to make this a priority on our legislative agenda at next session.

Judge Reyes: And we've committed our resources as well of the firm to even travel up there if we need to because we are of the same mindset. It offensive to anyone that this happened.

Commissioner Lago: Mr. Reyes can you get in touch with, from my understanding our representatives are Representative Rodriguez and Representative Fresen and maybe speak with them and also Mr. Fausto Gomez who represents the City and see if we can prepare for Session and draft a resolution or ordinance in regards...

Commissioner Quesada: Also which I think is important Carlos Lopez Cantera, the Lt. Governor also lives in the City of Coral Gables, so if you can meet with him as well.

Judge Reyes: Absolutely.

Commissioner Quesada: If you can meet with him as well.

Judge Reyes: If Mr. Leen agrees, we can even draft the proposed the legislation for that, we will know exactly where the loophole is, so we can draft that legislation.

City Attorney Leen: I just wanted to tell the Commission, by the way, Judge Reyes is a great asset for our Police Department, so I want you to all be aware, please feel free, I mean I know you know this anyway, but please feel free to call him anytime if you have any questions. He is one of the foremost, obviously he's been a judge, he's been a homicide detective, he is one of the foremost experts in Florida in this area. I used to defend false arrest cases at the County, civil rights cases, so we have a really good team here and I just wanted to make you aware of that and we are going to do everything in our power to make sure that we are doing everything you want here and that we are acting appropriately and ultimately, the issue here is the police did go to the State Attorney's office, it is an appropriate action, and we want them going to the State Attorney's office. But in the future, I'd also ask that they come to Judge Reyes and myself and we'll make sure that they know the full scope of their authority.

Judge Reyes: Thank you.

Commissioner Lago: Thank you very much and to my colleagues.

Mayor Cason: Before we make a motion on this. Its open for the public, do we have any speaker cards?

City Clerk Foeman: No.

Mayor Cason: If not, we'll close the public hearing.

City Attorney Leen: Mr. Mayor, the Clerk has asked that I also state the basis for the emergency nature of the ordinance. We've identified a problem in Florida law, it's a public safety issue, it's obviously happened just a few days ago, so we believe it's an emergency. We think that you should take this up immediately and that's why it's been categorized as an Emergency Ordinance. You will be having two – you need a four-fifths vote to pass this and it will be two roll call votes.

Commissioner Lago: If my colleagues have no further comment, I'd like to make a motion to adopt this Emergency Ordinance.

Mayor Cason: OK. Commissioner Lago makes the motion. Second?

Commissioner Quesada: Second.

Mayor Cason: Commissioner Quesada.

City Clerk

1st Roll Call

Commissioner Keon: Yes

Vice Mayor Kerdyk: Yes

Commissioner Lago: Yes

Commissioner Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: Second?

City Clerk Foeman: Second roll call.

2nd Roll Call

Vice Mayor Kerdyk: Yes

Commissioner Lago: Yes

Commissioner Quesada: Yes

Commissioner Keon: Yes

Mayor Cason: Yes

(Vote: 5-0)

[End: 10:37:55 a.m.]