

City of Coral Gables City Commission Meeting
Agenda Item E-4
September 22, 2015
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)

Elin Sosa, Gables Estates
Laura Russo, Representing Gables Estates

Agenda Item E-4 [Start: 3:15:44 p.m.]

An Ordinance on First Reading. It's an Ordinance of the City Commission of Coral Gables, Florida, granting guardhouse operators the authority to request information from individuals driving into communities where a guardhouse is present during certain hours, and providing for immunity for actions in accordance with these provisions; providing for severability, repealer, codification and an effective date.

Mayor Cason: Item E-4.

City Attorney Leen: Thank you Mr. Mayor. Item E-4 is an Ordinance on First Reading. It's an Ordinance of the City Commission of Coral Gables, Florida, granting guardhouse operators the authority to request information from individuals driving into communities where a guardhouse

is present during certain hours, and providing for immunity for actions in accordance with these provisions; providing for severability, repealer, codification and an effective date. This is a public hearing item. I'm also going to present the item. This is an item that is being sponsored by Commission Keon and also the City Manager. I've also worked on this item. What it does is, as you know in a number of communities in Coral Gables there are guardhouses, but the roads behind the guardhouses are public. What this does is, it allows for a guardhouse operator between the times of 11 p.m. and 6 a.m. when someone drives up to the guardhouse with their window closed, allows them to do very limited things. Basically four things, they can ask for the window to be opened, and then they can ask three questions. The three questions are, the drivers name; the reason why the driver desires to enter the area; and the particular residence or location the driver is visiting. If the driver refuses to roll down the window or refuses to provide this information, this ordinance allows the guardhouse operator to temporarily keep the gate down and call the police officer to come out to determine if loitering and prowling is occurring under state law and to follow up on the matter. Now the person may end up being allowed to go through once the police officer arrives there that will depend on the officer and what occurs, but the officer could potentially be nearby or they could call their security guard or there are different ways to address that sort of issue. What I want to tell you is my office researched this issue, the law related to it. There is one case; I believe it's at Vero Beach, which indicates that you cannot permanently bar someone from going through a guardhouse during the day, for example, because these are public roads. We kept that decision in mind when we wrote this particular one. This is a remedial measure, it is very limited. It is based on the factual findings you are making. Essentially enforces or allows the City to enforce the loitering and prowling statute and what it does, it allows the guardhouse operator a limited authority to temporarily keep the guardhouse gate down to make sure that they know where the person is going so they can alert the individual. We believe it's a safety measure, public safety measure, we believe it fights crime; we believe that it is a good measure. We've also limited the discretion as far as possible to prevent things such as profiling or something like that, that's not permitted. In fact, there is a provision in the ordinance which grants immunity to those who act in accordance with this provision. So if they ask those four questions and strictly adhere to it, they will be immune from

suit or criminal liability, but if they do not, then they would not be. With that I'll turn it over to the City Manager.

City Manager Swanson-Rivenbark: We are very much in favor of this ordinance and we ask your consideration and we can answer whatever questions you might have.

Vice Mayor Quesada: You know I think it's a great idea. I think it's spectacular. One thing I would request if the City Attorney's Office can create a memo that be given, provided and posted for every worker that's working at a guard gate, any kind of guard any community, just so that they are very clear on what they are allowed to do and what not to do, if this passes.

Mayor Cason: Definitely.

Commissioner Keon: I would really like as sort of the administrative order for that if you post something, I want you to tell them exactly what they can ask and how they can ask it. So there is very little discretion on the part of the guard gate operator to go beyond what you can ask. Do they ask that we know the individual's name?- do they ask for that? Do they want them to know their name? When I spoke to the people at Gables Estates, it was my understanding that what they wanted or what they would like to have happen is that when someone drives up to the gate and they said so often the windows are so heavily tinted in cars that you can't see into the car. You can't see who is in there; you can't see what's in the car, whatever. All they ask is that they would have the ability to ask the individual to roll down their window and to ask them, can I help you?- where you are going?- can I help you with where you are going? If the person says, you know I'm really just here to sightsee; they roll down their window and say, I'm here to sightsee, I just want to look at the neighborhood, they can lift the gate and the people can enter. You are not barring anybody entering. All they are asking is that you have the opportunity to be able to see into the car.

Ms. Russo: That is correct. I think the asking of the name probably not a pertinent question. I think it's more trying to engage the driver in conversation and if the driver refuses to state their name then the guards can already get the idea that maybe they need to follow up.

Vice Mayor Quesada: Commissioner Keon do you not want them to ask anything.

Commissioner Keon: Well, I don't know that it's important that they ask their name.

Ms. Russo: I think they are more looking for destination.

Commissioner Keon: What their interest was in destination, so what it was is, ask the individual to roll down their window, if the individual doesn't roll – if the individual rolls down their window that they can ask them, can I help you with where you are going?- or where are you going?

Ms. Russo: The key concern is, understand this is between 11 p.m. and 6 a.m., so the real issue was to stop people who would ordinarily come in and not say, I'm coming in to visit Mr. Lago or visiting the Quesada residence, but that just sort of wondering and driving around. So the ability is to try to discover, are you someone who is going to someone's house, whether it be as a guest, an employee and you might be an uber driving going to pick somebody up, and if you are not then it is to temporarily bar while the police is alerted, so that the police can then decide, you know what, you want to wonder through, you are absolutely entitled to, but we are going to be on your tail, and the G-Force Security in our community and the Gables Estates community is G-Force who are the successors of Wackenhut, who are the guardhouse operators. So they would then have the ability to sort of follow the person at 2, 3, 4, 5 o'clock in the morning.

Commissioner Lago: And I think the big issue here and I've spoken to several of the residents, obviously it's a public street, you can't bar somebody from entering. The big concern like Commissioner Keon said is not to me – a person could give a frivolous name; you are not going to be asking for I.D., actual documentation provided by the City, by the state or by the county. I think the issue here is all these guardhouses have some sort of recordkeeping device, a camera, so when you lower your window you get a face recognition of that individual, you proceed through the guard gate, if a crime is committed, now what I've heard has happened in the past is that some people have removed their license plate or they are driving so quickly in the cover of darkness and now they can't see your face because the windows are so tinted, like Commissioner Keon stated; and it is exacerbated by obviously a lot of these crimes are committed in the evening. So when you force somebody to stop, roll their window down, you engage them in some sort of conversation, you don't even need to ask their name. And like the

Vice Mayor said, if there is even a question of the legality, I think that we need to make sure that we provide that document like the Vice Mayor said. You provide them with the document, they are put on notice immediately that there is a camera and that they've been memorialized by lowering the window down.

Mayor Cason: But if they say they are going to go sightseeing at 2 in the morning...

Commissioner Lago: You can't stop them.

Ms. Russo: The police force can follow them and sort of escort them to where they are sightseeing.

City Attorney Leen: There is underlying issue though. I want to at least explain why we are asking for the name. You can remove that, that's perfectly fine, but the problem is this is the only thing. We are being very specific what can be asked, so if we take out the name and they say, I'm going to this person's house, they will not be allowed to then ask for what's the name so I can call forward and tell them that this person is coming to your house.

Commissioner Keon: It doesn't have to be. You can call them and tell them that you are expecting a guest.

City Attorney Leen: If someone is coming to their house at 2 a.m. that's going to scare them.

Commissioner Keon: No – are you expecting a guest.

City Attorney Leen: But we can't stop them.

Ms. Russo: I think they can also pull the name of somebody who doesn't live there and Gables Estates, the guards know everybody who lives there.

Commissioner Lago: Can I ask you just a quick question. On behalf of your client, is your client going into the business of having a guard contact every single resident in Gables Estates and Coco Plum, basically stating you have a resident at the front door. I mean the backlog of cars down Old Cutler, it would be ridiculous.

Ms. Russo: No. That's not the intent.

Commissioner Lago: I don't have an issue in reference to whether we ask a name or not. I think the City Attorney may have some reason in regards to the fact that – even if you do ask the name and the person doesn't want to give you their name; they are going to say whatever they want.

Elin Sosa: And our guards are, like you said, they are very aware of whom the people in the neighborhood are. They know all the addresses and all the residents, and they've told me, they said, "Oh people come in here at night and they make up a house number that doesn't exist and the guards are aware." At this point they can't do anything about it, they let them through, they alert the mobile security to whoever is on patrol say, there is somebody they said they are going to this address, which doesn't really exist, they are in this vehicle. So we do that on our own right now, but we did a survey and we have on average about 15 vehicles a month who come through the gates between those hours at night, who refuse to lower their window or refuse to give a destination.

Mayor Cason: So there is a problem.

Elin Sosa: Yes.

Mayor Cason: How fast can your local guard respond, so how long can you hold them with the barrier?

Elin Sosa: Well the response is going to be to Coral Gables Police.

Mayor Cason: Not to your internal....?

Elin Sosa: Correct. Our internal guards will be notified simultaneously because they always work in conjunction. We also have the off duty police several evenings a week, so they are on site so that's almost an immediate response.

Mayor Cason: Generally when you go to communities that have gate houses you voluntarily roll the window down and say I want to see John Doe – fine, go ahead.

Commissioner Slesnick: Are you saying people don't open their windows?

Commissioner Keon: The people that won't open their window and the cars are tinted heavily and you can't even see into the car. So you don't know who's in the car, you don't know what's in the car, you don't know anything. So I think the only thing I was asked or was told by the association was to ask them to lower their window and just to ask where you are going. Those are the only two things that they ask that we could ask. Some of the issue with asking people's names is, you know that has gotten into some real privacy issues and creates – either they are not going to tell you the truth, if they don't want you to know who they are, and if they feel compelled to tell you the truth and its somebody that's visiting somebody that they are not supposed to be visiting or whatever else.

Vice Mayor Quesada: Commissioner, I don't think the point of the question is to get that person's real name. I think the point of the question is to see how they react to the question. I think that someone's going to contemplate committing a crime, you start asking them questions, you can see how they react. They get nervous – never mind I'm leaving or something along those lines.

Commissioner Lago: The individual that's on guard at the guardhouse would be able to make a positive description of that individual.

Elin Sosa: Correct. And one of the things that we instituted several years ago on the south entrance on Arvida Parkway, there is the lane that goes through the guardhouse, which is for the guests and there is a member lane, which all the members have a decal, it opens automatically for the members. The member's lane is actually closed during the evening, so everybody entering is forced to go through the one lane through the guardhouse. Reason for that being that there was a concern at one point with kidnapping or things of the sort and they said, well if somebody is being forced to be taken back to their own home and they come at night in the members lane, we would rather them come through the guard's lane, if they lower the window we can look in the vehicle and we can see Mr. So and so who doesn't normally look so frazzled sitting in the passenger seat and....

Mayor Cason: Do we have a camera there for later identification when the window comes down; is that part of what you have in mind?

Ms. Russo: There is a camera there now and it records license plates.

Vice Mayor Quesada: The more I think about this, the more concern I have about it. I'm for passing it, but before it's implemented I'd like to hear or I don't need to hear from them. If you guys or Craig can you speak to Chief Hudak or the Police Department and see what they determine is probably the best way to carry it out and really just follow that recommendation.

Commissioner Keon: I really think if you limit it to, can you please roll down your window?- where are you going? It is enough information that, that's what they told me they needed, that's enough information. So, I would like to amend this to be...and provide certain information and that is to lower their window and to tell them where they are going. And if the person says – and it needs to be explained and whatever...and if the person says, I'm going sightseeing you can say, OK, thank you, notify the police or whatever, open the gate and let them go. It is a public road. I think the issue of asking people's names, you know it's not our business to monitor or peer into people's affairs or whatever else.

Mayor Cason: You think they are going in there for affairs?

[Laughter]

City Manager Swanson-Rivenbark: I understand that you all approved the concept, the administration of it you want further clarification. This is First Reading so it gives us ample opportunity to make changes and to also...

Commissioner Keon: Bring it back on Second Reading we will have this.

Mayor Cason: Why don't you prepare a card that they read from, so there is no discretion?

Commissioner Keon: We will prepare a card that is...

Ms. Russo: The card can be posted inside the guardhouse.

Commissioner Slesnick: If somebody is pulling up to the gate and you have something like this, a card that will give us all these private clubs over on the west coast, it's says like Gables Estates and something, but you have our City ordinance on there so that everybody has it, OK, as per the City of Coral Gables between 11 p.m. and 6 a.m., we just want you to know...If you put this out to a car window they are going to lower the window to get this card and that way everybody is notified what's going on, so you don't have a question.

Mayor Cason: Put it on the back of your script, on the back of your script.

Commissioner Keon: But their feeling is that some people won't. They still won't roll down the window because...

Commissioner Slesnick: But then I'll really call the police, if I was offering this to somebody like the pass to Gables Estates and its nothing except a card saying what our City ordinance is, then they would most likely open the window, because you are not going to stand there holding this...

Elin Sosa: We had originally thought a placard that we would put like the front entrance stating the ordinance...

Commissioner Lago: You can do both.

Commissioner Slesnick: You should do both.

Elin Sosa: Both – that would be a great idea because that's the prompt to lower the window.

Commissioner Slesnick: People aren't used to it, so that way at least they'll know that the City of Coral Gables came up with this, and if they don't open the windows I would definitely call the police.

Mayor Cason: You made the motion Commissioner Keon?

Commissioner Keon: Yes, but I would like it to read, a guardhouse operator within the City of Coral Gables has the authority to request that the driver of a vehicle desiring to enter into an area of the City serviced by that guardhouse between the hours of 11 (p.m.) and 6 (a.m.) be asked to lower the window to the vehicle and provide the destination or reason for entering through the guardhouse, and that's adequate.

Vice Mayor Quesada: At this point, I disagree. At this point, I'd like to have feedback from the Police Department before we decide on final language of it, so as for First Reading purposes, if you don't mind if we just say, leave it as is, let's get more feedback and then we can fine tune it the next meeting.

Commissioner Keon: I'd rather do it with the minimum that we want and if we can add to it at the next meeting. You know why because I don't want us to get, I don't want any unnecessary backlash...

Commissioner Slesnick: Approving the concept.

Commissioner Lago: Let me modify the Section 3812, why don't we just say, lower the window to the vehicle period.

Commissioner Keon: To lower the window and provide a destination or reason.

Commissioner Lago: Lower the window to the vehicle and let's go back to Chief Hudak because I want to see what his input is going to be in reference to like what Commissioner Slesnick said. Are we going to have a sign?- are we going to have a handout?

Vice Mayor Quesada: So moved as modified the way Commissioner Keon laid it out.

City Attorney Leen: So, I'm going to read back, but it will say, so you want to lower the window, the only information will be the location...

Commissioner Keon: Provide a destination or a reason for entry.

City Attorney Leen: OK.

Commissioner Keon: We can change it after.

Mayor Cason: Commissioner Keon has made that motion and the Vice Mayor seconds. City Clerk.

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

City Manager Swanson-Rivenbark: And Mr. Mayor, we jumped right into the item without the two identifying themselves for the record.

Ms. Sosa: Elin Sosa for Gables Estates.

Mayor Cason: And we have no public comment.

Ms. Russo: And Laura Russo, Gables Estates.

Mayor Cason: Alright, so you'll come back to us on Second Reading. Thank you.

Commissioner Lago: Thank you.

Vice Mayor Quesada: Good idea too.

Commissioner Slesnick: Do we have other gated communities?

Vice Mayor Quesada: We have Gables By The Sea, we have Coco Plum, and we have Hammock Lake.

Commissioner Keon: Deering Bay.

Vice Mayor Quesada: And what about the one, is it Hammock Oaks...Schoolhouse Road.

Commissioner Keon: That doesn't have a gate yet; Snapper Creek.

Commissioner Slesnick: These other communities might want to follow up on this.

Vice Mayor Quesada: Real quick. City Manager can we reach out to the other Homeowners Associations and let them know this is down the pike, maybe they'd be interested in piggybacking.

City Manager Swanson-Rivenbark: This would be available to all gatehouses where there are public roads, so we'll advise them of that.

City Attorney Leen: Mr. Mayor can I ask you, do you want me to have the, I guess the placard or what we are going to post at the next meeting.

Vice Mayor Quesada: We can get a draft of the language please.

City Attorney Leen: I can get you a draft. OK.

[End: 3:35:44 p.m.]