

City of Coral Gables City Commission Meeting
Agenda Item I-5
December 8, 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)

Agenda Item I-5 [Start: 1:29:45 p.m.]

Status report on Guardhouse ordinance

City Attorney Leen: So I-5 is a status report on the guardhouse ordinance, and how this came up was this Commission passed a Guardhouse Ordinance, which I drafted and which I believe is legally sufficient, I continue to stand by that. From what we've heard from Gables Estates it's a very effective ordinance, they are very happy with it and how its worked so far; and I do know that our Director of Public Safety met with the Guardhouse Operator, I believe went out there and he sent me a nice e-mail saying that he had spoken with them and that they are not having any issues. Also my office is going to be meeting at Gables Estates with, I believe its going to be the Board...

Ms. Russo: The Executive Committee and the Security Board.

City Attorney Leen: Yes, to go over the legalities related to the ordinance, but right now Laura and I have talked a lot about it, they know what they are supposed to do and so far its going really well. Now the issue that's come up, is we have a number of other guardhouses in Coral Gables which are a part of special taxing districts, and they have sent me e-mails saying that they would like to avail themselves of this ordinance. The way the ordinance was written it applies to every guardhouse in Coral Gables that's on a public road. It doesn't apply to the private guardhouses, because they already can do this and don't need this ordinance, but for these guardhouses that are in these special taxing districts, the ordinance does apply to them. Nevertheless the county has informed these homeowners associations that they are not going to enforce the ordinance unless they receive a direction from the County Mayor or the Board of County Commissioners. So, I have raised the issue with the County Attorney's Office, I spoke with George Martinez Esteves, an Assistant County Attorney, very honorable, a good attorney, in fact he worked with us on the issue regarding the solid waste fees and putting that on the tax bill. So I raised this issue with him and he told me that there has been a number of County Attorneys that have taken the position in the past that they are not going to stop anyone on a public road. I said well, is this a legal issue or is this a policy issue? He said in his view was both; and I said, well do you have any legal opinions that you've written?- any cases that you can point me to?- are there any County Attorney opinions? I was told there was none. This is just their view of the matter, you know it's a fairly conservative approach to the issue. Our City has taken a look at the matter, I have not found any case law saying that we can't do this. The one case that we found, the only real restriction in my view under that case is that we can't completely forbid people from going into public roads all day, which is not what this Commission did. What this Commission did was a very narrowly tailored ordinance to times of the night and early morning when there is no reason to be driving around a neighborhood to begin with. So where things like loitering and prowling are much more likely to occur and where there is a much higher likelihood that you are going to be protecting the community and that's what this Commission did, and even then this Commission made it very narrow what could be done. All that can be done is the window is rolled down and the person states where they are going and in fact even if they don't do that, they can continue through and they've just committed a municipal ordinance violation. So we addressed a lot of these issues. Anyway the

reason I'm bringing it back to you is I need to know what you want me to do. The county has said that they are not going to enforce the ordinance. I've let them know through a City Attorney opinion that it sets the standard of care for Guardhouse Operators. You have three options as I see or any option you think of, but the three I see are, one, you could just allow this to be enforced with Gables Estates and have that ordinance available and if the county chooses not to enforce it, then the homeowners association have to take that up with the county. Two, you can attempt to enforce the ordinance as to the Guardhouse Operators in these county guardhouses by basically through Code Enforcement, you could try to require them to enforce the ordinance; three, you could make there be some sort of private right of action for a resident who is harmed in a guardhouse community when this guardhouse ordinance is not enforced. You could allow them to basically sue the Guardhouse Operator or the County if that happens. There are issues with that we would have to narrowly craft any sort of ordinance like that as well; and four, I raised, this is what I wanted to raise with you. There is a County Charter Amendment believe it or not, that George told me about that would allow cities to take over, I just learned about this or I would have told you before, he told me this literally ten minutes ago, fifteen minutes ago, that there is a County Charter Amendment that would allow cities to take over these municipal taxing districts that's going to be on – that the County Commission has passed on First Reading and its going to be heard on Second Reading, this would have to be vetted through staff. I'm just alerting you to that, that's another potential possibility down the road, if the County Charter was amended by the voters.

Mayor Cason: You need a decision from us today or should we wait until we see what the county does?

City Attorney Leen: No. I just wanted to raise it with you.

City Manager Swanson-Rivenbark: He is just providing a status report sir.

City Attorney Leen: I wanted to raise it with you and have you think about it and maybe I'll bring it up again in the next meeting or the one after that.

Mayor Cason: Why don't you come back and bring a recommendation out of those four options.

City Attorney Leen: That would be great.

Mayor Cason: They've done it for us with the Charter then we don't have to take it up.

City Attorney Leen: Perfect. Did you want to say anything Laura? OK.

[End: 1:34:56 p.m.]