

City of Coral Gables City Commission Meeting
Agenda Item E-3
September 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)

Silvia Unzueta, Coral Gables Resident
Former Judge Israel Reyes, Justice Advocate Program

Agenda Item E-3 [Start: 9:59:57 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida, prohibiting the unauthorized entry into an automobile within the City of Coral Gables, Florida, allowing for a stay away order and minimum mandatory sentence and providing for a repealer provision, a severability clause, codification and providing for an effective date. (Passed on First Reading August 25, 2015).

Mayor Cason: Agenda Item E-3.

City Attorney Leen: Agenda Item E-3 is an Ordinance on Second Reading. It's An Ordinance of the City Commission of Coral Gables, Florida, prohibiting the unauthorized entry into an automobile within the City of Coral Gables, Florida, allowing for a stay away order and minimum mandatory sentence and providing for a repealer provision, a severability clause,

codification and providing for an effective date. This was passed on First Reading August 25, 2015. It's an item that's been sponsored by Mayor Cason. Just want to say it is a public hearing item. My office prepared the item along with the Police Department, on behalf of Mayor Cason and the Commission. The item looks specifically at car entries. Obviously, there are crimes that this City has indicated that we are going to fight, that direction has been given to all of us, City Manager, City Attorney, the Police Department, every type of crime, but of course we've been focusing on burglaries, burglaries of houses and also of cars. This Commission has made it clear they want crime decreased and that we should try to find every possible measure we could bring to fight that. This focuses on car entries, car burglaries, because one concern of the Commission as stated was that this sort of crime is not focused on as much because it's viewed as a, I don't want to say lesser crime, but it may be viewed that way was the concern, and not by our Police Department, but just by even the State Attorney's office who has informed us that the State Attorney has been very clear that they are working with the Police Department to prosecute all crimes in Coral Gables and they make that a priority, but we thought that the reason why car entries may want to be a focus is because, if you have an entry into a house that's always going to be a felony, except for very limited circumstances where it's a trespass. The concern was that some of these car entries were not being treated as seriously as the other crimes, even though they are quality of life crimes. So this Commission on the First Reading passed this unanimously, but what this does is it establishes that any entry into a car will have a mandatory minimum sentence of 30 days or the person who does that can elect to have a stay away order from all residential areas in Coral Gables for two years. If there is a second offense and it could be on the same night, if there is a second offense it will be a 60-day mandatory minimum sentence and also there would be a fine, for the stay away order there is a fine, so you don't just get the stay away order you would get a fine as well.

Mayor Cason: And that's the maximum that we can under...

City Attorney Leen: 60 days is the maximum that this City can do under the Florida Statutes.

Mayor Cason: OK. We have one speaker that signed up, Silvia Unzueta. How are you?

Ms. Unzueta: Mr. Mayor, good morning. I have been broken into on my house on Pizarro Street, and I am using this ordinance as a way...

City Attorney Leen: Can you say your name and address, I'm sorry.

Ms. Unzueta: My name is Silvia Unzueta; I live at 1137 Asturia Avenue. I am delighted to be here and I want to also take this opportunity it relates to crime fighting for the wisdom of your Manager in making permanent the Chief of Police, and I think I speak on behalf of practically every resident in this community, and I think that is the way to go. So thank you very much.

Mayor Cason: Thank you.

Commissioner Lago: Thank you.

Mayor Cason: Any other speaker cards?

City Clerk Foeman: No Mr. Mayor.

Mayor Cason: I will close the public hearing portion.

City Attorney Leen: Mr. Mayor if I could add one other thing, because we did talk to the State Attorney's office. They understand that quality of life crimes are very serious to our City and that we are continuing to try to decrease those and they are working with us, and I did want to say that on the record. And we spoke with Ms. Fernandez-Rundle's Chief of Staff; I've spoken with her directly myself, I know Chief Hudak has as well, so we are working with them.

Commissioner Keon: Can I ask one question about this? What is the charge now?- it's a felony?

City Attorney Leen: No. What this does is it adds a municipal ordinance violation. It's possible if someone goes into a vehicle and takes something or with the intent to take something, they could be charged with a felony, a third degree felony.

Commissioner Lago: So that individual is apprehended at that moment, they are charged with a third degree felony.

City Attorney Leen: They could be.

Commissioner Lago: This is where I think the lawyers step in, what are the ramifications for that individual?

Commissioner Keon: Yes. I want to know what is the...

Vice Mayor Quesada: So it all depends on how much they take. If they take a CD...

Commissioner Keon: It's an amount.

Vice Mayor Quesada: Your facial expression tells me you are frustrated with that response, but if they take something that's less than \$500, it's going to be a misdemeanor, which is a penalty of up to 364 days in jail, plus a potential municipal fine, so on and so forth. If they take you laptop that's worth \$5,000, then it could be a third degree felony or second degree felony, obviously depending on the price of or the value of the product that they stole. Now a municipality, correct me if I'm wrong Mr. City Attorney, they can add a municipal charge on top of that, that cannot be greater than a misdemeanor.

City Attorney Leen: It actually has to be less than a misdemeanor, up to 60 days, but the difference is even for a felony, a third degree felony is possible it won't be prosecuted or the individual will receive probation or something else, but this setting minimum mandatory sentence of 30 days.

Vice Mayor Quesada: The bigger issue is making sure that the State Attorney's Office prosecutes, that's the biggest issue. Here's what happens. I was a prosecutor for a short period; my wife was for a much longer period. When you are there and you are a prosecutor there are so many cases, that come before you. A young prosecutor is going to handle one of these types of cases someone fresh out of law school. They could have 100 files in one day in front of a judge, and I think what Craig Leen has done, our City Attorney, is brilliant what he has done hiring these former prosecutors to shadow our victims and to work with the current prosecutors to make sure that our files get a lot of attention. So what happens is, when you get a box of files as a prosecutor and you are standing in front of a judge and you are just going through the files, a lot of times the prosecutors are very inclined to just no prosecute. No prosecute means, you know something, this is a minor infraction, yes he broke into a car, he stole a few dollars from the cup-

holder, he stole \$10, we'll just let it go because we just don't have the time or the energy or the will to proceed on it. But what our City Attorney has done is the most proactive step; I think anyone in the state has ever taken. So you have to think about what we are doing, the levels that our City Attorney is putting in place. So now when that individual commits for the 20th time breaks into a car in the City of Coral Gables and steals \$10 and breaks a window, instead of the prosecutor just saying, well you know something will no process the case, we'll let this one go, let the guy out of jail. We have a former prosecutor, he's saying, no, no, no, we are here on behalf of the City of Coral Gables, make sure that we prosecute this one to make sure that this guy learns his lesson or woman learns her lesson not to come into the City, and so this is just another step, that stay away order, stay out of this vicinity, stay out of our City. It's an avenue to prevent.

Commissioner Lago: This sends a clear message.

Vice Mayor Quesada: This might not have the teeth, that what we are voting on today might not have the teeth that you want, but there are layers.

Commissioner Lago: When you said you read my facial expression, my concern was the fact that without this ordinance in place we are really limited in reference to how far we can take it, and I just feel the frustration, like the lady who spoke before, we don't have that type of level of crime in the City, but what we have is little minor crimes, the little break into a car and those types of things, which are just happening over and over again, and these individuals are jumping into the City and jumping out of the City and it's frustrating. Our Interim Chief Hudak, I don't know if you want to say a few words in regards to this, but I know we all get those e-mails.

Mayor Cason: One of the things that we discussed the last meeting is, in addition to what the Vice Mayor said is, an awful lot of these cases the victims don't go to court and so that adds the potential that they are dismissed, but as we approved the last Commission we now have a program where we are going to help victims if they have financial reasons to make it available per diem to go to court, as well as some affidavits and some other things that the Police Department and the Attorney are doing. So all these together is going to make it much more

likely that people are going to look to take something out of a car somewhere else as word gets out to them.

City Attorney Leen: Mr. Mayor, Commissioner Lago brought to my attention an individual whose door had been broken into and she was being charged a permit fee to replace the door and based on the victim assistance program and what this Commission did, we were able to waive that fee to make sure she wasn't penalized again.

Commissioner Lago: I'm happy you brought that up. That happened this past week and I wanted to – again through the Sunshine we can't speak about it, but now we'll use this platform to speak about it. You had a nice lady and her husband who relocated to our City six months ago, and were renting a home and they just recently purchased a home. He is an executive at a firm here in the City of Coral Gables. Extremely excited to be in our City, they love the atmosphere, they love the safety. Her front door was "jimmied" open, her husband, I guess, must have scared the intruder away, but it was such damage to the front door that she had to get it replaced. She called in to speak to Dayron on the third floor, who like always was very effective in helping and he recommended that she come and speak to the Commission. I spoke with her. I met with her, along with the City Attorney and came to the conclusion that, again, obviously with your approval, I think we need to write some sort of ordinance or resolution which pushes these type of cases into the victim advocacy program, because the simple fact that, why should a person pay for a permit when they are coming to replace a door and they were an actual victim. Her permit fee was around \$180, I think it was Craig?

City Attorney Leen: I think it was \$200.

Commissioner Keon: Well the whole issue is the cost of permit fees and what you have to go through to replace a door anyhow...

Commissioner Lago: Some of these individuals said, why don't you just get a handyman and just change the door? She said, no, I don't want to do that. I want to do it the right and legal way. I want to get the door, which has a NOA. I want to come to the City, I want to pull a permit, but that person did not expect they had to buy a new door. She was a victim of obviously a potential break-in. So through the City Attorney we were able to help her and assist her in the process of

getting a new door permitted correctly through the City standards. And I think that if something happens in the future we should entertain as a Commission and maybe assisting, there are very rare cases, very rare cases, but when you have this type of situation we should try to do everything in our power to help these individuals who were victimized.

Vice Mayor Quesada: You are saying the situation maybe they break a window, the window frame or...

Commissioner Lago: They break a window and they start to get a permit and it's minimal the impact, just like what we did with solar energy. I mean you are having four, five, six solar projects a year, when you are waiving those fees, which could be \$4-\$5-\$6-\$700, it's minimal impact on the City, but it just really exemplifies what the City of Coral Gables is all about, and I don't think anybody else is doing that.

Commissioner Keon: Maybe we could ask staff to look at that. I've heard from a couple of people, particularly with back doors, garage doors haven't been broken into, and there really is a need to get it replaced rather quickly and the cost is sometimes, the permitting and whatever at times is more than the cost of the door.

City Manager Swanson-Rivenbark: Absolutely Commissioner.

Commissioner Keon: So maybe you can work with staff, that we can look at the whole issue of permitting the replacement of doors that are the same doors as long as they meet code or whatever else, and it's not...reconfiguring their entrances or whatever else, but the simple replacement of doors due to damage to the door for whatever reason or a window, but it could be just a much more simple process and not quite as an expensive process as it is currently.

City Manager Swanson-Rivenbark: And it could be as simple as bringing a police number. As soon as something happens our officers will give them a card with the police number.

Commissioner Keon: Thank you.

City Manager Swanson-Rivenbark: That's the verification that we need. We'll develop a program.

Commissioner Keon: Right. You can do something. You'll just come back to us and let us know what you are doing. Thank you.

Commissioner Lago: You shouldn't be embarrassed because for example like I mentioned before, Dayron who brought it up to my attention that's the type of employee that we have to recognize because he's come up, as you know, with several different ideas which are what the City of Coral Gables is all about, in my opinion, and I think this Commission...

City Manager Swanson-Rivenbark: I'm sorry, I hadn't heard that happen. I'm glad that you brought it to our attention and I know we'll come up with...

Vice Mayor Quesada: It also depends. What if the homeowners insurance covers that cost?

Commissioner Keon: Well, I don't think – well one, I think the cost is high no matter what. I don't think they cover permit fee cost, they cover the door, but not the permit fee cost.

Commissioner Lago: We are talking about the deductible also, I'm sorry to interrupt you. You have a deductible, so I'm pretty sure, again, I don't know what her deductible was, some deductibles are \$5,000, \$10,000...

Vice Mayor Quesada: Let's have staff take a look at it.

Commissioner Keon: Just let them look at it and the cost and all of the issues around it, because it's something that usually needs to be done right away so people can...

Commissioner Lago: But while we are looking at it, I want to make sure that staff like Dayron mentioned that they are proactive, as they were at this point. If you have somebody who has a broken window, bring it to the City Attorney's attention, so that we can deal with it and expedite it as quickly as possible.

Mayor Cason: Chief you want to say anything on this sort of crime.

Chief Hudak: Well, I believe this is a tool in the tool box that you are giving us through this ordinance to continue to combat what is going on all the time. Whether we go through a straight prosecution as Vice Mayor Quesada said, if we catch somebody in a car actually committing a burglary, whether it was forced or not, a certain set of charges may apply, but if we catch

somebody walking down a street, riding a bike down a street with property from six or seven different cars, the charges are different from the State Attorney's office. I believe in total and looking at the big picture, I believe we have this, we have the victim advocate enhancement, this ordinance as well, it gives the officers, the detectives the tools to continue to send the message regardless of what the crime is. So with the victim advocate and this ordinance, I believe it gives us the ability to continue to foster the cooperation with the residents. A lot of residents don't report it if there is no damage to the vehicle, they write it off in their minds. There are a lot of people that don't call us on these, and again, if you see it, say it. If it happens we need to know. So we really kind of push that in the neighborhoods and I think with everything else that we have going on as far as what the Commissioners give us latitude to do, this will help us continue to drive the numbers down in that direction.

Commissioner Keon: Do we have any idea?-I mean on the people that you have been able to pick up on these charges, is this a crime that seems to be more often committed by juveniles or is it older?

Chief Hudak: It's both, Commissioner. I think primarily we see individuals that we've arrested, juveniles, we've arrested people as young as 12 years old and as old as 60. So it really goes back and forth. What is somewhat very consistent is the offenders don't live in the area. Very rare occasions, I can think of a few neighborhood pockets where the individual lived in the area. For the most part its deliberate, the car-hopping issue is a car will drop off a bunch of individuals at one end of the block, they'll walk down, they'll try the different cars. Again, in the north end where there is a lot of on-street parking, where we see in our biweekly meetings where the density of the population is, is where we see a lot more of these incidents. If people leave things visible, whether their doors are looked, we see the windows get broken.

Mayor Cason: What percentage of the break-ins is the door open?

Chief Hudak: You mean left unlocked?

Mayor Cason: Left unlocked.

Chief Hudak: The last time we actually checked it, Mayor, I think it was about 50 percent, I think it goes back and forth, the ones that I was aware of today. One was smashed; one was left unlocked, as we get those reports. Again, a lot of the people until they realize where their identity has been compromised – we had a lady in the south end that said, I didn't realize my Social Security card was taken, now I'm making a report. So we'll have one person making a report, other people won't. So it's hard to adjust that. We want everybody to call us. We want to know everyone that's going on, so we can put our resources where we need to.

City Attorney Leen: Mayor Cason one other thing I wanted to add. Izzy could you come up? - Former Judge Reyes. One other thing that this does which I'll have the judge talk about, one of the things it does, which I think is very important based on what the Vice Mayor had said, was that we have the Justice Advocate working on all of these matters or most of these matters. They are coordinating with the prosecuting attorney; we now have a charge that we can bring ourselves. What that means is, if for some reason the prosecutors don't want to bring a case and somebody is getting released a couple of times, we have the Justice Advocate who can say, look if you are not going to bring it, then I'm going to bring it, and he's been authorized by me to bring those type of matters, which in my view makes it more likely the State Attorney will act and also allows us that option, if the Commission gets to a point where they say, and we are hoping this won't happen, because we are working with the State Attorney's office, but if the Commission gets to the point and says, well look, why isn't this being pursued? - then we always have the option to bring the charge ourselves, because it's a municipal ordinance violation. Can I turn it over to you Judge?

Judge Izzy Reyes: What particular point?

City Attorney Leen: Just to speak on the Justice Advocate Program and how this will work in conjunction with that.

Judge Izzy Reyes: Good morning Mr. Mayor, Vice Mayor, Commissioner, Mr. Manager, Mr. Leen, my name is Israel Reyes, I'm an attorney here, the Reyes Law Firm, P.A., One Alhambra Plaza, Coral Gables. I'm the Police Legal Advisor to the Coral Gables Police Department. We have this program called the Justice Advocate Program or the Victim Advocate Program, we call

it the Justice Advocate Program, and what it is, is it's a program where we track certain cases depending on the nature of the charge and/or the nature of the defendant. We assist the State Attorney's Office with drafting legal documents, we will attend critical court hearings, we will coordinate with the State Attorney to make sure that the cases don't fall through the cracks and when necessary, we will ask the Chief and the Coral Gables Police Command Staff to address certain aspects of the case at the hearings, depending on what's going on. If it's a critical stage of the hearing or a critical motion. Whenever we appear in court, we obviously go on the record. We identify ourselves as the Police Legal Advisors for the City of Coral Gables. We explain what the program is, what it does and all of the judges so far have been very receptive with the program, as all the Assistant State Attorneys, because they are getting the help they need for some of these cases.

Commissioner Lago: Izzy just a quick question. In reference to other municipalities, are other municipalities enacting this type of services for the residents? - or are we groundbreaking.

Judge Reyes: We are the only ones that are doing it.

Mayor Cason: And Craig, I think your opinion was that by doing this a lot of the defense attorneys are going to plea rather than...

City Attorney Leen: The Mayor and I went to one of the hearings and we were sitting there and everyone was....and the judge took us right away and you spoke on our behalf, we were both standing there and you expressed, I think it was your man, I think it was Manny, who expressed our concern and why we were there and it was being reset for another date and they set it pretty quickly, and I remember while we were leaving one of the public defenders said, what is the Justice Advocate Program to Manny, and Manny said, well I'm going to explain it to you and everyone was looking at us in the jury box that a lot of the prisoners sit, the people in jail, and they were all looking, and it made a little bit of a scene in a good way for the City of Coral Gables. So, I thought it was an important moment and that will happen every time the Justice Advocate's there because it's so A-typical. It will always be unique, which I think is very helpful. Now, I wanted to say Mr. Mayor, the Justice Advocate Program, you had mentioned Victim Advocate Program. We have a separate Victim Assistance Program, which in fact I

wanted you to coordinate with the Victim Assistant Coordinator, because the Commission just expanded the program greatly that will involve a number of these matters, so you and Mr. Fernandez and the Director of Public Safety and the Chief of Police should talk about that and make sure we are using all of those things at once.

Judge Reyes: Well that aspect of the program will entail making our law offices available for the residents of Coral Gables to give their depositions. So number one, they don't have to go downtown or to the Attorney's Office, they'll be here at home; and secondly, we will attend the depositions because typically the Assistant State Attorneys don't attend these depositions, and so they are there, I'm trying to think of the right word, but the defense attorneys can do whatever they want and ask whatever questions they want because there is no lawyer there on their behalf. So we will be there and we will make sure that we protect the residents, especially if they have been victimized, not only witnesses. That hasn't happened yet because the cases are getting resolved. I just want to mention one other specific case; the Biltmore was defrauded of about \$15,000 from someone who stayed there. We put the case in the Justice Advocate Program. The defense attorney kept stalling the case because the Biltmore had agreed to put him in the diversion program, pretrial intervention, pretrial diversion, and he had to pay \$11,000 of the restitution up front, but he kept playing games. We went to a hearing, we introduced ourselves to the court, explained that and then I also said in open court on the record that we are willing to give him one more opportunity to come up with part of the restitution and if he doesn't come up with the restitution we are not going to accept a pretrial diversion program anymore. We are going to notify our detectives and we are going to start working up the case for trial and we are going to go all the way. It was reset one more time; he came up with \$11,000 of the restitution. Sam Whitley, the former Sergeant from Coral Gables was there, he's the Director of Security now, he took the restitution and that was resolved.

Mayor Cason: Thank you.

Commissioner Keon: Can I ask one question with regard to juveniles? What do you do with kids when they come into court?- you're a judge, what happens with them?

Judge Reyes: They can either go – there is a program called the JASS program, which is a diversion program, assuming they stay in the juvenile division. They can be put on house arrest; there are all sorts of therapeutic things that can be done.

Commissioner Keon: Right. Can we do that?- can we require that or ask for that as the advocate, the Justice Advocate Program, is that when we have juveniles that are arrested for this that they rather than go to jail or house arrest when they ought to be in school or whatever, that we ensure that they are entered into some sort of a program?

Judge Reyes: That's always the first option in any juvenile case, unless it's such a violent or dangerous case that it gets bound up...

Commissioner Keon: Right. Right. But I mean the types of things that we are talking about here with regard to, these are the types of things that they send to the diversion program that – rather than have them just set loose on the street, can we require that they be placed in a program of some sort?

Judge Reyes: We would suggest, it's always up to the Judge, we can't require it, and it's up to the Judge right now.

Commissioner Keon: Right, but we would do that.

Judge Reyes: If you look back at the history of the juvenile court; the juvenile court was created as a court of equity, not a court of law. Over the years it's evolved into a court of law, but that's always the underlying current in any juvenile proceeding, is to try to save the kid.

Commissioner Keon: Right. So it would be our policy then when you go that we would ask that the juvenile be placed in a diversion program.

Judge Reyes: Sure. Always taking of course, the victim's wishes into consideration as well. I did that when I was a Circuit Court Judge. I always ask for victim input before we did something like that to make sure that they were happy with it.

Commissioner Keon: OK.

Commissioner Lago: That's important of what Commissioner Keon said. Obviously if you have an individual who has committed the same infraction five or six times, it's a different story, but when you have an individual, a first time offender – sure, let's do everything in your power; push them in the right direction, to keep them out of the system

Commissioner Keon: If you have the potential to maybe to keep them out of the system...

Commissioner Lago: That's a great point by Commissioner Keon.

Judge Reyes: I agree. Usually if the child is in need of services anyway, so not only is there a delinquency case, but there is also an ongoing dependency case as well.

Commissioner Keon: And you know what, in most instances children that are in the dependency courts or children that are a problem don't get the help they need until they enter into the justice system. That usually is the moment when you can begin to access services for these kids that are risk, and you know, I know they do bad things, but they are also children or they are young, despite what they may do and all of us that have raised children know that children sometimes do stupid things.

Judge Reyes: I agree. And I learned early on in my police career there are criminals and then there is someone who committed a crime, and sometimes depending on the crime you should treat them differently, because you can save them and you can rehabilitate.

Commissioner Keon: But I think if we can work to have these kids put – kids that are out doing this are kids that are going to get in trouble in other ways too, so maybe we can help them.

Mayor Cason: Thank you.

Judge Reyes: Thank you.

Commissioner Lago: Thank you sir.

Mayor Cason: Close the public hearing portion right now. Do we have a motion on E-3?

Commissioner Lago: I'll make a motion.

Commissioner Slesnick: Second.

Mayor Cason: Commissioner Lago makes the motion, Commissioner Slesnick seconds. City Clerk.

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Mayor Cason: Yes

(Vote: 5-0)

[End: 10:26:19 a.m.]