



To: Alexander Palenzuela

From: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in blue ink, appearing to be "C. Leen", is written over the name of the City Attorney.

RE: Legal Opinion Regarding Clearing of Land

Date: June 23, 2015

I have reviewed the City's ordinances. It is my opinion pursuant to sections 2-201(e)(1) and (8) of the City Code, which authorizes the City Attorney to issue opinions and interpretations on behalf of the City, that the City already has authority under sections 34-1, 34-21, and 34-23 to enter onto Mr. Birnholz's lot and clean the debris, assuming that 5 day notice has been provided (which I have been informed has been provided). Indeed, section 34-1 expressly states "Specific authority is hereby granted the city to enter upon improved or unimproved properties and clean up the same of weeds, trees, debris and other like matter whenever the owner or occupant of such property has neglected to do these things and has been given five days after registered notice or certified notice has been served." *See* also Sec. 34-23 ("Upon failure of the owner of property to remedy the conditions existing in violation of the requirements of this article within five days after service of notice to do so, then the city shall proceed to have such condition remedied by contract or direct labor, or both . . ."). The City has home rule authority to adopt a law of this nature under the Municipal Home Rule Powers Act, and the law has a presumption of validity and may be enforced. It is also clearly a remedial ordinance to address a specific harm to the property and its neighboring properties, which the City has the power to enforce. It is my understanding that Mr. Birnholz has been given at least five days' notice as well, and has not filed any objection with the City or a Court.

Further, the action of failing to maintain the lot is declared unlawful by the Code under section 34-21 of the Code, and is therefore punishable by imprisonment for up to 60 days under section 1-7(a) and (e) of the City Code. I would also note that section 901.15 of the Florida Statutes expressly authorizes an arrest without a warrant where "[t]he person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit." (emphasis added).

Accordingly, it is my opinion that the City has the authority to enter upon Mr. Birnholz's property through its contractor and clear the lot. The police may be present to enforce the peace and ensure that there is no interference by Mr. Birnholz. The police may also order him to stand aside and not interfere. If Mr. Birnholz interferes and disobeys the officer, and fails to comply with the municipal ordinance in the presence of the officer, he is subject to arrest for violation of sections 34-1, 34-21, and 34-23 of the City Code, as well as obstruction/resistance under section 843.02 of the Florida Statutes.

Please see the following ordinances and statutes:

Sec. 34-1. - Clearing of land.

(a) *Authority to enter upon.* Specific authority is hereby granted the city to enter upon improved or unimproved properties and clean up the same of weeds, trees, debris and other like matter whenever the owner or occupant of such property has neglected to do these things and has been given five days after registered notice or certified notice has been served.

(b) *Authority to impose penalties; lien.* The city commission is hereby vested with the right, power and authority, by nonemergency ordinance, to impose penalties for the nonpayment of charges and fees incurred by it in cleaning up improved or unimproved property of weeds, trees, debris and other like matter whenever the owner or occupant thereof has neglected to do such and has been given five days after receipt of registered notice and/or posting, including the right and power to declare such unpaid charges and fees to be a lien against the property served and to provide methods for collection of such fees and charges, including the right to declare such unpaid fees and charges a lien against the real and personal property of the owner and occupant of such property, collectible in the same manner as unpaid liens for special assessments are collectible.

(c) *Cumulative effect.* This power conferred by subsections (a) and (b) of this section is cumulative in addition to any other powers which the city now has or may hereafter have.

Sec. 34-21. - Prohibitions.

It shall be unlawful for any owner of any lot, parcel or tract of land within the city to permit weeds, grass or undergrowth to grow thereon to a height of 12 inches or more from the ground; or to permit rubbish, trash, debris, dead trees or other unsightly or unsanitary matter to remain thereon; or to permit the existence of depressions or excavations or any other condition on such premises wherein water may accumulate and stand in such manner or fashion as to make possible the propagation of mosquitoes therein.

Sec. 34-23. - Cost of clearing as lien on property—Collection, foreclosure and sale.

Upon failure of the owner of property to remedy the conditions existing in violation of the requirements of this article within five days after service of notice to do so, then the city shall proceed to have such condition remedied by contract or direct labor, or both, and the cost thereof shall be and become a lien against such property 30 days after notice of completion of work by the city, to the same extent and character as the lien for special assessments, and with the same penalties and with the same rights of collections, foreclosure, sale and forfeiture as obtained for special assessment liens. The cost chargeable to the owner shall not exceed the amount of cost as set forth in the notice served to the property owner or owners required herein.

Florida Statutes § 843.02 Resisting officer without violence to his or her person.—Whoever shall resist, obstruct, or oppose any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission; county probation officer; parole and probation supervisor; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Herbello, Stephanie

From: Leen, Craig
Sent: Tuesday, June 23, 2015 12:22 PM
To: Herbello, Stephanie
Subject: FW: Clearing of Land

Please publish.

Craig E. Leen, City Attorney
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City, County and Local Government Law*
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From: Leen, Craig
Sent: Tuesday, June 23, 2015 11:19 AM
To: 'alp@alp-law.com'
Cc: Ramos, Miriam; Figueroa, Yaneris
Subject: Clearing of Land

City Attorney Opinion

I have reviewed the City's ordinances. It is my opinion pursuant to sections 2-201(e)(1) and (8) of the City Code, which authorizes the City Attorney to issue opinions and interpretations on behalf of the City, that the City already has authority under sections 34-1, 34-21, and 34-23 to enter onto Mr. Birnholz's lot and clean the debris, assuming that 5 day notice has been provided (which I have been informed has been provided). Indeed, section 34-1 expressly states "Specific authority is hereby granted the city to enter upon improved or unimproved properties and clean up the same of weeds, trees, debris and other like matter whenever the owner or occupant of such property has neglected to do these things and has been given five days after registered notice or certified notice has been served." *See also* Sec. 34-23 ("Upon failure of the owner of property to remedy the conditions existing in violation of the requirements of this article within five days after service of notice to do so, then the city shall proceed to have such condition remedied by contract or direct labor, or both . . ."). The City has home rule authority to adopt a law of this nature under the Municipal Home Rule Powers Act, and the law has a presumption of validity and may be enforced. It is also clearly a remedial ordinance to address a specific harm to the property and its neighboring properties, which the City has the power to enforce. It is my understanding that Mr. Birnholz has been given at least five days' notice as well, and has not filed any objection with the City or a Court.

Further, the action of failing to maintain the lot is declared unlawful by the Code under section 34-21 of the Code, and is therefore punishable by imprisonment for up to 60 days under section 1-7(a) and (e) of the City Code. I would also note that section 901.15 of the Florida Statutes expressly authorizes an arrest without a warrant where “[t]he person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit.” (emphasis added).

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Please see the following ordinances and statutes:

- **Sec. 34-1. - Clearing of land.**

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- **Sec. 34-21. - Prohibitions.**

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