




To: Kevin Kinney, Glenn Kephart, Miriam Ramos

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

RE: Legal Opinion Regarding Construction Staging

Date: July 14, 2015

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I would like to provide further analysis regarding the interpretation in light of the comment from Kevin and our discussion. The law indicates that the City cannot levy anything that would constitute a double charge. In order to comply with this principle, it is my view that the City should charge once for the parking and sidewalk area. This charge could be calculated by either (1) adding the parking meter fee for the parking spots to the public works fee for the sidewalk area or (2) charging the public works fee for the entire parking and sidewalk area and not charging a parking fee. In this way, the City would be charging for exclusive use of the parking and sidewalk areas just one time. The City should calculate both options and charge the higher one. This ensures that the private party does not receive a windfall. The City should then split the funds between Parking and Public Works in an equitable manner to account for both fees.

In this particular case, my office was informed that the (1) the parking meter fee added to the public works fee for the sidewalk area was a lower amount than (2) the public works fee for the entire area. In order to ensure that the developer does not receive a windfall, the public works fee for the entire area is being charged. Otherwise, the developer would be paying less for an area that has parking meters than what would be paid by a private party if there were no parking meters (which is an illogical result). I have been informed by Kevin that a lower parking meter fee was used here because of the age of the project. I have been informed that the parking meter fee now is higher than the public works fee for the equivalent area. If a case comes up like that in the future, then the parking fee plus the public works fee for the sidewalk measure should be used. The proceeds should still be allocated equitably between the departments.

I issue this opinion and interpretation under section 2-201(e)(1) and (8) of the City Code.

## Herbello, Stephanie

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**From:** Leen, Craig  
**Sent:** Tuesday, July 14, 2015 9:47 AM  
**To:** Herbello, Stephanie  
**Subject:** FW: Construction Staging

Please publish.

Craig E. Leen, City Attorney  
Board Certified by the Florida Bar in  
City, County and Local Government Law  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134  
Phone: (305) 460-5218  
Fax: (305) 460-5264  
Email: cleen@coralgables.com

-----Original Message-----

**From:** Leen, Craig  
**Sent:** Tuesday, July 14, 2015 9:47 AM  
**To:** Kinney, Kevin; Kephart, Glenn; Ramos, Miriam  
**Cc:** Figueroa, Yaneris; Tompkins, Jane; 'vivian.cuevas@hklaw.com'; 'afrey@ccresfl.com'; Olazabal, Carmen; Keller, Jessica; Hickman, Lina  
**Subject:** RE: Construction Staging

I would like to provide further analysis regarding the interpretation in light of the comment from Kevin and our discussion. The law indicates that the City cannot levy anything that would constitute a double charge. In order to comply with this principle, it is my view that the City should charge once for the parking and sidewalk area. This charge could be calculated by either (1) adding the parking meter fee for the parking spots to the public works fee for the sidewalk area or (2) charging the public works fee for the entire parking and sidewalk area and not charging a parking fee. In this way, the City would be charging for exclusive use of the parking and sidewalk areas just one time. The City should calculate both options and charge the higher one. This ensures that the private party does not receive a windfall. The City should then split the funds between Parking and Public Works in an equitable manner to account for both fees.

In this particular case, my office was informed that the (1) the parking meter fee added to the public works fee for the sidewalk area was a lower amount than (2) the public works fee for the entire area. In order to ensure that the developer does not receive a windfall, the public works fee for the entire area is being charged. Otherwise, the developer would be paying less for an area that has parking meters than what would be paid by a private party if there were no parking meters (which is an illogical result). I have been informed by Kevin that a lower parking meter fee was used here because of the age of the project. I have been informed that the parking meter fee now is higher than the public works fee for the equivalent area. If a case comes up like that in the future, then the parking fee plus the public works fee for the sidewalk measure should be used. The proceeds should still be allocated equitably between the departments.

Please let me know if there are any further questions. I issue this opinion and interpretation under section 2-201(e)(1) and (8) of the City Code.

Craig E. Leen, City Attorney  
Board Certified by the Florida Bar in  
City, County and Local Government Law  
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405 Biltmore Way  
Coral Gables, Florida 33134  
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Email: cleen@coralgables.com

-----Original Message-----

From: Kinney, Kevin  
Sent: Tuesday, July 14, 2015 8:29 AM  
To: Kephart, Glenn; Ramos, Miriam  
Cc: Figueroa, Yaneris; Leen, Craig; Tompkins, Jane; 'vivian.cuevas@hklaw.com'; 'afrey@ccresfl.com'; Olazabal, Carmen; Keller, Jessica; Hickman, Lina  
Subject: RE: Construction Staging

If we interpret the code in this fashion, the charge for the portion of right of way that is dedicated to parking should be increased to compensate the City for lost revenue.

Kevin J Kinney JD CAPP  
Parking Director  
City of Coral Gables  
305-460-5540

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-----Original Message-----

From: Kephart, Glenn  
Sent: Tuesday, July 14, 2015 8:10 AM  
To: Ramos, Miriam; Kinney, Kevin  
Cc: Figueroa, Yaneris; Leen, Craig; Tompkins, Jane; 'vivian.cuevas@hklaw.com'; 'afrey@ccresfl.com'; Olazabal, Carmen; Keller, Jessica; Hickman, Lina  
Subject: RE: Construction Staging

Will do, thank you.

Lina,  
Please adjust fees as per City Attorney direction.

Thanks,

Glenn Kephart, P.E  
Public Works Director  
City of Coral Gables  
305-460-5001

-----Original Message-----

From: Ramos, Miriam  
Sent: Monday, July 13, 2015 6:10 PM  
To: Kephart, Glenn; Kinney, Kevin  
Cc: Figueroa, Yaneris; Leen, Craig; Tompkins, Jane; 'vivian.cuevas@hklaw.com'; 'afrey@ccresfl.com'  
Subject: RE: Construction Staging  
Importance: High

Good afternoon Glenn and Kevin:

Craig and I met with Mr. Frey this afternoon. We have concluded that they should only be charged the total Public Works fee (which includes the 5 feet of sidewalk space + the 10 feet of parking stall space). Because, in including the square footage for the parking we are already charging for the exclusive use of that area, the City should not charge a separate parking fee. The total amount may then be distributed among the departments after the fact.

Also, please provide Mr. Frey with confirmation that going forward, we will calculate the amount based on the Public Works formula; he need to know the amount that they will be required to pay every 6 months so they may plan appropriately.

Thank you,

Miriam S. Ramos, Esq.  
Deputy City Attorney  
City of Coral Gables  
405 Biltmore Way, 3rd Floor  
Coral Gables, FL 33134  
(305) 460-5218  
(305) 460-5084 direct dial

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-----Original Message-----

From: Leen, Craig  
Sent: Monday, July 13, 2015 12:52 PM  
To: Tompkins, Jane; Ramos, Miriam; Kephart, Glenn  
Subject: FW: Construction Staging  
Importance: High

He makes an interesting point, which I think we should consider. What has been the City's practice in the past?

Miriam, I would like you to handle resolving this.

Craig E. Leen, City Attorney  
Board Certified by the Florida Bar in  
City, County and Local Government Law  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134  
Phone: (305) 460-5218  
Fax: (305) 460-5264  
Email: cleen@coralgables.com

-----Original Message-----

From: Andrew Frey [mailto:afrey@ccresfl.com]  
Sent: Monday, July 13, 2015 12:25 PM  
To: Leen, Craig; Garrido, Lorena  
Cc: Andy Burnham; ZGuilford@guilfordassoc.com; Tompkins, Jane; Kephart, Glenn; Ramos, Miriam; Vivian de las Cuevas-Diaz; Chen, Brigitte; Muñoz, Emily  
Subject: Re: Construction Staging

Craig,

I just left you a voicemail, do you have time to discuss today?

Best regards,  
Andrew

On Fri, Jul 10, 2015 at 4:35 PM, Andrew Frey <afrey@ccresfl.com> wrote:

> Glenn,  
>  
> I just stopped by Public Works. Can we schedule meeting for Monday?  
>  
> As far as the legal scope of the fee authorized by Sec. 62-64 and set  
> by City Commission resolution, it is for "public right-of-way usage",  
> which I would argue does not apply to parking spaces. Each parking  
> space is made available to one single user at a time, not to the  
> general public, and such use is subject to payment of a separate and  
> much more specific and detailed fee arrangement.  
>  
> Thus I would argue that the Public Works fee is only to recover the

> value of use of public property -- like sidewalks and travel lanes --  
> that falls through the cracks of other, more specific fee  
> arrangements, like parking meters.

>  
> But I'd like to discuss your and Craig's interpretation.

>  
> Best regards,  
> Andrew

>  
> On Thu, Jul 9, 2015 at 11:30 AM, Andrew Frey <afrey@ccresfl.com> wrote:  
>> Glenn and Miriam,

>>  
>> In a meeting this morning with Jane, she suggested that you may have  
>> been able to speak in the last couple of days regarding Glenn's  
>> discretion not to charge Public Works fee for parking spaces that are  
>> already being charged for (meter fee).

>>  
>> If so, could you provide an update? If not, can we schedule a time  
>> to all meet together? Tomorrow if possible, I'd like to resolve this  
>> right away.

>>  
>> Best regards,  
>> Andrew

>>  
>> On Fri, Jun 26, 2015 at 2:38 PM, Leen, Craig <cleen@coralgables.com> wrote:

>>> Good afternoon. I would like to review the issue you have raised with Development Services and Public Works before providing my office's legal opinion on behalf of the City. I am copying the Directors of each department along with special counsel.

>>>  
>>> Craig E. Leen  
>>> City Attorney

>>>  
>>> Sent from my iPhone

>>>  
>>>> On Jun 25, 2015, at 5:22 PM, Andrew Frey <afrey@ccresfl.com> wrote:

>>>>  
>>>> Craig,  
>>>>  
>>>> The approved 2020 Salzedo construction staging plan shows us  
>>>> occupying on-street parking areas on different sides of the block  
>>>> at different times.

>>>>  
>>>> We are getting a fee calculation from our GC, who received it from  
>>>> the City, showing two fees for the same on-street parking area: a  
>>>> parking meter fee, and a Public Works fee. We feel that this is  
>>>> charging double rent for the same area.

>>>>  
>>>> Can you point us to the City ordinance setting forth the scope of  
>>>> each of these fees?

>>>>  
>>>> I could understand charging one fee for the sidewalk area, and a  
>>>> separate fee for the on-street parking space, so that each area has

>>>> a distinct cost. But I can't imagine that charging both fees for  
>>>> the same area is what the City intended.

>>>>

>>>> Best regards,

>>>> Andrew

>>>>

>>>> --

>>>> CC Residential, Mobile 786 261 3380, Direct 786 453 3015

>>>> 135 San Lorenzo Ave, Suite 770, Coral Gables, FL 33146

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>> CC Residential, Mobile 786 261 3380, Direct 786 453 3015

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