



To: Diana Gomez, Jane Tompkins

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

RE: Legal Opinion Regarding Using Home Address As Business Address Also

Date: June 5, 2013

My preliminary answers are as follows, although we can discuss further if any of you have other thoughts on this:

1. The Code is presently silent on this issue. It is my view that there is a material difference between using a residence as a business (not a permitted use) and simply listing your only address (a home address) for purposes of a government or other similar registry, as the resident may be the business (i.e. a consultant who travels to meet with clients outside the home), and the residence may be the only physical address that individual has. An example would be an attorney who is required to register a physical address with the Florida Bar-- if the attorney does not have an office, the attorney would have to list the home address (as it is my understanding that the Bar will not accept a mailbox). This does not mean that the attorney could operate a firm out of the home (i.e. see clients), as that would not be a permitted use; it simply acknowledges that the attorney lives there and needs to list an address with the Florida Bar. I do not view the simple listing of a home address as constituting a business use at a residence for purposes of the Zoning Code. Moreover, the obtaining of a mailbox does not necessarily change this analysis, as the resident still lacks an office, so there will always be the question of whether the resident is using the residence as a place of business (not permitted). Of course, if the resident is receiving business deliveries, then a mailbox would be necessary to ensure the home is not being used as a business. I have the authority to make these interpretations under the City Code and Zoning Code. See City Code§ 2-201(e){8} (indicating the City Attorney has the authority "to interpret the City Charter, City Code, and Zoning Code on behalf of the City"); Zoning Code§ 2-702 ("The City Attorney serves as the final authority with regard to legal issues involving interpretation and implementation of these regulations."). This interpretation is also consistent with an interpretation I gave to Development Services and Code Enforcement a number of months ago.

2. To the extent the BTR is applicable to them, and they are actually doing business in the City, it is my view that they would be treated similarly to a mailbox or virtual office. We can discuss this further if you would like.
3. I do not believe they should be required to have a Certificate of Use or Fire Inspection as they are still not permitted to do have a business use/impact at the residence (i.e. no clients/customers, no deliveries, etc.)
4. We will try to have the affidavit/information sheet finished this week.
5. They should not be listing the home address as the business address in materials sent out to customers. This is one of the factors Code Enforcement would look at in determining if they are using a residence as a business place.
6. Code Enforcement would be responsible for enforcing the Code if a residence is unlawfully being used as a business.

Hernandez, Cristina

From: Figueroa, Yaneris
Sent: Friday, August 09, 2013 9:40 AM
To: Hernandez, Cristina
Subject: FW: Starting a Small Business; Location?

Cristy,

Please place this in the Opinions folder, if it hasn't been done already. Thank you!

Yaneris

From: Leen, Craig
Sent: Wednesday, June 05, 2013 10:47 AM
To: Figueroa, Yaneris
Cc: Thornton Richard, Bridgette
Subject: FW: Starting a Small Business; Location?

Please prepare the affidavit/information sheet discussed below.

Craig E. Leen
City Attorney

From: Leen, Craig
Sent: Wednesday, June 05, 2013 10:45 AM
To: Gomez, Diana; Tompkins, Jane
Cc: Thornton Richard, Bridgette
Subject: RE: Starting a Small Business; Location?

Diana,

It was good speaking with you. My preliminary answers are as follows, although we can discuss further if any of you have other thoughts on this:

1. The Code is presently silent on this issue. It is my view that there is a material difference between using a residence as a business (not a permitted use) and simply listing your only address (a home address) for purposes of a government or other similar registry, as the resident may be the business (i.e. a consultant who travels to meet with clients outside the home), and the residence may be the only physical address that individual has. An example would be an attorney who is required to register a physical address with the Florida Bar-- if the attorney does not have an office, the attorney would have to list the home address (as it is my understanding that the Bar will not accept a mailbox). This does not mean that the attorney could operate a firm out of the home (i.e. see clients), as that would not be a permitted use; it simply acknowledges that the attorney lives there and needs to list an address with the Florida Bar. I do not view the simple listing of a home address as constituting a business use at a residence for purposes of the Zoning Code. Moreover, the obtaining of a mailbox does not necessarily change this analysis, as the resident still lacks an office, so there will always be the question of whether the resident is using the residence as a place of business (not permitted). Of course, if the resident is receiving business deliveries, then a mailbox would be necessary to ensure the home is not being used as a business. I have the authority to make these interpretations under the City Code and Zoning Code. See City Code § 2-201(e)(8) (indicating the City Attorney has the authority "to interpret the City Charter, City Code, and

Zoning Code on behalf of the City"); Zoning Code § 2-702 ("The City Attorney serves as the final authority with regard to legal issues involving interpretation and implementation of these regulations."). This interpretation is also consistent with an interpretation I gave to Development Services and Code Enforcement a number of months ago.

2. To the extent the BTR is applicable to them, and they are actually doing business in the City, it is my view that they would be treated similarly to a mailbox or virtual office. We can discuss this further if you would like.
3. I do not believe they should be required to have a Certificate of Use or Fire Inspection as they are still not permitted to do have a business use/impact at the residence (i.e. no clients/customers, no deliveries, etc.)
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6. Code Enforcement would be responsible for enforcing the Code if a residence is unlawfully being used as a business.

Craig E. Leen
City Attorney

From: Gomez, Diana
Sent: Wednesday, June 05, 2013 9:16 AM
To: Leen, Craig; Tompkins, Jane
Subject: RE: Starting a Small Business; Location?

Hi Craig/Jane,

Finance has a couple of questions regarding this determination...

1. Will the Code be changed to allow for this? We don't believe that the Code currently allows it... if it does or if it is open to interpretation, please point us to any relevant sections...
2. Will these individuals be required to receive a Business Tax Receipt? Since they are conducting a business in the city... note that virtual offices and mailbox only business are required to obtain a BTR.
3. Will these individuals/homes be required to receive a Certificate of Use or have a Fire Inspections? We should be consistent with how we treat this versus businesses with a virtual office or just a mailbox.
4. Staff mentioned you would be creating an affidavit that would be required to be completed by the individuals... please let us know when that is completed... we would send those out with the BTR application.
5. If the individual's letterhead or business cards lists the home address (since it would be the only address of record), would that be considered advertising?
6. In the event that there is a violation or residents complain, I assume that Code Enforcement would be responsible for enforcing compliance (which is why it should be clear in the Code)...

Let me know your thoughts.

Thanks.

Diana M. Gomez
Finance Director
City of Coral Gables
dgomez@coralgables.com
PH: 305.460.5275
FX: 305.460.5376

From: Leen, Craig
Sent: Tuesday, June 04, 2013 3:56 PM

To: Gomez, Diana
Subject: FW: Starting a Small Business; Location?

Diana, please see the emails below, and let your staff know that the business address of record can be someone's home, as long as they are complying with the rules below.

Craig E. Leen
City Attorney

From: Tompkins, Jane
Sent: Tuesday, June 04, 2013 3:24 PM
To: Leen, Craig
Subject: RE: Starting a Small Business; Location?

Yes, I think that's fine.

From: Leen, Craig
Sent: Tuesday, June 04, 2013 3:09 PM
To: Tompkins, Jane
Subject: FW: Starting a Small Business; Location?

Hi Jane. Just following up as to whether you would be fine with this position (I would let Finance know as well). Thanks,
Craig

Craig E. Leen
City Attorney

From: Leen, Craig
Sent: Monday, June 03, 2013 4:22 PM
To: Tompkins, Jane
Subject: FW: Starting a Small Business; Location?

Jane,

Please see the email below from the Mayor. I am fine with Mr. Morin using his home address as his address of record as long as (1) he does not advertise the business as being at his home address, (2) he does not receive clients/customers at his home address, and (3) he does not receive business deliveries at his home address. I believe this is consistent with how we have handled a couple other cases as well. Please let me know if you are in agreement.

Craig E. Leen
City Attorney

From: Cason, Jim
Sent: Monday, June 03, 2013 12:03 PM
To: Leen, Craig
Subject: FW: Starting a Small Business; Location?

Craig—Can you let him know our code on this. Can his home be the address even if he does no consulting from there, just an address of record, no visitors, etc

From: Tim Morin [mailto:sparkycgfl@gmail.com]
Sent: Tuesday, April 23, 2013 1:57 PM

To: Cason, Jim

Subject: Starting a Small Business; Location?

Good afternoon,

First let me congratulate you on your recent re-election.

I am in the process of starting a small business/LLC.

My wife and I have lived in Coral Gables since 1985 and I "retired" from the US DOJ last year after 22 yrs.

I plan to do consulting work (productivity improvement consulting services) from our residence and on-site.

The business address of record for Florida ... is my home.

The business address of record for Miami-Dade ... is my home.

Lo and behold, I find out this afternoon that the business address of record, as far as Coral Gables is concerned *cannot be* my home !!!

I ... apparently ... am forced for some reason ... to lease a private "mailbox" to appease Coral Gables.

Even though that will add a cost/complication AND essentially conflict with the legal business address of record in Miami-Dade and Florida !!?

I realize that I will never be a large employer, but I fail to see why a consulting business with no physical building or material

cannot have its legal place of business as the owners/managers/registered agents residence and legal address.

If you don't see why either, and want to help me change that, please contact me at your earliest convenience.

Sincerely

Tim Morin

305-302-8114

sparkyCGFL@gmail.com

4406 San Amaro Drive, Coral Gables 33146