



To: Chief Edward Hudak

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

A handwritten signature in blue ink, appearing to be "CL", is written over the name "Craig E. Leen".

RE: Legal Opinion Regarding Residential Picketing Ordinance

Date: June 27, 2016

In response to your inquiry, and pursuant to sections 2-201(e)(1) and (8) of the City Code, I am providing the following City Attorney Opinion regarding Ordinance No. 2016-04, which regulates picketing in residential areas consistent with the decisions of the United States Supreme Court in *Frisby v. Schultz*, 487 U.S. 474 (1988) and the United States Court of Appeals for the Eleventh Circuit in *Bell v. City of Winter Park, Fla.*, 745 F.3d 1318 (11th Cir. 2014).

I have been informed that the police department has learned that several individuals are targeting a Coral Gables resident for protest and picketing at that resident's single family home in Coral Gables. The home is in a single family residential (SFR) zoned district. The City of Coral Gables has an ordinance that regulates picketing in residential areas, which intends to protect residents in the quiet enjoyment of their homes and provide a feeling of well-being, tranquility, and privacy in residential areas. The ordinance is within the City's lawful police power and is applied in a content neutral manner consistent with the First Amendment. Among the ordinances regulations, the ordinance does not permit protesting or picketing within a buffer area of 50 feet from the property line of a single family residence within a SFR zoned district. *See Sec. 62-202(a) and (b)*. This prohibition is consistent with the prohibitions upheld in the *Frisby* and *Bell* cases (these are binding cases upon which the City and its police officers may lawfully rely in enforcing this ordinance).

I have reviewed the definition of "picket," "picketing," and "protest" in section 62-202(a)(1) of the ordinance. It is my legal opinion that it would apply to this matter. The individuals who are targeting the resident for picketing should be provided a copy of the ordinance when they arrive and informed that they may not picket or protest within 50 feet of a targeted residence. Please note, the ordinance applies to protest and picketing in front of any single family residence in the SFR district. This is to ensure that no specific residents must bear the burden in their homes of being targeted or perceived to be targeted for picketing, and having picketing and protesting in front of their residence, which would deny them quiet enjoyment of their home in violation of

the ordinance and the principles established in *Frisby* and *Bell*. In other words, the protestors may not target neighboring residents or a neighboring residence for picketing either.

If the protestors request an “alternative means” to protest under section 62-202(e) of the ordinance, your officers should make “reasonable efforts to locate city-owned land reasonably near or abutting” the residential zoned district “for a reasonable period of time during daylight hours.”

If the protestors do not comply with the ordinance, it is my legal opinion that the officers have the lawful discretion to order the protestors to comply or be subject to arrest, and if the protestors fail to comply, to arrest the protestors for a municipal ordinance violation and for failure to obey a lawful order/resisting without violence under state law. In my legal opinion, both charges may be placed on the arrest form, although that is ultimately within the discretion of the officer. I would note that the ordinance expressly provides in section 62-202(c) that a violation of the ordinance is an offense punishable as provided in section 1-7 of the City Code. This section indicates that the violation is punishable for a term of imprisonment up to 60 days, a fine not exceeding \$500, or both.

Finally, I have been asked whether protestors may walk in a circle or back and forth, repeatedly entering and exiting the buffer zone in front of a targeted residence. In my legal opinion, this attempt to circumvent the ordinance would still violate the ordinance. In my legal opinion, intentionally and repeatedly walking through a buffer area in front of a known targeted residence would constitute loitering or milling about that targeted residence in violation of the ordinance.

## CITY OF CORAL GABLES, FLORIDA

### ORDINANCE NO. 2016-04

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA, PROVIDING FOR TEXT AMENDMENTS TO THE CITY OF CORAL GABLES CODE BY AMENDING CHAPTER 62 "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES," ARTICLE VI "PARADES AND PUBLIC ASSEMBLIES," TO PROMOTE PUBLIC PEACE AND ORDER IN RESIDENTIAL AREAS AND TO PROMOTE THE IMPORTANT VALUE OF TRANQUIL AND HARMONIOUS NEIGHBORHOODS IN THE CITY OF CORAL GABLES, BY REGULATING PICKETING WITHIN A DEFINED BUFFER AREA, REGARDLESS OF THE CONTENT OF THE COMMUNICATION; PROVIDING FOR ALTERNATIVE AREAS FOR PROTEST AND PICKETING; PROVIDING FOR A REPEALER PROVISION, SEVERABILITY CLAUSE, CODIFICATION, AND PROVIDING FOR AN EFFECTIVE DATE.

#### RECITALS AND LEGISLATIVE FINDINGS

**WHEREAS**, the City of Coral Gables finds that there have been reported instances during the last several years in which the domestic tranquility has been disturbed in residential areas by organized picketing and protests in residential areas directed against specific targeted residents living in those areas; and

**WHEREAS**, the United States Supreme Court in *Carey v. Brown*, 447 U.S. 455 (1980) stated and found that: "[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." *Id.* at 471; and

**WHEREAS**, the United States Supreme Court in *Frisby v. Schultz*, 487 U.S. 474 (1988) found and stated that: "[o]ur prior decisions have often remarked on the unique nature of the home, the last citadel of the tired, the weary and the sick." *Id.* at 484; and

**WHEREAS**, the United States Supreme Court has found that "[p]reserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value." *Carey v. Brown*, 447 U.S. at 471; and

**WHEREAS**, the United States Supreme Court in *Frisby v. Schultz* found and stated the following: "One important aspect of residential privacy is protection of the unwilling listener. Although in many locations, we expect individuals simply to avoid speech they do not want to hear [citations omitted], the home is different. That we are often captives outside the sanctuary of the home and subject to objectionable speech ... does not mean we must be captives everywhere." *Frisby*, 487 U.S. at 484, citing *Rowan v. Post Office Dep't*, 397 U.S. 728, 738 (1970); and

**WHEREAS**, in *Frisby v. Schultz*, the United States Supreme Court by a judgment of 6:3 upheld the constitutionality of a municipal ordinance in Brookfield, Wisconsin that provided the following: "It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the Town of Brookfield." *Frisby*, 487 U.S. at 477; and

**WHEREAS**, the Brookfield, Wisconsin ordinance that was upheld recited as its primary purpose "the protection and preservation of the home" through assurance "that members of the community enjoy in their homes and dwellings a feeling of well-being, tranquility and privacy." *Frisby*, 487 U.S. at 477; and

**WHEREAS**, in *Bell v. City of Winter Park, Fla.*, 745 F.3d 1318 (11th Cir. 2014), the United States Court of Appeals for the Eleventh Circuit upheld the constitutionality of a municipal ordinance in the City of Winter Park, Florida, which prohibited picketing within 50 feet of a residential dwelling unit; and

**WHEREAS**, the City Commission of the City of Coral Gables seeks to protect and preserve homes and dwellings in Coral Gables and to provide for the members of the community who reside in such homes and dwellings a feeling of well-being, tranquility, and privacy; and

**WHEREAS**, the City Commission seeks to prevent picketing that is targeted against specific residents (even though there may be a broader message, at least in the minds of one or more of the picketers) where the picketing, as recognized by the Supreme Court in *Frisby v. Schultz*, may have a "devastating effect ... on the quiet enjoyment of the home." *Frisby*, 487 U.S. at 477; and

**WHEREAS**, because the picketing prohibited by the Brookfield, Wisconsin ordinance that was upheld as constitutional in *Frisby v. Schultz* concerned only speech directed primarily at those who are presumptively unwilling to receive it, "the State has a substantial and justifiable interest in banning it." *Frisby*, 487 U.S. at 488; and

**WHEREAS**, the City Commission of the City of Coral Gables finds that this Ordinance is narrowly tailored to prohibit only that picketing activity which was prohibited by the Brookfield, Wisconsin ordinance upheld in *Frisby v. Schultz*, and which was prohibited by the City of Winter Park, Florida ordinance upheld in *Bell v. City of Winter Park, Fla.*, and finds that based on the authority cited herein it has a compelling interest of the highest order in enacting this local law; and

**WHEREAS**, the restrictions presented in this Ordinance are content and viewpoint neutral; and

**WHEREAS**, the City Commission finds and directs that the provisions of this Ordinance must always be applied to be consistent with the requirements of the First Amendment to the U.S. Constitution and all other applicable laws; and

**WHEREAS**, after notice duly published, a public hearing for First Reading was held before the City Commission on January 26, 2016, at which hearing all interested parties were afforded the opportunity to be heard; and

**WHEREAS**, the City Commission was presented with a text amendment to the City Code, and after due consideration and discussion, (approved the amendment on First Reading (vote: 5-0));

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA:**

**SECTION 1.** The foregoing “**WHEREAS**” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

**SECTION 2.** The City Code of the City of Coral Gables is hereby amended as followse

**CHAPTER 62 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

\* \* \* \*

**ARTICLE VI. - PARADES AND PUBLIC ASSEMBLIES**

\* \* \* \*

**Sec. 62-184. - Exceptions.**

This article shall not apply to the following:

\* \* \* \*

(4) Spontaneous events occasioned by news or affairs coming into public knowledge within two days of such public assembly, provided that the organizer thereof gives written notice to the city at least 24 hours prior to such parade or public assembly, and provided further that the provisions of Section 62-202 are complied with, if otherwise applicable;

\* \* \* \*

(6) Political or public issue events, which are events of a political nature or public concern, including, but not limited to, speech making, picketing, protesting, marching, demonstrating, or debating public issues on a public place or public places. Provided, however, that individuals or organizations shall have notified the city manager's office of when a political event is planned so that police, fire, and other emergency service organizations will be aware of the time, place, and scope of the event, and provided further that the provisions of Section 62-202 are complied with, if otherwise applicable;

\* \* \* \*

**Sec. 62-202. - Prohibition against picketing before or about a dwelling unit.**

*(a) Definitions.*

(1) "Picket"; "picketing"; and "protest." The terms "picket," "picketing," and "protest" shall all mean, for purposes of this section, any assembly of one or more persons, who, through conduct, speech, or other form of expression criticize, protest, or complain about any matter in which a particular person, group of persons, or type of person is specifically targeted for protest, complaint, or criticism, and where such assembly stands, loiters, congregates, or mills before or about a dwelling unit in

which a person who is a target or subject of such protest resides or is perceived to reside.

One or more persons may be considered picketing or protesting within the meaning of this section even if the message being communicated is intended to be heard or seen by persons in addition to the resident or residents inside a dwelling unit.

(2) The term "dwelling unit" shall mean a building or portion thereof that is designed for residential occupancy, and shall include single-family homes, zero lot line residences, townhomes or connected homes, duplexes, and other single- and multi-family dwelling units located in the SFR, MF1, MF2, and MFSA zoning districts. Where a single-family residence is grandfathered-in in another zoning district and is still used for single-family residential purposes, it shall be included in this definition. Excluded from this definition are apartment buildings and condominiums located in a zoning district other than the SFR, MF1, MF2, and MFSA districts.

(3) The term "buffer area" shall mean that area of public property, including any park, public street, public right-of-way, or sidewalk, located within an area that extends 50 linear feet in any direction measured from the property line of a dwelling unit. Privately owned property shall not be considered to be included in the buffer area, although the laws of trespass shall apply.

(b) *Prohibition against protest and picketing before or about a dwelling unit.* It shall be unlawful for any person or persons to picket, protest, or conduct any picketing or protesting activity, within a buffer area of 50 linear feet in any direction from the property line of any dwelling unit in the City of Coral Gables.

(c) *Enforcement and penalty for violation.* A person violating the provisions of this section shall be guilty of an offense punishable as provided in Section 1.7 of the City Code.

(d) *Supplement to other provisions of law.* The provisions of this section supplement other provisions of law that protect the public order and safety, including, but not limited to, the following: provisions of the City Code and other law governing noise limitations; provisions of the City Code and other law prohibiting obstruction or interference with passage on a public right-of-way, sidewalk, or street; and provisions of the City Code and other law that prohibit trespass, assault, battery, destruction of property or other injury to person or property.

(e) *Alternative means.* The city manager or designee shall, on application, make reasonable efforts to make available city-owned land reasonably near or abutting a residential zoning district for any protest or picket, for a reasonable period of time during daylight hours, subject to all laws applying to the conduct of persons engaged in the protest or picket. Furthermore, nothing in this section shall be read to prohibit a protest or picketing in a zoning district that is not listed in Section 62-202(a)(2) above, so long as the conduct of such protest or picket is otherwise lawful.

**SECTION 3.** All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 4.** If any section, part of section, paragraph, clause, phrase, or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

**SECTION 5.** If a court shall determine that the 50 foot buffer area provided for in this Ordinance is too large, then the court shall enforce such buffer that it finds will satisfy the constitutional requirements for a buffer area protecting residential dwelling units, and this Ordinance and the subject Code sections contained herein shall be deemed amended to reflect the buffer area determined by the court to satisfy constitutional requirements.

**SECTION 6.** It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the City Code, which provisions may be renumbered or re-lettered and the word “ordinance” be changed to “section”, “article”, or other appropriate word to accomplish such intention.

**SECTION 7.** If the City Code’s Tables of Contents, Supplemental History Table or other reference portions are affected by these provisions, then changes are approved as a part of this Ordinance.

**SECTION 8.** This Ordinance shall become effective upon passage and adoption hereof.


PASSED AND ADOPTED THIS TWENTY-SIXTH DAY OF JANUARY, A.D.,  
2016.

(Moved: Quesada / Seconded: Slesnick)  
(Yeas: Slesnick, Keon, Lago, Quesada, Cason)  
(Unanimous: 5-0 Vote)  
(Agenda Item: E-3)

APPROVED:

  
JIM CASON  
MAYOR

ATTEST:

  
WALTER J. FOEMAN  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

  
CRAIG E. LEEN  
CITY ATTORNEY

**From:** [Leen, Craig](#)  
**To:** [Paulk, Enga](#)  
**Cc:** [Ramos, Miriam](#)  
**Subject:** FW: City Attorney Opinion regarding Residential Picketing Ordinance  
**Date:** Monday, June 27, 2016 1:12:59 PM  
**Attachments:** [image001.png](#)  
[Residential Picketing Ordinance.pdf](#)

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Please publish.

**Craig E. Leen, City Attorney**

*Board Certified by the Florida Bar in  
City, County and Local Government Law*  
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*Celebrating 90 years of a dream realized.*

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**From:** Leen, Craig  
**Sent:** Friday, June 24, 2016 6:41 PM  
**To:** Hudak, Edward  
**Cc:** Barta, Bart  
**Subject:** City Attorney Opinion regarding Residential Picketing Ordinance

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Please call me with any questions.

**Craig E. Leen, City Attorney**

*Board Certified by the Florida Bar in*

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