



To: Abigail Price-Williams, County Attorney for the City of Miami-Dade County

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding the Legality of the City of Coral Gables Traffic and Vehicles Ordinances

Date: October 19, 2018

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On May 8, 2018 the City of Coral Gables ("City") Commission adopted Ordinance Nos. 2018-16 and 2018-17 with the intent of assuming responsibility for the entire parking fine and collection process from Miami-Dade County ("County"). The intention is to allow for a higher standard for parking in the City and provide for the entire process (ticket issuance through consideration of any appeal and collection) to be performed by the City rather than in conjunction with the County.

It is important to address how the relationship between the City and the County currently works. Presently, the City of Coral Gables Parking Department enforces the County Code throughout the City. The City issues the citations, maintains the meters, sets parking rates for on and off street parking in the City, and has the discretion to void parking tickets independently from the County. Tickets and fines are paid through the County and a portion of the fine is then returned to the City. The City has multiple agreements with the Parking Violations Bureau and the County in order to accomplish this. Municipalities individually contract with the County for shared equipment and share scofflaw information with each other. As the October 17<sup>th</sup> memorandum correctly states, municipalities enter into inter-local agreements to implement the current arrangement, and the agreements provide for termination upon sufficient notice. Additionally, the City has agreements with the County as to ADA parking fine reimbursements and crossing guard funds. The City also designates residential permit zones independently from the County and erects signs setting time limits and prohibiting parking. The City waives on-street parking fees for special events, removes on-street parking spaces, and collects fees for lost spaces when developments require the use of those spots. The City has not only a regulatory, but a proprietary, interest in regulating it's on and off-street parking. The setting and collecting of fines for violating those regulations clearly sits with the City. While currently the County Parking Violations Bureau handles appeals of citations, and the distribution of fines, it is the City itself who is enforcing parking restrictions, and the City would continue to do so following the City's proposed assumption of full responsibility over parking in Coral Gables.

**Section 1.01(A)(1) of the County Charter and the County's Traffic Code**

The October 17<sup>th</sup> memorandum relies largely on Section 1.01(A)(1) of the Miami-Dade County Charter ("County Charter") to conclude that the City's proposed assumption over

parking is impermissible. In reaching its conclusion, the memorandum asserts that parking enforcement is preempted to the County under the Miami-Dade County Home Rule Charter, and the Miami-Dade County Code. However, the memorandum fails to address Section 6.02 of the Miami-Dade County Charter (“County Charter”) as well as binding case law that is more recent than *Miami Shores Village v. Cowart*, 108 So.2d 468 (Fla. 1959).

The County Charter grants the Board of County Commissioners (BCC) authority to regulate roads and “develop and enforce master plans for the control of traffic and parking.” Section 1.01(A)(1), County Charter. The County thereby has authority to plan for and control traffic. This was recognized in *Cowart*, although on a narrower question. Notably, however, *Cowart* was decided before relevant provisions of Florida Statutes Chapter 316, which granted municipalities significant authority over local roads, and the Municipal Home Rule Powers Act were adopted. Section 1.01(a)(1) does not grant the County exclusive jurisdiction over local roads. Even under the *Cowart* opinion, localities can exercise a higher degree of control over local roads based on the “federated system” that the County Charter established. In fact, the City has worked closely with the County multiple times on issues regarding the City’s local roads and the City has provided higher standards of zoning, service, and regulation than the County on the City’s local roads.<sup>[1]</sup>

The memorandum also states that the County Traffic Code, Chapter 30 of the Miami-Dade County Code, preempts the City from adopting its own parking code and enforcing the same. Section 30-203 of the County Code states that any municipal ordinances related to the regulation of “traffic and its enforcement” are superseded, but makes no reference to parking, a distinction which *is* made in the County Charter. In fact many portions of the Traffic Code, which does not appear to have been substantially updated in the past three decades, have been superseded and preempted by state law. Nothing in the County Traffic Code prohibits the City of Coral Gables from enforcing its own parking ordinances. Moreover, the County’s power over traffic and parking is read *in pari materia* with Section 6.02 of the Charter, which is both a *limit on County power and a grant of municipal power*.

### **Section 6.02 of the County Charter and Municipal Police Powers**

Section 6.02 of the County Charter guarantees municipalities the ability to provide “higher standards of zoning, **service**, and **regulation** than those provided by the BCC in order that its individual character and standards may be preserved for its citizens.” (emphasis added). Thus, Section 6.02 allows the County to set minimum countywide standards while providing the City the option of setting higher standards within its boundaries. Section 6.02 of the County Charter was also interpreted broadly to prevent County preemption of municipalities in *Miami-Dade County v. The Village of Pinecrest*, 994 So. 2d 456 (Fla. 3d DCA 2008). This supports the City’s position that it should have greater authority over parking.

In *Pinecrest*, which dealt with a ballot question regarding the municipality’s desire to provide its own fire and rescue services, the County argued that Section 6.02 of the Charter merely allowed a municipality to contract with the Miami-Dade County Fire and Rescue District for delivery of additional fire and rescue services. In response to this contention, the court wrote, “This is not so. With regard to fire and rescue services, section 6.02 must-and-does mean municipalities have a right to provide service independently of those services provided by the County.” Additionally the opinion states, “**it is clear section 6.02 affords municipalities with the right to provide some alternative level of independent services.**” The memorandum also cites to *City of Coral Gables v. Dade County*, 189 So. 2d 530 (Fla. 1966) for the proposition that

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<sup>[1]</sup> Examples include the City’s play street ordinance, implementation of a 25 mph speed limit on local residential roads, and corresponding signage.

a Miami-Dade County countywide regulation can supersede municipal authority to enact similar regulations. The *Pinecrest* decision cites to *City of Coral Gables v. Burgin*, 143 So. 2d 859, 861 (Fla. 1962), which addressed the same regulations to those in *City of Coral Gables v. Dade County*. The court in *Burgin* stated that the regulation of the plumbing is not a matter so peculiar to the city as to justify purely local regulations in its ruling for the County. In contrast, parking is peculiarly local to the City of Coral Gables.

Additionally, independent from the County Charter, the City has the ability and authority to adopt remedial measures under the general police power to address specific public nuisances or other health, safety, and welfare concerns that may arise. See generally *Valdez v. State ex re. Fariior*, 142 Fla. 123, 120 (1940). Clearly, the regulation of parking is within the City's general police powers.

### **The City's adoption of Ordinances 2018-16 and 2018-17 is valid and appropriate**

While the City acknowledges that traffic control within the City may, in some instances, affect the County as a whole, parking is, in fact, a separate issue. The City has a proprietary interest in its on and off-street parking. Independently from the County, the City builds public garages, determines the location and availability of on-street parking spaces, and sets its parking fees, which differ from those in other municipalities and in unincorporated Miami-Dade County. In fact, the City may remove all on-street parking within its boundaries at its discretion. It would not be consistent for a municipality to have the power to eliminate all on-street parking spots within its boundaries, set time limits for parking locations, or set the on-street parking rates, but be prohibited from setting and collecting the fines for violations of those same rates and regulations.

The City wishes to provide a higher standard of service and regulation for parking in the City. Currently, the City sets parking rates that differ from other municipalities, and wants to set fines unique to Coral Gables as well. The parking issues in the City are different from those in unincorporated Miami-Dade County and other municipalities. Rates for parking on Miracle Mile should, and do, differ from those on Ocean Drive in Miami Beach. The City also wants to make payment and appeal of parking citations easier for its residents and visitors. By assuming full responsibility for enforcement and collection the City will have the ability to set flexible dates and hours for administrative appeals, to alter parking fines as the City environment changes, and provide a higher level of service to its residents and customers while doing so. The County Charter itself grants the City the authority to have higher standards of zoning, service, and regulation than those provided by the BCC in order that its individual character and standards may be preserved for its citizens.

For the reasons detailed above, the City disagrees with the County's reliance on Section 1.01(A)(1) of the County Charter and the County Code for the proposition that only the County may regulate the enforcement of parking in the City. As always, the City wishes to maintain a positive working relationship with the County and believes that any dispute between the City and County as to the City's assumption of responsibility over parking should be resolved through a cooperative approach incorporating a balancing of interests.