



To: Boriana Cloutier

From: Kara S. Nickel

Approved: 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 word "Gables" in the approval line.

RE: Legal Opinion Regarding Request For Accommodation Regarding Bulk Pick Up

Date: December 20, 2012

I reviewed a resident request for a modification to the City's zoning code as an accommodation for the residents' physical disabilities. As I understand it, residents are not permitted to put their trash receptacles on the street until 6:00 p.m. on the evening before their scheduled trash day. Two residents (who are members of the same household) have requested a modification to the time requirement of the zoning code as an accommodation for their physical impairments, which they contend are disabilities.

As a government entity, the City is required to comply with Title II of the Americans With Disabilities Act ("ADA"). The ADA prohibits discrimination against qualified individuals with disabilities on the basis of disability, including prohibiting discrimination in the participation in and provision of services, programs, activities of a public entity. 42 U.S.C. § 12132.

Under the ADA, an individual is disabled if he or she has a physical or mental impairment that substantially limits one or more major life activities. 42 U.S.C. §12102(1)(A). Based on the information you have provided me concerning their medical conditions, the residents may be able to show that they have disabilities within the meaning of the ADA.

Assuming that the residents are disabled, the City is required under the ADA to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the [City] can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. §35.130(7). As provided in the Title II Technical Assistance Manual published by the Department of Justice, such modifications could include granting a variance of a set-back requirement in a municipal zoning ordinance in order to install a ramp leading up to a

business, or permitting a mobility impaired individual to use a golf cart on the shoulder of a public street where pedestrians can walk, as a reasonable modification of the county's ordinance prohibiting such use of golf carts.

The residents at issue have advised that they are unable to physically move their trash receptacles to the curb because of their disabilities. The residents receive assistance from a nurse or home health aide who leaves at 4:00 p.m. and on the day prior to trash pick-up, the nurse/aide has been taking the residents' trash receptacles to the curb immediately prior to leaving their home at 4:00 p.m. The residents have asked to continue this practice, which would result in their trash receptacles being on the curb two hours prior to the time permitted by the City's zoning ordinance. This two hour difference is small and does not appear to "fundamentally alter" the nature or purpose of the zoning ordinance. Accordingly, I recommend that the City grant the residents' request as a reasonable modification of its zoning ordinance.

Hernandez, Cristina

From: Leen, Craig
Sent: Wednesday, December 26, 2012 3:38 PM
To: Hernandez, Cristina
Subject: FW: Resident Request for Accomodation Regarding Bulk Pick Up
Attachments: 2012-12-20 Letter to City of Coral Gables re Citizen request.pdf.pdf

Importance: High

Please place the email below and attachment into the opinion folder.

Craig E. Leen
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Leen, Craig
Sent: Wednesday, December 26, 2012 3:11 PM
To: Ortiz, William
Cc: Thornton Richard, Bridgette
Subject: Resident Request for Accomodation Regarding Bulk Pick Up
Importance: High

Will,

Please see the attached letter from outside counsel. I agree with the recommendation that a two-hour accommodation should be made here based on the information provided by the residents. Please call me if you have any questions.

Craig E. Leen
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Kara Nickel [mailto:KNickel@stearnsweaver.com]
Sent: Thursday, December 20, 2012 5:05 PM
To: Thornton Richard, Bridgette
Cc: Leen, Craig
Subject: RE: Legal Advice Needed

Bridgette and Craig – Please review the attached letter and let me know if you need anything further. Thanks.

Kara S. Nickel, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

150 West Flagler Street, Suite 2200
Miami, Florida 33130
knickel@stearnsweaver.com
Direct Tel: (305) 789-3226
Direct Fax: (305) 789-2645
Assistant: Tami Ruiz (Ext. 3248)

STEARNS WEAVER MILLER
WESSLER ALHADEFF & SITTERSON P.A.

From: Thornton Richard, Bridgette [mailto:bthornton@coralgables.com]
Sent: Thursday, December 20, 2012 11:20 AM
To: Kara Nickel
Cc: Figueroa, Yaneris; Leen, Craig
Subject: RE: Legal Advice Needed

That would be great. Just give me a call when you're ready.

Thanks!

Bridgette N. Thornton Richard
Deputy City Attorney for the City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
Tel: (305) 460-5084
Fax: (305) 476-7795

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From: Kara Nickel [mailto:KNickel@stearnsweaver.com]
Sent: Thursday, December 20, 2012 11:19 AM
To: Thornton Richard, Bridgette
Subject: RE: Legal Advice Needed

Talk at 11:30?

Kara S. Nickel, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
knickel@stearnsweaver.com
Direct Tel: (305) 789-3226
Direct Fax: (305) 789-2645

Assistant: Tami Ruiz (Ext. 3248)

STEARNS WEAVER MILLER
VESSLER ALHADEFF & SITTERSON, P.A.

From: Thornton Richard, Bridgette [<mailto:bthornton@coralgables.com>]
Sent: Thursday, December 20, 2012 11:17 AM
To: Kara Nickel
Cc: Leen, Craig; Figueroa, Yaneris; Franqui, Susan; Osle, Zilma; Hernandez, Cristina
Subject: Legal Advice Needed

Good Morning Kara,

I hope you are doing well. We would like to speak with you about an ADA issue that we need researched. Please let me when you are available to discuss the issue. This is a time sensitive matter.

Thank you,
Bridgette

Bridgette N. Thornton Richard
Deputy City Attorney for the City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
Tel: (305) 460-5084
Fax: (305) 476-7795

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STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.

Kara S. Nickel
150 West Flagler Street, Suite 2200
Miami, FL 33130
Direct: (305) 789-3226
Fax: (305) 789-2645
Email: knickel@stearnsweaver.com

December 20, 2012

VIA EMAIL AND U.S. MAIL

Craig Leen, City Attorney
Bridgette N. Thornton Richard, Deputy City Attorney
City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, Florida 33134

RE: Citizen request for modification to zoning code

Dear Craig and Bridgette:

At your request, I reviewed a resident request for a modification to the City's zoning code as an accommodation for the residents' physical disabilities. As I understand it, residents are not permitted to put their trash receptacles on the street until 6:00 p.m. on the evening before their scheduled trash day. Two residents (who are members of the same household) have requested a modification to the time requirement of the zoning code as an accommodation for their physical impairments, which they contend are disabilities.

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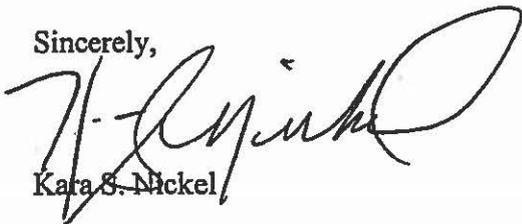
Mr. Leen and Ms. Thornton Richard
December 20, 2012
Page 2

business, or permitting a mobility impaired individual to use a golf cart on the shoulder of a public street where pedestrians can walk, as a reasonable modification of the county's ordinance prohibiting such use of golf carts.

The residents at issue have advised that they are unable to physically move their trash receptacles to the curb because of their disabilities. The residents receive assistance from a nurse or home health aide who leaves at 4:00 p.m. and on the day prior to trash pick-up, the nurse/aide has been taking the residents' trash receptacles to the curb immediately prior to leaving their home at 4:00 p.m. The residents have asked to continue this practice, which would result in their trash receptacles being on the curb two hours prior to the time permitted by the City's zoning ordinance. This two hour difference is small and does not appear to "fundamentally alter" the nature or purpose of the zoning ordinance. Accordingly, I recommend that the City grant the residents' request as a reasonable modification of its zoning ordinance.

Thank you for allowing me to assist the City with this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kara S. Nickel", written over a printed name.

Kara S. Nickel