



To: Cathy Swanson-Rivenbark, Glenn Kephart

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

RE: Legal Opinion Regarding Mulching in the City of Coral Gables

Date: August 31, 2015

I am writing to formalize the opinion I gave at today's staff meeting, which should be addressed since the City is in the middle of hurricane season, and emergency action may need to be taken. I have reviewed the document. Of course, a promise from a former City Manager carries weight, and the administration may elect to follow this policy when appropriate under their professional judgment. My view of the promise legally, however, is that such a promise cannot bind future administrations, particularly in an emergency. It may have bound City Manager Brown morally to seek alternative locations to place debris, but there was no legal consideration for the promise, and the promise was not ratified through a formal legislative or administrative act, so it cannot be binding on future administrations and Commissions. This is particularly true in an emergency, such as a hurricane response, as the applicable state law and resolutions allow the City Manager, as the Mayor's emergency designee, to take emergency action and to even waive regulations where in the best interests of the City. If the City Manager may waive formal regulations, the City Manager may also waive policies or prior non-binding commitments where in the best interests of the City during an emergency. Hypothetically, in the future, if there is not adequate space to place mulch and debris, the City Manager must have the authority to take action to clear the streets and rights-of-way for the benefit of the public, which may include placing the mulch in available City land and rights-of-way.

My opinion would likely be different if there was formal action taken, such as a Commission resolution or ordinance. This is because the Commission could then consider the benefits and risks of such a policy, and formally bind the City to the decision in an emergency (at least until a future Commission decided otherwise, and voted to amend the resolution or ordinance. At this point, no such action has been taken, so the City Manager retains this discretion when exercising emergency powers as the Mayor's designee.

This opinion is issued pursuant to section 2-201(e)(1) and (8) of the City Code.

Paulk, Enga

From: Leen, Craig
Sent: Monday, August 31, 2015 1:04 PM
To: Paulk, Enga
Cc: Ramos, Miriam; Figueroa, Yaneris; Chen, Brigitte
Subject: FW: Mulching in the city

Please publish as a City Attorney Opinion.

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



CORAL GABLES
1925-2015

Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Monday, August 31, 2015 12:20 PM
To: Swanson-Rivenbark, Cathy; Kephart, Glenn
Cc: Spain, Dona; Dannemiller, Brook; Fernandez, Frank; Ramos, Miriam; Figueroa, Yaneris
Subject: RE: Mulching in the city

I am writing to formalize the opinion I gave at today's staff meeting, which should be addressed since the City is in the middle of hurricane season, and emergency action may need to be taken. I have reviewed the document. Of course, a promise from a former City Manager carries weight, and the administration may elect to follow this policy when appropriate under their professional judgment. My view of the promise legally, however, is that such a promise cannot bind future administrations, particularly in an emergency. It may have bound City Manager Brown morally to seek alternative locations to place debris, but there was no legal consideration for the promise, and the promise was not ratified through a formal legislative or administrative act, so it cannot be binding on future administrations and Commissions. This is particularly true in an emergency, such as a hurricane response, as the applicable state law and resolutions allow the City Manager, as the Mayor's emergency designee, to take emergency action and to even waive regulations where in the best interests of the City. If the City Manager may waive formal regulations, the City Manager may also waive policies or prior non-binding commitments where in the best interests of the City during an emergency. Hypothetically, in the future, if there is not adequate space to place mulch and debris, the City Manager must have the authority to take action to clear the streets and rights-of-way for the benefit of the public, which may include placing the mulch in available City land and rights-of-way.



CORAL GABLES
90th ANNIVERSARY

Celebrating 90 years of a dream realized.