



To: Miriam Ramos

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

RE: Legal Opinion Regarding Hourly Hotel Rooms Prohibited in Coral Gables

Date: September 2, 2016

Please see the attached memorandum, which is adopted as a City Attorney Opinion pursuant to section 2-201(e)(1) and (8) of the City Code, as well as section 2-702 of the Zoning Code. The Opinion clearly demonstrates that hourly room rates for hotels or overnight accommodations in Coral Gables are prohibited. Such rates must be daily, weekly, or monthly pursuant to the applicable provisions of the Zoning Code.

MEMORANDUM

To: Craig Leen, City Attorney

From: Naomi Levi Garcia, Esq., Special Counsel

Re: Hourly hotels within the City of Coral Gables

Date: August 31, 2016

The question at hand is whether the Zoning Code permits hotels located both in the Commercial Limited District along SW 8th Street, between Granada Boulevard and LeJeune Road, and outside of this Commercial Limited District to rent rooms by the hour. Article 8 and Article 4 of the City of Coral Gables Zoning Code prohibit hourly hotels in the City of Coral Gables, including within the Commercial Limited District (CL).

The Coral Gables Zoning Code defines “hotel” as “a building in which lodging and/or boarding is designed and utilized for daily, weekly or monthly occupancy, including extended stay units, and offered to the public for compensation.” City of Coral Gables, Fla., Zoning Code Art. 8-15. Applying the longstanding principle of statutory construction, *expressio unius est exclusio alterius* — the mention of one thing implies the exclusion of another— the City can take the position that because the City Commission expressly defined acceptable durations of hotel occupancy, all other durations are necessarily prohibited. *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So. 2d 898, 900 (Fla. 1996) (holding that a statute that applies to leases “of” recreational or other commonly used facilities, but makes no reference to land leases “including” recreational or other commonly used facilities; is unambiguous and does not apply to land leases).

Expressio unius est exclusio alterius has served as a guiding principle in prior City Attorney opinions interpreting the City’s Zoning Code. For example, City Attorney Opinion 2013-55, which addressed short term rentals within the Single Family Residential District states, “When a governmental entity expressly provides for one thing, all others must be excluded”. (CAO 2013-55 Short-Term Rentals Of Single-Family Dwellings Within The Single-Family Residential District And The Authority Of The Special Masters In Issuing An Order Commanding Compliance With A Zoning Code Ordinance). In that Opinion, the City Attorney concluded that the City’s Zoning Code prohibited short-term rentals of residential property located within the SFRD. The Opinion relied in part on § 4-101(A) of the Zoning Code, which states that in the SFR District, “no use other than [those] listed ... shall be permitted.” *Id.* Thus, the SFRD, like the CL District, only permits uses expressly stated in the Zoning Code -any use not expressly stated is, therefore, prohibited. *Id.*; City of Coral Gables, Fla., Zoning Code § 4-101(A).

In defining “hotel”, the Zoning Code expressly provides for daily, weekly or monthly occupancy. Given this express definition, any length of time other than daily, weekly or monthly intervals of lodging and/or boarding is necessarily prohibited. The plain and ordinary meaning of “daily” is “covering the period of, or based on, a day.” “Daily.” Merriam-Webster Online Dictionary (2016) *Merriam-*

Webster.com (31 Aug. 2016). We need not look beyond the ordinary characterization of “daily”, for when a term is clear, one must not look behind the plain language for legislative intent or resort to rules of statutory construction to ascertain intent. *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So.2d 297, 303 (Fla. 2002). Instead, the plain and ordinary meaning must control. *Id.*; *State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004). The Code does not provide for a period of time shorter than daily, therefore, a hotel designed or utilized for daily occupancy must comport with the ordinary meaning of that word, or rather “cover the period of a day”. *Id.*

In addition to defining “hotels” generally, the code also addresses overnight accommodations within the Commercial Limited (CL) District. The purpose of the CL District is to provide convenient access to goods and services of low and medium intensity without adversely impacting the integrity of residential neighborhoods, diminishing the scenic quality of the City or negatively impacting the safe and efficient movement of people and things within the City. City of Coral Gables, Fla., Zoning Code § 4-301(A).

According to Article 4-3, defining zoning districts, overnight accommodations are permitted within the CL District as a use and as a conditional use, depending on the number of rooms for rent. City of Coral Gables, Fla., Zoning Code Art. 4-3. The Code defines an “overnight accommodation” as “a building or portion thereof designed and used primarily to provide sleeping accommodations for transient guests for a daily or weekly rental charge and including interval ownership and such office, meeting, restaurant facilities as are integral to the primary function of the use.” City of Coral Gables, Fla., Zoning Code Article 8-21.

The City should take the position that the overnight accommodations permitted in the CL District may charge patrons on a daily or weekly basis but may not bill at an hourly rate because the Zoning Code does not include hourly within the list of permissible rates. Indeed, the canon of *Expressio unius est exclusio alterius* does not apply to every statutory listing or grouping, but has force only when the items expressed are members of an associated group or series, justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence. *Barnhart v. Peabody Coal Co.*, 537 U.S. 149 (2003). The terms expressed within the Zoning Code’s definition of “overnight accommodation” describe intervals of time, and thus are members of an associated group. The omission of an “hourly” charge from the definition of “overnight accommodation” when daily and weekly charges are clearly delineated was by deliberate choice and precludes the ability for hotels to charge hourly rates within the CL District.

The Zoning Code expressly defines acceptable durations of occupancy in hotels within the City and outlines the basis by which overnight accommodations may charge rental fees within the CL District. The Code does not permit the hourly rental of hotels or other overnight accommodations within the Commercial Limited District or within the City as a whole. Thus, hotels and overnight accommodations within the City may not be designed or utilized for hourly rentals.

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: FW: City Attorney Opinion - Hourly Hotel Rooms Prohibited in Coral Gables
Date: Friday, September 02, 2016 6:01:36 PM
Attachments: [image001.png](#)
[Memorandum regarding prohibition on hourly hotel rooms in Coral Gables.pdf](#)
Importance: High

Please publish.

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



Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Friday, September 02, 2016 6:01 PM
To: Ramos, Miriam
Cc: Suarez, Cristina; Throckmorton, Stephanie; Levi, Naomi
Subject: City Attorney Opinion - Hourly Hotel Rooms Prohibited in Coral Gables
Importance: High

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



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