



To: Debra Herman and Dennis A. Kerbel

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 end of the "From:" line.

RE: Legal Opinion Regarding Removal of Concrete Buttons Placed in the Swales by Residents without Permits

Date: August 8, 2016

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Thanks for looking into this. I agree that our Public Works Departments can work together on this. I will provide you my legal analysis in response just for the record:

Respectfully, in my view this is both a *Temple Terrace* and section 6.02 issue. The City has aesthetic and zoning authority regarding all of the residences on Coral Way (and other County roads), including their swales. The City is seeking to remove concrete buttons placed in the swales by residents without permits. This is not a situation where the County has placed or permitted an encroachment in the swale to address a public safety issue, where the balancing of interests test may favor the County (I want to assure you that we have no issue with that.) Our focus is on unlawful buttons, pyramids, etc., which neither the County nor the City has permitted. The City could simply issue citations for these, but has instead approved a program to remove them at the City's own expense (if they are not removed though, then citations would be issued). Ultimately, this is a good and helpful program to the residents, and benefits both the County and the City (as the unlawful encroachments in the swale would no longer be present).

As mentioned, I agree with you that both Departments will be working together, which I know will go well.

**From:** [Leen, Craig](#)  
**To:** [Paulk, Enga](#)  
**Subject:** Fwd: concrete domes in ROW along Coral Way in Coral Gables  
**Date:** Monday, August 08, 2016 12:27:23 PM  
**Attachments:** [image001.png](#)

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Please publish.

Sent from my iPhone

Begin forwarded message:

**From:** "Leen, Craig" <[cleen@coralgables.com](mailto:cleen@coralgables.com)>  
**Date:** August 8, 2016 at 11:54:11 AM EDT  
**To:** "Herman, Debra (CAO)" <[dherman@miamidade.gov](mailto:dherman@miamidade.gov)>  
**Cc:** "Ona, Leandro (DTPW)" <[Leandro.Ona@miamidade.gov](mailto:Leandro.Ona@miamidade.gov)>, "Kerbel, Dennis A. (CAO)" <[DKERBEL@miamidade.gov](mailto:DKERBEL@miamidade.gov)>, "Osgood, John" <[josgood@coralgables.com](mailto:josgood@coralgables.com)>  
**Subject:** **RE: concrete domes in ROW along Coral Way in Coral Gables**

Good morning, Debra and Dennis.

Thanks for looking into this. I agree that our Public Works Departments can work together on this. I will provide you my legal analysis in response just for the record:

Respectfully, in my view this is both a Temple Terrace and section 6.02 issue. The City has aesthetic and zoning authority regarding all of the residences on Coral Way (and other County roads), including their swales. The City is seeking to remove concrete buttons placed in the swales by residents without permits. This is not a situation where the County has placed or permitted an encroachment in the swale to address a public safety issue, where the balancing of interests test may favor the County (I want to assure you that we have no issue with that.) Our focus is on unlawful buttons, pyramids, etc., which neither the County nor the City has permitted. The City could simply issue citations for these, but has instead approved a program to remove them at the City's own expense (if they are not removed though, then citations would be issued). Ultimately, this is a good and helpful program to the residents, and benefits both the County and the City (as the unlawful encroachments in the swale would no longer be present).

As mentioned, I agree with you that both Departments will be working together, which I know will go well.

Best regards,  
Craig

**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](mailto:cleen@coralgables.com)



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**From:** Herman, Debra (CAO) [<mailto:dherman@miamidade.gov>]  
**Sent:** Monday, August 08, 2016 11:21 AM  
**To:** Leen, Craig  
**Cc:** Ona, Leandro (DTPW); Kerbel, Dennis A. (CAO); Osgood, John  
**Subject:** RE: concrete domes in ROW along Coral Way in Coral Gables

I discussed this with Dennis, and we don't think that the Coral Gables's zoning ordinance trumps our management of our rights-of-way. They are really different areas of law, and additionally, under *Temple Terrace*, the balancing of interest tests may very well favor the County's discretion in the management of its ROW, even where it passes through a municipality.

That said, if there is a way to accommodate this request under the discretion given DTPW in the PW Manual, we agree that it would be best to work together and not have to reach the *Temple Terrace* analysis. I assume that are respective Public Works departments are doing that as we speak. Take care, Debra

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**From:** Leen, Craig [<mailto:cleen@coralgables.com>]  
**Sent:** Friday, August 05, 2016 9:58 AM  
**To:** Herman, Debra (CAO)  
**Cc:** Ona, Leandro (DTPW); Kerbel, Dennis A. (CAO); Osgood, John  
**Subject:** Re: concrete domes in ROW along Coral Way in Coral Gables

Hi Debra. Our Public Works Department informed County Public Works below. I will

make sure they discuss it. This is primarily for the removal of concrete buttons placed by our residents in the swale/right-of-way. They are unlawful and being removed by the City pursuant to the ordinance as a Code Enforcement matter. If they are not removed, the residences would ultimately be cited and have to pay fines.

This is in the nature of an aesthetic/zoning/police power ordinance so can be applied along Coral Way under the Temple Terrace line of cases and section 6.02 of the County Charter. My goal was not to make this a legal issue though, simply to ensure you were informed. I am hopeful that the County will support the effort since the buttons are unlawful. I will make sure that our two departments communicate on this matter. Please call me if you would like to discuss. Best always, Craig

Craig E. Leen  
City Attorney

Sent from my iPhone

On Aug 5, 2016, at 9:14 AM, Herman, Debra (CAO) <[dherman@miamidade.gov](mailto:dherman@miamidade.gov)> wrote:

Hi Craig - with respect to County roadways, you need to speak with our Public Works department before initiating any activity. I have cc'd Leo Ona. Is this the first time you are notifying the Public Works department???

On Aug 5, 2016, at 9:06 AM, Leen, Craig <[cleen@coralgables.com](mailto:cleen@coralgables.com)> wrote:

Good morning, Abi. I hope all is well. Please see below and let me know if you would like to discuss. This involves the forthcoming citywide enforcement of a City ordinance relating to elimination of concrete buttons, domes, etc. from swales/rights-of-way throughout the City. It is a City Commission priority.

The City Public Works department informed the County Public Works department in the email below. Also, as indicated below, I wanted to make sure the County Attorney's Office was aware as well. Best, Craig

Craig E. Leen  
City Attorney  
City of Coral Gables

Sent from my iPhone

Begin forwarded message:

**From:** "Osgood, John"

<[josgood@coralgables.com](mailto:josgood@coralgables.com)>

**Date:** August 4, 2016 at 5:02:58 PM EDT

**To:** "'[frankg@miamidade.gov](mailto:frankg@miamidade.gov)'"

<[frankg@miamidade.gov](mailto:frankg@miamidade.gov)>

**Cc:** "Keller, Jessica" <[jkeller@coralgables.com](mailto:jkeller@coralgables.com)>,

"Senespleda, Yamilet"

<[ysenespleda@coralgables.com](mailto:ysenespleda@coralgables.com)>, "Leen,

Craig" <[cleen@coralgables.com](mailto:cleen@coralgables.com)>, "Ramos,

Miriam" <[mramos@coralgables.com](mailto:mramos@coralgables.com)>

**Subject: concrete domes in ROW along Coral Way in Coral Gables**

Good afternoon Mr. Guyamier,

As you may know, the City of Coral Gables recently adopted an ordinance amendment prohibiting concrete domes, pyramids, reflectors and other encroachments in the public right-of-way (attached for your reference). We have been notifying residents since April 12, 2016 of their responsibility to remove the encroachments; we plan to finalize the notification period in the next week and will begin citywide removals at our expense by the end of August. Please consider this email notification of our intent to initiate the removal process along Coral Way and potentially other MDC rights-of-way after notifying the residents/properties where the domes remain, and where they are not serving a public purpose. Relatedly, our City Attorney will share this notification with the County's legal team. Please let me know if you have questions or concerns, thank you very much.

**John Osgood • Assistant Public Works Director/Field Services**

**Department of Public Works**

**2800 SW 72nd Avenue**

**Miami, FL 33155**

**T: 305.460.5177**

Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be

subject to public disclosure.

<image001.png>

<concrete dome ordinance.pdf>

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