



To: Edward J. Hudak, Chief of Police

From: Cristina M. Suárez, Deputy City Attorney

Approved By: Miriam Soler Ramos, City Attorney *MSR*

RE: Legal Opinion Regarding Prohibitions against Residential or Dwelling Unit Picketing

Date: December 21, 2022

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Please see the attached Legal Opinion relating to prohibitions against residential or dwelling unit picketing. This Opinion has been reviewed by and approved by the City Attorney's Office. We are happy to have a call with you and the Majors to discuss.

## LEGAL OPINION

To: Miriam Ramos                      Cristina M. Suarez  
City Attorney                      Deputy City Attorney  
City of Coral Gables              City of Coral Gables

From: Israel U. Reyes, Managing Partner  
Christopher Reyes, Senior Associate  
The Reyes Law Firm, P.A.  
Police Legal Advisors

Date: December 21, 2022

Re: Prohibitions against Residential or Dwelling Unit Picketing

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The City of Coral Gables Attorney's Office has requested an analysis of Florida Statutes Section 810.15 and Coral Gables Municipal Code Section 62-230, both of which prohibit the picketing or protesting near a person's home.

***Picketing Laws under Florida Statutes Section 810.15 and Coral Gables Municipal Code Section 62-230***

In the 2022 legislative session, the Florida legislature created Florida Statutes section 810.15,<sup>1</sup> titled Residential Picketing, which went into effect on October 1, 2022. Under this law "[i]t is unlawful for a person to picket or protest before or about the dwelling of any person with the intent to harass or disturb that person in his or her dwelling." *Id.*

However, the City of Coral Gables has had a similar<sup>2</sup> law in its municipal code for several years under section 62-230.<sup>3</sup> This law states that "[i]t shall be unlawful for any person to picket, protest, or conduct any picketing or protesting activity, within a buffer area of 50 linear feet in any direction from the property line of any dwelling unit in the city." *Id.*

<sup>1</sup> A copy of section 810.15 is attached for reference.

<sup>2</sup> Both crimes have similar penalties as well, i.e., including 60 days of imprisonment and up to a \$500 fine.

<sup>3</sup> A copy of section 62-230 is attached for reference.

### ***The Differences between Section 810.15 and Section 62-230***

Although substantially similar, the primary difference between the two is that a violation of section 810.15 requires “the intent to harass or disturb” whereas section 62-230 does not have a specified intent element. This intent element requires “the State to prove affirmatively either by direct or circumstantial evidence that the act was done with the requisite specific intent.” 23 Fla. Jur 2d Evidence and Witnesses § 114 (citing *Allen v. State*, 124 So. 2d 741 (Fla. 1st DCA 1960); *Smith v. State*, 87 Fla. 502, 100 So. 738 (1924)). In other words, “the doing of the act alone does not raise a presumption that it was done with such intent.” *Id.*

Another difference between the two is that section 62-230 specifies the exact footage from the property line—the “buffer area”—in which a violation can occur:

*Buffer area* means that area of public property, including any park, public street, public right-of-way, or sidewalk, located within an area that extends 50 linear feet in any direction measured from the property line of a dwelling unit. Privately-owned property shall not be considered to be included in the buffer area, although the laws of trespass shall apply.

Conversely, section 810.15 has a generalized prohibitive area of “before or about the dwelling.”

The last difference between the two is that section 62-30 provides more definitions and guidance than section 810.15, including mandating the city manager or designee to make reasonable efforts to find alternative means to allow for a protest or picket.

### ***Frisby v. Schultz, 487 U.S. 474 (1988)***

In passing the creation of section 810.15, 2022 FL CS/HB 1571 cites to the Supreme Court of the United States case *Frisby v. Schultz*, 487 U.S. 474 (1988). In *Frisby*, the Court addressed the constitutionality of a picketing law: ““It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the Town of Brookfield.” *Id.* at 477. The Court found that this law was constitutional under the First Amendment. *Id.* at 488. The Court

found the law was reasonable because (1) the ban is narrow and limited to a singular, particular residence not the public at large (2) there is no general prohibition of marching “through residential neighborhoods, or even walking a route in front of an entire block of houses,” and (3) it strikes a balance with the privacy rights of an individual in their home. *Id.* at 483-488.

Thus, because both section 810.15 and section 62-230 are narrowly tailored as the subject law in *Frisby* was, both are likely to be found constitutional should they be challenged. Additionally, under either law, individuals are still free to exercise their First Amendment rights in alternative manners so long as they comply with existing Florida and Coral Gables law.

#### ***Enforcement of Section 810.15 and Section 62-230***

Officers who are considering charging an individual with a violation of either section 810.15 or section 62-230 must be aware of their individual elements. It is possible for an individual to be in violation of only one of the laws in one circumstance but in another circumstance to be in violation of both laws.<sup>4</sup>

For violations of section 810.15, officers must ensure that the picketer or protester is “before or about the dwelling of any person.” Officers must determine if the individual’s picketing or protesting is focused on a single residence or is picketing or protesting in a more generalized public area. *See Frisby v. Schultz*, 487 U.S. 474 (1988). Additionally, officers must articulate the element of an individual’s “intent to harass or disturb that person in his or her dwelling.” Possible sources of evidence for this element are statements made by the individual, social media postings, or actions directed at the person or the home.

<sup>4</sup> “Pursuant to the Blockburger test, if each offense has an element the other does not, double jeopardy presents no bar to conviction.” *D.G.D. v. State*, 341 So. 3d 1167, 1170 (Fla. 3d DCA 2022) (citing *Blockburger v. U.S.*, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932)).

For violations of section 62-230, officers must ensure that the individual is picketing or protesting within the buffer area which has a defined measurement. Officers must use a measuring tool or photographs to properly document that this element is present. Unlike section 810.15, section 62-230 does not have a specific element of intent. It is also possible that the individual is authorized to be in the area because they were provided with this alternative means by the city manager or his designee.

West's Florida Statutes Annotated  
Title XLVI. Crimes (Chapters 775-899)  
Chapter 810. Burglary and Trespass (Refs & Annos)

West's F.S.A. § 810.15

810.15. Residential picketing

Effective: October 1, 2022

Currentness

(1) As used in this section, the term “dwelling” means a building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.

(2) It is unlawful for a person to picket or protest before or about the dwelling of any person with the intent to harass or disturb that person in his or her dwelling.

(3) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Before a person may be arrested for a violation of this section, a law enforcement officer, as defined in s. 943.10(1), or a local, state, federal, or military law enforcement agency must go as near to the person as may be done with safety and shall command any person picketing or protesting before or about the dwelling of a person to immediately and peaceably disperse. If any such person does not thereupon immediately and peaceably disperse, he or she may be arrested for a violation of this section.

**Credits**

Added by Laws 2022, c. 2022-118, § 1, eff. Oct. 1, 2022.

West's F. S. A. § 810.15, FL ST § 810.15

Current with laws, joint and concurrent resolutions and memorials through July 1, 2022, in effect from the 2022 Second Regular Session. Some statute sections may be more current, see credits for details.

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## **Sec. 62-230. Prohibition against picketing before or about a dwelling unit.**

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Buffer area* means that area of public property, including any park, public street, public right-of-way, or sidewalk, located within an area that extends 50 linear feet in any direction measured from the property line of a dwelling unit. Privately-owned property shall not be considered to be included in the buffer area, although the laws of trespass shall apply.

*Dwelling unit* means a building or portion thereof that is designed for residential occupancy, and shall include single-family homes, zero lot line residences, townhomes or connected homes, duplexes, and other single-family and multifamily dwelling units located in the SFR, MF1, MF2, and MFSA zoning districts. Where a single-family residence is grandfathered in, in another zoning district, and is still used for single-family residential purposes, it shall be included in this definition. Excluded from this definition are apartment buildings and condominiums located in a zoning district other than the SFR, MF1, MF2, and MFSA districts.

*Picket, picketing, and protest* mean any assembly of one or more persons, who, through conduct, speech, or other form of expression, criticize, protest, or complain about any matter in which a particular person, group of persons, or type of person is specifically targeted for protest, complaint, or criticism, and where such assembly stands, loiters, congregates, or mills before or about a dwelling unit in which a person who is a target or subject of such protest resides or is perceived to reside. One or more persons may be considered picketing or protesting within the meaning of this section even if the message being communicated is intended to be heard or seen by persons in addition to the resident inside a dwelling unit.

- (b) *Prohibition against protest and picketing before or about a dwelling unit.* It shall be unlawful for any person to picket, protest, or conduct any picketing or protesting activity, within a buffer area of 50 linear feet in any direction from the property line of any dwelling unit in the city.
- (c) *Enforcement and penalty for violation.* A person violating the provisions of this section shall be guilty of an offense punishable as provided in section 1-7.
- (d) *Supplement to other provisions of law.* The provisions of this section supplement other provisions of law that protect the public order and safety, including, but not limited to, provisions of the city code and other laws governing noise limitations; provisions of the city code and other laws prohibiting obstruction or interference with passage on a public right-of-way, sidewalk, or street; and provisions of the city code and other laws that prohibit trespass, assault, battery, destruction of property or other injury to persons or property.
- (e) *Alternative means.* The city manager or designee shall, on application, make reasonable efforts to make available city-owned land reasonably near or abutting a residential zoning district for any protest or picket, for a reasonable period of time during daylight hours, subject to all laws applying to the conduct of persons engaged in the protest or picket. Furthermore, nothing in this section shall be read to prohibit a protest or picketing in a zoning district that is not listed in the definition of "dwelling unit" in subsection (a) of this section, so long as the conduct of such protest or picket is otherwise lawful.

(Code 2006, § 62-187; Ord. No. 2016-38, § 2, 7-26-2016)