



To: Edward Hudak

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 name "Craig E. Leen".

RE: Legal Opinion Regarding Stacking on US-1 at 475 South Dixie Highway

Date: September 2, 2016

There has been a recurring stacking problem on US-1 at the entrance to the Starbucks at 475 South Dixie Highway. The City has exercised its regulatory authority to order Starbucks to ensure that the stacking ceases and desists, as it is a danger to public safety. The City Commission has even issued the attached resolution expressly ordering that such stacking cease.

The City is also the landlord of the parking lot and has an agreement with Starbucks, which is in possession and control of the property as subtenant. Starbucks has agreed to hire an off-duty officer to ensure the stacking ceases while they come up with a permanent plan to solve the problem over the next two weeks. This would include the authority to deny entry to vehicles that are stacking.

As a matter of regulatory authority, the officer may direct traffic to cease stacking on the highway before the private entrance to Starbucks under the following provisions of law: (1) Fla. Stat. § 316.1945 [regulating standing] and (2) Coral Gables Zoning Code § 5-115(A) [prohibiting interference with vehicular traffic on adjoining streets caused by drive thru]. Of course, any lawful police order must be followed pursuant to section 843.02 of the Florida Statutes as well.

In addition, the off-duty officer is authorized by agreement of the City and Starbucks to exercise authority to prevent entrance into Starbucks when stacking or similar dangerous condition is occurring. This is both to enforce the Zoning provision mentioned above, and also based on the property rights of Starbucks as the subtenant on City property. This would be enforceable under zoning, property, and trespass law.

Finally, this is a unique situation. The City is allowing use of off duty police officers here because this involves City-owned property where the Commission has issued a regulatory order

to a subtenant in possession and control of the property. This does not set a precedent as to how the City would allow the use of off duty police officers in the future.

This opinion is issued pursuant to section 2-201(e)(1) and (8) of the City Code, as well as section 2-702 of the Zoning Code.

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2016-168.1

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA, UNDER ITS REGULATORY AUTHORITY, ORDERING STARBUCKS CORPORATION TO CEASE STACKING IN THE PUBLIC RIGHT-OF-WAY, AT THE STARBUCKS LOCATED AT 475 SOUTH DIXIE HIGHWAY, AND DIRECTING STAFF TO ORDER THAT THE DRIVETHROUGH WINDOW BE SHUT DOWN IF STACKING OCCURS.

WHEREAS, on July 13th, 2016, after receiving a prior Code Enforcement Warning, the Starbucks store located at 475 South Dixie Highway was issued a Code Enforcement citation for violating the City's Zoning Code; and

WHEREAS, the citation issued to Starbucks was for vehicle stacking onto the right-of-way, as prohibited in Section 5-115(A) of the City's Zoning Code; and

WHEREAS, the City of Coral Gables owns the parking lot used by Starbucks and leases the same to the corporation; and

WHEREAS, aside from its proprietary authority, the City possesses regulatory authority to protect public safety; and

WHEREAS, when stacking occurs at the Starbucks parking lot it creates a public safety issue, as parked cars are unable to exit the parking lot and those vehicles that stack onto US-1 effectively block that lane of traffic; and

WHEREAS, Starbucks has implemented a plan to prevent stacking from occurring; and

WHEREAS, the City of Coral Gables Commission wishes to allow Starbucks the opportunity to implement its plan, while reiterating its regulatory authority to close the drive through window if stacking continues to occur;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

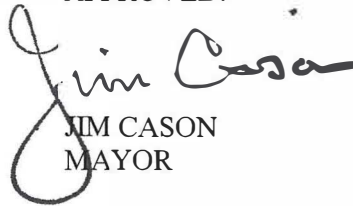
SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. That the City Commission, under its regulatory authority, orders Starbucks to cease stacking in the public right-of-way at the store located at 475 South Dixie Highway and directs staff to order that the drive through window be shut-down if stacking occurs.

SECTION 3. That this Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-SIXTH DAY OF JULY, A.D., 2016.
(Moved: Keon / Seconded: Leon)
(Unanimous Consent Vote)
(Agenda Item: I-2)

APPROVED:



JIM CASON
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



CRAIG E. LEEN
CITY ATTORNEY

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: FW: City Attorney Opinion Regarding Stacking on US-1 at 475 South Dixie Highway
Date: Friday, September 02, 2016 8:35:53 PM
Attachments: [img-901110923-0001.pdf](#)
[image001.png](#)

Please publish and include the referenced Commission Resolution, which is attached.

Craig E. Leen, City Attorney

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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
THE CITY BEAUTIFUL

Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Friday, September 02, 2016 8:27 PM
To: Hudak, Edward
Cc: Ramos, Miriam
Subject: RE: City Attorney Opinion Regarding Stacking on US-1 at 475 South Dixie Highway

The referenced Commission Resolution is attached.

Craig E. Leen, City Attorney

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From: Leen, Craig
Sent: Friday, September 02, 2016 8:23 PM
To: Hudak, Edward
Cc: Ramos, Miriam
Subject: City Attorney Opinion Regarding Stacking on US-1 at 475 South Dixie Highway
Importance: High

City Attorney Opinion

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possession and control of the property. This does not set a precedent as to how the City would allow the use of off duty police officers in the future.

This opinion is issued pursuant to section 2-201(e)(1) and (8) of the City Code, as well as section 2-702 of the Zoning Code.

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