



To: Antonio Silio, Ombudsman for the City of Coral Gables

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding Property Owned by a Foreign Government

Date: June 13, 2018

We were able to find 2 emails issued by Craig in the past on a similar issue but they are not crystal clear except for the reliance on a balancing of interests analysis. In one, the question arose due to the Columbian consulate wishing to install temporary tents on their property. In that case, Craig opined that a permit should not be required unless there is a life-safety issue in which case the City could request a courtesy inspection at no cost to ensure no life-safety issues existed. In the second, the question arose whether the Peruvian consulate needed to obtain a building permit to install a flag pole on their property. There, Craig simply opined that a balancing of interests test should be applied.

Under the Foreign Missions Act, 22 USC 4301 through 4316 a “foreign mission” is defined as “any mission to or agency or entity in the United States which is involved in the diplomatic, consular, or other activities of, or which is substantially owned or effectively controlled by a foreign government...including any office or other building.” Residential properties are not subject to the act but according to the State Department, residential properties are subject to compliance with the applicable laws and regulations of the local jurisdiction. Even assuming the consul general’s house is more akin to a foreign mission and less akin to a residential property, according to the State Department, consular properties are subject to the building and land-use laws and regulations of the local jurisdiction. Thus, properties owned by foreign governments are subject to the City’s land use and zoning regulations as well as all other regulations that address health, safety, and welfare. However, each matter should be evaluated on a case-by-case basis to determine what regulations should be imposed under a balancing of interests standard.

This opinion is issued in accordance with Sec. 2-525(e)(1) and (8) of the City Code.

From: [Ramos, Miriam](#)
To: [Paulk, Enga](#)
Cc: [Throckmorton, Stephanie](#); [Ceballos, Gustavo](#)
Subject: FW: CAMBIO DE AIRE ACONDICIONADO EN LA RESIDENCIA DEL CÓNSUL GENERAL
Date: Wednesday, June 13, 2018 5:07:17 PM
Attachments: [image003.png](#)
[image004.png](#)

Please publish.

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

*Board Certified by the Florida Bar in
City, County, and Local Government Law
City of Coral Gables*

405 Biltmore Way, 3rd Floor
Coral Gables, FL 33134
(305) 460-5218
(305) 460-5084 direct dial



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From: Ramos, Miriam
Sent: Wednesday, June 13, 2018 5:07 PM
To: Silio, Antonio <asilio@coralgables.com>
Cc: Cabrera, Suramy <scabrera@coralgables.com>
Subject: RE: CAMBIO DE AIRE ACONDICIONADO EN LA RESIDENCIA DEL CÓNSUL GENERAL

Tony,

We were able to find 2 emails issued by Craig in the past on a similar issue but they are not crystal clear except for the reliance on a balancing of interests analysis. In one, the question arose due to the Columbian consulate wishing to

install temporary tents on their property. In that case, Craig opined that a permit should not be required unless there is a life-safety issue in which case the City could request a courtesy inspection at no cost to ensure no life-safety issues existed. In the second, the question arose whether the Peruvian consulate needed to obtain a building permit to install a flag pole on their property. There, Craig simply opined that a balancing of interests test should be applied.

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This opinion is issued in accordance with Sec. 2-525(e)(1) and (8) of the City Code.

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

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From: Silio, Antonio

Sent: Wednesday, June 6, 2018 9:09 PM

To: Ramos, Miriam <mramos@coralgables.com>

Cc: Cabrera, Suramy <scabrera@coralgables.com>

Subject: Re: CAMBIO DE AIRE ACONDICIONADO EN LA RESIDENCIA DEL CÓNSUL GENERAL

Thank you for your response. The question was not whether they had to comply with the applicable building codes but rather did they have to comply with the zoning and city codes. They applied and were issued a mechanical replacement permit. As part of protecting the health and safety of not only the property owner but future owner and neighboring properties. It was previously determined in a different case by Craig. in the case of an actual Consulate that they must comply with the building codes as well as the life safety codes. But not the Zoning and city codes because the property was considered sovereign.

This property is not the consulate but the residence of the consulate

Therefore the reason for the request for clarification. Once again thank you very much for your hard work to provide us an answer.

Have a good night.

Respectably sent,

Antonio Silió
Ombudsman for Residents and
Small Business Owners.

Coral Gables-
World Class City With A Hometown Feel.

Sent from my iPhone

On Jun 6, 2018, at 8:57 PM, Ramos, Miriam <mramos@coralgables.com> wrote:

Tony,

The question of whether a property owned by a foreign government is exempt from “City and Zoning requirements” is a broad question that, depending on the facts, may have varied answers.

Below, I address whether this specific residence is subject to obtaining a permit for the replacement of the air-conditioning system. The determination of whether a building permit is required is governed by the Florida Building Code, Sec. 553.73, F.S. The only possible exemption under this section is whether this property qualifies as a building and structure specifically regulated and preempted by the Federal Government.

The case of *City of New York v. The Permanent Mission of India to the United Nations*, 433 F. 3rd 365 (2nd Cir. 2006) is instructive. The City of New York sought a declaratory judgment that its tax liens were valid. [New York’s exemption from taxation for property owned by a foreign government for its representatives having the rank of ambassador was not applicable.] The issue before the Court was whether it had jurisdiction to hear a claim under the immovable property exception to the Foreign Sovereign Immunities Act. That act under 28 USCA 1602 et seq. provides the basis where foreign governments may be sued in Federal Court and in section 1605 provides for an exception involving interests in immovable properties. “A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case- ... [where] rights in immovable property situated in the United States are in issue.” The Court in interpreting this section determined that it had jurisdiction over the City of New York’s lien holding: “When owning property abroad, a foreign state must follow all the same laws that pertain to private owners of such property, except to the extent that it can point to specific exceptions in that

country's agreements with the United States, treaties, or other sources of law.”

In *USAA Cas. Ins. Co. v. Permanent Mission of Republic of Namibia*, 681 F.3d 103, 113 (2nd Cir. 2012), the Court makes reference to a foreign government’s required compliance with local building codes. There, the Mission was sued for failing to protect a party wall with its neighbor during renovation of a townhouse. The Court in rejecting the Mission’s immunity argument as a foreign government held, “Although the Mission was not under an obligation to construct the chancery at any particular location (or, for that matter, to construct a chancery at all), once it decided to do so it could not disregard the nondelegable duty of care imposed upon it by the New York City Building Code.”

Based upon the forgoing, the property owner is not exempt from the building code, unless it can point to specific exceptions in that country’s agreements with the United States, treaties or other sources of law. In this case, it is unlikely that the property owner will be able to meet this burden.

This opinion is issued in accordance with Sec. 2-252(e)(1) and (8) of the City Code, giving the City Attorney’s Office the authority to issue opinions and interpretations on behalf of the City.

Sincerely,

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

*Board Certified by the Florida Bar in
City, County, and Local Government Law
City of Coral Gables*

405 Biltmore Way, 3rd Floor
Coral Gables, FL 33134
(305) 460-5218
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From: Silio, Antonio
Sent: Monday, June 4, 2018 10:47 AM
To: Ramos, Miriam <mramos@coralgables.com>
Cc: Cabrera, Suramy <scabrera@coralgables.com>
Subject: FW: CAMBIO DE AIRE ACONDICIONADO EN LA RESIDENCIA DEL CÓNSUL GENERAL

Good morning Madam City Attorney:

I have a request for an A/C replacement permit for the Council Generals Residence located at 3600 Granada. This property is listed on the Miami Dade Property Appraisers site as being owned by the State of Spain. The Development Services Director has a question of wheatear that property is treated as sovereign and would be exempt from City and Zoning requirements.

Could you please provide an opinion for now, which we will follow moving forward.

Cordially sent,

Antonio Silió
Ombudsman
For Residents and Small Business Owners
City of Coral Gables
City Manager's Office
(305) 460-5206
<image003.jpg>

From: Cabrera, Suramy
Sent: Monday, June 04, 2018 10:24 AM
To: Silio, Antonio
Subject: RE: CAMBIO DE AIRE ACONDICIONADO EN LA RESIDENCIA DEL CÓNSUL GENERAL

I do not believe that they need a special plan. As long as this is a replacement of a window unit to a window unit, there is not issue. We just need the permit application. I would include photos from the street and of the elevation where the unit is installed.

I am not sure that the consulates home is exempt. I think legal should advise.

Thanks,
Suramy

From: Silio, Antonio
Sent: Monday, June 4, 2018 10:06 AM
To: Cabrera, Suramy
Subject: FW: CAMBIO DE AIRE ACONDICIONADO EN LA RESIDENCIA DEL CÓNSUL GENERAL

Suramy, can you help cut some of this red tape. If this is the consulates home this may be exempt from our zoning requirements.

Please let me know your thoughts on this so I may respond to the Mayor's Office.

Thank you in advance for your kind and prompt attention to this matter.

Regards,

Antonio Silió
Ombudsman
For Residents and Small Business Owners
City of Coral Gables
City Manager's Office
(305) 460-5206
<image003.jpg>

From: Paz, Evelyn
Sent: Monday, June 04, 2018 10:02 AM
To: Silio, Antonio
Cc: 'mercedes.lumbreras@maec.es'
Subject: FW: CAMBIO DE AIRE ACONDICIONADO EN LA RESIDENCIA DEL CÓNSUL GENERAL

Good morning Mr. Silio,

Please when you have a moment would you kindly reach out to Mercedes the assistant to the Consul General of Spain and with permitting at the Consul General's residence. Once again thank you and have a nice day.

Warm regards,

<image005.jpg> **Evelyn Paz**
Assistant to the Mayor
405 Biltmore Way, 2nd floor, Coral Gables 33134
Office: 305.460.5220
Email: epaz@coralgables.com

From: Lumbreras Bustillo, Mercedes [<mailto:mercedes.lumbreras@maec.es>]
Sent: Monday, June 04, 2018 9:56 AM
To: Paz, Evelyn
Cc: Escudero López, Asunción; Lozano Hidalgo, Ana M^a
Subject: CAMBIO DE AIRE ACONDICIONADO EN LA RESIDENCIA DEL CÓNSUL GENERAL

Buenos días Evelin,

Por favor, cuando puedas, agradezco me pases el contacto de la persona encargada en la ciudad que nos pueda ayudar para realizar un cambio e instalación de una unidad de aire acondicionado de ventana en la Residencia.

Al parecer necesitamos un plano especial que os tenemos que pedir para el survey y solicitud del permiso.

Muchas gracias,

Mercedes

Mercedes Lumbreras

Office of the Consul General of Spain

T: 305.446.2608 D: 305.446.5511 ext. 110

Fax: 305.446.0585 - 305.446.5431

Email: mercedes.lumbreras@maec.es

www.maec.es/consulados/miami

CONSULATE GENERAL OF SPAIN IN MIAMI (USA)

2655 Le Jeune Road Suite 201-203, Coral Gables, FL 33134

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