

## CITY OF COOPER CITY

### MEMORANDUM NO. 2020-037

TO: Joseph Napoli, City Manager

FROM: Jacob G. Horowitz, City Attorney *JGH*  
Heather Needelman, Assistant City Attorney *HN*

DATE: November 10, 2020

RE: City of Cooper City (“City”) / City Officials’ Access to Gated Communities

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Pursuant to your request, the City Attorney’s Office has examined whether members of the City Commission are legally entitled to access to private communities within the City.

This issue was previously considered by the prior City Attorney’s Office. In November 2018, their office provided an email legal opinion specifically addressing the rights of “city personnel” to access private communities. A copy of the prior city attorney’s email opinion is attached for your review.

Based on this prior opinion, it is our understanding that the City has previously interpreted “city personnel” to include members of the City Commission. In accordance with the City’s prior custom and practice, and given the City Commission’s legal authority to interpret its own code of ordinances, the City may continue to rely on the advice of its prior city attorney with regards to access to private communities.

While the analysis of the prior City Attorney’s Office is legally supportable by the City Code, please be advised that the City may incur some **potential risk and legal liability** by accessing private property without the consent of the owner, the existence of exigent or emergency circumstances, or with a warrant.

#### I. LEGAL ANALYSIS

In general, City personnel may only access private property with consent of the owner, under exigent or emergency circumstances, or with a warrant. In times of an emergency, the City’s police and fire departments may only use its emergency access in situations which there is compelling need for official action.

Pursuant to §166.021, Florida Statutes, the City is authorized to perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law. The City may also legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State. *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006). Since the Legislature has not otherwise preempted the City’s authority with regards to access to gated communities, the City has the authority to legislate such

access, subject to private property rights and applicable case law. The City has taken certain legislative action with regards to private roads, as set forth in the prior city attorney's email analysis.

In general the City's Police Department is legally authorized to enter private property in an emergency as such exigent circumstances would permit governmental access to private property without a warrant to ensure the public safety as a compelling need for official action. *Davis v. State*, 834 So. 2d 322, 327 (Fla. 5th DCA 2003). However, absent an emergency situation, law enforcement is not permitted to access private property without consent of the property owner or an executed warrant.

This same limit applies to the City's code enforcement. Florida Attorney General Opinion 2002-27, dated April 4, 2002, states that code enforcement is not permitted:

To enter any private, commercial or residential property to assure compliance with or to enforce the various technical codes or to conduct any administrative inspections or searches without the consent of the owner or the operator or occupant of such premises, or without a duly issued search or administrative inspection warrant.

Code enforcement may obtain an inspection warrant pursuant to Sec. 933.21, F.S. An inspection warrant permits the City to enter and inspect private property upon the presentation of affidavit describing the premises to be inspected and the purpose of such inspections to a court of competent jurisdiction.

In addition, Section 316.006, F.S., further authorizes the City to exercise jurisdiction over "any private road or roads" within the City, subject to a written agreement between the City and the owners of the roads approved by the City Commission. Such agreements are typically utilized to provide for the enforcement of traffic laws within private communities.

Based on the foregoing, absent a written agreement with the private community to enforce traffic laws, the issuance of an inspection warrant, or a need to respond to any emergency, the City is generally not authorized to enter onto private property, included a private gated community. To the extent that city personnel, including members of the city commission, have access to private, gated communities, the City Attorney's Office strongly urges such personnel to utilize such access sparingly and consistent with this analysis and the analysis of the prior city attorney.

Please contact our office if there is any additional information that we can provide.

JGH:HN

**From:** Matthew Pearl <MPearl@wsh-law.com>  
**Sent:** Friday, November 30, 2018 10:20 AM  
**To:** Marie Elianor <MElianor@coopercityfl.org>; Commissioner\_Pulcini <MPulcini@coopercityfl.org>; Kathryn Sims <KSims@coopercityfl.org>  
**Subject:** Access to Private Roads

Good morning Marie,

I spoke with Commission Pulcini regarding access to the private streets in gated communities. Section 25-87 of the City code address the City's access to private streets and states in pertinent part as follows:

"Private streets shall be allowed within the city only at the absolute discretion of the city commission in individual circumstances and subject to the following terms and conditions and any other terms and conditions deemed necessary by the city commission to protect the health, safety and welfare of the citizens of the city.

i) All private streets shall be open to all city vehicles, all emergency vehicles and all city personnel at all times, by means of a recordable easement or other appropriate document. City police are to be authorized to have complete access at all times to enforce all existing laws, ordinances and motor vehicle regulations on all private streets."

The code grants broad rights of access to private streets to City vehicles and all City personnel. The Code does not defined the term "personnel" in this context. If the Commission has taken the interpretation that the Commissioners themselves fall within the definition of "personnel" in this context, than granting access to them individually would be appropriate. In the alternative, if the Commission has taken the position that they are not "personnel" in this context, any individual commissioner may achieve access by simply riding with a City employee in a City vehicle.

With respect to obtaining a "clicker", the only portion of the code that speaks to the manner in which access must be granted to a property is Section 7-21, which requires that all gated communities approved after June 1998 place a lock box when the fire chief determines that access to or within a structure or area is unduly difficult because of secured openings, or where immediate access is necessary for life-saving and firefighting purposes. The lock box shall be a type approved by the fire chief and shall contain among other things, keys to locked points of ingress, whether on the interior or exterior of such buildings, complexes or facilities.

The Code does not otherwise enumerate the mechanism that must be used to grant access to particular communities. Although unlikely, the only other document that may impose the obligation on a community to provide a "clicker" would be a traffic control agreement, though the use of "clicker" granted under such an agreement would likely be limited to the police.

The City is free to request "clickers" from each community. The various gated communities may provide them at their discretion. If a community elects not to provide a clicker, it may satisfy the requirement of Section 25-87 of the Code by simply providing access.

Please let me know if you have any further questions.

Matthew Pearl  
Partner