



To: William Ortiz

From: Craig Leen, City Attorney for the City of Coral Gables

A handwritten signature in black ink, appearing to be "U", is written over the name "Craig Leen".

RE: Legal Opinion Regarding Pigeon Relocation

Date: November 20, 2013

My understanding of the issue is that Ten Aragon has been dealing with an influx of pigeons all over the pool area, and other areas of the property. This is hampering the residents' ability to use and enjoy the pool and the property. The legal question is whether it would be consistent with the City Code for Ten Aragon to have a pest control company relocate the pigeons by capturing and releasing them away from Ten Aragon. It is my understanding that the pest control company would not harm the pigeons.

The two relevant provisions of the Code are sections 10-2 and 10-3. Section 10-2 prohibits the "destruction" of birds. Included in that prohibition is that it is "unlawful for any person to shoot, trap or in any manner kill or destroy birds or their nests within the territory embraced by the City." There is then a more specific provision relating to pigeons in section 10-3 that makes it "unlawful for any person to feed, keep, maintain, water or otherwise contribute to the existence of pigeons in the city."

There are two rules of statutory construction that are relevant to consideration of this issue. The first rule is that a more specific provision should govern over a more general one. *See, e.g., T.S. v. Clemons*, 770 So. 2d 197, 200 (Fla. 2d DCA 2000) ("a more specific statutory provision governs over a more general provision"). Here, the more specific provision is section 10-3 relating to pigeons, which indicates that it is unlawful to "contribute to the existence of pigeons in the city." In this case, Ten Aragon's pool and common areas is essentially an attractive nuisance for pigeons, and is contributing to their existence in the city. In order to comply with section 10-3, it is incumbent upon Ten Aragon to catch and remove the pigeons, so as not to continue to contribute to the existence of pigeons in the City.

The second rule is that where there is a list of items, they are interpreted consistently with one another, which has been referred to in legal decisions as *eiusdem generis* and *noscitur a sociis*.

See generally Dunham v. State, 140 Fla. 754, 757-58 (Fla. 1939) ("Where an author makes use first of terms each evidently confined and limited to a particular class of a known species of things, and then after such specific enumeration subjoins a term of very extensive signification, this term, however general and comprehensive in its possible import, yet when thus used, embraces only things ejusdem generis; that is, of the same kind of species with those comprehended by the preceding limited and confined terms", and the opinion continued: 'The maxim is a mere specific application of the broader maxim 'noscitur a sociis,' which means that general and specific words which are capable of an analogous meaning being associated together take color from each other, so that the general words are restricted to a sense analogous to the less general.')(citation omitted).

In applying this rule of construction, it is important to begin by noting that Section 10-2 prohibits the destruction of birds. It is clear to me that the word "trap" in section 10-2 means trap in a manner that hurts or destroys the bird, because the other words in that section all involve actions that would hurt or destroy birds. In contrast, I do not interpret the word "trap" to mean catching birds that are causing a substantial nuisance on private property and then releasing them in a safe place. This is particularly true in regards to pigeons, as there is an affirmative duty in the code to not "contribute to the existence of pigeons in the city."

Accordingly, my interpretation of section 10-2 and 10-3 of the City Code is that they should be read together when considering pigeons, and that it is permissible, and in fact required, for Ten Aragon to take steps to mitigate the pigeon issue they are having. This mitigation would take the form of relocating the pigeons in a manner that does not harm the birds. Ten Aragon should hire professionals to conduct this activity and to release the birds with care in a manner that does not cause the same problem for another property. This opinion is limited to cases where pigeons are causing a nuisance, and where no harm is caused to the pigeons. In situations involving other birds, section 10-3 would not apply, and my office would need to look at that case at that time.

Hernandez, Cristina

From: Leen, Craig
Sent: Wednesday, November 20, 2013 8:28 PM
To: Hernandez, Cristina
Subject: Re: City Attorney Opinion Regarding Pigeon Relocation
Attachments: image001.png; image002.gif; image003.jpg

Please place in the opinion folder.

Sent from my iPhone

> On Nov 20, 2013, at 5:49 PM, "Leen, Craig" <cleen@coralgables.com> wrote:

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> Will,

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> My understanding of the issue is that Ten Aragon has been dealing with an influx of pigeons all over the pool area, and other areas of the property. This is hampering the residents' ability to use and enjoy the pool and the property. The legal question is whether it would be consistent with the City Code for Ten Aragon to have a pest control company relocate the pigeons by capturing and releasing them away from Ten Aragon. It is my understanding that the pest control company would not harm the pigeons.

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> Accordingly, my interpretation of section 10-2 and 10-3 of the City Code is that they should be read together when considering pigeons, and that it is permissible, and in fact required, for Ten Aragon to take steps to mitigate the pigeon issue they are having. This mitigation would take the form of relocating the pigeons in a manner that does not harm the birds. Ten Aragon should hire professionals to conduct this activity and to release the birds with care in a manner that does not cause the same problem for another property. This opinion is limited to cases where pigeons are causing a nuisance, and where no harm is caused to the pigeons. In situations involving other birds, section 10-3 would not apply, and my office would need to look at that case at that time.

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> Craig E. Leen

> City Attorney

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> From: Liliane Agra [mailto:lagra@apmanagement.net]

> Sent: Thursday, November 07, 2013 10:47 AM

> To: Ortiz, William; Leen, Craig

> Cc: Liliane Agra; cmh2343 (cmh2343@bellsouth.net); Mercy Fernandez;

> cmh2343 (cmh2343@bellsouth.net); Clement Quinones

> (Clem@simpsonsgreens.com); Jorge Besu (jbesu@bellsouth.net);

> a.elyordi@gmail.com; Brian Goodkind (brian@bgoodkindlaw.com); Joerg

> Reinhold (fuesik@gmail.com); judithpdn@hotmail.com

> Subject: Pigeon Relocation

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> Dear William and Mr. Leen,

> Please see attached, 1) Letter from pest control company, Pictures and letters from concerned residents.

> Please let me know if there is anything else that I can assist with.

>

> Regards,

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>

> LILIANE AGRA

> Property Manager [ribbon-black_68]

>

> TEN ARAGON

> Ten Aragon Ave, Ste 600 | Coral Gables, FL 33134

> Office: (305) 444.9665 | Fax: (305) 444.3522

> E-Mail<mailto:lagra@apmanagement.net> |

> V-Card<http://www.apmanagement.net/files/Liliane%20Agra.vcf> |

> Website<http://www.apmanagement.net/>|

> Facebook<http://www.facebook.com/atlanticpacificcompanies> |

> Twitter<http://www.twitter.com/apcompanies> |

> LinkedIn<http://www.linkedin.com/in/apcompanies>

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> cid:image005.gif@01CCF089.DA92C7A0] [Description: Description:

> Description: cid:image004.jpg@01CD1270.73FF22F0]

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> From: AMERICANPESTCO@aol.com<mailto:AMERICANPESTCO@aol.com>

> [mailto:AMERICANPESTCO@aol.com]

> Sent: Wednesday, November 06, 2013 3:58 PM

> To: Liliane Agra

> Subject: Pigeon Relocation

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> Hi, LILIANE AGRA

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> **CONFIDENTIAL COMMUNICATION:** Warning, this electronic message (and attachments) contains confidential information and is intended only for the specified recipient. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail message by mistake and delete this e-mail notification from your system. E-mail transmission cannot be guaranteed to be secured or error-free as information could be intercepted, corrupted, lost, destroyed, delayed or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version.

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> <image002.gif>

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> <TEN ARAGON.doc>

> <Pigeons.docx>

> <letters from residents.pdf>