



To: City Commission

From: Israel U. Reyes, Manuel A. Guarch, The Reyes Law Firm, P.A., Police Legal Advisors

Approved: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Discharging Firearm In Public Or Residential Property<sup>1</sup>

Date: February 10, 2014

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The City Attorney for the City of Coral Gables has sought an opinion regarding the application and enforceability of Section 790.15, Florida Statutes (2013), within the residential areas of Coral Gables. More specifically, the City of Coral Gables has expressed a concern that the safety and well-being of its residents may be endangered in the event an individual endeavors to engage in target shooting within the residential areas of Coral Gables as has occurred in other more rural locations throughout the State of Florida.

Section 790.15, Florida Statutes (2013), states in pertinent part;

[A]ny person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street, who knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises, or who recklessly or negligently discharges a firearm outdoors on any property used primarily as the site of a dwelling as defined in s. 776.013 or zoned exclusively for residential use commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 ....<sup>2</sup>

§ 790. 15, Fla. Stat. (2013).

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<sup>1</sup> This Opinion has been requested on an expedited basis and may be amended or supplemented at a later date.

<sup>2</sup> "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night. § 776.013, Fla. Stat. (2013).

To prove the crime of Discharging a Firearm in Public or on Residential Property under Florida Statutes Section 790.15, Florida Statutes (2013) in the context of the present Opinion, the State must prove beyond a reasonable doubt that the Defendant either recklessly or negligently discharged a firearm outdoors on property used primarily as the site of a dwelling or zoned exclusively for residential use. Fla. Std. Jury Instr. (Crim.). 10.6 Discharging a Firearm in Public or On Residential Property.

Of particular importance as it relates to the circumstances discussed below concerning the City of Coral Gables, are the definitions of the above mentioned terms "Recklessly" and "Negligently." The Florida Standard Jury Instructions for Section 790.15, Florida Statutes (2013) define "Recklessly" as a conscious and intentional indifference to consequences, and "Negligently" as failing to use reasonable care under the circumstances. Fla. Std. Jury Instr. (Crim.) 10.6 Discharging a Firearm in Public or On Residential Property.

In essence, the above statutory regime makes it unlawful for one to discharge a firearm in a residential zone without using reasonable care, or to do so while in conscious disregard of the safety of persons or property.

The City of Coral Gables maintains a strict residential zoning regime. The average lot size in the City of Coral Gables for residential lots is typically either 5,000 square feet or 10,000 square feet.<sup>3</sup> As a general rule, each residence is abutted on three sides by another residence, with the fourth side facing the public right-of-way. In those limited instances where a lot is a corner lot, the un-abutted sides of the lots generally are no more than the width of a two-lane thoroughfare from the next dwelling/residential lot.

In light of the density of the residential dwellings as determined by the Coral Gables Zoning scheme, it is highly likely that any instance in which an individual undertakes to discharge a firearm on one's private property within the residential zones of Coral Gables will be violative of Section 790.15, Florida Statutes (2013) and any such individual would likely be subject to arrest.<sup>4</sup> As discussed above, in the event an individual attempts to shoot on private property within the residential areas of Coral Gables, they will inevitably be directing their fire at another residence, or, over a public right-of-way. While there may be circumstances where an individual can take sufficient steps to protect the safety of persons and property adjacent to his/her property, such circumstances are likely to be the exception, rather than the rule, given the particular circumstances of The City of Coral Gables.

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<sup>3</sup> Most small-arms projectiles are expelled from the barrel of the firearm at speeds in excess of 1,000 feet per second. University of Utah SpencerS. Eccles Health Sciences library, <http://librarv.med.utah.edu/WebPath/!UTORIAL/GUNS/GUNBLST.html> (last visited Feb. 10, 2014).

<sup>4</sup> This Opinion deals with the question presented on a macro analysis level, each case should, and in fact must, be considered on a case-by-case basis.

Further, it should be noted that this Opinion should not be interpreted as opining that Section 790.15, Florida Statutes (2013) imposes strict criminal liability for the discharge of a firearm on private property. The facts of each case should, and in fact must, be considered on a case-by-case basis to determine whether the actions in each case meet the elements of the aforementioned statute. Further, it is strongly encouraged that any officer, who encounters such a situation, contacts the Police Legal Advisor and/or the City Attorney's Office for assistance prior to effecting an arrest.

**Arias, Cristina**

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**From:** Leen, Craig  
**Sent:** Wednesday, February 12, 2014 9:59 AM  
**To:** Hernandez, Cristina  
**Subject:** FW: Opinion Re: Section 790.15 of the Florida Statutes (Restricting Discharge of Firearm in Public/Dwelling)  
**Attachments:** 2010.01 790.15 Opinion 2-10-14 (FINAL).pdf.html

Please place this email and the attachment in the opinion folder.

Craig E. Leen  
City Attorney

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**From:** Leen, Craig  
**Sent:** Wednesday, February 12, 2014 9:58 AM  
**To:** Commissioners  
**Cc:** Salerno, Patrick; Foeman, Walter; Olazabal, Carmen; Thornton, Bridgette; Weiner, Dennis; Israel Reyes; 'Manuel Guarch'  
**Subject:** Opinion Re: Section 790.15 of the Florida Statutes (Restricting Discharge of Firearm in Public/Dwelling)

Mayor and Commissioners,

Please see the attached opinion from special counsel, which was distributed at the City Commission meeting yesterday. As mentioned at the Commission, section 790.33 of the Florida Statutes preempts the field of firearm and ammunition regulations, and "require[s] local jurisdictions to enforce state firearms laws." (emphasis added). The attached opinion is consistent with this mandate as it supports the enforcement of a state firearms law by the City of Coral Gables, namely section 790.15 of the Florida Statutes. I agree with the opinion, adopt it as a City Attorney Opinion, and am providing a copy to the Chief of Police.

Craig E. Leen  
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City of Coral Gables  
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Email: [cleen@coralgables.com](mailto:cleen@coralgables.com)

**THE REYES LAW FIRM, P.A.**  
ATTORNEYS AND COUNSELORS

**LEGAL OPINION<sup>1</sup>**

**Florida Statutes Section 790.15. Discharging firearm in public or on residential property**

To: C. Leen, City Attorney  
City of Coral Gables

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



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Please immediately contact the sender and destroy the material in its entirety, whether in electronic or hard copy format. Thank you.

