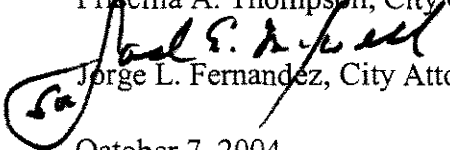


**CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Priscilla A. Thompson, City Clerk
FROM:  Jorge L. Fernandez, City Attorney (508)
DATE: October 7, 2004
RE: Interpretation of exemption provided for "code enforcement officers" under Section 119.07(3)(i)5 F.S. (2004) (A-0400962) (MIA-04-00006)

You have asked for a legal opinion on substantially the following questions:

DOES THE EXEMPTION PROVIDED FOR "CODE ENFORCEMENT OFFICERS" UNDER SECTION 119.07(3)(i)5, FLORIDA STATUTES, (2004), APPLY TO COMMISSIONER JEFFERY L. ALLEN, WHO IS A FORMER CODE ENFORCEMENT SPECIAL MASTER DESIGNATED BY THE CITY OF MIAMI UNDER CHAPTER 162, FLORIDA STATUTES, AND CITY OF MIAMI ORDINANCE NO. 12547?

The answer is in the affirmative. Section 119.07(3)(i)5, Florida Statutes, (2004), provides, in pertinent part, as follows:

The home addresses, telephone numbers, social security numbers, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from subsection (1) and s. 24(a), Art. I of the State Constitution.

While 119.07(3)(i)5, does not define the term "code enforcement officers", Chapter 162, Florida Statutes, the "Local Government Code Enforcement Boards Act" provides a definition for such term and prescribes the duties of said officers. The term "code enforcement officer" and the procedure for designating code enforcement officers is defined and described, in pertinent part, in Section 162.21, Florida Statutes, (2004), as follows:

- (1) As used in this section, "code enforcement officer" means any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality.
- (2) A county or a municipality may designate certain of its employees or agents as code enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the county or the municipality. Employees or agents who may be designated as code enforcement officers may

include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or fire safety inspectors.

Counties and municipalities may create local government code enforcement boards by ordinance as provided in Section 162.02, Florida Statutes. This ordinance may give code enforcement boards or *special masters* designated by the local governing body the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. Pursuant to the authority granted under Section 162.03(2), Florida Statutes, the Miami City Commission enacted Ordinance No. 12547, thereby authorizing the use of special masters in lieu of the code enforcement board. Under Chapter 162, Florida Statutes, a special master has the same status as an enforcement board.

The powers of enforcement boards and *special masters* are set forth in Section 162.08, Florida Statutes, (2004), as follows:

Each enforcement board shall have the power to:

- (1) Adopt rules for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or police department of the municipality.
- (3) Subpoena evidence to its hearings.
- (4) Take testimony under oath.
- (5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Based on the on the statutory scheme referenced above special masters are "code enforcement officers" for purposes of the exemption provided in Section 119.07(3)(i)5, Florida Statutes. Thus, as the custodian of personal information pertaining to Commissioner Jeffery L. Allen, who is a former code enforcement special master designated by the City of Miami under Chapter 162, Florida Statutes, and City of Miami Ordinance No. 12547, the City Clerk must maintain the confidentiality of personal information which is exempt pursuant to Section 119.07(3)(i)5, Florida Statutes.

JOB/dd

c: Mayor and Members of the City Commission
Joe Arriola, City Manager
Teresita L. Fernandez, Executive Secretary
Hearing Boards Department