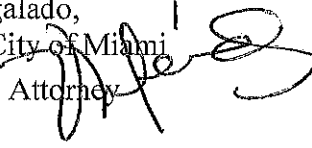


**CITY OF MIAMI**  
**OFFICE OF THE CITY ATTORNEY**  
**LEGAL OPINION -17-002**

---

**TO:** Honorable Tomas Regalado,  
Office of the Mayor, City of Miami

**FROM:** Victoria Méndez, City Attorney 

**DATE:** June 15, 2017

**RE:** Authority of Miami-Dade County to place restrictions for off-duty emergency services on a land sale agreement to a private entity purchasing property located in the City.

---

You asked substantially the following questions:

Whether Miami-Dade County (“the County”) has authority to unilaterally impose a requirement in an arm’s length real estate transaction, as to which agency, Miami-Dade Fire Rescue and Miami-Dade Police Department (collectively, “County First Responders”) or Miami Fire Department and Miami Police Department (collectively, “City First Responders”), will provide emergency services inside a privately owned venue located within the jurisdictional boundaries of the City of Miami (“the City”). Specifically, whether the County, as the seller of a development site, may force a private real estate buyer, Miami Properties, LLC, to utilize a particular vendor, the County First Responders, exclusively for off-duty services within a privately owned stadium.

This request relates to a County resolution approving the terms of a contract for sale and purchase of approximately 2.79 acres of County land between the County and Miami Properties, LLC, for development of a soccer stadium in Overtown. Upon conveyance of the subject property to Miami Properties, LLC, the land and any completed developments on the land will be privately owned and located completely within the jurisdictional boundaries of the City. However, during the discussion of the item, a County commissioner demanded that the buyer exclusively hire County First Responders to provide services inside the stadium in exchange for a vote to approve the sale. The buyer’s representative immediately agreed to the restriction thereby securing approval of the sale. This is a matter of first impression since there is no precedent for similar restrictions imposed by the County onto private purchasers of property located within the City’s jurisdiction.

Generally, the primary jurisdiction for Miami First Responders extends to all property located within the City’s boundaries while primary jurisdiction of the County First Responders consists of all unincorporated areas of Miami-Dade County and in limited circumstances, all areas within Miami-Dade County. However, one of the principal functions of the City is to provide services to preserve the health, safety, and welfare of its residents, visitors, and business owners within the limits of its jurisdiction. Furthermore, it is well established that municipalities have been granted home rule powers to exercise any power for municipal purposes except when expressly prohibited

by law.<sup>1</sup> The broad nature of this grant of power was recognized by the Florida Supreme Court in State v. City of Sunrise, 354 So.2d 1206, 1209 (Fla. 1978), when the court noted that:

Article VIII, Section 2, Florida Constitution, expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal services. The only limitation on that power is that it must be exercised for a valid 'municipal purpose.' It would follow that municipalities are not dependent upon the Legislature for further authorization. Legislative statutes are relevant only to determine limitations of authority.

A "municipal purpose" is defined as "any activity or power which may be exercised by the state or its political subdivisions." *See* Sec. 166.021(2), Fla. Stat. Furthermore, the provisions of section 166.021 shall be construed so as to secure for municipalities the broad exercise of home rule powers granted by the Constitution, and to extend to municipalities the exercise of powers not expressly prohibited by the Constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. *See* Fla. Stat. §166.021(4). Ultimately, limitations upon the legislative and governmental powers vested in the governing body of a municipality must be contained in a general or special law or county or municipal charter.

The Florida Supreme Court has stated that whenever a municipality exercises its powers, a two-tiered question is presented. First, whether the action to be taken is for a municipal purpose. City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla., 1983). Second, if so, whether that action is expressly prohibited by the Constitution, general or special law, or county charter. *Id.* Therefore, if the provision of emergency services by the City to its residents, visitors, and property owners through its First Responders constitutes a "municipal purpose," and is not distinctly and explicitly prohibited by the Constitution, statute or charter, then the City possesses the home rule power to provide such services within its boundaries. Despite this authority clearly established by law, the County has improperly contracted away the City's authority, discretion, and policy control which are inherent in the nature of the City's police power by forcing a private property owner to hire County First Responders as a security vendor for a privately owned stadium within the City. There is no supporting authority in the County Charter that would allow the County to interfere with the City's power to provide emergency services on private property.

As with all special events in the City, it is up to the host of the event to procure services from the City First Responders to preserve the health, safety, and welfare of event attendants. This is particularly the case when the event is prone to include attendees that may create a safety risk to other attendees such as those attending sporting events. Here, Miami Properties, LLC, as the owner of a sporting venue on private property, is charged with securing emergency services from the City's special events coordinator to provide security to its invitees and licensees. Special events include, but are not limited to, sporting events, concerts, and street festivals. These events are managed by the City's First Responders because they are primarily responsible for the planning, implementation, and analysis of emergency services required for maintaining public safety for citizens who patronize special events within the City. Moreover, based on the location of the property, County First Responders do not have the resources readily available for immediate

---

<sup>1</sup> *See Op. Att'y Gen. Fla. 2006-12 (2006)*; §166.021, Fla. Stat.; and *Art. VIII, § 2(b), Fla. Const.*

deployment if a critical incident were to happen inside the stadium. Because the privately owned venue is located within the jurisdiction boundaries of the City, it follows that City First Responders should be the agency procured to provide emergency services inside the stadium because the City has primary jurisdiction for law enforcement powers.

Nonetheless, the County contends that they have the right to place the restriction allowing County First Responders exclusively to work inside the stadium in the contract merely because they sold a piece of land and are entitled to reap additional benefits from the sale. However, it does not appear that any such requirement would be legally enforceable. First, such a condition would be against public policy. Public policy is the cornerstone or foundation of all constitutions, statutes, and judicial decisions, but its latitude and depth are greater than any and all of them. Although "public policy" is a term of vague and variable meaning it is the community common sense and common conscience, extended and applied throughout Florida to matters of public morals, public health, public safety, public welfare, and the like. *Harris v. Gonzalez*, 789 So. 2d 405 (Fla. 4th DCA 2001). When determining whether a contract violates public policy, it is necessary to carefully balance the public interest with the right to freely contract. Prejudice to the public interest must clearly appear before the court is justified in declaring a contract void as against public policy. *Gonzalez v. Trujillo*, 179 So. 2d 896 (Fla. 3d DCA 1965).

The restriction at issue can be found unenforceable for violating public policy, not only to protect one of the parties involved, but also because what the contract term represents could pose harm to society as a whole. Requiring the buyer to utilize County First Responders as the exclusive emergency services vendor within the stadium creates a potential life-safety issue for the attendees, employees, and players participating in the event. The County must understand that off-duty opportunities for its first responders does not outweigh the safety of all persons in and around the stadium. The venue is located within the City therefore, any calls to the 911 emergency system emanating from within the stadium will naturally be received by the City of Miami Police Department. The County First Responders will not have the same immediate access to any potential emergency information as the City First Responders. The consequential delay in providing information to County First Responders could impact the ability to provide immediate and effective emergency services. Ultimately, if a court were to review the restriction at issue here and feels that the restriction imposes an extraordinary liability on one of the parties or contravenes some established interest of society, it may, in certain instances, pronounce that portion of the contract void as being contrary to public policy.

Another reason such a requirement may be unenforceable is because the contract term is unconscionable. Unconscionability relates to the manner in which a contract is made and involves consideration of issues such as the relative bargaining power of the parties and their ability to know and understand the disputed contract terms. *Pendergast v. Sprint Nextel Corp.*, 592 F.3d 1119 (11th Cir. 2010) (applying Florida law). In other words, it means that a term in the contract or something inherent in or about the agreement was so shockingly unfair that the contract simply cannot be allowed to stand as is. In order to determine whether a contract is unconscionable, a court must look to the manner in which the contract was entered into. *Pendergast v. Sprint Nextel Corp.*, 592 F.3d 1119 (11th Cir. 2010). Here, a County commissioner, from the dais, demanded that a private buyer exclusively hire County First Responders as a vendor to provide services inside the stadium in exchange for a vote to approve the sale. The buyer's representative immediately

had to agree to the restriction in order to obtain the commissioner's approval for the sale even though the County First Responders will be less efficient and more costly than alternative vendors.

If a court were to review the circumstance upon which the restriction was imposed on the buyer, it will consider factors such as whether the complaining party had a meaningful choice at the time the contract was entered into and the relative bargaining power of the parties; whether the complaining party had a realistic opportunity to bargain regarding the term of the contract, or whether the terms were merely presented on a "take-it-or-leave-it" basis; and the complaining party's ability and opportunity to understand the disputed terms of the contract. *Pendergast v. Sprint Nextel Corp.*, 592 F.3d 1119 (11th Cir. 2010). Furthermore, if a contract or term thereof is unconscionable at the time the contract is made, the court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit application of any unconscionable term as to avoid any unconscionable result. *In re Colony Beach & Tennis Club Ass'n, Inc.*, 454 B.R. 209 (M.D. Fla. 2011).

An additional reason such a requirement is unenforceable is that it appears to stem from undue influence imposed upon the buyer. Undue influence is imposed when, like here, a buyer is forced to enter into an agreement by taking advantage of a special or particularly persuasive relationship that the seller had with the buyer. In general, to prove undue influence, the buyer would have to show that the seller used excessive pressure against the buyer during the bargaining process and that the buyer was overly susceptible to the pressure tactics. Here the seller, intimated that their purchase agreement would be rejected if the buyer did not agree to use the employees of the seller for the provisions of security services. Essentially the terms were 'take our employees or you can leave the purchase and sale agreement.' The buyer was pressured into acceding to the demand of the seller to hire its employees.

However, it is important to note that, notwithstanding the above, the ability to challenge the terms of the contract for sale and purchase lies with Miami Properties, LLC, and not the City of Miami. It is our opinion that if Miami Properties, LLC were to seek the assistance of the courts they would find relief.

### Conclusion

It is therefore my opinion, unless and until legislatively or judicially determined to the contrary, that the City has home rule power for providing emergency services to the residents, visitors, and business owners in and around privately owned property and a sporting venue located within the boundaries of the City. The County has no authority to unilaterally contract away the City's governmental powers, its policies, its police power, or its power to enforce state laws, codes, and rules pertaining to the prevention and control of fires. There is absolutely no justification for the County to dictate any jurisdictional affairs of the City in a private venue located within City boundaries. Although the County has concurrent jurisdiction to take law enforcement action under limited circumstances throughout the boundaries of Miami-Dade County, including areas incorporated by a municipality, the County's concurrent jurisdiction does not authorize the County to dilute the City's primary jurisdiction. The County has attempted to force a private buyer to use a particular vendor for emergency services when that vendor will be less efficient and more costly than alternative vendors. Consequently, the restriction at issue in the County's land sale agreement

violates public policy, may be unconscionable, and procured under undue influence and therefore may be deemed unenforceable.

cc: Honorable Mayor and Members of the City Commission  
Daniel J. Alfonso, City Manager