

**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #08-005**

TO: Honorable Marc Sarnoff, Commissioner
District 2

FROM: Julie O. Bru, City Attorney 

DATE: August 20, 2008

RE: Regulation of Peacocks

Legal Opinion - Matter No. 08-1674

You have requested a legal opinion on the following issue:

CAN THE CITY OF MIAMI REGULATE PEACOCKS WITHIN THE CITY OF MIAMI?¹

The answer to the question is in the negative.

ANALYSIS

Your first inquiry is what can be done by the City of Miami to control peacocks. Section 6-3 of the City of Miami Code states that “[i]t is hereby declared that all territory embraced within the city shall be a bird sanctuary.” Section 6-4 further states, in pertinent part, that “[i]t shall be unlawful for any person to shoot, trap or in any manner kill or destroy birds within the city.” Accordingly, unless the City of Miami Code is amended, the Code currently prohibits any control or regulation of peacocks.

Further, Section 5-16 of the Code of Miami-Dade County protects peafowl.² Specifically, Section 5-16 states that it is unlawful to take any peafowl, including the “hunting, molesting, capturing, or killing [of] any peafowl, their nests or eggs, by any means.” Additionally, Section 5-2(a) of the Code of Miami-Dade County states that “[t]he provisions of this chapter shall apply in the incorporated and unincorporated areas of Miami-Dade County.” Because the Code of Miami-Dade County, which applies to the City of Miami, specifically protects peacocks, residents of the City of Miami cannot capture, hunt, regulate, or otherwise control peacocks on City of Miami property.

You have also inquired whether we can prohibit the feeding of peacocks within the City of Miami. While there is no specific ordinance that prohibits an individual from feeding a peacock, Section 6-5 of the City of Miami Code states that it shall be

¹ Your specific inquiries are: (1) What can be done to control peacocks? (2) Is this an issue for the City of Miami or Miami-Dade County? (3) Can we prohibit the feeding of peacocks? (4) Are peacocks protected?

² Peafowl is the species of bird. A peacock is a male peafowl and a peahen is a female peafowl. See The American Heritage College Dictionary, 3rd Ed. (2000).

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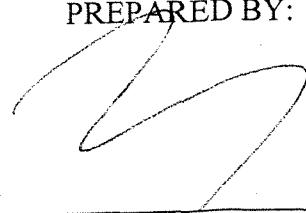
Re: Legal Opinion No.: 08-005

considered cruelty to animals if a person deprives an animal "of necessary sustenance." See also Section 5-4(b)(3) of the Code of Miami-Dade County; Fla. Stat. Ann. 828.12. Accordingly, individuals cannot intentionally prohibit a peacock from eating. Those individuals who do deprive a peacock of necessary sustenance face civil penalties by the City of Miami in county court as well as criminal sanctions as provided for by the Code of Miami-Dade County and Florida Statute. See Section 6-71 of the City of Miami Code; Section 5-2 of the Code of Miami-Dade County; Fla. Stat. Ann. 828.12.

CONCLUSION

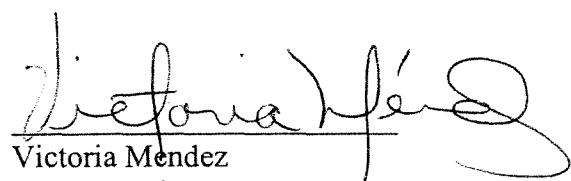
Both the City of Miami Code as well as the Code of Miami-Dade County prohibit anything other than the protection of peacocks within the City of Miami. Failure to protect and/or the intentional harming of a peacock can result in civil sanctions as well as criminal penalties.

PREPARED BY:



Barnaby L. Min
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REVIEWED BY:



Victoria Mendez
Assistant City Attorney

cc: Honorable Mayor and Members of the City Commission
Pedro G. Hernandez, City Manager
Mariano Loret de Mola, Director of Code Enforcement