



CITY OF HALLANDALE BEACH, FLORIDA

MEMORANDUM

DATE: November 12, 2024

TO: Golden Isles Safe Neighborhood District Liaison

FROM: Jennifer Merino, City Attorney *JM*

SUBJECT: Requiring Identification at GISND guardhouse/restricting access to those that identify themselves

Question

Is it legally permissible for a security guard stationed at the guardhouse at the entrance of the Safe Neighborhood District on Layne Boulevard, a public roadway, to request and record driver's licenses from individuals seeking entry between the hours of 10:00 p.m. and 6:00 a.m., or at all times? The streets in the District are public streets. The guardhouse is staffed by a private security company under contract with and paid for by the District. The District is a dependent special district of the City of Hallandale Beach created pursuant to Florida Statute.

Executive Summary

Yes, subject to certain findings of fact and certain conditions.

There is a single line of cases out of the First District, from Puerto Rico, that has held that guard gates restricting access to public streets can be constitutional if the purpose of the regulation is to prevent crime and the factual circumstances upon which the regulation is based are sufficient to justify the level of intrusion of the regulation. While the factual circumstances that were addressed in that case are very extreme, the ruling does not appear to require that level of circumstances to support its findings. As long as the First amendment rights of expression are not infringed upon by the regulation, the requirement to identify oneself can be justified by the goal of preventing criminal activity if the facts establish such a specific concern exists. The

court further held that the Fourth amendment is not violated by a guard gate stop where a person is free to turn around and drive away.

Finally, Florida Statute permits municipalities to limit the use of streets to certain type of traffic and to restrict the use of streets. Therefore, the act would not be preempted by statute. Although there is an Attorney General Opinion that might be read to opine in the negative, that opinion is distinguishable because the city in that case sought to restrict access to residents and only certain individuals. The goal of this regulation would not be to restrict access, other than the restriction required for enforcement.

In application, enactment and enforcement of this type of requirement would require an act of the City, an ordinance, because the City has jurisdiction over all public streets and the District has no authority to enact a traffic regulation or to enforce it. In order for the City to avoid violation of any constitutional rights, the City would need to determine, on the basis of facts, that there was a specific public concern that would be addressed by the proposed regulation. The public concern would need to be “substantial and real.” The proposed regulation would need to be intended to prevent the public concern, rather than designed to obtain evidence of criminal activity or other general law enforcement objective.

The ordinance would need to specifically need to state the streets must remain accessible to the public and that access will not be restricted except for those that refuse to provide the requested identification. It is further recommended that signage be place in the guardhouse clearly notifying guard that they are not to limit or restrict access except for those refusing to provide identification.

Analysis

This scenario raises possible legal concerns with respect to constitutional restrictions and potential statutory considerations. The two aspects are analyzed as follows:

Constitutional Concerns

Violations of constitutional rights can result in significant financial liability for the City. In reconciling a checkpoint stop in the safe neighborhood districts, the government must balance specific safety concerns with the right to privacy and the right to travel on public roads. Citizens have an inherent right to travel on public roads subject to reasonable regulations in the interest of the public good. *See Florida Motor Lines v. Ward*, 137 So.163, 167 (Fla. 1931). Individuals are also entitled to a reasonable expectation of privacy when traveling in their vehicles. In enacting regulations that affect these rights, the government must weigh “the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.” *U.S. v. Regan*, 218 Fed.Appx. 902, 903 (11th Cir. 2007); citing *Brown v. Texas*, 443 U.S. 47 (1979).

In *Delaware v. Prouse*, 440 U.S. 648, 662 (1979), the United States Supreme Court stated that individuals maintain a right to privacy while driving, regardless of vehicle regulation. It held that stopping drivers to check licenses and vehicle registration without reasonable suspicion of violations is unconstitutional under the Fourth Amendment. *Id.* at 663.¹ Nonetheless, the decision allowed states to devise less intrusive methods, such as roadblock stops, for specific law enforcement purposes. *Id.*² However, the public concern served by the stop cannot be a general interest in crime control,³ or the detection of evidence of ordinary criminal wrongdoing.⁴ The public concern has been deemed allowable in cases where the stops were to detect and prevent drunk driving, detect and intercept illegal aliens, and the prevention of illegal hunting at federal park. In *U.S. v. Fraire*, 575 F.3d 929, 933 (C.A.9 (Cal.), 2009), the Ninth Circuit held that where the primary purpose of the checkpoint was prevention and not arrest, it was distinguishable from the general interest in crime control, and therefore not presumed unconstitutional.

Our research revealed that the issue of guard gates restricting access to public streets appears to only have been addressed by one federal court, the First District, in a line of cases arising from Puerto Rico.⁵ It is important to understand the context of that case in order to analyze its holdings. Puerto Rico suffered from a homicide rate that was quadruple the U.S. national rate and more than double that of virtually every state in the late 1980's and 1990's. The government adopted a "Controlled Access Law" that allowed municipalities to vote on the creation of guard gates to control vehicular traffic into neighborhoods, although those were public streets.

In *Watchtower Bible*, the law was challenged by Jehovah Witnesses that claimed they were being denied access onto public streets in violation of their constitutional rights. The court noted that, "[a]ccess to public streets and property for purposes of expression, including door-to-door religious proselytizing, has long been protected by the First Amendment." *Id.* at 10. It also noted that the statute itself prohibited the restriction of access to the public streets for legal purposes. It held that the statute was therefore not unconstitutional on its face, but proceeded to analyze the statute as-applied. Relevant to the scenario proposed here, the court held that a guard could constitutionally ask a visitor for his or her name and identification, although it noted that

¹ "The Fourth and Fourteenth Amendments are implicated in this case because stopping an automobile and detaining its occupants constitute a "seizure" within the meaning of those Amendments, even though the purpose of the stop is limited and the resulting detention quite brief." *Id.*

² Even if the stop were conducted by a private security company, the activity will still be considered a "state action" conducted by the District, a state actor. *Watchtower Bible and Tract Society of New York, Inc. v. Sagardia De Jesus*, 634 F.3d 3, 13–16 (C.A.1 (Puerto Rico), 2011).

³ *City of Indianapolis v. Edmond*, 531 U.S. 32, 32 (2000); "There is a two-step analysis applicable to Fourth Amendment checkpoint cases. First, the court must 'determine whether the primary purpose of the [checkpoint] was to advance 'the general interest in crime control.' 'If so, then the stop ... is per se invalid under the Fourth Amendment.' *U.S. v. Fraire*, 575 F.3d 929, 932 (C.A.9 (Cal.), 2009) (*internal citations omitted.*).

⁴ *Watchtower Bible*, 634 F. 3d at 16.

⁵ In *Citizens Against Gated Enclaves v. Whitley Heights Civic Assn.*, 23 Cal.App.4th 812, 817 (Cal. 2nd DCA 1994), the court did address the issue of guard gates limiting access to public streets in a neighborhood, but the holding is based on statutory restrictions in state law in California. Statutory considerations in Florida are addressed below.

this was a close question and that it would be safer to only ask for identification where cause existed based on objective circumstances. *Id.* at 13-14. They further held that the statute could not be administered in such a way that persons could be prohibited access for the purpose of exercising their First Amendment rights. *Id.*

With respect to the Fourth Amendment, the court took a unique approach to the issue. It held that the guard gates were not “seizures” as were the stops in the roadblock line of cases. The court distinguished the guard gates from the roadblocks because no one was detained at a guard gate inasmuch as they could chose to turn around and leave. “No one thus halted [at a police roadblock] imagines himself free merely to turn and drive away without permission.” *Id.* at 15. However, the court acknowledged that another court might treat the stop as a seizure. In such a case the purpose of the legislation would need to justify a limited seizure without detention. It noted that the purpose of protecting communities endangered by crime by a means not designed to secure the arrest of the would-be criminals was constitutional “where the risk to the public safety is substantial and real.” *Id.* at 17.

Statutory Concerns

Even if deemed permissible pursuant to constitutional considerations, any municipal regulation on the matter must also take into account statutory restrictions. Specifically, while the City has home rule powers, it cannot enact a law that is preempted by state statute. Chapter 316 of the Florida Statutes, also known as the Florida Uniform Traffic Control Law, was implemented to ensure uniform traffic regulations across the state, including counties and municipalities. However, § 316.008, Fla. Stat., expressly enumerates those areas within which a municipality may control certain traffic movement on the streets within their jurisdiction. It preserves to the municipalities the power to restrict the use of the street, to regulate or prohibit the use of certain roadways by certain classes or kinds of traffic, to alter or establish speed limits within the provisions of the chapter.

While this would seem to directly address the statutory authority of the City to erect a guard gate to restrict the use of the streets, pursuant to AGO 90-51 (1990), the Attorney General opined that the statutes did not permit a city to place a security gate on a public roadway for the purpose of restricting access only to residents or those persons that purchased a gate remote.⁶ In the present case, however, there are distinctions in that the intent is not to restrict access, but to have a publicly funded, private party request for drivers provide identification and record entries to prevent crime.

Another consideration is whether the Safe neighborhood district would have the authority to enact the regulation or whether it would need to be enacted by the City. The Florida Uniform Traffic Control Law provides that municipalities have exclusive jurisdiction over traffic control

⁶ Attorney general opinions are not binding law. The courts view them as merely persuasive. This specific opinion seems to have gone beyond the plain text of the statute. Nonetheless, the facts are distinguishable as indicated.

on roads open to public use. § 316.006, Fla. Stat. The Attorney General, in AGO 09-40, recognized that special dependent districts, such as the safe neighborhood districts here, are not authorized to enact or enforce traffic laws.

Application

The City has jurisdiction over all public streets and the District has no authority to enact a traffic regulation or to enforce it. Therefore, in order to enforce the requirement that individuals provide driver's license information prior to accessing the specified roadways, an ordinance would need to be enacted by the City. In order for the City to avoid violation of any constitutional rights, the City would need to determine, on the basis of facts, that there was a specific public concern that would be addressed by the proposed regulation. The public concern would need to be "substantial and real." The proposed regulation would need to be intended to prevent the public concern, rather than designed to obtain evidence of criminal activity or other general law enforcement objective. The fact that it is also generally a law enforcement process does not make it a general law enforcement objective if the goal is to prevent rather than seek evidence of criminal wrongdoing. The proper findings, based on facts, would support the constitutionality of the regulations as it relates to the any First Amendment claim.

The ordinance would need to specifically need to state the streets must remain accessible to the public and that access will not be restricted except for those that refuse to provide the requested identification. It is further recommended that signage be place in the guardhouse clearly notifying guard that they are not to limit or restrict access except for those refusing to provide identification. The contract should include the above notification and the instruction to instruct vehicles to turn around if they refuse to provide identification.