

APPROVED in Open Session

Manatee County Board of County
Commissioners

Manatee County Government Administrative Center
Honorable Patricia M. Glass Chambers, First Floor
9:00 a.m. - May 21, 2019

Emailed 5/23/19

May 21, 2019 - Regular Meeting
Agenda Item #49

Subject

Authorization to Set Public Hearing on June 18, 2019, to Consider Ordinance 19-15 Regarding Access to Automatic Security Gates

Briefings

Briefing Provided Upon Request

Contact and/or Presenter Information

Manatee County Public Safety Department
Nicole Knapp
x 7824
nicole.knapp@mymanatee.org

Action Requested

Authorization to set public hearing on June 18, 2019, to consider Ordinance 19-15 amending and restating section 2-28-2 of the Manatee County Code of Ordinances relating to emergency access.

Enabling/Regulating Authority

Manatee County Land Development Code and Florida Statute Chapter 162

Background Discussion

Manatee County has rules and regulations regarding the use of remote-control emergency access systems, with the primary concern being the timely access for law enforcement and other emergency services personnel. The proposed Ordinance 19-15 will extend the current regulations to allow emergency services personnel, as well as County departments, to use the remote-control access system when operating in the discharge of their regular duties, responding to a disaster, or providing emergency disaster services. The amendment will also amend regulations relating to violations.

County Attorney Review

Formal Written Review (Opinion memo must be attached)

Explanation of Other

Reviewing Attorney

Morris

Instructions to Board Records

Emailed 5/23/19

Please forward a copy of approved agenda to the Emergency Management Division (Nicole Knapp at Ext. 7824), nicole.knapp@mymanatee.org.

Cost and Funds Source Account Number and Name

\$0 001.0007001 Emergency Management

Amount and Frequency of Recurring Costs

\$0

Attachment: [RLS 01312018.pdf](#)

Attachment: [Emergency Access Ordinance #19-15_Final\(2\).pdf](#)



OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY*
William E. Clague, Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**
Christopher M. De Carlo, Assistant County Attorney
Geoffrey K. Nichols, Assistant County Attorney
Pamela J. D'Agostino, Assistant County Attorney
Anne M. Morris, Assistant County Attorney
Katharine M. Zamboni, Assistant County Attorney
Alexandria C. Nicodemi, Assistant County Attorney

MEMORANDUM

Date: January 31, 2018

To: Jacob Saur, Chief, Emergency Services Division, Public Safety Department

Through: Mitchell O. Palmer, County Attorney *MOP 1-31-18*

From: Anne Morris, Assistant County Attorney *AMM*

RE: Ordinance 04-30, Sec. 2-28-2- Emergency Access Through Automatic Security Gates; Remote Control Access; CAO Matter No. 2017-0094.

This memorandum is the second response to the above referenced Request for Legal Services. On July 21, 2017, this office issued its first memorandum and made several proposed revisions to Chapter 2-28, Article I, regarding emergency access through automatic security gates (proposed Ordinance 17-50). The request for revisions to Chapter 2-28 was initiated by concerns from a few gated communities that unauthorized persons are gaining access through their security gates via a remote clicker that utilizes the Department of Public Safety's secured access code.

Based on discussions with staff, emergency gate access in Manatee County was initially accomplished by utilizing a combination of hard access cards, code numbers, or physical keys. This method caused significant delays in the County's ability to timely respond to medical emergencies. Section 2-28-2 (via Ordinance 04-30) first established a countywide, standardized method of access to gates through the use of a universal remote-control access system. These remote controls are currently in every fire truck, police car and ambulance in the County. As a result of this uniform emergency access system, emergency response times have drastically improved.

According to staff, in many gated communities access is also granted via a passcode. This gate passcode is often passed on to mail couriers (*e.g.* UPS or FedEx), food delivery services, pet groomers, landscapers, repairmen, friends, relatives, and the list goes on. The homeowner's associations of these gated communities have the ability to impose their own rules and regulations regarding general access through their security gates. The homeowner's associations of these gated communities should consider changing their general access codes on a more frequent basis

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law

or impose some type of penalty for residents that improperly pass on the general access code to third persons.

From a legal standpoint, failure to remedy security gaps in gated communities has resulted in Florida courts finding homeowner's associations, condominium associations, and security companies hired by these communities liable where criminal activity could have been prevented by a properly working security system. *Sanders v. ERP Op. Ltd. P'ship*, 157 So. 3d 273 (Fla. 2015) (plaintiff raised a reasonable inference that the landlord's failure to fix the inoperable gate may have contributed to the criminal activity); *Vasquez v. Lago Grand Homeowners Assoc.*, 900 So. 2d 587 (Fla. 3d DCA 2004) (homeowner's association was held liable for a contracted security company's failure to prevent a multiple homicide). Implementing these types of changes for general access methods will have no implications on emergency gate access and will allow the gated communities to address these problems in a manner that is tailored to that community's needs and security system.

After a review of the first round of revisions to Chapter 2-28, additional changes were requested by the Department of Public Safety, Manatee County Sheriff's Office and the Building and Development Services Department. The following are the substantive changes:

- Since the current Ordinance does not contain penalties for unauthorized emergency access, Section 2-28-2 was amended to include a subsection prohibiting the unauthorized use of the remote-control emergency access system. Penalties for the unlawful use of this system may be civil or criminal in nature.
- Section 2-28-3 was added to allow non-emergency access by Manatee County Code Enforcement so that they can enforce Section 2-28-2, conduct official inspections as required by Florida State law, Manatee County's Code of Ordinances, the Land Development Code and the Comprehensive Plan.

A revised version of Ordinance 04-30 (now Ordinance 18-15) is attached. The above referenced RLS was not reviewed or commented upon for the policy merits of the recommended amendments. Proposed Ordinance 18-15 is now in legally sufficient form to place on a future Board agenda for consideration.

Enclosures

Copies to: Ed Hunzeker, County Administrator
Dan Schlandt, Deputy County Administrator
Robert Smith, Director, Public Safety Department
John Barnott, Director, Building and Development Services
Michele Hall, Legal Counsel, Manatee County Sheriff's Office
Stanley Schaeffer, Sergeant, Manatee County Sheriff's Office

ORDINANCE NO. 19-15

**AN ORDINANCE OF MANATEE COUNTY, FLORIDA,
REGARDING EMERGENCY AND NON-EMERGENCY
ACCESS TO AUTOMATIC SECURITY GATES;
AMENDING AND RESTATING SECTION 2-28-2 OF THE
MANATEE COUNTY CODE OF ORDINANCES RELATING
TO EMERGENCY ACCESS; PROVIDING FOR
CODIFICATION; PROVIDING FOR SEVERABILITY; AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Manatee County has codified its rules and regulations regarding emergency access to automatic security gates in Chapter 2-28 of Article II of the Manatee County Code; and

WHEREAS, Manatee County is an urban county with a growing prevalence of gated developments; and

WHEREAS, the Board of County Commissioners (Board) is concerned with the ability of law enforcement and other emergency services personnel to sufficiently and timely gain access into a gated development in the discharge of their regular duties, responding to a disaster, or providing emergency disaster services; and

WHEREAS, the Board is also concerned with the ability of Manatee County Code Enforcement, Manatee County Utilities Department, and Manatee County Public Works to timely gain access into a gated development in the discharge of their regular duties, responding to a disaster, or providing emergency disaster services; and

WHEREAS, the amended mandatory provisions regarding use of the emergency access system will provide a more adequate system to ensure timely emergency access and enable Manatee County departments to operate in the discharge of their regular duties; and

WHEREAS, in an effort to prevent misuse and/or unauthorized access of the emergency access system the Board wishes to adopt criminal and non-criminal penalties for a violation of Chapter 2-28-2; and

WHEREAS, it is in the best interest of protecting the health, safety and welfare of the citizens of Manatee County in adopting and enforcing its rules and regulations regarding use of the emergency access system to automatic security gates.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA:

Section 1. Purpose and Intent. This Ordinance is enacted to carry out the purpose and intent of, and exercise the authority set forth in, Article VIII, Section 1 of the Florida Constitution and Chapter 125, Florida Statutes, as amended.

Section 2. Findings. The Board relies upon the following findings in the adoption of this Ordinance:

- A. Section 2-28-2 of the Code sets forth the policies and rules regarding use of the emergency access system to automatic security gates.
- B. It is in the best interests of protecting the health, safety and welfare of the citizens of the County to adopt this restatement of Section 2-28-2 of the Code, as set forth in this Ordinance for the purposes of prescribing and enforcing additional regulations and enforcement procedures regarding use of the emergency access system.

Section 3. Section 2-28-2 of the Code is hereby amended as follows:

Sec. 2-28-2. - Access through automatic security gates; emergency access system.

- (1) The County Administrator ~~shall~~ may cause the director of the Manatee County Public Safety Department or his or her designee ~~(or the successor to such position, however designated)~~ to publish, and to maintain as needed on a continual basis, standards for the operation of all automatic security gates and emergency access ~~through them~~ throughout the county, except those that serve only one single-family residence. Said standards ~~shall~~ may, at a minimum, provide for emergency access by the fire districts, law enforcement agencies, and other emergency response agencies operating in Manatee County, ~~which shall~~ to include ~~without implied limitation~~ the Manatee County Emergency Medical Services (EMS) in the discharge of its regular duties and any agency or county department in responding to a disaster or providing emergency disaster services.
- (2) All entities within Manatee County that operate and maintain automatic security gates, except those that serve only one single-family residence or that serve County-owned property that is

not open to the general public, shall install an ~~remote-control~~ access system which meets the requirements of the Land Development Code and the minimum standards as published and maintained by the Manatee County Department of Public Safety. The emergency access feature of the automatic security gate shall at all times be maintained in working condition and access shall not be obstructed in any way, so that the authorized agencies and County departments in subsection (5) will be able to use the emergency access during the discharge of their regular duties, responding to a disaster, or providing emergency disaster services.

- (3) The developer of any new community shall install an ~~remote-control~~ access system which meets the requirements of the Land Development Code and the standards set by the director of the Manatee County Public Safety Department, and ~~will~~ shall comply with these standards as part of its development plans.
- (4) The director of the Manatee County Public Safety Department (or his or her designee) shall coordinate the standards for emergency access with the fire districts, law enforcement agencies, and other emergency response agencies operating in Manatee County to ensure an efficient emergency access system is used throughout the county.
- (5) The use of the emergency access system shall be limited to the following agencies or County departments who are operating in the discharge of their regular duties, responding to a disaster, or providing emergency disaster services:
 - (a) Fire districts;
 - (b) Law enforcement agencies;
 - (c) Manatee County EMS;
 - (d) Manatee County Code Enforcement personnel;
 - (e) Manatee County Utilities Department;
 - (f) Manatee County Public Works; or
 - (g) Any other emergency response agency operating in Manatee County at the request of the director of the Manatee County Public Safety Department.

Any other use of the emergency access system shall be a violation of this section.

- (6) ~~Variations of this section adopted by municipalities in Manatee County may be processed under the procedures set forth in Section 162.21, Florida Statutes.~~ Any violation of this section may be enforced as provided by the code enforcement provisions in Chapter 2-7 of the Manatee County Code and Chapter 162, Florida Statutes. The County may also bring suit for damages for any violation of this section to restrain, enjoin or otherwise prevent a violation or mandate compliance with this section.
 - (a) Due to the immediate danger that a violation of Section 2-28-2 may cause to the public, a code enforcement officer is not required to provide a violator with a reasonable time period to comply with an order or correct a violation prior to issuing a citation and may immediately take such action if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, the violator

is engaged in violations of an itinerant or transient nature, or if the violation is irreparable or irreversible.

- (b) ~~The civil fine for~~ Each violation of this section is punishable upon conviction by a fine not to exceed shall be five hundred dollars (\$500.00).; ~~provided, however, that if a violator does not contest a citation, the civil penalty for failure to have an emergency access remote control system that meets the standards set by the director of the Manatee County Public Safety Department, will be two hundred fifty dollars (\$250.00).~~
- (b) ~~Pursuant to Section 162.30, Florida Statutes, and as an alternative to a code enforcement action, violators of this section shall may be subject to a civil action wherein all manner of civil relief, including injunctive relief, may be sought.~~
- (c) ~~Notwithstanding any of the foregoing, as an alternative to civil enforcement, and pursuant to Sections 162.21(8) and 162.22 Chapter 162, Florida Statutes, violators of this section may be subject to the issuance of a notice to appear and upon conviction may be sentenced to pay a fine not to exceed five hundred dollars (\$500.00), a definite term of imprisonment not to exceed sixty (60) days in the county jail, and the restitution award of applicable costs and defender fees as authorized by Section 162.30, Florida Statutes.~~
- (6) ~~This section may be enforced, and citations issued, by any code enforcement officer with jurisdiction over the gated access community in question.~~
- (7) The provisions of this section are intended to insure a minimum level of access to emergency vehicles during emergencies and shall not be construed to guarantee the safety of a gated development.
- (8) This section shall be effective throughout Manatee County, including all municipalities. If a provision of this section is inconsistent with a municipal ordinance, that provision of this section shall not be effective within that municipality.

Section 4. The publisher of this County's Code, the Municipal Code Corporation, is directed to incorporate the amendments in Section 3 into the Code.

Section 5. If any clause, phrase, provision, section or sentence of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

Section 6. This Ordinance shall take effect immediately upon filing with the Department of State.

DULY ADOPTED, with a quorum present and voting, this _____ day of _____,
2019.

**BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA**

By: _____
Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk