To: Walter Foeman

From: Craig E. Leen, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding Section 18 Of City Charter - Initiative And Referendum

Date: June 6, 2012

As discussed, and pursuant to section 2-201(8) of the City Code, I am writing to provide you, as the Supervisor of Elections for the City, my interpretation of Section 18 of the City Charter relating to initiatives and referendums, and specifically my interpretation that a proposed amendment to the City or Zoning Codes can be submitted to the voters by a written resolution of the City Commission.

The Charter provides in section 18 that "[t]he electors shall have the power to approve or reject at the polls any ordinance passed by the Commission or submitted by the Commission to a vote of the electors, except an appropriation ordinance or an ordinance making the annual tax levy, such power being known as the referendum." (emphasis added).[1] Likewise, in section 13, the Charter authorizes the Commission to act generally by either ordinance or written resolution. It is my interpretation of the plain meaning of these provisions that Commission action is required to submit a proposed ordinance to the electorate, and that such action can be by written resolution. Indeed, the express wording of section 18 supports such an interpretation, as the electorate is given the authority to either approve or reject an already passed ordinance or an ordinance submitted to the public for passage (which indicates the item has not been already passed as an ordinance). My interpretation of section 18 of the Charter provides meaning to both "passed" and "submitted."

This interpretation is supported by language in section 101.161 of the Florida Statutes, as well as the Miami-Dade County Home Rule Charter. For example, section 101.161(1) addresses the

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[1] Section 18 of the Charter authorizes the electors to enact or amend an ordinance through the initiative or referendum process. *See City of Coral Gables v. Carmichael*, 256 So. 2d 404, 408 (Fla. 3rd DCA 1972); *see generally Florida Land Company v. City of Winter Springs*, 427 So. 2d 170, 172-73 (Fla. 1983) ("Once the referendum power is reserved, particularly as done in our current constitution, this power can be exercised wherever the people through their legislative bodies decide that it should be used.") (footnote omitted).

procedure for municipal elections, and authorizes the placement on the ballot of an "amendment or public measure" by "enabling resolution or ordinance."(emphasis added). Likewise, section 6.03 of the County Charter authorizes City Charter amendments to be placed on the ballot by resolution. If a resolution can permissibly be used to place a City Charter amendment on the ballot, it logically follows that a City or Zoning Code amendment can also be placed on the ballot in the same manner.

Accordingly, the City Charter authorizes the City Commission to submit to the electors a proposed amendment to the City or Zoning Codes through a written resolution

CITY OF CORAL GABLES

OFFICE OF THE CITY ATTORNEY

- MEMORANDUM-

TO: **CITY CLERK**

FROM:

CRAIG E. LEEN
CITY ATTORNEY

DATE: **June 6, 2012**

SUBJECT: **Initiative and Referendum**

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