



To: City Commission

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

A handwritten signature in black ink, appearing to be "CL", written over the printed name of the City Attorney.

RE: Legal Opinion Regarding Position of City Architect

Date: December 8, 2012

At the recent Sunshine meeting between Commissioners Anderson and Cabrera, I was requested to provide analysis regarding the present legal status of the position of City Architect, and to provide an opinion and interpretation of the City Charter, City Code, and Zoning Code regarding several issues raised at the meeting. I subsequently received a request from Commissioner Anderson for a memorandum regarding these issues. Based on my review of the transcript of the Sunshine meeting, and Commissioner Anderson's request, it is my view that there are three legal questions to be answered (discussed below). Of course, my office takes no position on the merits of this matter, and awaits instruction of the City Commission as to whether any of these areas should be further explored. The three questions are:

A. Could the position of City Architect be made into a Commission-appointed official, similar to the City Manager, City Attorney, and City Clerk?

Short answer. The City Architect is presently a member of the administrative service of the City under the charge of the City Manager. The only Commission-appointed officials recognized by the Charter are the City Manager, City Attorney, and City Clerk. A Charter amendment would be required to make the City Architect a Commission-appointed official.

B. Does the City Commission have any authority under the present City Charter over the hiring or removal of the City Architect, and any discretion over the City Architect's placement in the organizational chart?

Short answer: The City Charter vests the City Manager, as chief executive officer, with day-to-day management authority over the City Architect and other administrative staff in his charge, including the power to hire and remove the Architect. The City Commission, however, has final authority to direct by resolution the appointment or removal of any administrative

officer or employee by the City Manager, including the City Architect, under section 23 of the City Charter. As for the organizational chart, once again the City Manager has day-to-day management authority over his administrative staff, including the delegation of his authority to staff members in an administrative hierarchy. Nevertheless, the Commission has final authority to determine by ordinance the number, structure, and duties of administrative departments under section 26 of the City Charter.

C. Could the City Architect be request to attend meetings by the City Commission?

Short Answer: The Charter recognizes that an individual Commissioner has the authority to make inquiries to the City Architect or other members of administrative staff. An individual Commissioner may also make a request that certain administrative staff be present at a Commission meeting. Only a majority of the Commission in open session, however, may require or direct attendance of a staff member at one or more meetings.

I will now provide a brief background regarding the position of City Architect, and then answer each question in turn.

Background

Section 2-706 of the City Zoning Code establishes the duties and powers of the City Architect. Specifically, Section 2-706 of the City Zoning Code provides as follows:

The City Architect shall be a registered architect who is responsible for reviewing and submitting recommendations regarding the design of new buildings and structures and modifications to existing structures in the City in accordance with the procedures in Article 3 and the standards in Article 5, Division 6 of these regulations. The City Architect serves on the Development Review Committee.

Other provisions in the Zoning Code also provide authority to the City Architect, including but not limited to sections 2-802 (membership on the Development Review Committee), 3-205 (review of permitted uses, including certain plans and specifications), 3-2002 (recommendations regarding acquisitions for artwork projects), 4-201, Table 1-15 (additional vertical building setbacks in mixed use districts), 5-113 (trellises), 5-114 (wood decks), 5-120 (fountains and reflecting pools), 5-121 (planters), 5-122 (flagpoles), 5-604 (recommendations regarding compliance with Mediterranean Design Standards), and 5-607 (exterior walls).

Both the City Manager (directly) and the City Commission (by appeal, or by direction to Manager and staff in open session) have oversight authority over the City Architect's duties under the Zoning Code. For example, the City Architect is subject to direct oversight by the City Manager under section 2-701 of the Zoning Code, as the Manager has "ultimate authority over

implementation of these regulations,"¹ which the Manager may delegate to "City staff as necessary for the effective administration and enforcement of these provisions." Likewise, the administrative decisions of the City Architect are subject to final appellate review by the City Commission as indicated in section 2-101 of the Zoning Code (following appellate review by the Board of Architects). Of course, both the Commission and the Manager also have oversight authority over the Architect based on their respective roles as described by the City Charter, which will be further discussed in answering the questions below.

A. Could the position of City Architect be made into a Commission-appointed official, similar to the City Manager, City Attorney, and City Clerk?

Yes, although such a change would require an amendment to the City Charter. According to Section 21 of the City Charter, "[t]he City Manager [is] responsible to the Commission for the proper administration of all affairs of the city placed in his charge and to that end he shall have the *power to appoint and remove all officers and employees in the administrative service of the city.*" See Charter, Section 21 (emphasis added); see also Charter, Section 22. Likewise, Section 24 of the City Charter gives the Manager the authority to appoint and remove except as otherwise provided in the Charter. See Charter, Section 24. Additionally, "the Manager may authorize the head of a department or officer responsible to him to appoint and remove subordinates in such department or office." *Id.*

Conversely, in accordance with Section 17 of the City Charter, the City Commission has the authority to appoint the City Manager, the City Clerk, and the City Attorney who serve as Charter officers at the will of the Commission. More specifically, Section 17 states that the Commission "shall appoint the following who shall not be members of the Commission: City Manager, City Clerk, City Attorney, *which officers shall hold office at the will of the Commission.*" See Charter, Section 17 (emphasis added). Thus, while the Charter gives the City Manager the authority to appoint, remove, suspend, layoff, and reduce in grade officers and employees in the administrative service of the City *placed in his charge*, the Charter expressly establishes the exception that the City Clerk and City Attorney serve at the will of the Commission, and thus such offices are not placed under the City Manager's charge. Notably, however, the Charter does not contain any similar provision relating to City Architect. Because the Charter currently does not contain any such exception to the City Manager's authority, then a Charter amendment would be required to make the City Architect into a Commission-appointed official similar to the City Manager, City Attorney, or City Clerk.

B. Does the City Commission have any authority under the present City Charter over the hiring or removal of the City Architect, and any discretion over the City Architect's placement in the organizational chart?

¹ The City Attorney has "final authority with regard to legal issues involving interpretation and implementation of these regulations" under section 2-702 of the Zoning Code.

Yes, as long as the Commission acts by resolution under section 23 of the Charter (regarding hiring or removal) or by ordinance under section 26 of the Charter (regarding departments). As discussed above, the City Manager is the chief executive officer of the City, and has authority over the day-to-day management of administrative staff placed in his charge, including their hiring and removal. *See* Charter, Sections 20, 21, 22, and 24. The City Commission, as the governing body of the City, has authority to direct the City Manager through appropriate action (usually an ordinance or resolution) in the performance of these functions. Specifically, section 23 of the Charter authorizes the City Commission, by resolution, "to direct or require appointments, suspensions, or discharges of city officers or employees by the City Manager." Likewise, section 26 of the Charter authorizes the Commission, by ordinance, to create, combine, or abolish departments, and to determine the functions of such departments. The Commission therefore has the authority to modify the organizational chart by modifying the structure and functions of administrative departments. Please note, however, that the Manager retains administrative authority over the administrative departments created by the Commission (*see* Charter, Section 24(3)), and has authority to delegate his oversight authority.

C. Could the City Architect be requested to attend meetings by the City Commission?

Yes, an individual Commissioner may request attendance by the City Architect at a Commission meeting or meetings, but only the Commission as a whole, by majority vote, may require such attendance.

An individual Commissioner has authority to inquire, and receive information, directly from City staff relating to City business. *See* Charter, Section 23. This permits each Commissioner to perform an oversight function. An individual Commissioner is therefore permitted to request the attendance of City staff at a Commission meeting for purposes of asking questions. An individual Commissioner is prohibited from directing staff, however, so an individual Commissioner may not compel the attendance by staff at a Commission meeting.

In contrast, the Commission as a whole, by majority vote, has authority to direct the City Manager, as well as other administrative staff (but only in "open session"). *See* Charter, Section 23. Accordingly, the Commission, by a majority vote in open session, may require a member of City staff to attend a Commission meeting or meetings.

Conclusion

In sum, the City Charter grants the City Manager, as the chief executive officer, with day-to-day management authority over administrative staff placed in his charge (including the City Architect), while providing the City Commission, as the governing body, with oversight authority to provide direction to the Manager and administrative staff in open session by appropriate action (usually an ordinance or resolution). I will be prepared to answer any further legal questions related to these issues at the December 11th City Commission meeting.

Hernandez, Cristina

From: Leen, Craig
Sent: Monday, January 14, 2013 11:53 AM
To: Hernandez, Cristina
Subject: FW: Memorandum to City Commission (Responses to Legal Questions Relating to City Architect)
Attachments: Memorandum to City Commission (Responses to Legal Questions Relating to City Architect).pdf

Please place the attached in the opinions folder.

Craig E. Leen
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Leen, Craig
Sent: Saturday, December 08, 2012 5:53 PM
To: Commissioners
Cc: Salerno, Patrick; Foeman, Walter
Subject: Memorandum to City Commission (Responses to Legal Questions Relating to City Architect)

Mayor and Commissioners,

Please see the attached memorandum responding to legal questions relating to the position of City Architect, and please call me with any questions.

Best regards,

Craig E. Leen
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

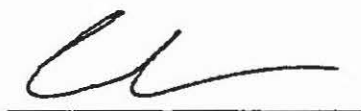
CITY OF CORAL GABLES

OFFICE OF THE CITY ATTORNEY

- MEMORANDUM-

TO: CITY COMMISSION DATE: December 8, 2012

FROM:



CRAIG E. LEEN
CITY ATTORNEY

SUBJECT: Responses to Legal
Questions Relating to
City Architect

At the recent Sunshine meeting between Commissioners Anderson and Cabrera, I was requested to provide analysis regarding the present legal status of the position of City Architect, and to provide an opinion and interpretation of the City Charter, City Code, and Zoning Code regarding several issues raised at the meeting. I subsequently received a request from Commissioner Anderson for a memorandum regarding these issues. Based on my review of the transcript of the Sunshine meeting, and Commissioner Anderson's request, it is my view that there are three legal questions to be answered (discussed below). Of course, my office takes no position on the merits of this matter, and awaits instruction of the City Commission as to whether any of these areas should be further explored. The three questions are:

A. Could the position of City Architect be made into a Commission-appointed official, similar to the City Manager, City Attorney, and City Clerk?

Short Answer: The City Architect is presently a member of the administrative service of the City under the charge of the City Manager. The only Commission-appointed officials recognized by the Charter are the City Manager, City Attorney, and City Clerk. A Charter amendment would be required to make the City Architect a Commission-appointed official.

B. Does the City Commission have any authority under the present City Charter over the hiring or removal of the City Architect, and any discretion over the City Architect's placement in the organizational chart?

Short Answer: The City Charter vests the City Manager, as chief executive officer, with day-to-day management authority over the City Architect and other administrative staff in his charge, including the power to hire and remove the Architect. The City Commission, however, has final authority to direct by resolution the appointment or removal of any administrative officer or employee by the City Manager, including the City Architect, under section 23 of the City Charter. As for the organizational chart, once again the City Manager has day-to-day management authority over his administrative staff, including the delegation of his authority to staff members in an administrative hierarchy. Nevertheless, the Commission has final authority to determine by ordinance the number, structure, and duties of administrative departments under section 26 of the City Charter.

C. Could the City Architect be requested to attend meetings by the City Commission?

Short Answer: The Charter recognizes that an individual Commissioner has the authority to make inquiries to the City Architect or other members of administrative staff. An individual Commissioner may also make a request that certain administrative staff be present at a Commission meeting. Only a majority of the Commission in open session, however, may require or direct attendance of a staff member at one or more meetings.

I will now provide a brief background regarding the position of City Architect, and then answer each question in turn.

Background

Section 2-706 of the City Zoning Code establishes the duties and powers of the City Architect. Specifically, Section 2-706 of the City Zoning Code provides as follows:

The City Architect shall be a registered architect who is responsible for reviewing and submitting recommendations regarding the design of new

buildings and structures and modifications to existing structures in the City in accordance with the procedures in Article 3 and the standards in Article 5, Division 6 of these regulations. The City Architect serves on the Development Review Committee.

Other provisions in the Zoning Code also provide authority to the City Architect, including but not limited to sections 2-802 (membership on the Development Review Committee), 3-205 (review of permitted uses, including certain plans and specifications), 3-2002 (recommendations regarding acquisitions for artwork projects), 4-201, Table 1-15 (additional vertical building setbacks in mixed use districts), 5-113 (trellises), 5-114 (wood decks), 5-120 (fountains and reflecting pools), 5-121 (planters), 5-122 (flagpoles), 5-604 (recommendations regarding compliance with Mediterranean Design Standards), and 5-607 (exterior walls).

Both the City Manager (directly) and the City Commission (by appeal, or by direction to Manager and staff in open session) have oversight authority over the City Architect's duties under the Zoning Code. For example, the City Architect is subject to direct oversight by the City Manager under section 2-701 of the Zoning Code, as the Manager has "ultimate authority over implementation of these regulations,"¹ which the Manager may delegate to "City staff as necessary for the effective administration and enforcement of these provisions." Likewise, the administrative decisions of the City Architect are subject to final appellate review by the City Commission as indicated in section 2-101 of the Zoning Code (following appellate review by the Board of Architects). Of course, both the Commission and the Manager also have oversight authority over the Architect based on their respective roles as described by the City Charter, which will be further discussed in answering the questions below.

A. Could the position of City Architect be made into a Commission-appointed official, similar to the City Manager, City Attorney, and City Clerk?

Yes, although such a change would require an amendment to the City Charter. According to Section 21 of the City Charter, "[t]he City Manager [is] responsible to the Commission for the proper administration of all affairs of the city placed in his charge

¹ The City Attorney has "final authority with regard to legal issues involving interpretation and implementation of these regulations" under section 2-702 of the Zoning Code.

and to that end he shall have the power to *appoint and remove all officers and employees in the administrative service of the city.*" See Charter, Section 21 (emphasis added); *see also* Charter, Section 22. Likewise, Section 24 of the City Charter gives the Manager the authority to appoint and remove except as otherwise provided in the Charter. *See* Charter, Section 24. Additionally, "the Manager may authorize the head of a department or officer responsible to him to appoint and remove subordinates in such department or office." *Id.*

Conversely, in accordance with Section 17 of the City Charter, the City Commission has the authority to appoint the City Manager, the City Clerk, and the City Attorney who serve as Charter officers at the will of the Commission. More specifically, Section 17 states that the Commission "shall appoint the following who shall not be members of the Commission: City Manager, City Clerk, City Attorney, *which officers shall hold office at the will of the Commission.*" *See* Charter, Section 17 (emphasis added). Thus, while the Charter gives the City Manager the authority to appoint, remove, suspend, layoff, and reduce in grade officers and employees in the administrative service of the City *placed in his charge*, the Charter expressly establishes the exception that the City Clerk and City Attorney serve at the will of the Commission, and thus such offices are not placed under the City Manager's charge. Notably, however, the Charter does not contain any similar provision relating to City Architect. Because the Charter currently does not contain any such exception to the City Manager's authority, then a Charter amendment would be required to make the City Architect into a Commission-appointed official similar to the City Manager, City Attorney, or City Clerk.

B. Does the City Commission have any authority under the present City Charter over the hiring or removal of the City Architect, and any discretion over the City Architect's placement in the organizational chart?

Yes, as long as the Commission acts by resolution under section 23 of the Charter (regarding hiring or removal) or by ordinance under section 26 of the Charter (regarding departments). As discussed above, the City Manager is the chief executive officer of the City, and has authority over the day-to-day management of administrative staff placed in his charge, including their hiring and removal. *See* Charter, Sections 20, 21, 22, and 24. The City Commission, as the governing body of the City, has authority to direct the City Manager through appropriate action (usually an ordinance or resolution) in the performance of these functions. Specifically, section 23 of the Charter authorizes the City Commission, by resolution, "to direct or require

appointments, suspensions, or discharges of city officers or employees by the City Manager." Likewise, section 26 of the Charter authorizes the Commission, by ordinance, to create, combine, or abolish departments, and to determine the functions of such departments. The Commission therefore has the authority to modify the organizational chart by modifying the structure and functions of administrative departments. Please note, however, that the Manager retains administrative authority over the administrative departments created by the Commission (*see* Charter, Section 24(3)), and has authority to delegate his oversight authority.

C. Could the City Architect be requested to attend meetings by the City Commission?

Yes, an individual Commissioner may request attendance by the City Architect at a Commission meeting or meetings, but only the Commission as a whole, by majority vote, may require such attendance.

An individual Commissioner has authority to inquire, and receive information, directly from City staff relating to City business. *See* Charter, Section 23. This permits each Commissioner to perform an oversight function. An individual Commissioner is therefore permitted to request the attendance of City staff at a Commission meeting for purposes of asking questions. An individual Commissioner is prohibited from directing staff, however, so an individual Commissioner may not compel the attendance by staff at a Commission meeting.

In contrast, the Commission as a whole, by majority vote, has authority to direct the City Manager, as well as other administrative staff (but only in "open session"). *See* Charter, Section 23. Accordingly, the Commission, by a majority vote in open session, may require a member of City staff to attend a Commission meeting or meetings.

Conclusion

In sum, the City Charter grants the City Manager, as the chief executive officer, with day-to-day management authority over administrative staff placed in his charge (including the City Architect), while providing the City Commission, as the governing body, with oversight authority to provide direction to the Manager and administrative staff in open session by appropriate action (usually an ordinance or resolution). I will be prepared to answer any further legal questions related to these issues at the December 11th City Commission meeting.

City Attorney Ordinances

City Code, Section 2-201; Zoning Code, Section 2-702

Section 2-201(e) *Duties*: The city attorney shall be the head of the legal department, and in that capacity shall have the following authority:

- (1) To act as legal counsel and advisor to the city commission, city manager, city clerk, as well as to city departments, boards, and committees, and to provide legal opinions where warranted in the performance of such function.**
- (2) To prepare or review ordinances, resolutions, contracts, and other legal instruments, and to approve as to form and legal sufficiency.
- (3) To file, prosecute or defend, for and on behalf of the city, all complaints, suits and controversies to which the city is a party, or to which it is in the city's interests to become a party, before any court or other tribunal. The approval of the city commission shall be sought before filing suit, except where immediate action is warranted, in which case the city attorney, with the approval of the city manager, may act in the best interests of the city, and will notify the city commission.**
- (4) To file amicus curiae briefs or intervene in actions already pending on behalf of the city where the city attorney determines that the city has an interest in such proceedings and where such action is warranted to protect the city's interests.
- (5) To represent or provide for the representation of city officers and employees where required by law or where otherwise appropriate, and where such officers and employees are sued based on actions taken in their official capacities. This authority does not limit any right to indemnification as established elsewhere in the City Code.**
- (6) To settle disputes and sign settlement agreements on behalf of the city consistent with settlement authority as designated by applicable law or by resolution of the city commission unless such authority is provided to the city manager or another city officer under the City Charter, City Code, or Zoning Code.
- (7) To attend and speak at meetings of the city commission or any city board.
- (8) To interpret the City Charter, City Code, and Zoning Code on behalf of the city.**
- (9) To renumber or make corrections to the City Code and Zoning Code where appropriate to address scrivener's and typographical errors, to delete provisions that have been superseded or preempted by applicable law, and to improve the format by moving provisions within and between the Codes.
- (10) To retain, supervise, and remove outside counsel in accordance with the procurement provision of the City Code relating to the authority to contract for legal services.**
- (11) To exercise all other authority granted to the city attorney in the City Charter, City Code, and Zoning Code.

Section 2-702 The City Attorney serves as the final authority with regard to legal issues involving interpretation and implementation of these regulations. An action to review any decision of the City Attorney may be taken by any person or persons, jointly or separately, aggrieved by such decision by filing with the Circuit Court in the manner and within the time prescribed by the Florida Rules of Appellate Procedure.