



To: Walter Foeman and Billy Urquia

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

A handwritten signature in black ink, appearing to be "CL", is written over the name "Craig E. Leen".

RE: Legal Opinion Regarding Section 17 1/2 of the City Charter

Date: January 6, 2016

Pursuant to sections 2-201(e)(1), (8), and (9) of the City Code, along with the collective bargaining laws, Municipal Home Rule Powers Act, and the attached City Attorney Opinion, it is my legal opinion on behalf of the City that section 17 1/2 of the City Charter has been superseded and voided in part by applicable law. The section should be stricken in part and corrected as follows:

Sec. 17 1/2 - Authority to provide pension plan.

The Commission of the City of Coral Gables may, by ordinance, provide for a pension plan for the officers and employees of the City. Said ordinance may be amended by the City Commission consistent with applicable law. but no such ordinance, or amendment thereto, shall become effective and operative until it shall have been ratified and approved by a majority of the qualified electors of said city actually voting in a general election, or special election called for that purpose.

Any ordinance adopted by the City Commission of the City of Coral Gables, providing for a pension plan for the officers and employees of said city, and which ordinance after submission to the people by referendum has been ratified and approved by a majority of the qualified electors of said city actually voting thereon, may be amended by an ordinance proposed to the City Commission of the City of Coral Gables by a resolution adopted by a majority of the trustees acting under such ordinance and adopted by ordinance by a majority of four-fifths of the City Commission voting in favor thereof; provided, however, that such amendatory ordinance shall be confined to clarifying of ambiguous phraseology in the ordinance sought to be amended, or to the removal of inconsistencies which may be shown, by practical application of such ordinance to exist, and provided further, that no such ordinance may be adopted without referendum which imposes any substantial liability upon the city.

Please inform the Municipal Code Corporation to strike in part and correct section 17 1/2 of the City Charter as indicated above, and to place a note referencing this opinion.

CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

M E M O R A N D U M

TO: Craig E. Leen, City Attorney

FROM: Miriam S. Ramos, Deputy City Attorney

CC: Yaneris Figueroa, Assistant City Attorney

APPROVED: Craig E. Leen, City Attorney

RE: Opinion Regarding Section 17 ½ of the City Charter

DATE: January 6, 2016

As written, section 17 ½ of the City Charter places several invalid limitations on the power of the City Commission relating to its pension ordinance, such as requiring a referendum of electors to ratify amendments to the pension ordinance as a condition precedent to their enforceability. These limitations violate the rights of municipal employees and the City to bargain collectively. The same is true for requiring active members of the retirement/pension board to ratify such changes. In *City of Miami Beach v. The Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach*, 91 So.3d 237 (Fla. 3d DCA 2012), the Court held that, the statute requiring a referendum by voters to approve or disapprove changes in a special law or municipal charter “with respect to the collective [sic] bargained Pension Agreement in the case is violative of Article I, Section 6 of the Florida Constitution.” See also *General Employees Retirement Committee v. City of North Miami Beach*, 151 So.3d 1271 (Fla. 3d DCA 2014).

In addition, these limitations violate the Municipal Home Rule Powers Act (MHRPA), Ch. 166, F.S., which voids and removes referendum and similar requirements limiting the power of municipal commissions and councils. The City’s practice in amending its pension ordinance has been to follow MHRPA and the collective bargaining laws, and section 17 ½ should be stricken in part and corrected to reflect what is required by law.

Thus, pursuant to Section 2-201(e)(1), (8), and (9) of the City of Coral Gables Code, along with MHRPA and state laws relating to collective bargaining, section 17 ½ is hereby stricken in part and corrected as illustrated below. The Municipal Code Corporation will be notified of this change.

Sec. 17 ½ - Authority to provide pension plan.

The Commission of the City of Coral Gables may, by ordinance, provide for a pension plan for the officers and employees of the City. Said ordinance may be amended by the City Commission consistent with applicable law. ~~but no such ordinance, or amendment thereto, shall become effective and operative until it shall have been ratified and approved by a majority of the qualified electors of said city actually voting in a general election, or special election called for that purpose.~~

~~Any ordinance adopted by the City Commission of the City of Coral Gables, providing for a pension plan for the officers and employees of said city, and which ordinance after submission to the people by referendum has been ratified and approved by a majority of the qualified electors of said city actually voting thereon, may be amended by an ordinance proposed to the City Commission of the City of Coral Gables by a resolution adopted by a majority of the trustees acting under such ordinance and adopted by ordinance by a majority of four-fifths of the City Commission voting in favor thereof; provided, however, that such amendatory ordinance~~

~~shall be confined to clarifying of ambiguous phraseology in the ordinance sought to be amended, or to the removal of inconsistencies which may be shown, by practical application of such ordinance to exist, and provided further, that no such ordinance may be adopted without referendum which imposes any substantial liability upon the city.~~

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: FW: City Attorney Opinion Regarding Section 17 1/2 of the City Charter
Date: Wednesday, January 06, 2016 5:14:26 PM
Attachments: [image001.png](#)
[Opinion Regarding Section 17.5 of the City Charter \[FINAL VERSION\].pdf](#)
Importance: High

Please publish the opinion in the email below and the attachment.

Craig E. Leen, City Attorney

*Board Certified by the Florida Bar in
City, County and Local Government Law*
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Coral Gables, Florida 33134
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Fax: (305) 460-5264
Email: cleen@coralgables.com



Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Wednesday, January 06, 2016 5:14 PM
To: Foeman, Walter; Urquia, Billy
Cc: Ramos, Miriam; Figueroa, Yaneris; Chen, Brigitte; Paulk, Enga
Subject: City Attorney Opinion Regarding Section 17 1/2 of the City Charter
Importance: High

Mr. Clerk,

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~~Any ordinance adopted by the City Commission of the City of Coral Gables, providing for a pension plan for the officers and employees of said city, and which ordinance after submission to the people by referendum has been ratified and approved by a majority of the qualified electors of said city actually voting thereon, may be amended by an ordinance proposed to the City Commission of the City of Coral Gables by a resolution adopted by a majority of the trustees acting under such ordinance and adopted by ordinance by a majority of four-fifths of the City Commission voting in favor thereof; provided, however, that such amendatory ordinance shall be confined to clarifying of ambiguous phraseology in the ordinance sought to be amended, or to the removal of inconsistencies which may be shown, by practical application of such ordinance to exist, and provided further, that no such ordinance may be adopted without referendum which imposes any substantial liability upon the city.~~

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Craig E. Leen, City Attorney

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