To: Walter Foeman

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

RE: Legal Opinion Regarding Ethics Code

Date: June 18, 2015

I have reviewed the Deputy City Attorney's opinion and considered the matter. Pursuant to section 2-201(e)(1), (8), and (9) of the City Code, which authorizes the City Attorney to issue opinions and interpretations, and to delete provisions that have been superseded or preempted by applicable law, I hereby direct that the following language be deleted as preempted:

~~Section 2-242. Applicability~~

~~The requirements of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance shall not be applicable to the City of Coral Gables except as provided in the city's Code of Ethics Ordinance~~.

The provision must be deleted for two reasons. First, it is clearly preempted. As mentioned in the opinion below, Miami-Dade County is authorized to set minimum standards for ethics, and the City may set more restrictive standards. This principle is also supported by Article 6 of the County Charter. Because the language is preempted, I have the authority to direct that it be stricken under section 2-201(e)(9) of the City Code, which establishes that the City Attorney may delete provisions of the City Code or Zoning Code "that have been superseded or preempted by applicable law." Second, this language could mislead an employee into believing that the County ethics code does not apply in Coral Gables, even though it clearly does apply as the minimum standard. Moreover, as a factual matter, the County ethics commission does apply the County ethics code in Coral Gables. As the chief ethics officer for the City, I view it as important that employees understand that the County ethics code applies and is enforceable. This is also consistent with the will of the Commission, which has repeatedly demonstrated its commitment to strict ethical guidelines throughout my tenure as City Attorney. Finally, I would note that the County ethics code permits a City to opt out of the County cone of silence. I would note that the language in section 2-242 is unnecessary for that purpose, as the City has already separately

opted out of the County cone of silence in section 2-1059 of the City Code. Instead, the City provides its own cone of silence with its own provisions and exceptions. This is perfectly permissible.

Please inform the Municipal Code Corporation.

Herbello, Stephanie

From: Leen, Craig
Sent: Thursday, June 18, 2015 11:56 PM
To: Herbello, Stephanie
Cc: Ramos, Miriam; Figueroa, Yaneris; Chen, Brigette
Subject: FW: Opinion on Ethics Code

Importance: High

Please publish.

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
City, County and Local Government Law
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Phone: (305) 460-5218
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Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Thursday, June 18, 2015 11:55 PM
To: Foeman, Walter
Cc: Ramos, Miriam; Figueroa, Yaneris
Subject: RE: Opinion on Ethics Code
Importance: High

Walter.

I have reviewed the Deputy City Attorney's opinion and considered the matter. Pursuant to section 2-201(e)(1), (8), and (9) of the City Code, which authorizes the City Attorney to issue opinions and interpretations, and to delete provisions that have been superseded or preempted by applicable law, I hereby direct that the following language be deleted as preempted:

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CORAL GABLES

Celebrating 90 years of a dream realized.

From: Ramos, Miriam
Sent: Monday, March 30, 2015 3:36 PM
To: Leen, Craig
Cc: Figueroa, Yaneris
Subject: Opinion on Ethics Code

Craig,

I have made the change we discussed. Let me know if you would like me to do anything further.

Sec. 2-242 of the City of Coral Gables' Code of Ordinances (the Code) states, "[t]he requirements of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance shall not be applicable to the City of Coral Gables except as provided in the city's Code of Ethics Ordinance." This section of the Code should be stricken as it violates the doctrine of

preemption, in that the Board of County Commissioners (BCC), as the County's legislative body, has adopted an ordinance intended to regulate ethics among local government officials thereby removing municipal legislative control over that area.

Furthermore, when reading pertinent sections of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance (the Ordinance) in tandem, it is evident that the legislative intent was for the Ordinance to apply to all municipalities within the boundaries of Miami-Dade County. The Ordinance, "shall be applicable to all County personnel as defined herein, and shall also constitute a ***minimum standard*** of ethical conduct and behavior for all municipal officials and officers." (Sec. 2-11.1(a)). The ***minimum standard*** language points to the fact that the intent was for municipalities to be covered and bound by the terms of the Ordinance. Also, in Sec. 2-11.1(t)(4), *Cone of Silence*, the Ordinance explicitly states that the requirements of that section "shall not apply to any municipality in Miami-Dade County that has adopted an ordinance providing that the Cone of Silence shall not apply to that municipality." No other section of the Ordinance contains this language, further bolstering the conclusion that municipalities are not permitted to opt out or to adopt less stringent ethical provisions that those established by the BCC in the Ordinance.

This opinion is issued pursuant to the authority granted to the City Attorney's Office to delete provisions that have been superseded or preempted by applicable law the City Code (Sec. 2-201(e)(9), City of Coral Gables' Code of Ordinances).

Miriam S. Ramos, Esq.
Deputy City Attorney
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