

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #19-002

TO: Commissioner Manolo Reyes, District 4
FROM: Victoria Méndez, City Attorney
DATE: December 24, 2019
RE: Veto authority of the Mayor

You have requested a legal opinion on the following question:

Whether the Mayor of the City of Miami ("Mayor") has the authority to veto a directive of the City of Miami Commission.¹

For the reasons set forth below, your question is answered in the negative.

Pursuant to Section 4(g)(5) of the Charter of the City of Miami, Florida, as amended ("City Charter"), the Mayor has veto authority only over "any legislative, quasi-judicial, zoning, master plan or land use decision of the city commission, including the budget or any particular component contained therein which was approved by the city commission." "Executive" or "administrative" decisions which may arise from the ministerial functions of the governing body, including City Commission directives, are not included in the list of decisions which are subject to veto by the Mayor. Hence, the Mayor may not veto "executive" or "administrative" decisions or directives of the City Commission.

ANALYSIS

I. THE CITY COMMISSION'S AUTHORITY.

"Generally, the functions of a municipal legislative body fall into the following categories: legislative, administrative, fiscal, investigative, and judicial or quasi-judicial." McQuillan, *Municipal Corporations*, 13.3 (3d Ed. Rev.).

The City Commission is the Governing Body of the City. See Section 4(a), City Charter. Section 4(a) of the City Charter states: "The city commission shall constitute the governing body with powers (as hereinafter provided) to pass ordinances[,] adopt regulations and exercise all powers conferred upon the city except as hereinafter provided." Pursuant to this broad

¹ The City Commission directive that is the subject of this discussion was a direction from the City Commission to the Independent Auditor General to investigate certain accusations presented at the December 12, 2019 City Commission meeting. It should be noted that Section 48 of the City Charter empowers any single member of the City Commission to assign duties to the Independent Auditor General without the necessity of City Commission action.

authority, the City Commission's powers include, but are not limited to, the adoption of ordinances and resolutions.

Under Florida law, an "ordinance" is defined as "an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law." § 166.041(1)(a), Fla. Stat. (2019).

Unlike an ordinance which is legislative, a "resolution" is defined as "an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body." § 166.041(1)(b), Fla. Stat. (2019). Under the foregoing definition, the governing body does not necessarily take "legislative" action by adoption of a resolution.

In determining what may constitute a legislative and what an administrative matter or measure, the cases state that if the measure proposed relates to a subject of permanent and general character it will be regarded as legislative, while if the measure is with respect to a subject of temporary and special character it will be regarded as administrative. See *McQuillin*, *Municipal Corporations*, 3rd Ed. pp. 253, 254, Sec. 16.55 and cases cited.

Barnes v. City of Miami, 47 So. 2d 3, 5 (Fla. 1950).

The distinction between "legislative" action and "non-legislative" action was further explained by the United States Court of Appeals for the Eleventh Circuit, *en banc*, in McKinney v. Pate, 20 F.3d 1550 (11th Cir. 1994):

Executive acts characteristically apply to a limited number of persons (and often to only one person); executive acts typically arise from the ministerial or administrative activities of members of the executive branch. The most common examples are employment terminations[.] ... Legislative acts, on the other hand, generally apply to a larger segment of—if not all of—society; laws and broad-ranging executive regulations are the most common examples.

Id. at 1557, n. 9 (the Board of County Commissioners was acting in a "non-legislative" capacity in terminating its Building Official after a three (3) day hearing). See also De Groot v. Sheffield, 95 So. 2d 912, 915 (Fla. 1957) ("[W]here one holds office at the pleasure of the appointing power and the power of appointment is coupled with the power of removal contingent only on the exercise of personal judgment by the appointing authority, then the decision to remove or dismiss is purely executive and not subject to judicial review.").

Accordingly, in certain circumstances such as in appointments, terminations, and directives, the City Commission acts in a non-legislative capacity, which may arise from the

executive or administrative functions of the governing body. See, e.g., Board of Public Instruction v. McQuiston, 233 So. 2d 168 (Fla. 3d DCA 1970) (action of Board is discharging a non-instructional employee not protected by classified service was executive; see also Gershman v. Florida Ethics Commission, 127 So. 3d 686 (Fla. 4th DCA 2013) (Commission's dismissal of complaint was quasi-executive decision); Fisher Island Holdings, LLC v. Miami-Dade County Commission on Ethics and Public Trust, 748 So. 381 (Fla. 3d DCA 2000) (Commission's dismissal of ethics complaint was quasi-executive action); Tenney v. State Commission on Ethics, 395 So. 2d 1244 (Fla. 2d DCA 1981) (dismissal of complaint was quasi-executive decision).

II. THE MAYOR'S VETO AUTHORITY.

The Mayor's veto authority is provided in Section 4(g)(5) of the City Charter, which states:

(5) The mayor shall, within ten days of final adoption by the city commission, have veto authority over any legislative, quasi-judicial, zoning, master plan or land use decision of the city commission, including the budget or any particular component contained therein which was approved by the city commission....

(Emphasis added.)

Section 2-36 of the Code of the City of Miami, Florida, as amended ("City Code") also addresses the mayoral veto as follows:

(1) Each ordinance and resolution adopted by the Commission shall contain a place for noting mayor approval or veto, and commission override, if applicable.

(Emphasis added.)

Based on the plain language of City Charter, the Mayor's veto authority specifically extends only to any:

- 1) legislative,
- 2) quasi-judicial,
- 3) zoning,
- 4) master plan or
- 5) land use decision of the city commission,
- 6) including the budget or any particular component contained therein.

Applying the rule of statutory interpretation *expressio unius est exclusio alterius* – the express mention of one thing implies the exclusion of another – this itemized list of decisions which may be vetoed implies the exclusion of any other decisions from mayoral veto. See, e.g., Schoeff v. R.J. Reynolds Tobacco Co., 232 So. 3d 294, 304 (Fla. 2017) ("Under the canon of

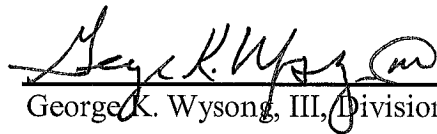
construction *expressio unius est exclusio alterius*, we conclude that the Legislature purposefully excluded items not included in a list.”). The language of Section 2-36 of the City Code which requires “a place for noting mayor approval or veto, and commission override, if applicable” (emphasis added) further establishes that not all decisions are subject to veto. Accordingly, the Mayor's veto authority does not extend to decisions of the City Commission which are not included in the above list, including “executive” or “administrative” decisions and directives of the governing body.

CONCLUSION

Executive and administrative decisions, including directives, issued by the City Commission may not be vetoed by the Mayor.

PREPARED BY:

REVIEWED BY:



George K. Wyson, III, Division Chief



Barnaby L. Min, Deputy City Attorney

cc: Honorable Mayor and Members of the City Commission
Emilio T. Gonzalez, Ph.D., City Manager
Todd B. Hannon, City Clerk
Theodore Guba, Independent Auditor General