CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #15-001

TO: Honorable Mayor Tomás Regalado and Members of the City Commission

FROM: Victoria Méndez, City Attorney

DATE: November 9, 2015

RE: Requirement for a Runoff Election

You have asked for a legal opinion related to the requirement in the City Charter that a runoff election be held where no candidate for the office of city commissioner receives a majority of votes in the general municipal election for that office. As explained below, in the event that no candidate receives a majority of votes at the general election, the plain language of the Charter requires the City to hold a runoff election.

ANALYSIS

In order to be elected to the Office of Mayor or City Commissioner at the general municipal election, the City Charter requires that a candidate receive a majority of votes cast in the election. Section 4(b) of the Charter states, in part:

> If a candidate for Office of Mayor or City Commissioner receives a majority of votes in the general municipal election for that office, the candidate shall be considered elected upon and after the canvass of the vote and the declaration of the result of the election as provided.

However, if no candidate receives a majority of the votes, a runoff election is mandated by the Charter. Section 4(b) states, in part:

> If no candidate receives a majority of the votes for that office, the two candidates for the respective office who received the greatest number of votes for that office in the general municipal election shall be placed on the ballot at the runoff election. The candidate receiving the greatest number of votes in the runoff election, shall be considered elected to the office for which the candidate has qualified.

Resolution of the issues presented begins by examining the language of the Charter. The Charter requires a "majority vote" in order to be elected at the general municipal election. In the absence of a majority of votes for a candidate, the Charter requires a runoff election. The Charter states that "the two candidates for the [office of city commissioner] who received the greatest number of votes for that office in the general municipal election shall be placed on the

ballot at the runoff election." City Charter, Section 4(b). By using the term "shall," the Charter imposes a mandatory requirement that the two candidates who received the greatest number of votes in the general election be placed on the runoff ballot, and that a runoff election be held. See, City Code, Section 1-2 (stating that "[t]he term 'shall' is mandatory"); Ordinance No. 13509.

Neither the Charter nor the City Code addresses a candidate's withdrawal following a general municipal election, but prior to the runoff election. Section 16-8 of the City Code specifically addresses the situation where there is only one candidate at the close of the qualifying period for the general municipal election. In that situation, no election would be required. However, because this provision is only applicable to general elections, and there are no similar Code provisions to runoff elections, it would violate long-standing principles of statutory construction to interpret Section 16-8 as applying for runoff elections. State v. Hearns, 961 So. 2d 211, 219 (Fla. 2007) ("Under the canon of statutory construction expression unius *est exclusio alterius,* the mention of one thing implies the exclusion of another.").

There is no other provision in the Charter or the City Code which would provide authority to cancel a runoff election when the opposing candidate has withdrawn. [1] Because there is no other applicable authority, our analysis is constrained by the plain language of the Charter. See e.g., Lee County Elec. Coop., Inc. v. Jacobs, 820 So. 2d 297, 303 (Fla. 2002) ("When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent.... Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent.").

Because the Charter provides a specific mandate for runoff elections, it must be followed. There are no other Florida statutes, cases, or Florida Department of State, Division of Elections opinions that supplant the plain language of the Charter.[2] From a practical standpoint, it may

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[1] Moreover, because there is no mechanism in the Charter or City Code provision, as to a candidate's withdrawal, we do not believe that the City Clerk has the power to accept a withdrawal at this stage of the electoral process. Section 101.151(7), Florida Statutes, provides: "Except for justices or judges seeking retention the names of unopposed candidates shall not appear on the general election ballot. Each unopposed candidate shall be deemed to have voted for himself or herself." Section 101.151(7) does not control this analysis to override the Charter because it applies to general elections, not runoff elections.

Furthermore, section 100.3605(1), Florida Statutes, provides: "The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities." Because the Florida Election Code does not contain a municipal runoff provision, there is no conflict between state law and the Charter.

[2] The most comparable statute may have been Section 101.253, which governed instances in which a candidate's name would not be printed on an election ballot:

> No candidate's name, which candidate is required to qualify with the Department of State for any primary or general election, shall be printed on the ballot if such candidate has notified the Department of State in writing, under oath, on or before the 42nd day before the election that the candidate will not accept the nomination or office for which he or she filed qualification papers. The Department of State may in its discretion allow such a candidate to withdraw after the 42nd day before an election upon receipt of a written notice, sworn to under oath, that the candidate will not accept the nomination or office for which he or she qualified.

In Florida Dept. of State, Division of Elections v. Martin, 916 So. 2d 763 (Fla. 2005), the Department of Elections denied a candidate's attempt to withdraw forty days before a general election and kept his name on the ballot. The Florida Supreme Court held that Section 101.253(2) ***was an unconstitutional violation of the separation of powers*** under Article II, Section 3 of the Florida Constitution because the Legislature impermissibly delegated to the executive branch absolute, unfettered discretion to determine whether to grant or deny a candidate's request to withdraw after the forty-second day before an election. Section 101.253(2) has since been repealed.

seem expensive and unnecessary to hold a runoff election where a candidate withdraws leaving no opposition. The Charter should not be read in such a manner. State v. Goode, 830 So. 2d 817, 824 (Fla. 2002) ("[A] basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless.").

Nevertheless, the citizens of the City of Miami in 1957 adopted the language in Section 4(b) of the Charter requiring that candidates be elected by a majority vote and mandating a runoff election where no candidate receives that required majority vote. The plain and unambiguous language of the Charter reflects the intent of those who adopted it. Florida case law obligates the City to carry out the intent of the voters as expressed in the Charter. See e.g., Dade County Classroom Teachers Ass'n, Inc. v. The Legislature of the State of Florida, 269 So. 2d 684, 686 (Fla. 1972). A contrary interpretation in the face of clear language would effectively provide a substitute for the intent of the voters which is disallowed.

The only statute that the City could have relied on for stopping the election has been repealed.

PREPARED BY:

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REVIEWED BY:

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cc: Daniel J. Alfonso, City Manager
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VM/JAG/FLA FLA