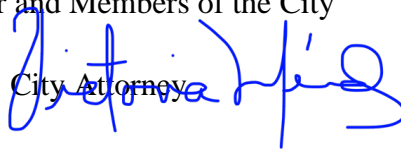


**CITY OF MIAMI**  
**OFFICE OF THE CITY ATTORNEY**  
**LEGAL OPINION - #21-001**

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**TO:** Honorable Mayor and Members of the City Commission  
**FROM:** Victoria Méndez, City Attorney   
**DATE:** March 30, 2021  
**RE:** City Commission investigation of the Omni CRA, its employees, and activities

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You have requested a Legal Opinion on the following question:

Whether, pursuant to Section 14 of the Charter of the City of Miami, Florida, as amended (“City Charter”), the City Commission can investigate the Omni Redevelopment District Community Redevelopment Agency (“Omni CRA”), including its employees and its activities?

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

Pursuant to Section 14 of the City Charter, the City Commission “may investigate the financial transactions of any office or department of the city government and the official acts and conduct of any City Official, and by similar investigations may secure information upon any matter.” The question then becomes, whether the Omni CRA is an “office or department of the City government?” The Omni CRA was created pursuant to Chapter 163, Florida Statutes. Section 163.356(1), Florida Statutes, allows a county or municipality to create a “public body corporate and politic to be known as a Community Redevelopment Agency.” Section 163.356(1), Florida Statutes, further provides that “each agency shall be constituted as a public instrumentality.” The City Commission serves as the governing body of the Omni CRA<sup>1</sup>. According to 163.357(1)(b), Florida Statutes, “the members of the governing body shall be the members of the agency, but *such members constitute the head of a legal entity, separate, distinct, and independent from the governing body.*” (Emphasis added). Accordingly, the Omni CRA is not an office or department of the City of Miami (“City”) and the investigative authority vested in the City Commission pursuant to Section 14 of the City Charter does not extend to the Omni CRA, as it is a “public body” separate, distinct, and independent from the City’s government.

**ANALYSIS**

The City Commission is the governing body of the City. See Section 4(a) of the City Charter. Section 4(a) of the City Charter states that “The City Commission shall constitute the governing body with powers (as hereinafter provided) to pass ordinances[,], adopt regulations and

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<sup>1</sup> Miami-Dade County Ordinance No. 87-47 designated the City Commission as the governing body of the Omni CRA pursuant to the provisions outlined in Section 163.357, Florida Statutes.

exercise all powers conferred upon the City except as hereinafter provided.”<sup>2</sup> As the governing body of the City, Section 14 of the City Charter authorizes the City Commission to:

investigate the financial transactions of any office or department of the city government and the official acts and conduct of any city official, and by similar investigations may secure information upon any matter. In conducting such investigations..., the city commission..., may require the attendance of witnesses and the production of books, papers and other evidence, and for that purpose may issue subpoenas which shall be signed by the presiding officer of the city commission..., which may be served and executed by any police officer.

With this broad authority, the City Commission’s powers include the ability to investigate financial transactions of any Office or Department of the City’s government and the official acts and conduct of City officials. See Section 14 of the City Charter. However, the City Charter is also clear as to whom and what can be investigated. Specifically, Section 14 of the City Charter limits the City Commission’s authority to investigate any office or department of the City’s government and City officials. Because the Omni CRA is a separate, distinct, and independent public body and not a City office or department, Section 14 of the City Charter does not give the City Commission the ability to investigate the Omni CRA.

“The paramount law of a municipality is its charter, which gives the municipality all the powers it possesses.” McQuillan, *Municipal Corporations*, 9.1 (3d Ed. Rev.). Municipal corporations, including the City Commission, have no powers except those expressly conferred, or which are necessary to the exercise of those expressly given, and to enable it to accomplish the purpose of its creation. Id. Similarly, cases on this issue have determined that municipal officials can only act in accordance with an express grant in their charter and not any implied grant of power. See Barry v. Garcia, 573 So. 2d 932, 939 (Fla. 3d DCA 1991) citing Tampa v. Easton, 198 So. 753 (Fla. 1940). Furthermore, when applying the rule of statutory interpretation *expressio unius est exclusio alterius* – the express mention of one thing implies the exclusion of another – the failure to include independent agencies or separate public bodies implies the lack of intent for the City Commission to investigate such agencies. See, e.g., State v. Miller, 227 So. 3d 562, 564 (Fla. 2017) (“Where the Legislature enumerates items to the exclusion of others, the canon of construction *expressio unius est exclusio alterius* encourages the interpretation that the Legislature purposefully excluded items not mentioned”). Using this analysis of statutory construction, Section 48(c)(1) of the City Charter states that the City’s Independent Auditor General (“IAG”) is granted the express authority to examine, among other things, audits of “city government, officials, and *independent agencies*, with reports submitted to the City Commission as deemed necessary by the IAG.” (Emphasis added). Similar language with respect to independent agencies is not included in Section 14 of the City Charter concerning the City Commission’s ability to conduct

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<sup>2</sup> “Generally, the functions of a municipal legislative body fall into the categories: legislative, administrative, fiscal, investigative, and judicial or quasi-judicial.” McQuillan, *Municipal Corporations* 13.3 (3d Ed. Rev.).

investigations. If the intent of Section 14 of the City Charter was to extend the City Commission's investigative authority to any other agency or public body including but not limited to Community Redevelopment Agencies, it would have been expressly provided for in the City Charter.

### CONCLUSION

Pursuant to a plain reading of Section 14 of the City Charter and applicable law, the City Commission is not authorized to investigate the Omni CRA, its employees, and its activities. The authority of the City Commission to investigate does not extend to separate, distinct, independent public bodies.<sup>3</sup>

PREPARED BY:

REVIEWED BY:

/s/ George K. Wysong III

George K. Wysong, III, Division Chief

Barnaby L. Min

Barnaby L. Min, Deputy City Attorney

cc: Arthur Noreiga V, City Manager

VM/BLM/DG/GKW

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<sup>3</sup> This memorandum is limited to the City Commission's authority to investigate pursuant to Section 14 of the City Charter. While the City Commission cannot investigate the Omni CRA under any apparent or implied authority pursuant to Section 14 of the City Charter, this memorandum does not analyze the governing body of the Omni CRA's authority to conduct any investigations pursuant to Chapter 163, Florida Statutes, or any other basis in law.