

**City of Coral Gables City Commission Meeting**  
**Non-Agenda Item**  
**May 9, 2017**  
**City Commission Chambers**  
**405 Biltmore Way, Coral Gables, FL**

**City Commission**

**Mayor Raul Valdes-Fauli**  
**Vice Mayor Pat Keon**  
**Commissioner Vince Lago**  
**Commissioner Michael Mena**  
**Commissioner Frank Quesada**

**City Staff**

**City Manager, Cathy Swanson-Rivenbark**  
**City Attorney, Craig E. Leen**  
**City Clerk, Walter J. Foeman**  
**Deputy City Clerk, Billy Urquia**  
**Public Safety Director, Frank Fernandez**

**Public Speaker(s)**

---

Non-Agenda Item  
[Start: 12:27:04]

Mayor Valdes-Fauli: The hiring of the audit company, you mentioned to me, is that going to come up before us or is that...

City Manager Swanson-Rivenbark: We have already through a competitive Request for Proposal process, involving the Budget and Audit Advisory Board; they sat actually as the Evaluation Committee and helped us develop a scope. We did hire an internal auditor, an external/internal auditor, Crowe Horwath, which is a national expert that also has local expertise. They have an audit plan, we reviewed that plan with the Budget and Audit Advisory Board, they contributed to fine tuning that with a commitment that we have to the Commission on regular reporting, because that was an important piece of the Commission, not only are we advising the Budget and Audit Advisory Board, but we are also advising you.

Mayor Valdes-Fauli: We are aware of the check cashing, whatever it was, the Commission was aware.

City Manager Swanson-Rivenbark: We utilize them as part of that, but if you'd like we can have the Assistant City Manager, Director of Public Safety speak briefly about that item.

Mayor Valdes-Fauli: Would you, so we are aware of it – it's a Miami Beach type of thing.

City Manager Swanson-Rivenbark: Director Fernandez will you speak on the issue that, I know that Commissioner Quesada had also asked about that, would you speak on the issue that – I received a call from an outside group and then we immediately alerted and involved Internal Affairs through the Director of Public Safety.

Commissioner Quesada: Just real quick, thank you Mr. Mayor for bringing this up, just real quick before you start. It was kind of tough for me to follow exactly what the issue was, but if you could just frame the issue and just start from the beginning and walk us through factually.

Director Fernandez: Sure.

Commissioner Quesada: Thank you.

Director Fernandez: Good afternoon Mr. Mayor, Vice Mayor, members of the Commission, thank you very much for the opportunity. So this is an interesting situation where it pre-dates the City Manager and the Director of Finance and Budget Departments. This complaint came by way of the City Manager for a check that was supposed to be deposited for the payment of an alarm service or a City service was not registered in the individual's bank, in that person's bank. That led to an Internal Affairs investigation which revealed that an employee in the Finance Department, a clerk, had manipulated the system. I think the best way to frame it, Commissioner, what you are saying is that this is where technology met the opportunist. So the technology gap that we found was that this employee would take this information, manipulate it, and then cash these checks via an online service; and nonetheless we conducted a thorough investigation, went back five years, revealed that the individual had been doing this for quite some time, in excess of three years, the amount is in excess of \$78,000 that this employee manipulated. We do have insurance to cover those costs, but we also are going to seek through the Law Department reimbursement from that individual's part of a court settlement, or part of the restitution process with the criminal justice system. As part of our investigation that employee has subsequently

been arrested grand theft and scheme to defraud and is facing criminal prosecution at this time. Nonetheless the employee before our arrest opted to resign abruptly, and that was the inception of our investigation. Since then, we have met with the Finance Department since our arrest, and we were able to reveal and process this whole situation to identify process improvements within the Finance Department. So we did identify that again, the employee utilized an online app to cash these checks. We also identified that online app on the iPhone had a vulnerability point that the bank probably has not identified, in which it doesn't recognize the person they are paying the account to. In this case, all these checks came via the City Hall here, the process inside of the Finance Budget Department and in that process the employee would manipulate the system and check it in the system as being paid and then deposit the check via an online system into her own account. Subsequently, we have revised our systems to the Finance Director; again these are systems that have been in place for a long time without any gaps that we could identify. It wasn't until technology met the opportunity that this surfaced. So since then they have separated responsibilities, provided a buffer between the receiving and the actual online acknowledgement of payment where the two parties do not connect, and so we have a validation process in place. Additionally, we have the external/internal auditor services that will be conducting a process review to identify gaps in oversight and the lack of oversight for those processes and they'll be reporting to us. So we have the total measures that are in place and we have external measures in place as well to identify process improvements or gaps in that process. In addition to that, the Manager has instituted an oversight strategy to make sure that not just in that department, but in other departments as well that we are looking for integrity gaps or opportunities for employees unethically manipulate the system for their own personal gain and for manipulation of tax dollars. So that process again, is an internal process that we will undertake in the next couple of months.

Commissioner Quesada: So this employee found that these thefts or manipulation occurred over a three-year time period?

Director Fernandez: That's correct.

Commissioner Quesada: And how long had that employee had access to that information or that data?

Director Fernandez: Well this employee has been employed for just about ten years, so she is vested. I will not mention the name because it's in process, so we'll leave the name out of it; nonetheless she is a vested employee. We will be looking at our internal and external options to identify what the City can recoup, as well as the option in terms of the pension for that individual.

Commissioner Quesada: You mentioned the moment you uncovered the manipulation you made an arrest, correct?

Director Fernandez: The arrest took some time, because it's an internal investigation, it required us to go back and obtain subpoenas for the cases on the bank statements for that individual.

Commissioner Quesada: Because the scheme was somewhat complex.

Director Fernandez: It is a very complex scheme. It is an online app that our phones have where you could deposit checks via photograph.

Commissioner Quesada: Yes, I've seen them. How confident are we that we've identified all the instances where money could have been manipulated?

Director Fernandez: To the best of the investigator's ability going back and all the subpoenas that she was able to obtain, actually, I believe she did a great job of going back as far as we can to surface any additional co-conspirators or additional flaws in the system. So I'm confident that we've gone back a sufficient amount of time. But keep in mind that this employee was here for ten years. Full transparency as always for additional complications with this particular employee, she's been employed for ten years, she was an employee here, she had a previous criminal history for schemes to defraud, I'm sorry not schemes to defraud, but fraud and forgery. So that brings up an additional question of background checks, and we've talked about this before about background checks and individual, and it's been quite a controversial conversation, but this among other situations that have occurred in the City continue to highlight the importance of background checks and properly vetting now individuals. Again, I do want to note that this does pre-date the Finance Director's tenure with the City as well as the City Manager. This is a pre-existing chronic problem that we have addressed.

Commissioner Quesada: You said the manipulations occurred prior to their...

Director Fernandez: The manipulations to the best of my understanding is that they occurred prior to the...

Commissioner Quesada: Tenure.

Director Fernandez: Yes.

City Manager Swanson-Rivenbark: One of the reasons why we asked you on C-4 to extend and expand our background checks. When we went back into the file for this employee and saw the hire paperwork, there was no background check done, so we have changed our processes through this. We had changed how we are handling cash, checks transactions just as a validation, but we've also changed our process as it relates to backgrounds, and so that's why we needed to place C-4, the background contract authorization.

Mayor Valdes-Fauli: Thank you, thank you very much.

Commissioner Lago: Mayor just a quick question for the City Attorney. Understand that this employee is vested and she's been with the City for ten years, what are our options in regards to her pension if she is found guilty of committing these crimes.

City Attorney Leen: Well her pension can be removed.

Commissioner Lago: Will that have to be done...

Director Fernandez: Let me answer that question, I can answer it. So our Labor Relations Director is on top of this in terms of working with following the prosecution, and once that is properly vetted, out then the appropriate measure will be taken with the Pension Board to seek that option for the City.

City Attorney Leen: And just remember when the Pension Board acts and for some reason the Pension Board did not do that, you have the power under our Code to review it, so it would be brought to you.

Commissioner Lago: I want to make sure my colleagues are aware...

Commissioner Quesada: I'm sorry. Can we make sure that the Justice Advocate Program and Izzy's office and former prosecutors and former judges, I want to analyze the information or the indictment, whatever was used by the State Attorney, I'm assuming it's the State Attorney's Office.

Director Fernandez: Yes – State.

Commissioner Quesada: So I would like him to work with the Prosecution to make sure that everything is buttoned up nicely.

Director Fernandez: I've already spoken to him and he's on top of that case and that's been done already.

City Attorney Leen: I've asked them to be involved to seek the full restitution and even to look at maybe treble damages through a civil theft or...

Commissioner Quesada: But that would be a civil proceeding that would occur subsequent to the criminal.

City Attorney Leen: We are hoping to get the restitution through the criminal proceeding.

Commissioner Mena: Are we evaluating potentially legal action against the app or whatever this company is that allowed this person to cash checks that were not made out?

Director Fernandez: That's a process through our Law Department to seek restitution for; we believe the bank does have some liability there.

City Attorney Leen: We have not looked at that.

City Manager Swanson-Rivenbark: It's not the app; it's the bank that we are going after.

Commissioner Quesada: Absolutely – there is absolutely cause of action here.

City Attorney Leen: We have addressed it with the bank; we have not looked into the app.

Director Fernandez: I would like to add also that in terms of processes in Finance, and again, I'm only repeating what I understand about the process, we've walked it through, like to visualize

and see how we can improve processes that we do have again, the external/internal auditor to right process improvements as needed, but the Finance Director has already initiated steps to ensure that we have that separation. The checks that come in today go through a service called Lock Box, the other checks that people don't send to Lock Box for whatever reason, they just send them to the address at City Hall, those are the ones that are processed through the system, at this point they are separated, so that one reconciles the other and there is a supervisor that checks to ensure that that's done properly.

Commissioner Quesada: I'm curious. The funds that were manipulated, were those coming from – what was the source of those funds?- was it a resident paying for a bill?- what was the situation?

Director Fernandez: It's a variety, but the vast majority is individuals or residents or businesses paying for permits,

Commissioner Quesada: Can we make sure that those residents – If I sent in \$25 to pay for a licensing fee or permitting fee and all of a sudden this person manipulates that data, does it show...

City Manager Swanson-Rivenbark: It shows you have paid.

Commissioner Quesada: Its shows that I've paid.

Director Fernandez: Yes, it does show you paid, that's part of the scheme.

Commissioner Quesada: So how would the accounts balance?

Director Fernandez: Again the system worked for years and years and years, so Diana can answer that question.

Finance Director Gomez: Diana Gomez, Finance Director...

Commissioner Quesada: Is that a bad question?

City Manager Swanson-Rivenbark: None of this is a bad question.

Commissioner Quesada: I'm just curious

City Manager Swanson-Rivenbark: We approached this very holistically to prevent this from happening again.

Finance Director Gomez: So I just want to clarify. They did mark it as paid; they adjusted the account to a zero balance, so the individual would never receive another bill, the City never believed we received that money that, that account was adjusted to zero for whatever reason, and so the deposit was never made.

City Manager Swanson-Rivenbark: But it's also why we have our external/internal auditors now helping through this process as a double-check, not only in the Finance Department, but anywhere where money is received in any department.

Commissioner Lago: If I could just ask one question Mr. Fernandez, when did this happen? When did you get wind of this? Because I found out about this yesterday.

Director Fernandez: This occurred several months ago, it's a protracted investigation. It came to light as a result of a phone call the Manager received, we immediately jumped on it, we followed through, identified it as an internal affairs investigation. At that point, as you know, it becomes confidential, we don't disclose that and we proceed forward. It is complex in the sense that you have to obtain subpoenas from these banks; there is an enormous amount of data and bank accounts that have to be processed by the investigator that takes a long time.

Mayor Valdes-Fauli: I agree with everything you've said. It's the right thing to say, but really the Commission should be aware of these things, so we are not blindsided and we get a call from the Herald or from somebody saying, we didn't know about this, and it would be extremely embarrassing for us to say we don't know anything. It has to come before us.

City Manager Swanson-Rivenbark: I understand sir. In the future when an employee is arrested we will develop a new protocol in terms of notification, but in the middle of an internal affairs investigation we cannot do that, but I believe is it at the point of arrest that we could, that I can notify the Commission in the future?



Director Fernandez: Yes.

City Manager Swanson-Rivenbark: I will develop a process, I'm sorry.

City Attorney Leen: The law is pretty clear on this, there is an Attorney General opinion, is my understanding on this, you can alert the Commission at any time, but the Commission and I have to be very clear about this, you cannot disclose it, anyone, its confidential, and sometimes I guess – but there is an AGO directly on this issue.

Commissioner Lago: And this is the only comment that I'm going to make about this and I want to be very clear. When you talk about complexity, its fine, I deal with complex issues every day, he deals with complex litigation every day, it's not a problem. I understand I can understand complex things. As a matter of fact, we passed one of the most complex legislation that any other City has passed in the last four years here, we've been trail-blazers, OK, but what really bothers me and there are two issues; number one, I don't like to be blindsided by any individual or by any media outlet in reference to information that I don't have. So when they ask me, are you aware of what's going on?- my response was, with true candor I'm not aware. It makes me look foolish. It makes me look like I don't know what I'm talking about; and the second thing that bothers me is when my colleagues know and I don't know.

Vice Mayor Keon: Were you asked by the media about this?

Commissioner Lago: Yes, I was. But hold on, my point is that if you are and I'm not talking to you, I'm talking about the staff as-a-whole, if we are going to tell certain Commissioners when we don't tell all the Commissioners, because I don't remember receiving this information and I'm pretty diligent about reading my e-mails and responding to everybody and getting back. It just takes a simple phone call, listen, I really need to speak to you, I know you are busy, I really got to tell you something very quickly because I've already talked to the Vice Mayor, the Commissioner and the Mayor, that's all I'm saying. So it just caught me a little bit off guard. I wasn't prepared and I pride myself on being prepared.

Vice Mayor Keon: I think we do need to – it's important that we know what's going on, but I do think that we need to be very careful about; we need to give them the opportunity to do the

investigation before there is a lot of discussion about it. This is that issue of people are presumed innocent until and actually until they go to court or are prosecuted, but at least until an arrest is made, so I think there probably are....need to know but I do think there are a lot of times a thing that says we have a concern, we are looking into a problem within the Finance Department. When I was told we were looking into an issue within the Finance Department where there are some checks. It was sort of a very vague, very whatever. It is under investigation.

Mayor Valdes-Fauli: Your statement that it should not be made public and whatever, but I want to know frankly, I really want to know as Mayor that there has been a big problem, an \$87,000 problem in the Finance Department...my having to plead ignorance.

Commissioner Lago: And dovetail off your comments, you were provided a courtesy that I wasn't...

Vice Mayor Keon: [Inaudible]

Commissioner Lago: But that was a courtesy that you received several weeks ago that I didn't receive...

Vice Mayor Keon: It was a couple weeks, maybe two.

Commissioner Lago: But the point is that...

City Manager Swanson-Rivenbark: Commissioner, I appreciate that. I take responsibility.

Commissioner Lago: I'm not done yet, give me one second, please, it's a lot of interrupting here. I just ask for common courtesy, that's all I ask for. Treat people with the utmost respect in the City, and I ask them to please treat me with the same respect.

Mayor Valdes-Fauli: We will not interrupt you.

Commissioner Lago: This is a problem and it's a problem for me, because I'm constantly in the City giving everybody the courtesy and every respect that they deserve. I give everybody the credit, say thank you to everybody. I go out of my way to be a gentleman and this is something that bothers me. So if we are going to conduct ourselves and we are not going to do things like

previous administrations and we honor where we came from and where we are today, I ask you to step up our game. As you know, I have the utmost respect for the people on this dais, because I don't walk by any employee in the City I don't say good morning, good afternoon, and look you straight in the eye. So if you are out there and you are not able to give me information, or you are being told by higher-ups to not give information, which a memo was out there and was provided a few weeks ago, let's be clear, and the City Attorney has told us on multiple occasions, you will provide the information. I've never asked any employee in the City to do anything, the direction comes from the City Manager, but if I ask you for something in regards to any information or clarification, you ought to provide it. We here on the Commission have only the best interest of the City at heart and in reference to this matter that Vice Mayor Keon stated, she had a three week head start on me, and I was embarrassed yesterday when I had a media outlet call me in reference to this issue, and I was talking with them about something completely different and they brought this to my attention; and again, if I'm here to serve the City of Coral Gables and the Manager's job is to ensure that every single person here in this office has the same information, because if not, we'll go to a strong Mayor form of government, if that's what we are going to have, we'll take the powers away from the Manager, it's very simple, it's very simple. So I want to be very clear and I don't want to take a step back where we were before because it's very embarrassing. I'm not going to allow anyone of you to embarrass me, because I don't embarrass you in public, let's be clear about that.

Mayor Valdes-Fauli: Thank you Commissioner Lago. Anything else on this issue, I hope not.

Vice Mayor Keon: I think the other piece of this would be the internal auditor is that it is really an operational audit, which we hadn't done before which I'm very happy that we did move to do that; and when the audits are completed and no longer in draft form, but completed, we had also agreed that they would go online and the Finance Department because it's through the Finance Department although it will affect all the other departments that the actual results of the audit will be posted online, so it is available for the public once they are completed.

City Manager Swanson-Rivenbark: In addition to when there have been items identified how we had solved them; and so, in addition to the partners that we have, Budget and Audit Advisory

Board that we will come to you all on a quarterly basis, so that you and the public are well aware of those internal audited findings and how we are addressing them.

Mayor Valdes-Fauli: Thank you very much.

City Manager Swanson-Rivenbark: Very well qualified firms.

Mayor Valdes-Fauli: And Ms. Cruz wanted to say something, very, very brief.

Ms. Cruz: I'm sorry it's not going to be as brief as you would like because I'm embarrassed.

Mayor Valdes-Fauli: I'll cut you off if you go to long.

Ms. Cruz: Let me tell you that we pride ourselves in being transparent; transparent when it's convenient for us to be transparent, because this case has been going on since last fall. The person was arrested in March and all the Commissioners didn't know it was going on. I'm sorry, this case requires, as long as I'm concerned, somebody from the outside to come and follow what has happened. We do have a Police Chief. The Police did an investigation, it went to the Public Safety Director and to the City Manager, and that was it. You all, most of you, because from what I understand somebody knew, were not told. I am sorry; this is not what transparency is about. You did not have to give us the name of the person, but there should have been information that there was an investigation and let me tell you, the information I have is completely different than what you have been presented today. I know how they found out, because I was told how it was found out, and it was nothing – and let me tell you, we are talking about three years, no, recently it was found out, and it was found out by chance, by chance, because somebody wanted to help that person and deposit a check that had already been deposited, or more than one check.

Mayor Valdes-Fauli: Thank you Ms. Cruz.

Ms. Cruz: We need somebody from the outside, maybe an independent person from the beginning to the end, and the first thing that we need to do is make sure that our administration that prides herself on being transparent to be transparent, and not choose who gets to know the information.

Mayor Valdes-Fauli: Thank you Ms. Cruz. I appreciate your comments. Thank you.

[End: 12:51:08 p.m.]