

**City of Coral Gables City Commission Meeting  
Agenda Item G-1  
May 30, 2017  
City Commission Chambers  
405 Biltmore Way, Coral Gables, FL**

**City Commission**

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

**City Staff**

**City Manager, Cathy Swanson-Rivenbark  
Assistant City Manager, Peter Iglesias  
City Attorney, Craig E. Leen  
Deputy City Attorney, Miriam Ramos  
City Clerk, Walter J. Foeman  
Deputy City Clerk, Billy Urquia  
Police Chief, Edward Hudak  
Labor Relations and Risk Management Director, Raquel Elejabarrieta**

**Public Speaker(s)**

**Maria Cruz  
Maria Del Carmen Calzon  
Albert A. A. Cartenuto, III  
Gema Piñón  
Ray Cantillo  
Ed Claughton**

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Agenda Item G-1 [0:00:00 a.m.]

Discussion and/or action by the City Commission under Section 14 of the City Charter regarding Major Terry Molina (including review of any determination by

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Agenda Item G-1 – Discussion and/or action by the City Commission under Section 14 of the City Charter regarding Major Terry Molina (including review of any determination by the City Manager under Section 13 of the City Charter, as well as the recommendation by the Police Chief, as part of any final Commission decision.

the City Manager under Section 13 of the City Charter, as well as the recommendation by the Police Chief, as part of any final Commission decision).  
(Sponsored by Commissioner Lago)

City Attorney Leen: (INAUDIBLE) employment. And basically, what the City Manager decided -- and she's going to discuss this at greater length later -- is to go forward with an agreed separation relating to Major Molina. The terms of that agreed separation are before you in an agreement that's been put into the record. So, -- and each of you were provided that yesterday, as soon as we were able to agree to final terms and get a signature from Major Molina. She has signed the agreement. You will note that it has not been signed by the City as of yet, because under Section 14 of the City Charter, the City Commission has the authority to essentially hire, fire or suspend or reduce in grade, demote someone who is in the service of the City. It generally applies to excluded employees, because collective bargaining agreements limit the rights of the Commission to hire and fire based on state law. But, Major Molina is an excluded employee, so Section 14 does apply. Commissioner Lago asked to put this item on the agenda for a review under Section 14. And so, with that being said, I wanted to note that we do have a couple people in the audience who would like to speak today. Commissioner Lago, obviously, as the sponsor, will speak. City Manager will speak related to Section 13 of the Charter.

Mayor Valdes-Fauli: I'll take it over from there, yes.

City Attorney Leen: But in addition to that, there will be Major...

Mayor Valdes-Fauli: There will be -- and I have them here...

City Attorney Leen: Oh, you have the speaker cards?

Mayor Valdes-Fauli: I have the speaker cards.

City Attorney Leen: And I've also, on your behalf, Mr. Mayor, told Major Molina, Brian Tannebaum, who's her counsel, and Maria Cruz, that each of them will be given equal time basically to present to the Commission during the process.

Mayor Valdes-Fauli: Perfect.

City Attorney Leen: So, with that, I would turn it back to you, sir.

Mayor Valdes-Fauli: Commissioner Lago.

Commissioner Lago: Thank you, Craig. I appreciate it, Mayor. We're going to have a few people speak to today. And, I imagine that Ms. Molina and her attorney will want to also have a moment to clarify exactly what happened on September 28, and what's been going on since that moment. But, what I want to do is I want to make sure we get everybody their due time and their due process here. So, I want to make sure that the Manager has a few moments to explain her recommendation, and then I want to move in the direction of having our Police Chief explain his recommendation, and then we'll open it to the public, and then I'll give just a real simple synopsis of my opinion and my findings. So, -- and then maybe we can have some public discussion...

Mayor Valdes-Fauli: Madam City Manager.

Commissioner Lago: Amongst the Commissioners.

Mayor Valdes-Fauli: Would you like to address the Commission?

City Manager Swanson-Rivenbark: Thank you, Mayor and members of the Commission. My comments relate to a series of actions, some in the past, others, a commitment to move forward, and some represent both. First, a bad action. In September, no one denies that in the

Commission Chambers Major Molina made what was a rude and inappropriate action when she instructed the resident, Mrs. Cruz, to stop texting the Commission. In Major Molina's sworn testimony, now public record, she states that she thought she was witnessing a violation. When she spoke to me as we went to the ribbon cutting -- ribbon cutting for the NSA vehicles. She said, I saw Maria Cruz texting the Commission. And I immediately said to her, it's her right to text the Commission, and I really believe in the direction we're going. No other comments. That was the end, and no comments sense, except for Sunday, when I met with her, and I'll speak exactly why I met with her on this past Sunday -- I'm sorry, the Sunday before last. While some of this could be addressed with training -- Miriam Ramos does an excellent training of you all for public records, Sunshine Law and ethics -- I had required all directors to attend your training for Sunshine, public records and ethics, and the City Attorney's Office also offered, on several occasions, that all directors can invite their individual leaders in their department, or they can hold additional meetings to review what Sunshine and public records law is. Development Services has taken advantage of that twice. Public Works has taken that training once. Economic Development has taken that training. She clearly heard me when I said residents are allowed to text the Commission, yet when we returned back to the Commission chambers, she instructed Mrs. Cruz not -- to stop texting the Commission. Because of this experience, the training will now be mandatory for all supervisors and higher, and a Cliff's Notes version will be presented to all employees. The file that I presented to you reviews my findings in response -- provides a response from Chief Hudak's findings. But also, I wanted to create a very objective and independent review, so I asked the City Attorney -- and he agreed -- to secure outside counsel that could evaluate the entirety of that experience, what happened September 28, and also what the appropriate action would be. So, the first action was a bad action. The next action I chose not to do was what many believed and encouraged me to do and that was the easiest action, and that is defer it to the Commission. And as a professional City Manager, under Section 13 is both my right and my responsibility to manage personnel matters, so I chose not to take that easiest action. I took instead what I believe is the right action, and that is to create the determination myself to conduct the reviews to work with outside counsel. And, outside counsel is here today to speak on the findings and analysis that they submitted. And, Kara Nickel is the

outside counsel with a very good firm. Her partner is not here today, because she's in Ireland, and she spoke on the issue of the First Amendment, the civil rights, because one of the pieces of this was did we violate somebody's civil rights in a city that really values the right for people to speak. And so, that review is also there. And so, I have before you my determination, my determination, which, as I mentioned in my report, as I began -- once I received Chief Hudak's recommendation for termination, I began reviewing the file. I deliberately made no decision as to how I would handle it until I had that information, and also didn't decide how I would handle it until after I received the insight and analysis from the outside counsel. And so, that written -- is also included. It's included -- Chief Hudak's comments are Exhibit 1. Chief -- the outside counsel's is Exhibit 2. And then referenced in Chief Hudak's report was a consistent with past practices for basically leadership in the Police Department, so I asked the City Attorney to ask him exactly, which instance is he referring to, so I could better understand it. And then I also did a -- through the help of Raquel Elejabarrieta, our Director of Labor Relations, I asked her to assemble all discipline actions that we know in the Police Department and what -- how did they - - how were they dispensed. I say that we know, because there are times when things are handled informally that never had an IA that instead was through perhaps verbal counseling without documentation. So, we gave the best list that we could, encumbered not only with that, but also the fact that in a prior contract at some point in time, all IA files, after they were concluded, whether sustained or otherwise, were allowed to be purged. You allowed us in the last contract to -- and the union, to their credit, agreed that now that is no longer the practice. And so, IA files that are sustained will remain in place and they will no longer be purged. And so, working with Raquel, we assembled that list. And so, that became important, because I wanted to make sure not only do I recognize that as a major, majors are going to be placed at a higher standard of performance, but I also know that there is a fairness and applicability that we have to follow. And so, through the -- as I was assembling my decision, the City Attorney came to me and said that...

Mayor Valdes-Fauli: Please...

City Manager Swanson-Rivenbark: They have been...

Mayor Valdes-Fauli: Can you...

City Manager Swanson-Rivenbark: Approached...

Mayor Valdes-Fauli: We are listening to her speaking, please.

City Manager Swanson-Rivenbark: They have been approached by Major Molina's counsel wanting to discuss a separation. And, having reviewed the findings our outside counsel -- I've shared with you those findings. It concludes that the recommended termination -- her actions did not rise to that level. Having listened to and considered the findings of the -- of Abby Corbett, her partner on the issue of whether it's Fourth Amendment, as was quoted in Chief Hudak's paper or First Amendment, then I realized that this is a time for the City to move ahead. So, my requested action -- I talked first about a bad action, then the easiest action, the right action, and now my requested action is for you all actually to do nothing, because if you do nothing, then you uphold my determination, which is to enter into a settlement agreement, an agreement which I've provided you. I give you reasons why. First of all, I am sincerely apologetic to Mrs. Cruz and to the Commission for the incident that happened. We are going to be learning from that, and we are going to be changing our processes, so that that type of outburst does not happen in the future. The settlement allows us to -- the separation -- agreed upon separation allows the City to turn the page. I think that's important, too. I know that you all have been under tremendous pressure from the public and also from internally, and I think it's important that we move forward with the business that is confronting the City. I think it introduces a better training on Sunshine and public records, which clearly was lax, not because of the City Attorney's Office and their offer to do that. I think it also holds the Major accountable for her actions in the form of significant financial penalties, and you all have been asking me throughout the weekend additional information we've been calculating and forwarding to you, so that you'll understand what those significant financial penalties are. Most significantly, that a retirement at this stage

prevents anyone from entering into the DROP, calculated as between \$775,000 and \$850,000, rounded. As important, it also secures mutual releases that protect the City from possible litigation with Major Molina, and I think that's an important consideration that I, as the CEO of the City, has to consider. And so, I'm prepared to review in detail my report. It's a report that I wrote myself, while I was on vacation for my daughter's graduation. I am prepared to have the legal counsel outside answer anything related to Exhibit 2. I can answer on Exhibit 3. It is -- you'll see that on Exhibit 3 -- and as can Raquel Elejabarrieta, who assembled it for me. And you'll see it was important that, at my instruction, I asked that no names be included in the summary of allegations and how they were dispensed, because it's not our intention to embarrass anyone. Those have been dealt with. They are aligned. We can speak to that information that we know that was available without the purging of certain files. But, I will give you one that even though it was not a major -- there was an instance where a major did resign -- or retire. They actually retired, and that was due to a scenario that is described in the back, and the conclusion was that they could retire without incident and further discussion. There was also one, though, that I have to say was particularly significant, and that was a 2007 uniformed police officer who was in his City car on City duty with his canine in the back, and chose to solicit what he thought was a prostitute for \$40. She took the \$40. She went into his City car. They proceeded to drive to a warehouse. They entered into the warehouse, and to his surprise, he was arrested. One year later, after I believe, a week before the predetermination was going to happen, he resigned. He resigned and I asked then, as a 21-year officer, I asked to check even for the financial files. And, because he had not reached rule of 70, he was not able to retire -- he didn't reach it until 2014, yet today, he receives a \$5,000 pension from the City with that kind of cloud. It becomes significant, because I think we are also about fairness. Absolutely, what she did was wrong and I know that if she had to do it over again, she would have done things differently. I know because I met with her the Sunday before I went away, because I wanted to make sure that she was sorry for what had happened. If it was something that was just brushed aside, something that, you know, we didn't really understand the why, then that was important to me. I believe her representation. I find her to be sincere. I have reviewed her files and the performance that she has had over the past 23 years, and there's nothing in that file that would

suggest that she was not telling me the truth and wasn't deeply regretful. And so, my goal is to have the City turn the page and move forward. We have that separation agreement for your consideration. I chose not to sign it, because I recognize the authority that you all have in Section 14. While I have the authority under Section 13 to handle personnel matters, I recognize you have that authority to override that decision, and I respect that authority. I'm here to defend my decision, and I'm here to answer whatever other questions that you have.

Mayor Valdes-Fauli: Thank you, Madam City Manager. In order to state your recommendation, Chief Hudak, if you'd like to come up and state it.

Commissioner Lago: Thank you.

Police Chief Hudak: As is our rules and regulations, the authority that I have is only to make a recommendation to the City Manager. I believe it was provided, along with the response that you all had about taking into the consideration I did from the facts of the Internal Affairs case. Based on, as the Manager touched on, previous practices, as well as consultation with Police Legal on the statutory stuff -- statutory issues that were raised in my memorandum, I make the recommendation to the City Manager, and that's pretty much where my role in the discipline process stops in these type of cases.

Mayor Valdes-Fauli: Thank you. Thank you, Chief. I would like to call, first of all, the attorney for Major Molina. Is it Brian Tannebaum? Yes, sir. And please, you know, state your name, address, and then tell us...

Commissioner Lago: What is time?

Mayor Valdes-Fauli: Your recommendations.

Commissioner Lago: Two minutes or five minutes? What are we...?



Mayor Valdes-Fauli: Ten minutes. No, he'll have ten minutes.

Brian Tannebaum: I won't take ten minutes, I hope.

Commissioner Lago: Take your time.

Mr. Tannebaum: Thank you, Commissioner. Mr. Mayor, Commissioners, my name is Brian Tannebaum. My address is 1 Southeast 3<sup>rd</sup> Avenue, Suite 1400, Miami, 33131. And, I have the honor of representing Major Molina, as I have since the beginning of this process. And, I'm here to talk about two things. I'm here to talk about fairness and reasonableness. No one mistake defines a person. You cause an accident; it doesn't mean we're a bad driver. You bounce a check; it doesn't mean we're financially irresponsible. Officers wrongfully arrest someone; it doesn't make them a bad cop. If they incorrectly jail someone or even mistakenly fire their weapon, we don't fire them. We give our police the highest responsibility to protect and serve us, and when they fall below the standards, we review them in whole. We review their act and their person. We ask them to make split-second judgments, and because of that, when that judgment is wrong, we look at their intent and give them another chance. The City, by this agreement, is losing one of their best. Major Molina has dutifully served and protected this community for almost two and a half decades. She was never accused of being rude to anybody until now, nor has she received a shred of discipline in 23 years. That's exceptional. More importantly, in this situation, she recognized that if she knew then what she knows now, she wouldn't have done anything, and that is even though your City Manager and your very good outside counsel had made no findings of any constitutional violation. Being rude to someone is not something we like, but it's not something that outweighs a 23-year career. Officers are rude to people, it happens. I'm a defense lawyer. I'm friends with police officers, and they're occasionally rude to me. Maybe they had a bad day. Maybe they didn't like a question I asked. Maybe they don't like my client. But, I would never want a high-ranking officer fired for this, nor in my career where I've represented many police officers in Internal Affairs matters would I

ever expect to hear the word termination for these allegations. And that's without acknowledging the stellar career of Major Molina. Her retirement separation agreement is not a great deal for her, as you've already heard. There's no golden parachute. There's no extras. There's no gold watch. There's not even a ceremony, and she's giving up DROP, almost a million dollars, and at a savings of a lot of money to the City and the residents. Terminating her sends a message, and I believe the wrong message to the current officers and future officers. One mistake and you're gone. And, in no professional workplace is that what we expect, especially when we ask these individuals to carry a gun and make split-second decisions. A waiter drops a tray, a lawyer misses a hearing, a doctor operates on the wrong leg, a police officer believes they see a weapon and they fire and kill someone and it was a toy. None of these are career-ending actions. It's not that we tolerate mistakes. It's that we address them fairly and reasonably. Major Molina's conduct throughout this process has been nothing less than professional since the allegations came forward. And the result should simply be, don't do it again. That being said, she wishes to separate from the City, and I ask that the City approve this separation agreement for two reasons. It's fair and it's reasonable. Thank you.

Mayor Valdes-Fauli: Thank you, Mr. Tannebaum. I would like to call -- Ms. Cruz, do you have an attorney here that wants to talk?

Maria Cruz: I have two expert (INAUDIBLE).

Mayor Valdes-Fauli: No, no, no. Do you have an attorney? That's my question.

Ms. Cruz: Yes.

Mayor Valdes-Fauli: Okay, would the attorney want to speak and get the ten minutes that I gave Mr. Tannebaum?

Maria Del Carmen Calzon: I believe Mrs. Cruz wanted to speak first.

Mayor Valdes-Fauli: No. I would like to -- the attorney, and then I will call Mrs. Cruz, absolutely.

Ms. Calzon: There's two of us, sir.

Mayor Valdes-Fauli: Okay, please. You have five minutes each.

Ms. Calzon: Thank you.

Mayor Valdes-Fauli: Yes, ma'am. Your name, please, and...

Ms. Calzon: My name is Maria Del Carmen Calzon. My mailing address is 1825 Ponce De Leon Boulevard, Number 249, Coral Gables, Florida, 33134. It disturbs me a little bit to hear the arguments that are being made about this case being about rudeness. This case has nothing to do with rudeness, although, certainly, the officer was rude. I have heard an argument that because an officer is rude, they should not be terminated, and that is not Mrs. Cruz's position nor recommendation. The recommendation is that she be terminated and that you not approve the settlement, because she violated the law which she is sworn to uphold. I also take issue with the argument that the only law she violated was some constitutional right and that because she didn't violate Florida Statute, that she can be neither prosecuted or terminated. I take issue with that. Florida Statute 934.03 specifically addresses the interception and disclosure of, among other things, electronic communications. And what this officer did, in my opinion, was do just that. She took pictures of Mrs. Cruz's cellphone as she was texting a Commissioner. She intercepted a communication, and pursuant to this statute, the number of pictures that she took under 934.03(1) (a) and other sections of the statute constitute third-degree felonies. But yet, I have -- although I have reviewed carefully the Internal Affairs documents that have been provided, that issue was not addressed. And although I have reviewed tapes of the Commission and heard that the matter had been returned from FDLE, my contacts with FDLE revealed that this was not

addressed with FDLE, and in fact, the matter had never been sent to FDLE. I was also -- I have heard and Mrs. Cruz had been advised that the State Attorney's Office did not approve proceeding in the case, because it did not involve Florida Statute; it involved federal rights. Well, I contend to you that nobody has posed the right question, which is whether the officer has been cleared or arrested for third-degree felonies she committed in this chamber in front of many witnesses, violations that she has admitted and has nothing to do with rudeness. It has to do with violation of law. Violation not just of a citizens constitutional right, but violation of Florida Statutes, which prohibits the interception of those communications and rise to the level of being felonies because, in this country, we value those communications and we value the right of citizens to communicate with their Commissioners. And so, I would urge you to not approve this agreement, because there are other violations that are not being presented to you other than rudeness. There are criminal violations that this officer committed, for which she has not been prosecuted. And so, I would urge you to consider your role in providing justice to your citizens to ensure that your police officers who are sworn to uphold the law, to protect and serve, don't violate those citizens' rights and certainly don't violate the state of Florida criminal law. Thank you.

Mayor Valdes-Fauli: Thank you, ma'am. Thank you, Ms. Calzon. Next attorney, please. Yes. Hello, sir. Five minutes.

Albert A. A. Cartenuto: Good afternoon, Your Honor.

Commissioner Lago: Good afternoon.

Mr. Cartenuto: Members of the Commission, my name is Albert A. A. Cartenuto, III, and I have been asked by Mrs. Cruz to come and speak before the council. With regard to questions as to whether or not there might be an actual or potential civil liability on the part of Officer Molina or on the part of the Coral Gables Police Department, and perhaps on the part of the City of Coral Gables, with respect to the incident that occurred on September 28, 2016, involving Mrs. Cruz,

where she was accosted by Officer Molina at a meeting -- attending a meeting of this very body. I listened with interest to some of the comments that were made. City Manager Swanson-Rivenbark stated that her recommendation was to do nothing. And, the first thing that popped into my mind was the quote was that the surest way for evil to flourish is for good men and women to stand by and do nothing. Chief Hudak stood up and said that he had made certain recommendations. My understanding is his recommendation was one of termination. And, then Mr. Tannebaum stood up and said that we don't need to be -- in essence, he was saying we don't need to be draconian as to how we do this. It should be, in essence, a review in fairness, in light of 23 years of stellar service, as he put it on the part of Officer Molina. That may be. There's an old maxim that says that one oh boy can wipe out a thousand "Atta boys" when you make a mistake. If Chief Hudak's recommendation is termination, then that should be given serious consideration, because in this day and age, police officers -- as Mr. Tannebaum said, and I'm a criminal defense attorney as well, and I know a lot of police officers as well -- they do a very difficult job, very, very difficult job. Constantly under scrutiny, and it's because of that scrutiny that they are held to a higher standard. As a former officer in the United States Army, we had a maxim that was when it came to ethics, it was anything that gives the appearance of impropriety is to be avoided. In this case, Officer Molina has admitted her wrongdoing, which by my reading, as Ms. Calzon has stated clearly, is a violation of Chapter 934 of the Florida Statutes. What she did with the intercepted images, who she communicated them to, it may not be just an incident of -- or an instance of whether only Officer Molina may be liable for civil damages, alright, but whether or not the department's liable, whether or not the City is liable, depending on how it was done. There's a number of things here. Mrs. Cruz, who you're going to get a chance to hear from, has been a long-time supporter of the City and of its police, a very, very active woman in this community. This has hit her very, very hard. She has been very troubled by this. She should never have been made to undergo these circumstances, to be made a part of these circumstances she didn't ask for it. She's going to get up here and speak from her -- hear her speak and she can speak far more eloquently as to that. The issue here today is whether or not you should approve this settlement. And my question to you -- or the question that you have to consider for yourselves is if you approve the City Manager's recommendation versus the Chief's

recommendation, what kind of message are you sending, again, when officers, when government officials are under scrutiny, alright, and when everybody has questioned the ethics and the integrity of the actions of the law officers that protect the citizens of the community and the elected officials, the appointed officials, and the hired officials. Mention was made of certain precedents. And if the concern is that, well, we've done these precedents before, we've engaged in these types of settlements before where there has been wrongdoing, where there has been criminal acts on the part of an individual or the part of an officer, and they've still been allowed to retire and receive certain benefits -- again, what kind of message is being sent? And if the concern is -- or if the thought is that this will somehow avoid a potential litigation arising from this, as somebody has often told me whose judgment and opinion I respect greatly, anybody can sue anyone for anything at any time. This approval of settlement will not prevent litigation. Is there a possibility that litigation will arise from this? Yes, very much so, and that's why I've been asked to step in. I cannot say at what time or when that this will happen or as to what issues will be brought, what claims will be raised, but it's a possibility. However...

Mayor Valdes-Fauli: Is that a threat?

Mr. Cartenuto: No, sir. No, sir. No, sir. I'm just -- I'm putting down -- I was stating that in conjunction with my reference to if the decision to be made is to approve the settlement is so that litigation could be avoided, it doesn't necessarily mean that litigation would be avoided, and if not by me...

Mayor Valdes-Fauli: One more minute.

Mr. Cartenuto: Or on the part of Mrs. Cruz, then perhaps by somebody else. Incidents happen every day, and we're all under scrutiny. With regard to looking at Officer Molina's service record, I would point this out to you that, yes, she may have done a fine job, but if you hold people to a higher standard, then while that service record may mitigate certain things, it does not

excuse the actions or the injuries that were suffered by Mrs. Cruz in this regard. I thank you for the opportunity.

Mayor Valdes-Fauli: Thank you very much, Mr. Cartenuto. Now, I'd like to call Ms. Maria Cruz to speak with us. Ms. Cruz, I'm going to give you 15 minutes...

Ms. Cruz: Thank you.

Mayor Valdes-Fauli: Or ten, if you want, but whatever.

Ms. Cruz: Won't need that long. I don't think I can last that long. Good afternoon.

Mayor Valdes-Fauli: Good afternoon, ma'am.

Ms. Cruz: I'm here today to recount how I felt when the incident happened in this same chambers over eight months ago. I'm doing it for the benefit of those that were not here and to refresh the memory of those who were. Fidel Castro took over Cuba when I was 12 years old, 12, and I witnessed many abuses. Thank god we were able to come here. Ms. Molina's actions towards me took me back almost 60 years. I'm here to ask you to disregard the City Manager's recommendation, uphold the Chief's and terminate Ms. Molina. Please, please send a clear message to everyone that in the City of Coral Gables, no police officer is above the law. Thank you.

Mayor Valdes-Fauli: Thank you, Ms. Cruz. Now, I'd like to call on other people that have requested to speak. Gema Piñón. Ms. Piñón, we've heard from both sides and from the victim, and I'll give you five minutes, at the most.

Gema Piñón: Much...

Mayor Valdes-Fauli: Five minutes.

Ms. Piñón: Much less. Good afternoon, Mr. Mayor and City Commissioners. My name is Gema Piñón. I reside at 339 Alesio Avenue. I'm an attorney, but I'm not here on behalf of anyone other than myself. I'm here to ask you to support Commissioner Lago's proposal and support the termination of this police officer, who, unfortunately, has acted egregiously, notwithstanding the fact that she has been with the City for so many years. I believe that training is no longer a question, and unfortunately, she got caught. So, thank you very much.

Mayor Valdes-Fauli: Thank you. I'd like to call on Ambassador Ray Cantillo.

Ray Cantillo: Good afternoon.

Mayor Valdes-Fauli: Good afternoon, Mr. Cantillo.

Mr. Cantillo: Mr. Mayor, congratulations.

Mayor Valdes-Fauli: Five minutes.

Mr. Cantillo: Yes. I have known you for many years and the City cannot be any luckier than having such a fine group of public officials defending our interests in the best city in the world, the City Beautiful of Coral Gables.

Mayor Valdes-Fauli: Thank you. We all agree.

Mr. Cantillo: Yes. I have been living here since 1959, in and out, and I was unfortunate to be robbed at Publix a few months ago, and I (INAUDIBLE) to have one of the best police officers that I have ever met in my life contact me to be able to help me investigate the case. And I can tell you that the life of positive people, good police officers and perfection is very, very hard to



achieve. Today, law enforcement has become a very important issue of our society and police officers are being held to a very high standard. That being said, I think we're lucky to have the quality law enforcement that we have in our city for so many years. As I travel around the world as an ambassador of the United Nations in Geneva, I remind people that I am very, very lucky to live in the City Beautiful where we have some of the best public official talent in the whole world. And Major Molina has always impressed me as being somebody who truly represents the character of our city in the area of professionalism, good people to people contact, and any of us can at any time make a judgment error, a mistake and do something that may not be what people consider proper. However, we must have a longer look to be positive and sometimes forgive and forget something that may be a technicality, but at the end, it will result in a lot more positive than negative things. And, I am here to support peace, to support retaining good people, and to support not having to make a decision that we may regret in the near future if we are not able to get a person of the quality of our Chief of Police, our police directors and people who allow us to sleep very, very quietly every night. So, my purpose in talking is to say that in my 40-some years' experience in public work, I have never met too many people of the quality that I have met in the -- Major Molina's way of conducting herself and representing the City. And, I urge you to try to see two decades of perfection and consider that as a big plus before you make a decision that could ruin the life of a person of her quality and hope that it will never happen again, because life is not perfect. We try to make it as good as we can. God bless you all. And, please be positive with the female officer who has been doing her best. Thank you.

Commissioner Lago: Thank you, sir.

Mr. Cantillo: Thank you for the opportunity, Mayor.

Mayor Valdes-Fauli: Thank you, Mr. Cantillo: I've known you for a long time. And thank you for appearing and giving us your opinion. Thank you very much.

Mr. Cantillo: Thank you.

Mayor Valdes-Fauli: Alright. The next person to come before us is Ed Claughton, San Sebastian Avenue.

Ed Claughton: Good morning. Ed Claughton, from 38 San...

Mayor Valdes-Fauli: Good morning.

Mr. Claughton: Sebastian Avenue. For the record, I'm not here to speak on behalf of Major Molina, or the City, or the Chief or anybody else. I'm here to call out what this is. And, I'd like to get for the record the City to acknowledge, if they would, and Manager and Commissioner Lago to answer the question did Chief Hudak request this to be put on the agenda today, or was that solely your decision.

Mayor Valdes-Fauli: No, sir. We're not going to answer that. Commissioner Lago placed that...

Commissioner Lago: No, I'll answer it. I'll answer it.

Mayor Valdes-Fauli: Okay.

Commissioner Lago: I put it on the agenda.

Mayor Valdes-Fauli: He put it on the agenda.

Mr. Claughton: And was that at the request of the Chief?

Commissioner Lago: No, not at all.

Mr. Claughton: No? Not at all?

Commissioner Lago: It wasn't.

Mr. Claughton: Not at all?

Commissioner Lago: Not at all. It wasn't. And the reason why -- I was going to mention this prior to -- I gave my brief comments. The reason why I put it on the agenda was because it's been going on for seven, eight months now, and this has to come to a head and we have to get beyond this already.

Mr. Claughton: Sure, sure.

Commissioner Lago: And I thought that the best thing to do -- and by the way, I was also giving Commissioner Mena and Mayor Raul Valdes-Fauli a little bit of a break, because I wanted to put this on the agenda in their first meeting, but I thought that would be a little inappropriate considering it was obviously their first meeting.

Mr. Claughton: Has somebody else ever sent you text messages during a Commission meeting?

Commissioner Lago: Residents? Yeah.

Mr. Claughton: And, do you make that information public when somebody does it at that Commission meeting where it came up?

City Manager Swanson-Rivenbark: Excuse me, Mr. Mayor. I'm not sure (INAUDIBLE) on this.

City Attorney Leen: Excuse me. This is not...

Mayor Valdes-Fauli: This is inappropriate.

City Attorney Leen: This is not appropriate.

Mayor Valdes-Fauli: This is not appropriate.

Mr. Claughton: (INAUDIBLE). That's fine.

Mayor Valdes-Fauli: (INAUDIBLE) speak on the issue, please do.

Mr. Claughton: No, I understand.

Mayor Valdes-Fauli: You're not here to question us, and if you continue that way...

Mr. Claughton: Wanted to see if I had the opportunity.

Mayor Valdes-Fauli: I will interrupt you, please.

Mr. Claughton: So, the refusal of the question by the Manager, I'd like to note for the record. Nobody seems to want to answer that. I appreciate you answering that question. I think it's wrong, so I'm going to call this what it is. I'm not here to speak on her behalf. What she did was wrong. She needs to be held accountable. Discipline needs to occur. This is nothing but politics, and every single one of you up there knows it. Every single one of you knows the back channels that are going on here. Every single one of you knows that Commissioner Molina -- or excuse me, Major Molina and Chief Hudak don't get along. Every single one of you knows the politics in the Police Department are devastating right now and that there is a fracture that drives right down the middle that department, which has destroyed it over the last five to, say, seven years. I know, because I worked there for 20 years and I honorably retired to go out on my own

to start a business. The fact that the -- Mrs. City Manager decides to make a decision and take action on this fracture is appalling. The fact that she won't sign that document is appalling and put it incumbent upon you I think having a public forum spectacle against her is wrong when it's within the Manager's power to make the decision at the Chief's recommendation. It's wrong. And by the way, the reason the Chief recommended what he did for termination of this issue is because of politics. It's because they don't like each other. That's all this is. You all know it. And I will say again, in case anybody didn't hear it before; I'm not defending her, okay. She needs to be held accountable. There needs to be discipline. But, to call for termination of a 23-year veteran who served honorably is appalling when people have done other things in that department and were not recommended termination that I think, in my personal opinion, were potentially worse. So, the public needs to be aware of that. I think the media should be involved in the back-channel conversations that are going on and have been going on. I think the media needs to bring a spotlight to the dysfunction that's occurring at the Coral Gables Police Department, that the Chief and the Director don't get along, and that the leadership of the Coral Gables Police Department is appalling. Thank you.

Mayor Valdes-Fauli: Thank you very much, Mr. Claughton.

Vice Mayor Keon: Can I have one clarification, please? When -- this is to the Manager. It is my understanding that you, as a Manager, did not sign this because you recognized the Commission's ability to hire or fire. And, because Commissioner Lago has put it on the agenda and it is here before us, we are in a position that that decision could be made, so you are waiting for that...

Mayor Valdes-Fauli: That's right.

Vice Mayor Keon: Before you would sign anything. Is that right?

City Manager Swanson-Rivenbark: Yes, ma'am. You're correct.

Vice Mayor Keon: Thank you.

Mayor Valdes-Fauli: She's deferring to our decision under Section 14 of the Charter.

City Manager Swanson-Rivenbark: Excuse me, sir. Just as clarification, I am not deferring. I am respecting the fact that you have the ability to override my determination.

Vice Mayor Keon: Yes.

City Manager Swanson-Rivenbark: And so, I felt that it was disrespectful if I went ahead and executed the document. The City Attorney will tell you I had the opportunity to and I chose not to until after the Commission had heard this item.

Vice Mayor Keon: Thank you.

City Attorney Leen: Mr. Mayor...

Mayor Valdes-Fauli: Alright. Could I...

City Attorney Leen: I do need to correct one thing for the record, because there was a Commissioner that was attacked there. I want to be very clear -- I've said this before and I'll say it again. Residents can text Commissioners, and it does not have to be put on the record in the meeting, unless it's a quasi-judicial proceeding. And so -- look, I speak to the law, and what you said was factually incorrect. There's nothing illegal about that.

Mr. Cloughton: I didn't say (INAUDIBLE)...

City Attorney Leen: You can text Commissioners.

City Manager Swanson-Rivenbark: Excuse me, sir.

City Attorney Leen: I want to be clear about that.

City Manager Swanson-Rivenbark: I don't think the Mayor allows this.

Mayor Valdes-Fauli: Please...

Commissioner Lago: And let me -- if I may...

Mayor Valdes-Fauli: Wait, wait, wait. I will -- anybody else wishes to be heard? Alright, I will close the public section of the meeting and turn the meeting over to you, Commissioner Lago, who was the person who requested this.

Commissioner Lago: Thank you, Mayor. Just to address the gentleman in the front, this is an issue of transparency. That's all it is. Again, we get blamed and the Commissioners will obviously nod their heads, because we get calls from residents saying, you know, there's not enough transparency at City Hall. And, we have taken significant measures over the last two years -- and the City Manager will tell you -- to make sure that we are the most transparent city in Dade County. Everything from -- right now we have a program that I don't think any other city has where you can make a comment in the middle of a Commission meeting and your comment will be memorialized. And, I think we probably had a handful of people that have used that service that we pay money for, along with all the projects that we put online. Every last bit of detail is there. So, the purpose of this is to get this finalized and to have some sort of transparent government, so that people can't say that there was backhanded dealing -- you know, backdoor dealings and stuff like that that occurred. You're damned if you do; you're damned if you don't, correct? So, we're doing the best that we can. We're not perfect. So, I have a few comments here. Just bear with me, and then we can open it up to the Commission. I just want to

clarify one issue, because we talked about is this a First or a Fourth Amendment violation. I want to get clarification from Craig in reference to your opinion, because outside counsel has stated it's not, but I want to get your opinion because I respect and I value your opinion.

City Attorney Leen: Thank you, Commissioner. Mr. Mayor, Commission, first, regarding the wiretap statute, which is the statutes that were talked about by Ms. Cruz's attorneys, I don't believe there's been a violation of the wiretap statute. The reason why is even though a picture was taken of her device -- Ms. Cruz's device, it was being done in plain view. There was no legitimate expectation of privacy for purposes of a wiretap claim. We did bring the matter to the attention of the State Attorney and they decided not to proceed. So, I want to be clear about that. Also, I never really viewed this as a Fourth Amendment issue for the same reasons. I do view it as a First Amendment issue, and I want to talk about it in three parts. First, the action itself. Ms. Cruz was engaged in protected speech under the Constitution. There's no doubt about that. She has the right to petition Commissioners. She has the right to send a text message. She was ordered to stop by a police officer, who said stop texting the Commissioners. That action, in my opinion, violated the First Amendment. Now, that doesn't necessarily mean, though -- and I want to be clear about this too -- that Major Molina would be held liable by a court of law, because I want to be clear about that. There's two different issues there. There's the action itself and then what was her state of mind. There's a body of case law -- and I used to do this case law when I was at the County Attorney's Office. I was the chief for the federal litigation section. I did 50 civil rights cases while I was there. I was counsel of record. You cannot commit a negligent civil rights violation. So, Major Molina has indicated that she was mistaken as to what the meaning of the Sunshine Law was. That would be something for -- you know, to be discovered in the case. And ultimately, there could be a jury decision on that. But, if she truly was negligent and it was a mistake, then that would not be -- she would not be held liable for that civil rights violation. In addition to that, as to the -- I do think that it's very important that you not consider the risk of litigation today. I understand I'm the City Attorney and I look at that, but you have, you know, two people before you. You have Ms. Cruz, who is the victim in this matter, as she has indicated. You have -- and whether you think she's the victim or not, that's



what -- she's come before you in that way and she's very upset about this matter. And then you have Major Molina, whose career is before you. So, you have a decision to make, and I don't think you need to consider litigation. I will tell you, for purposes of litigation, though, just to put it on the record, if the City was sued for this matter, for what happened with Ms. Cruz, we will be fine. There's a -- the only way you can sue a city under the civil rights laws is if -- is under what's called the Monell claim. You have to demonstrate that the city has a policy or practice of violating civil rights laws. As you may recall, right after Major Molina made her statement, I stated on the record, no, you can text the Commissioners. And, I believe Commissioner Lago also spoke immediately. And so, in that respect, it was clear that the City Commission and the City leadership did not believe that or did not agree with that; did not ratify it. So, there's no claim against the City at all. As to Major Molina, in my view, she would have qualified immunity. Qualified -- the only time you can be sued for a civil rights violation individually is when you violate clearly established law. And as Abby Corbett indicated in her memo, there's not much law on this particular subject. So -- but ultimately, though, I do -- I have to say -- you asked for my opinion. I thought about it and I also testified to it in the IA proceeding itself. I do believe that the action itself does violate the First Amendment, because it was protected speech and she was ordered to stop.

Commissioner Lago: Thank you. Okay, on September 28, 2016, an incident took place where Terry Molina stood behind a resident and took photos of her text messages. After, in an uncourteous and far from professional manner, she responded to a remark by yelling, "Stop texting Commissioners," which echoed throughout the chambers where me, the members of the Commission and the public witnessed this spectacle firsthand. In my view, the moment this occurred, Terry Molina violated the Fourth Amendment, which states that it is unconstitutional to conduct a search without a warrant. She also violated the First Amendment by trying to restrict an individual from exercising their right to free speech and simultaneously violated both the City of Coral Gables personnel rules and the regulations of the Coral Gables Police Department on a multitude of levels. Last, she distorted the public perception of our police department to depict a negative one. Terry Molina has been a police officer in the City of Coral

Gables for 23 years, 16 of them has been in a supervisory role. Might I add, this individual wanted to be considered for police chief and advocated as to why she believed she was suitable to lead our police force. In a letter dated April 10, 2017, by Ms. Molina's attorney, Brian Tannebaum, Officer Molina's argument lies mostly along the lines of pleading ignorance and claims Ms. Molina has not trained in public hearing procedures. In many cases, this could not be used as a defense, especially as the second highest-ranking officer in the police department. It is expected that with so many years of experience, one would understand the seriousness of violating constitutional rights and policies and procedures. I've read many documents surrounding this case. Although some share different perspectives, all have acknowledged the severity of Molina's actions. Everything from the City Manager's report to Chief Hudak's report, to the IA report. In a memo written by the City Manager, she cites her reasons for disagreeing with Chief Hudak's recommendation to terminate Terry Molina and lists multiple instances where officers were arrested for criminal behavior and continued working or were allowed to resign with pension. She states: "A particularly egregious incident involved an on-duty officer in uniform arrested for solicitation (prostitution) in his police vehicle. Another high-ranking member of the command staff who made sexual advances to a subordinate in his direct chain of command during a City-funded business trip. Battery against a female who was 6 months pregnant, cyber-stalking and another to have submitted false information." To learn these acts took place in our City Beautiful without serious consequences is highly disturbing and clearly lacking of good leadership. I would expect good leadership to harshly discipline these actions to a significant magnitude. We need to set a high standard and lead by example and not let these kind of events fade away and continue to occur. Police officers are known to protect and to serve our community. They are the guardians of safety and are supposed to exhibit model behavior, especially those in high-ranking command positions. For them to breach the public trust is concerning. According to the City of Coral Gables Police Department's rules and regulations, it is the duty of each officer to respect and protect the rights guaranteed to each citizen by the Constitution. Persons will not be deprived of constitutional rights, because they are suspect of having committed a crime. Officers who lawfully act within scope of their authority do not deprive people of their civil liberties. I believe one of the greatest offenses one

can do to another is deprive them of their constitutional rights and make people feel intimidated or fearful of speaking, especially in government. On numerous occasions, I have encouraged all residents to communicate with me via text, via phone, any ability. I'm always welcome. I have even announced my personal cell phone number during meetings. The severity of a wrongful act cannot be underestimated; nor could it be undone. A split-second act speaks volumes on an individual's ability to use their judgment and could be a matter of life or death. In sum, I fully support Chief Hudak's recommendation to terminate Terry Molina. And going forward, I expect City administration to continue to embrace a no-tolerance policy on egregious acts committed by any individual associated with the City Beautiful. The City Manager mentioned that we may open ourselves to litigation if we move in this direction. Litigation should never be our reasoning for making a decision. Let us lead, not cower in fear.

Mayor Valdes-Fauli: Thank you very much. Thank you very much, Commissioner Lago. Any other comments from Commission members?

Commissioner Quesada: Yeah, I have some comments. You know, this is a difficult one for me. I've gone back and forth on this quite a bit. The -- just a little bit of history. You know, I've always had a good relationship with, I think, all of our majors, for the most part since I've been on this Commission. And at one point, we had an interim City Manager and we had a decision to make with an interim police chief, and I remember the person who I had discussed with that interim City Manager was actually -- was Major Molina at the time. And then some things came -- you know, there was a little bit of a strange meeting when that came up a few years ago, and then we went in a different direction. You know, I was looking at the letter from Mr. Tannebaum. I reviewed, you know, the City Manager's response on it. And, you know I didn't realize what a decorated history Major Molina had had. You know, it's been a few years since she had her Officers of the Month. But again, we deal with so many issues up here and there are so many different employees in the City that sometimes you lose track or you just don't know all the facts behind someone's employ at the City until something like this comes up. You know, so a lot of good, but then, obviously, at that moment, you know, being in that meeting on September

28 and what had happened, you know, it was tough. It was a tough thing to watch. You know, I've read the, I guess -- I don't know if it's called a deposition, but I read the transcript of the questioning of Major Molina after the incident. And, what always comes back to me is, you know, something that Ms. Cruz mentioned. You know, it's funny, you know, when you're a young Cuban American living in South Florida, you know, you hear the stories of what happened in Cuba and we didn't live it, but we hear it through our families. And you know, it's part of our family history for a lot of us in South Florida. So, you know, it's tough to go to the back and forth on it. So, you know, I've read through the -- I guess, the settlement agreement or agreement for transition and retirement and general release of all claims, and you know, I don't want to impact -- you know, I want to punish the bad act, but at the same time, you know, you want to reach a place where -- to recognize the good work at the same time. So, it's funny, the speakers that have come up try to make it seem so black and white. It's not so -- to me, it hasn't been so black and white. It's not so clear, because you have a lot of good. Great history with the City, but at the same time, the bad act. So, you know, I'd like to hear the other Commissioners, if there are any other thoughts because, you know, I'm leaning -- I will tell you, I'm strongly leaning towards the agreement, but then I have some issues with it as well. Does it completely wipe under the rug the bad act, which is something I want it to be clear to all employees of the City, especially someone at that level of the police department, that this is not only frowned upon, but it should absolutely never happen again. So, that's what my thoughts are. I'm sorry if that was a little all over the place.

Mayor Valdes-Fauli: Commissioner Mena.

Commissioner Mena: It's actually refreshing to hear you say that because I, likewise -- you know, this is a very challenging situation, because it's one of those situations where no matter what we decide today, nobody wins. This is a -- you know, we never want to be in these situations. These things happen, but here we are and we have to deal with it. It's important that -- and there's no dispute whatsoever here and many have said it already that what Officer Molina did on that day was wrong. Whether you ascribe, you know, a constitutional violation to it or

not, I have reviewed the legal memoranda. I've heard what Mr. Leen has said and it's, at best, vague that there was a violation. If not, I would say to lean towards the fact that there probably wouldn't be liability. With that said, and to Commissioner Quesada's point, we can't tolerate this. We can't have a situation where people feel like they can't come to City Hall and speak freely and we need to avoid that at all costs. And if anything, I think the spectacle that this in some respects has become shows that we take it very seriously, because everybody has been wrestling with this and really trying to handle this very delicate situation in the right manner. I'm also a believer, though, that the punishment has to fit the crime, you know. You hear that saying said, but it's really true. And Major Molina has had a long career. As a result of this incident and as a result of her own poor judgment -- and she's responsible for that -- she's been the center of a lot of media attention. Her career -- whatever we decide today, her career has been tarnished. She has to live with that. Her family has to live with that. But, there's also -- and I think this is really important not to lose sight of -- a significant financial penalty. And maybe, you know, when we finish our remarks, we can touch on that again, but estimates of anywhere from 700 to \$800,000. That's a pretty severe penalty. I think that sends a pretty loud message to our employees that this will not be tolerated. So, my question really is why is that not enough? If we are going to depart from the City Manager's recommendation and suggestion and decision, for lack of a better word -- I understand it's not signed. If we're going to depart from that, you know, I think it's her -- really ultimately her realm to deal with these issues. She's given us her recommendation, which was very thorough, and I have a hard time seeing why we need to depart from that. And so, again, I think we have to weigh the wrongful act, but we also have to weigh the wrongdoer's entire history and the entirety of the circumstances. You know, the easy thing to do here is to ask for termination, because nobody ever has any sympathy for the wrongdoer. She committed a bad act. Everybody agrees with that. It'd be easy to pile on and, you know, suggest that we have the harshest and most draconian measure. But, I think the hard thing to do here, for me at least, has been to take a measured approach. And, I think that the measured approach here, in my opinion, is in favor of supporting the City Manager's recommendation, so that's where I fall on the issue.

Mayor Valdes-Fauli: Thank you, Commissioner. Vice Mayor.

Vice Mayor Keon: I agree with Commissioner Mena and what Commissioner Quesada has said. You know, I think that issue of an eye for an eye is fine, but that means no more than an eye. I think, yes, what Major Molina did was wrong. Should she have known better? Yes, she should have known better. I think that as soon as it happened, it was corrected. I know it is difficult for Mrs. Cruz. I have tremendous sympathy for you. I know flashing back to your life as a child in Cuba and to have seen what happened to your family, to your relatives, to your neighbors and all of us that have lived here in Miami for so many years know and saw what happened and how when people first came here in the '60s, the conditions under which they came and what happened to them. So, I know that act creates terrible distress for you. And, I am so sorry that you -- as every single person that came here from Cuba, there is tremendous sympathy that anyone went through, what everyone went through when they had to leave Cuba. And, we know that that -- it does take you back to that time, and that time remains as a painful place in your heart. So, I know that it is hard for you and I know that it's difficult. And, it brings back memories and feelings for you that it might not to someone else, but to you, it did, and I'm really sorry. And I don't know whether, you know, Major Molina had any sense of that when she did it or not, you know. I would hope that all of us going forward are very careful what we say to people and how we say it and when we say it, because we don't know what that may evoke in someone else because of their past experience and their life. But, I also agree that Major Molina has served the City, has served the City well. She has, you know, had commendations and everything else. I am sorry to see in our city that this has gone to the level that it's gone to. I think that it does, you know, speak to some issues within our police department and the division in the police department and the inability of the leadership in the police department to bring this department together and to work as one or as a whole, which I really think should be -- someone should address. But, I don't think that we -- I don't -- I wouldn't terminate Major Molina over this. I mean, I think to allow her to separate from the City, to take what she has earned and to live her life as she chooses is fine. And we offer a tremendous apology and truly with all sincerity to Mrs. Cruz. But, I think what Mrs. Cruz also understands is that as soon as those

words were spoken from this dais; the City Attorney told you that it was wrong, apologized to you and went on with the meeting. So...

Mayor Valdes-Fauli: Let me let -- Commissioner Quesada had a question to ask from...

Commissioner Quesada: Yeah. Madam City Manager, I know that this agreement has -- I mean, you've been -- you know, you've negotiated this agreement. A question for you. The first thing that comes to mind is, you know, why through November of 2017? You know, if I were to make a correction to this, I would say effective the day the incident occurred, the September 28, 2016. Are there any issues with that? And I understand it's negotiated. Obviously, Mr. Tannebaum would want to review it and then we'll discuss it.

Commissioner Lago: And Mr...

Commissioner Quesada: But that's the first, you know -- the main thing that pops out at me, why not from that date? Because typically...

Commissioner Lago: And that's why...

Commissioner Quesada: When anyone acts -- if I had an employee that acted out, you know, on X date, termination's going to be effective from that date or the negotiated resignation or whatever it is. Is there a -- can you address that point?

City Manager Swanson-Rivenbark: Yes, sir. So, we considered a lot of factors in determining the separation date. One of them was, if it was that date -- and one of your colleagues asked about that -- then her departure would not be until her ability to collect and retirement would not be until 2019. So, what we wanted to was once...

Commissioner Quesada: I'm sorry. Clarify that. I don't understand that.

City Manager Swanson-Rivenbark: So...

Commissioner Quesada: Her ability to collect.

City Manager Swanson-Rivenbark: To receive her pension.

Commissioner Quesada: So, if...

Commissioner Lago: So, she -- I have the numbers here right in front of me. So, basically...

Commissioner Quesada: No, but I -- I want to be -- I'm sorry.

Commissioner Lago: No, no. I don't...

Commissioner Quesada: For the people watching at home because we have some media as well, I just want to be very clear. Pension can get very foggy, very quickly. So, if she were to have been -- if she were to resign the day of the incident, the September 28, 2016, she's not able to collect until 2019. What does that mean? She's not able to start receiving her pension payments until 2019?

City Manager Swanson-Rivenbark: Yes, sir.

Commissioner Lago: Yes.

City Manager Swanson-Rivenbark: Yes, sir.

Commissioner Quesada: Got it. And if she were to resign in November of 2017, which is the date that you're -- well, that has been negotiated in this settlement agreement...



City Manager Swanson-Rivenbark: And we get there...

Commissioner Quesada: What's the impact of that?

City Manager Swanson-Rivenbark: Understand. And so, we get there by using her sick time, her vacation time, 200 hours of her comp time, and then there's a gap that -- what we estimate to be three weeks to November 7 or 8, 2017. That allows her -- and I'm sorry to be a bureaucrat. That allows her to retire under what they call Rule of 70, which is her years of service, plus her age. That is not the 25 years. That is not the retroactive three multiplier that you have approved under this contract. That is not the ability to enter into the DROP. It is the ability to retire and begin the next month to receive her pension, her monthly pension check, and that's called under Rule of 70. And that's the...

Commissioner Lago: Can we discuss that really quick? Because I think that's very pertinent. And I know that we want to be very careful with optics here, but let's not use the word terminate. Let's use the word separate from the date that this occurred, September 28, 2016. That's fine. I don't have a problem with that. I was actually going to move to use that date. I wasn't going to use terminate, but now we'll move to opt out. If you look at the numbers, if she would opt out on that day, she would receive \$6,918 per month as of September 28, 2016. She would not be able to access that monthly pension until January 1, 2019. If we allow her now to extend, like as per the agreement to November 8, 2017, she will receive \$7,452, which is almost \$500 more a month, and she will get her pension immediately the following month.

Commissioner Quesada: But, the additional \$600...

Mayor Valdes-Fauli: And how much would she give up?

Commissioner Quesada: I'm sorry?

Mayor Valdes-Fauli: How much would she give up by doing that?

Commissioner Lago: She would -- what do you mean?

Mayor Valdes-Fauli: Yeah. How much will she...

City Manager Swanson-Rivenbark: I have -- excuse me, sir. I have the emails. We have -- I say this respect -- heavily negotiated every sentence in this, including the timing and the calculation as was under my authority to prepare my determination.

Commissioner Lago: Madam City Manager, but the issue is -- and I respect your ability to heavily negotiate, you know, this settlement. But you're allowing her, by going until November 8, to get to the Rule of 70, when she committed an act before this Commission to a resident in this community that occurred in September 28, 2016. Again, there has to be a little bit of give and take here. I know you want to get to the Rule of 70 using her days off and some of her comp time -- or sick days, excuse me, but I think that there has to be a little give and take.

Mayor Valdes-Fauli: Okay, let's...

Vice Mayor Keon: Commissioner Lago, that was...

Mayor Valdes-Fauli: Let me...

Vice Mayor Keon: Time that she -- that is hers.

Mayor Valdes-Fauli: That is her time.

Vice Mayor Keon: It is vacation time that is hers.

Mayor Valdes-Fauli: Let me -- let's.

Vice Mayor Keon: It is comp time that is hers.

Commissioner Lago: I understand that.

Mayor Valdes-Fauli: I would like to call the question. I can't call the question, but I'd like to -- so, a few closing remarks, if that's okay with you.

Commissioner Lago: Perfect.

Mayor Valdes-Fauli: And, you know I would call for a motion at that point. Several things have upset me very, very, very much. And I was not here when this incident happened, so I do not share with you the indignation that you rightly feel, because I wasn't here. I mean -- and when it's described, it loses its immediacy. There are two things here that upset me very much, however, that have nothing at all to do with this incident -- or that have something to do with this incident. And one is the shocking past history of the police department in terms of disciplining grievous faults, grievous violations of law, violations of ethics, violation of morals. To have -- and I read the report -- somebody beating up his pregnant wife or somebody making love in the backseat of a car -- a police car...

Vice Mayor Keon: I think that's called having sex.

Mayor Valdes-Fauli: Huh?

Vice Mayor Keon: I think that's called having sex.

Mayor Valdes-Fauli: Having sex, okay. Having sex. I'm sorry.

Commissioner Lago: (INAUDIBLE) using it as an excuse.

Mayor Valdes-Fauli: Having sex in the backseat of a police car or, again, soliciting a prostitute with a canine, with a dog in the back and being arrested and basically nothing happening. I find that shocking and I find that very, very disturbing, and I hope that that doesn't happen again. The second thing that I find very disturbing here is that this -- and we've about it today and I've gotten calls is attributed to infighting in the police department. This is not infighting in the police department. This is a violation that occurred in a City Commission Meeting and we're discussing whether it violated Article IV or Article I of the US Constitution. And, there may be problems in the police department in terms of politics, but this has nothing at all to do with that. And, I would hope that things that are happening in the police department are not attributed to that type of situation. I just wanted to make those comments, because I find those very, very upsetting and very destructive for the morals of our police department, which has a wonderful police chief. And we'll see in a minute, I hope, the crime statistics have been doing well with this police department and this police chief. And to attribute things like this to politics in the police department, I find upsetting. At this point, I would like to hear a motion from a member of...

Commissioner Lago: I'll make a motion.

Mayor Valdes-Fauli: The City Commission.

Commissioner Lago: I make a motion...

Commissioner Quesada: I'm sorry, Mr. Mayor. I just -- I know you want to get to the point of asking the question already.

Mayor Valdes-Fauli: No, go ahead.

Commissioner Quesada: But, I just have a few financial questions.

Mayor Valdes-Fauli: Okay, good.

Commissioner Quesada: I just want to clarify...

Mayor Valdes-Fauli: No, I'm glad. I'm glad.

Commissioner Quesada: Specifically on that. We haven't...

Mayor Valdes-Fauli: I thought you'd asked them, but go ahead, please.

Commissioner Quesada: No, no. This is something that came up after what Commissioner Lago said. So, and Cathy or Diana or whoever the appropriate person is from staff, if I could just -- a few quick financial questions on this.

City Manager Swanson-Rivenbark: Raquel Elejabarrieta has been the one...

Commissioner Quesada: I don't try pronouncing her last name.

Commissioner Lago: Raquel.

City Manager Swanson-Rivenbark: But, I did it so well.

Commissioner Lago: With all due respect, Raquel.

City Manager Swanson-Rivenbark: It's worth it. I even erred. But...

Commissioner Quesada: So...

City Manager Swanson-Rivenbark: She did all the -- she helped us with the calculations. And, the Pension Board allowed their pension actuary to assist, too, and we are grateful for that.

Commissioner Quesada: So, I just want to -- a few clarifying questions on this, because it sounds like something that maybe not be the case, and I could be incorrect. Okay, so I just want to give you the fact pattern first. If it were to be a separation September 2016, she gets \$6,900 a month. If the separation is in November, she gets \$7,500 a month. That delta of \$600 is that delta coming from her already-accrued benefits and that she's just receiving it ahead of time? So, in reality, she's -- at the end, the net sum that comes to her is equal regardless? Is that a correct statement or incorrect.

Labor Relations and Risk Management Director Elejabarrieta: So, before I answer that, we would not be able to terminate her retroactively to September 28, because of the Florida Law Enforcement Bill of Rights. So, she needs her due process. So, any termination would have to be effective today or at a later date. It would not be applied retroactively. As to the increase in...

Commissioner Quesada: Even if it was a settlement agreement. Because the settlement agreement, I guess...

Labor Relations and Risk Management Director Elejabarrieta: Even if it was a settlement agreement, well if it's a settlement agreement...

City Attorney Leen: Anything can be settled.

Labor Relations and Risk Management Director Elejabarrieta: Anything can be settled.

Commissioner Quesada: That was my point.

Commissioner Lago: The key is the Rule of 70. If she reaches the Rule of 70...

Commissioner Quesada: I only want to understand the financial difference -- if there is any at all.

Commissioner Lago: May 30...

Commissioner Quesada: The final...

Commissioner Lago: If the settlement would be date -- were to be dated today, the number will be \$7,235. She would not reach the Rule of 70. The purpose of going to November 8 and using those dates, as Commissioner Keon so eloquently mentioned that she's earned, would be to reach the Rule of 70.

Mayor Valdes-Fauli: Okay. Any other...

Commissioner Mena: I also think...

Commissioner Lago: Which obviously would increase her pension benefit.

Mayor Valdes-Fauli: Let's get through with the questions and...

Commissioner Mena: I also want to understand -- have you clarify for everybody, because Commissioner Lago, you talked about it has to be a give and take...

Commissioner Lago: Of course.

Commissioner Mena: And part of the give here, as I understood the City Manager, was that she's foregoing somewhere between 700 and \$800,000...

Commissioner Lago: She hasn't...

Commissioner Mena: Even by...

Commissioner Lago: She hasn't earned it.

Commissioner Mena: Getting to November 8.

Commissioner Lago: But, she hasn't earned that money yet. You have to go into the DROP...

Commissioner Mena: I understand.

Commissioner Lago: Several years.

Commissioner Mena: I understand. But, if she was still with the police department, she would get that. And so, as part of a separation agreement...

Commissioner Lago: She would get it if she would stay here X amount of years to get that DROP.

Commissioner Mena: Correct. And, we don't have any reason to believe that she was planning on leaving but for this event, right? I mean...

Commissioner Lago: I don't know. You never know.



Commissioner Mena: Right. But, assuming that's the case, which I would assume she wouldn't forego that amount of money voluntarily, but for this event happening. I just want to understand, to your point, if it's a give and take, what is it that's being given up? And so, that's been presented to us by the City Manager and by Raquel, and I want to make sure we're clear on what that is. What is the 700 to 800 plus thousand dollar figure that we've been advised she would be foregoing as a result of this?

Labor Relations and Risk Management Director Elejabarrieta: Correct. So, if she would remain employed with the City and enter the DROP on December 1, 2017, she would -- monthly into her DROP would be deposited the amount of \$7,452, and the DROP is a seven-year DROP. So, after seven years, it's estimated that she would have in her DROP account, upon separating seven years later, approximately \$774,000.

City Manager Swanson-Rivenbark: That's in addition to her salary.

Labor Relations and Risk Management Director Elejabarrieta: Her salary. If she...

City Attorney Leen: One correction, though. I did talk to Jim Lenny (phonetic). He said he spoke to you. The -- I do believe she has to get to the 25 years to go into the DROP.

City Manager Swanson-Rivenbark: Yes, that is...

Labor Relations and Risk Management Director Elejabarrieta: Correct, correct.

City Attorney Leen: So, it wouldn't be on December 1.

Labor Relations and Risk Management Director Elejabarrieta: So, it would not be December 1, and I apologize. I misspoke. So, what would happen is, on December 1, she doesn't have 25 years, so she would enter the DROP on February 1, 2019? And that's when she would enter the

DROP. Seven years later, in 2026, she would have approximately \$855,000. If she enters the DROP on February 1, 2019, she would have 25 years of service. So, her benefit would be increased to \$8,228 per month, because she would have the maximum benefit, which is 75 percent of a final average compensation...

Mayor Valdes-Fauli: Alright.

Labor Relations and Risk Management Director Elejabarrieta: At that time.

Mayor Valdes-Fauli: Any other...

Commissioner Lago: Alright, so I call the question. So, I'm going to make a motion to set the separation date as of today, May 30, 2017, so the City can come into an agreement with Ms. Terry Molina in reference to today being the separation date from her employment with the City of Coral Gables.

Mr. Tannebaum: And she, therefore, will not reach the Rule of 70.

Commissioner Lago: My day -- and by the way, when you said give or take, like I mentioned before, my date would have been September 28, when the -- was the date of the infraction.

City Attorney Leen: Commissioner, one issue...

Commissioner Lago: But...

City Attorney Leen: With the motion. If you're going to do it today, it either -- we either have to negotiate it with her, so that the separation is today or is it termination as of today?

Commissioner Quesada: Our vote is the direction for staff to take in trying to conclude -- is that...

Commissioner Lago: Listen, if you want...

Commissioner Quesada: Fair?

Commissioner Lago: If we're going to get back into a back and forth negotiation...

City Attorney Leen: You may want to ask...

Commissioner Lago: I'll change my motion to a termination as of today, if that's what...

Mayor Valdes-Fauli: Alright. The motion is termination as of today.

City Attorney Leen: Mr. Tannebaum asked to speak.

Vice Mayor Keon: You made -- and your motion is to terminate...

Mayor Valdes-Fauli: Is there -- wait, wait, wait. Come on.

Vice Mayor Keon: As of today?

Commissioner Lago: As of today.

City Attorney Leen: Sorry, Mr. Mayor.

Mayor Valdes-Fauli: Is there a second to this motion, termination as of today?

Commissioner Quesada: I need more facts, I'm sorry, before I can determine...

Commissioner Lago: No worries.

Commissioner Quesada: Whether to vote for or against it.

Commissioner Lago: Not a problem.

Commissioner Quesada: So, then she would not reach the Rule of 70.

Commissioner Lago: She would not rule the reach of 70 -- she would not reach the Rule of 70.

Mayor Valdes-Fauli: Right. The same effect as terminating...

Commissioner Lago: Yes.

Commissioner Quesada: As of the 28<sup>th</sup>.

Mayor Valdes-Fauli: In September, yeah.

Commissioner Quesada: I have a problem. I'm in favor of the termination. I am not in favor of her not being able to hit that Rule of 70.

Mayor Valdes-Fauli: Okay, there has been a motion...

Commissioner Quesada: Is there a way for us to waive -- is the legal question -- to allow her to reach that Rule of 70 and be terminated?

Commissioner Lago: The difference is...

Vice Mayor Keon: That's the difference in his motion.

Commissioner Lago: The difference is the additional money.

Vice Mayor Keon: That's the issue in his motion. If you're not supportive of it...

Mayor Valdes-Fauli: Okay. We're going to do that.

Vice Mayor Keon: Don't second it.

Commissioner Lago: Fine. Don't second my motion.

Mayor Valdes-Fauli: Alright. Is there a motion -- there is a motion. Is there a second? Okay, I will second it. No, you can't take it.

City Attorney Leen: Give it to the Vice Mayor, the Vice Mayor.

Vice Mayor Keon: Here.

Commissioner Lago: The Vice Mayor. You have to start going that way.

City Attorney Leen: Your Vice Mayor, Mayor.

Mayor Valdes-Fauli: Oh, yeah, yeah. I'm sorry. That's right.

City Manager Swanson-Rivenbark: I'm sorry. Could you repeat the motion?

Commissioner Quesada: Terminate today.

Mayor Valdes-Fauli: The motion is to terminate today, and I'll second it. Now, let all those in favor say -- you know, call the roll.

Commissioner Lago: Call the roll.

Vice Mayor Keon: Call the roll.

Commissioner Lago: Yes.

Commissioner Mena: No.

Commissioner Quesada: No.

Mayor Valdes-Fauli: Yes.

Vice Mayor Keon: No.

(Vote: 2-3)

Mayor Valdes-Fauli: Alright, the motion fails. Is there another motion?

Vice Mayor Keon: If we don't do anything, the Manager's motion...

Mayor Valdes-Fauli: If we don't do anything...

Vice Mayor Keon: Remains.

Mayor Valdes-Fauli: The Manager can sign her agreement.

Commissioner Lago: Commissioner, let me ask you a question.

Vice Mayor Keon: Okay, fine.

Commissioner Lago: What is the issue -- I mean, since we're talking about this transparently, what is the big concern with the Rule of 70, just an additional 5, \$600 a month?

Unidentified Speaker: No.

Commissioner Quesada: You know what it is for me, it's...

Commissioner Lago: You were here. You were here in the Commission when that occurred.

Commissioner Quesada: Absolutely, and it was appalling. It was absolutely appalling.

Commissioner Lago: It was appalling. And by the way...

Commissioner Quesada: But, it's 23 years of distinguished service.

Commissioner Lago: But hold on. I'll give you another -- let me give you...

Commissioner Quesada: That's my problem.

Commissioner Lago: My comments in my prepared statement were very interesting, because the facts that are used to justify why the Manager took her stance in regards to non-termination, like we mentioned before, oh, it's happened in the past. It's not that the behavior's acceptable. And, we see -- not that it's acceptable...

Commissioner Quesada: No, she didn't say...

Commissioner Lago: Excuse me.

Commissioner Quesada: It was acceptable.

Commissioner Lago: I take that back.

Commissioner Quesada: She didn't say that.

Commissioner Lago: I take that back. I take that back. This has happened in the past, and there's been similar actions taken in reference to reprimanding that officer. So, I think...

Commissioner Quesada: No. Okay, you misconstrued the memo. The memo said for some of those provisions that were violated, but not the primary item that was a violation. There was no previous -- there was no precedent that we had seen for something like this in before.

Mayor Valdes-Fauli: Okay, can I bring this...

Commissioner Quesada: (INAUDIBLE) in the Code, and they give examples for the second and third, but not the first.

Commissioner Mena: Can I make one clarification, though? When you're saying if his issue is the 5 or \$600 a month, it's not just 5 or \$600 a month. It's also several years before the benefits kick in, so it's a several hundreds of thousands of dollars more in addition to the 7 or \$800,000. Now, I haven't done the math on that, but it's the difference between a penalty of 7 or \$800,000 or, I don't know, 1.1, 1.2, \$1.3 million. So, it's a question of what is enough. And is a 7 or \$800,000 penalty...

Commissioner Lago: I think it's a question of...

Commissioner Mena: Enough?



Commissioner Lago: We need to be held to a higher standard and we haven't done that for a long time. And, this was an act that was done before -- the previous Commission...

Commissioner Mena: To that point -- and I think it's -- this is an important distinction to make. We, at the last meeting, discussed the situation in the Finance Department that came to light about somebody taking money from the City -- stealing money or embezzling money from the City. I'll tell you right now, in that instance, I don't think that person should ever see a dime of their pension. That, to me, is flagrantly criminal conduct that they should -- we should do whatever we can to make sure that they don't receive their pension. I think -- and all I'm saying is that in this instance and I think what Commissioner Keon said as well, when you balance the 23 years of service and you look at the actual act here, is the penalty of the 7 or \$800,000 enough? So, to the extent you're asking the question you asked Commissioner Quesada to me, that's my answer is that I think that that penalty...

Mayor Valdes-Fauli: Is enough.

Commissioner Mena: Is appropriate for this act.

Commissioner Lago: I just think you send the wrong message.

Mayor Valdes-Fauli: Okay.

Commissioner Lago: You send the wrong message...

Mayor Valdes-Fauli: Today...

Commissioner Lago: To the employees.

Commissioner Quesada: An \$800,000 hit?

Commissioner Lago: No, no, no. Come on. You know what I'm talking about, Frank.

Mayor Valdes-Fauli: Alright, please.

Commissioner Lago: I think it's just -- again, my motion wasn't approved. There's no big deal. Let's move on.

Mayor Valdes-Fauli: We discussed this enough. Mr. City Attorney, Madam City Manager, the City has foregone its ability or its opportunity to act under Section 14 of the Charter, and therefore, you are free -- or you are welcome to sign your agreement of termination. Is that correct?

City Attorney Leen: Yes.

City Manager Swanson-Rivenbark: Yes.

City Attorney Leen: This matter is closed.

Vice Mayor Keon: Well, I think it's that we haven't challenged her authority as the Manager.

Mayor Valdes-Fauli: No, no. We haven't -- we have declined to act. Therefore...

Vice Mayor Keon: To challenge her authority as the Manager.

Mayor Valdes-Fauli: Please sign your agreement.

Vice Mayor Keon: So, it moves on.

Mayor Valdes-Fauli: I'll call for a ten-minute break, please.

Commissioner Quesada: If I can just reopen the hearing for a second.

Commissioner Lago: Go ahead. Let's open it.

Commissioner Quesada: No.

Commissioner Lago: Go ahead.

Commissioner Quesada: I just -- I want to have a motion on this. If that's going to happen, I'd rather there be a motion on it.

Mayor Valdes-Fauli: Okay. Let's have -- I'm sorry, reopen the...

City Attorney Leen: Please stop. Please stop. It's not over yet. It's not over.

Mayor Valdes-Fauli: Yeah, please a motion.

Vice Mayor Keon: It's up to you. Go ahead. I will tell you that I am grateful that we have a...

City Attorney Leen: They're still talking.

Vice Mayor Keon: An agreement, because we're going to leave this room knowing exactly what the agreement is, and it's not left up to negotiate or to negotiate later or to negotiate outside of our purview or whatever. We know what the agreement is...

Mayor Valdes-Fauli: Okay.

Vice Mayor Keon: Which is different than we have known in the past when people have left and they negotiate...

Mayor Valdes-Fauli: Alright.

Vice Mayor Keon: And they did -- you know, the agreement is to be.

Commissioner Quesada: So, there doesn't need to be a motion?

Mayor Valdes-Fauli: Mr. Quesada.

City Attorney Leen: There does not need to be a motion.

Commissioner Quesada: Got it, okay.

Mayor Valdes-Fauli: Make a motion. Make a motion that we authorize...

Unidentified Speaker: Mr. Mayor.

Vice Mayor Keon: He doesn't need to make a motion.

Mayor Valdes-Fauli: Make a motion that would authorize her to sign.

Commissioner Quesada: Oh, I'm told I don't need to, so...

Commissioner Mena: She's going to do that anyways, yeah.

City Attorney Leen: Yeah. The procedure is if there's no motion, the City Manager's decision stands.

Unidentified Speaker: Perfect.

Commissioner Quesada: Got it.

Commissioner Lago: On to the next item.

Mayor Valdes-Fauli: Frank, your motion?

Commissioner Mena: No, I don't think (INAUDIBLE)...

Commissioner Quesada: I thought we needed a motion. That was it.

Mayor Valdes-Fauli: No, I don't think that we -- we declined to act.