

City of Coral Gables City Commission Meeting
Agenda Item G-7
June 13, 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

Public Speaker(s)

Maria Cruz

Agenda Item G-7 [4:23:51 p.m.]

A discussion regarding the hiring of retired police officers.
(Sponsored by Commissioner Quesada)

Mayor Valdes-Fauli: Next item is discussion regarding the hiring of retired police officers.
Commissioner Quesada.

Commissioner Quesada: So, that's Item G-7. This relates to the -- is it the employee handbook or the -- is it -- what is the term that you have for that?

City Manager Swanson-Rivenbark: Personnel rules of procedures.

Commissioner Quesada: The personnel rules of procedures, as well as -- oh, okay. Personnel rules of procedures as opposed to City Code. So, we have -- there was a rule of procedure in the personnel handbook related to that employees cannot run for office when they hold -- when they are an employee of the City. I think that is an issue that is something that should be codified -- you know, I've had a lot of conversations with the City Attorney on this whether it should be in our campaign law or our campaign code or just general code. I think this is -- like, I have no problem with our personnel and our procedures in the handbook and the rules and requirements there. But, I think this is an item that should be codified, and this is something that should be decided by the City Commission. There's an issue there that we have with a past employee that has run for office and resigned prior to doing that. Now, related to that specific issue, you know, again, I've had a lot of conversations with the City Attorney about this. You know, in that specific instance, there's currently a grievance in process, which we've responded to. I believe the whole Commission got copies of that documentation, Mr. City Attorney. Is that correct?

City Attorney Leen: Correct.

Commissioner Quesada: I know I got it. And I know there are some potential conflicts with state statute and potential constitutional issues, and obviously, our position with the grievance, if any. I'm not saying there are any present, but from my conversations with you, that those still have to be analyzed further.

Commissioner Lago: Are there any? Are there any issues legally in regards to what Commissioner Quesada said?

City Attorney Leen: In terms of how -- well, hypothetically, what are you asking? So, if the Commission wanted to do what?

Commissioner Lago: No. I mean, pending. Is there anything pending right now?

Commissioner Quesada: Well...

City Attorney Leen: Well, right now, we have a response to a grievance, and we're waiting to see what the employee who grieved -- what he does with that. The position the City has taken is that the grievance is not subject to arbitration, because it involves issues of law that basically require judicial review, not an arbitrable issue. But, I don't know what position they're going to take on that matter.

Commissioner Quesada: So, my concern is that I want to resolve the issue in the sense that, you know, I think this is something that should be codified. Again, this is something that we should have decided on. But you know, after my conversations with the City Attorney today, you know, I think this is something that, you know, I want him to resolve. I want him to give the additional feedback on that. I think he needs to brief all of us on any potential -- I don't want to say quagmire, but any potential exposure, if any. I know we've had a lot of conversation on that. And, then I want to come back on this and I want to put this to bed.

Commissioner Lago: But, do we -- do you have an interpretation on this matter, Craig?

City Attorney Leen: Well, to be clear...

Commissioner Lago: Because you and I have had this...

City Attorney Leen: You've each...

Commissioner Lago: You and I have...

City Attorney Leen: I've spoken to each of you.

Commissioner Lago: Had discussions on this matter before and...

City Attorney Leen: The question I received was there were -- there are several parts to that. First, my position is that the resignation that he gave -- and we're talking about Mr. Hoff -- was irrevocable. It was clearly stated to be irrevocable. It is irrevocable. I was also asked, well, can the Commission reinstate him or allow him to revoke, and then I said yes. The Commission can do that in Section 14 of the Charter. But that's --, but I want to be clear. If you did that and you should, you know, obviously confer with the City Manager about that under Section 13 of the Charter, but if you were to do that, that's where I said I would want to meet with the counsel and also meet with staff and determine the best way to do that, if that's what your will is. But first, you have to make a determination whether you want to do that or not. That was the -- that's what I said.

Commissioner Lago: And the best way to do that would be either through, I guess, through the Commission proffering a resolution or taking a vote on it...

City Attorney Leen: Well, the...

Commissioner Lago: And directing you that this is what we want or...

City Attorney Leen: The only two Charter...

Commissioner Lago: What is the clearest way to do it?

City Attorney Leen: Well, either the City Manager could do it or the Commission could do it.

Commissioner Lago: (INAUDIBLE).

City Attorney Leen: In this particular instance -- and by the way, this is all hypothetical, because I don't know what you want to do on this. And right now, the City's position is that it's irrevocable, the resignation. If you wanted to allow him back, it would require either the action of the Manager or the action of the Commission through a vote.

Mayor Valdes-Fauli: Under Section 14.

Commissioner Quesada: But Mr. City Attorney, based on the conversations that we had this past week on this topic, you know, the precedential impact is what, you know, what my concern was at this point.

City Attorney Leen: Well, yes. You had wanted to do an ordinance change and then not have it be retroactive, essentially. And then, as to that employee, reach some sort of -- potentially some sort of settlement agreement.

Commissioner Lago: But, how often does -- I think this is the first time this has happened, correct?

City Attorney Leen: First I know of.

City Manager Swanson-Rivenbark: So, Mr. Mayor, if I can. We've finished the grievance. We forwarded it to the -- or the response to the grievance. We just forwarded it, I guess, yesterday or...

City Attorney Leen: Yesterday morning.

City Manager Swanson-Rivenbark: Or the -- you know...

City Attorney Leen: Or yesterday early afternoon.

City Manager Swanson-Rivenbark: Because we needed to wait until Walter was back from his vacation, because of the resign to run statutory issue. We did that. It has been sent, and we're waiting to hear back from their counsel.

City Attorney Leen: Yes.

City Manager Swanson-Rivenbark: So, we...

Commissioner Lago: Well, I mean, obviously, the gentleman wants his job back. I mean, that's pretty obvious. I mean, I think he's contacted probably all of us. And like we had before, we had a pretty thorough discussion in regards to vacancies in the police department. So, if you have somebody who has got 30 years of experience, who has an impeccable record, just like you mentioned before Molina has an impeccable record. I mean, this gentleman has an impeccable record. He's got two and a half years left. I think that what you're seeing a lot now -- you know, I'm not a police officer, but I did ride with them on Friday night, and I was surrounded by guys who are a lot younger than me. And it's pretty incredible to see how many young -- and with all due respect, kids. They're children that are out there with a gun, you know, in the middle of the strength, you know...

Mayor Valdes-Fauli: College graduates.

Commissioner Lago: Advocating on our behalf. It's incredible. I've never seen anything quite like that; 21, 22, 23. But, he's got two and a half years. And that institutional knowledge that he has, I think he can instill it on all the young individuals who are going to be joining this force. So, I mean, I'm not advocating on his behalf. I want to put this to a rest, so...

Commissioner Quesada: Yeah, so do I.

Commissioner Lago: So, if we want, as a Commission, to make -- to take a vote on this issue right now and direct the City Attorney to move forward or not to move forward, I think we should make a decision here.

Mayor Valdes-Fauli: Can I ask a question of the City Attorney?

City Attorney Leen: Sure, Mr. Mayor.

Mayor Valdes-Fauli: I want to make it very, very clear that this has nothing at all to do with an elected official and its requirement that he or she resign to run.

City Attorney Leen: Well, in that particular case, the elected official's seat has been filled by someone else, so you could not -- yes.

Mayor Valdes-Fauli: Notwithstanding that...

City Attorney Leen: Yes.

Mayor Valdes-Fauli: Does that -- is that resign to run from an elected official impacted by this?

City Attorney Leen: No. You can't revoke -- the elected official nor the appointed official, assuming that statute applies -- and that was the City Clerk's decision -- and the City is advancing that position in this matter. The court would have to look at that and determine. There's no real precedent for that. It's based on Attorney General opinions. So --, but if a court agreed with us, then he could not revoke his resignation under that statute. Now, once the resignation occurs and there's a passage of time, the Commission -- as long as -- you know,

always the issue on these things is, is there some sort of attempt to circumvent the statute? Was there an intent before the resignation to allow him to come back? If so, I would be very concerned about that because --, so that's why in these sort of instances, I said it would be the City Manager or the Commission, if that was your will. But, it would have to be clear that you were doing it after the fact, which with the Commission that would be clear, because you weren't involved in this before. If the Commission takes that decision, then the reason why there would be some issues is, well, one, let's say for example you allow him to revoke his resignation. Well, what would happen to that time period where he wasn't working? Would it be unpaid? Would it be paid? There are other legal issues that may come up, all resolvable, but that's what I meant.

Commissioner Quesada: Well -- so, our previous conversations was the liability aspect of it, because it had never been done before. If it ever happens again, what is the precedential impact, which is what I was referring to earlier. Now, if it is -- my concern was, which we had discussed earlier because it came from your concern is if we did something today that could potentially negatively affect us in the future was my concern. That's why I wanted more briefing from you...

City Attorney Leen: Yes.

Commissioner Quesada: Of what you had advised to me. That is why I've taken that position. Now, if it's the will that you're saying we can vote today, then I would want to take a two-minute recess because we're in a grievance proceeding, which could become a litigation. I don't -- I just want to be clear with you between you and I...

City Attorney Leen: What you would do, if you're interested in that, you would just direct me to come back to you next time with your -- with the full range of your options.

Commissioner Quesada: Or we can even do it on an expedited basis. But, the point is I just want to make sure that there's not any kind of exposure, which was my concern...

City Attorney Leen: Oh, I understand.

Commissioner Quesada: On our private conversations, which again...

Mayor Valdes-Fauli: Do you want to direct him to...

Commissioner Lago: Do you believe there's any exposure...

Mayor Valdes-Fauli: Bring it next time? I'm asking.

Commissioner Lago: Do you believe there's exposure?

Mayor Valdes-Fauli: It's your wish.

Commissioner Quesada: I thought that was the more prudent way, based off our conversations.

Mayor Valdes-Fauli: Okay. Why don't we do that.

Commissioner Quesada: I mean...

Mayor Valdes-Fauli: Ms. Cruz wants to...

Commissioner Quesada: My...

Mayor Valdes-Fauli: Address us.

Commissioner Quesada: I mean -- I haven't -- I put it on the agenda for a reason. I have a certain feeling of the way it should go -- the way I want it to go. But again, at the same time, I don't want to have any negative impact if we do...

Commissioner Lago: So, that's why I asked...

Commissioner Quesada: Make a decision today.

Commissioner Lago: I asked when I (INAUDIBLE)...

City Attorney Leen: When you say exposure, do you mean liability?

Commissioner Mena: Do you feel...

City Attorney Leen: I don't believe there's any liability.

Vice Mayor Keon: There's no liability.

City Attorney Leen: Yeah.

Vice Mayor Keon: It's whether or not it will be then used for another...

City Attorney Leen: Has a precedential impact.

Commissioner Quesada: If we take a two-minute recess, I might be able to resolve it with Craig.

Commissioner Lago: She's going to speak.

Maria Cruz: Well, good afternoon. I guess it's been a long day...

Mayor Valdes-Fauli: Good afternoon.

Ms. Cruz: For you all and for me. I have serious concerns.

Mayor Valdes-Fauli: Three minutes.

Ms. Cruz: I am here -- I was here two weeks ago. And we're very concerned about liability today, but last -- three weeks ago, we were not concerned about liability. You know, you can't have it both ways. You cannot have it both ways. If a -- when you tell me that the person that violated my rights was a stellar record -- without reading her record --, because I did pick it up and I can tell you it was not, but that's okay. You believed it. You voted on it. She had a stellar record, so not only did we allow her to take vacation time at home while the IA investigation was going on, okay; we stretched it as far as we could. Then we're going to give her vacation time, sick time, three weeks to work at home, so she can get to the Rule of 70. But this gentleman, okay, who has a perfect record -- nobody has said differently -- wants to come back and now we have to worry about all kinds of things. Hello. We're short police officers. We have somebody who's certified, who's qualified, who was not involved in any scandal, has no IA record, and yet, we have to think about it. Something is wrong.

Mayor Valdes-Fauli: You know what the difference is, he resigned. He signed a letter resigning irrevocably.

Ms. Cruz: But...

Mayor Valdes-Fauli: That's the difference.

Ms. Cruz: Yes. But, this Commission has the power to allow him to revoke that, and that's the bottom line. This Commission had the power to overrule the City Manager, and this

Commission chose not to. And you know what, let me tell you, from the citizen side, from the resident side, you know what? It's time for this Commission to stand up and not be allowed to, you know -- I get concerned. We're worried about liability. Let me tell you. I have a letter from Molina's attorney where he very nicely suggests that she could be using the whistleblower and sue, okay, so maybe that's why you gave her everything she wanted. You know what, maybe that's what this gentleman is doing. It doesn't make any difference to me. He has a stellar career. There's no issues about him other than he had no choice, but to sign that letter so he could run, and that is another issue on the side. Because in any other -- you know, a teacher can run for School Board and not have to resign his position, okay. And, there are many places that you can do that. So, why do we play -- we play hardball with some people and not with others. The facts of the case are you have the power to do it. We need good police officers. This is a perfect example of why we have so many vacancies. We put so many stumbling blocks that, you know, I guess we don't want good police officers. We want the 19-year-old that doesn't know how to drive. That's the one that we're looking for. I'm sorry. You have the power. You are the City Commission. You know what, you can attach any conditions you want. You can vote on it, you know. Let him revoke that with the condition that he pulls the grievance. You can do that. There are many ways that you can do it. You know, how many attorneys do we have here? There are many things that you can do, but we do need good police officers, and this is your chance to put your money where your mouth is.

Mayor Valdes-Fauli: Thank you, ma'am. Thank you very much.

Commissioner Lago: Thank you.

Mayor Valdes-Fauli: And thanks for staying as long as you have. Mr. Quesada -- Commissioner Quesada, your choice.

Commissioner Quesada: Can I just -- can I take a two-minute recess, or can you move to the next item, and I'll step out, so I can just...

Mayor Valdes-Fauli: Yes, we'll move...

Commissioner Quesada: Discuss some brief item with...

Mayor Valdes-Fauli: To the next -- the next item is...

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