

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2008-152

A RESOLUTION AUTHORIZING THE CITY MANAGER TO COMPENSATE EXEMPT CITY EMPLOYEES AT TIME AND ONE HALF THE REGULAR RATE OF PAY FOR DUTY IN EXCESS OF FORTY HOURS PER WEEK FOR LOCAL, STATE OR FEDERAL DECLARED OR NON-DECLARED EMERGENCIES; SUBJECT TO A WRITTEN ADVISORY OPINION BEING PROVIDED BY OUR INDEPENDENT COUNSEL (I.E. LABOR ATTORNEY) REGARDING SAME.

WHEREAS, the City recognizes the need to provide essential services to protect the health, safety, welfare, and property of Coral Gables residents in anticipation of, during and following natural and man-made disasters; and

WHEREAS, these essential services include pre-operational and post-recovery operations utilizing the City Emergency Response Team (CERT) including exempt employees; and

WHEREAS, Field Operations, including the support of the Emergency Operations Center (EOC), are staffed by Department Directors, Assistant Directors and other exempt employees; and

WHEREAS, there is a long standing policy in Rule 22 of the Personnel Rules and Regulations of paying overtime to exempt employees on duty in excess of forty hours per week when there is an emergency affecting the City;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES AS FOLLOWS:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.


SECTION 2. That the City Commission does hereby authorize the City Manager to compensate exempt city employees at time and one half the regular rate of pay for duty in excess of forty hours per week under local, state or federal declared emergencies.

SECTION 3. That this resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-THIRD DAY OF SEPTEMBER A.D.,
2008.

(Moved: Kerdyk /Seconded: Anderson)
(Yeas: Cabrera, Kerdyk, Withers, Anderson, Slesnick)
(Unanimous: 5-0 Vote)
(Agenda Item: H-6)

APPROVED:



DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ
CITY ATTORNEY

Bryant • Miller • Olive

ATTORNEYS AT LAW

October 3, 2008

Mr. David Brown
City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Re: Compensation Exempt Employees

Dear Mr. Brown:

We have been asked to provide an opinion as to the legality of the City's resolution authorizing the City Manager to compensate exempt City employees' time at one-half the regular rate of pay for duty in excess of forty (40) hours per week for local or state declared or non-declared emergencies.

The resolution is in compliance with applicable federal authority, i.e., the Fair Labor Standards Act. The applicable regulation provides:

29 C.F.R. Sec. 541.604

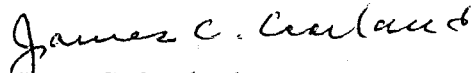
(a) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least \$455 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least \$455 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least \$455 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.

Mr. David Brown
October 3, 2008
Page 2

Thus, the extra compensation contemplated under the resolution is legal.

Very truly yours,

BRYANT MILLER OLIVE


James C. Crosland

cc: Elizabeth Hernandez, Esquire
Ms. Marjorie Adler