

City of Coral Gables City Commission Meeting
Agenda Item F-1
September 22, 2009
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Donald D. Slesnick, II
Vice Mayor William H. Kerdyk, Jr.
Commissioner Maria Anderson
Commissioner Rafael “Ralph” Cabrera, Jr.
Commissioner Wayne “Chip” Withers

City Staff

City Manager, Patrick Salerno
City Attorney, Elizabeth Hernandez
City Clerk, Walter J. Foeman
Deputy Clerk, Billy Urquia

Public Speaker(s)

F-1 [Start: 12:59:18 p.m.]

Discussion regarding the adopted policy of unearned annual and sick leave from employees' leave banks – Commissioner Rafael “Ralph” Cabrera, Jr.

Mayor Slesnick: F-1 Mr. Cabrera.

Commissioner Cabrera: Well interestingly enough under F-1, I was not the person who said bring it back two weeks later. I basically understood how everyone felt, and essentially knew that we weren't going to agree on this one, and decided that I saw no further reasons to follow it up, but someone on the Commission suggested that we bring it back two weeks later. So it's on there and it's under my name.

Vice Mayor Kerdyk: I can't remember if I brought it up and asked for it to come back or not.

City Attorney Hernandez: It was the Mayor...

Vice Mayor Kerdyk: It was the Mayor.

City Attorney Hernandez: I got the minutes and what the Mayor indicated was, why don't we look at it and just put it on the agenda, if it needs to be discussed again we will, and so its on here if the Commission wishes to discuss.

Commissioner Cabrera: Well I mean, I will discuss it again for a couple of reasons; number one, I want to get some clarification to the first time I brought it to you all; and I believe we all spoke

to Interim City Manager Maria Jimenez about this issue. We were first contacted by her, at least I was, and I'm assuming the rest of you were part of this outreach; we were contacted by her, we were told of what she had discovered; I remember also being told by her that she had asked for involvement by outside counsel, and she received that assistance from outside counsel, and proceeded accordingly based upon what she felt was very sound position that the Charter supported this along with the additional information that I gave you all copies of two weeks ago. So then all of a sudden we moved forward in March, I think the letter was dated March 20th, we sent this letter out to twenty-one (21) people, I think eighteen of the twenty-one were affected from a monetary standpoint, and the next thing you know is that we get back one check from one of those participants, and we get no other monies returned to the City of Coral Gables. Then she proceeds to change the policy back to, well to rescind the policy, not change the policy back, just rescind it, and incidentally if I didn't mention it last time, I'll mention it now, when the policy was instituted to the best of my knowledge I was never contacted by the City Manager's office and asked what I thought of changing this policy, and furthermore in my research of this issue I came to find out that our own Finance Director was opposed to the policy, and made a written statement to that effect. So where are we today? I think where we are today is that we had this discussion and the City Attorney has reviewed it, and the City Attorney feels that if the City were to proceed with trying to get the monies back from those that had received it, it may be a difficult defense if some of these participants were to take legal matters against the City. So that's where we are at, and I believe that the City was well within its rights, the City is well within its rights to request the monies be returned, and I'm very sensitive to what Ms. Anderson said and it was a very good point that you made which was some of these people may have already used those monies and it may be a real financial hardship for them to return it, and I do not for one minute disagree with her, I think it's a very logical and sensitive commentary to make. At the same time my commentary is, you know we are not talking about \$5,000, \$50,000, we are talking about \$127,000, that's out there based upon a policy that I believe was made without the appropriate Commission approval, and that's kind of where we are at. So I don't know how much more there needs to be said about this?

Vice Mayor Kerdyk: You know, I'd like to mention some things please, if it's OK. First of all I too like everybody else feels the former City Manager acted in bad faith when he made the decision to take this money for himself and the twenty plus other employees. Where I have an issue here is that the City Attorney has engaged counsel to opine on the situation, and please tell me that I'm going down a road that is not fact. Jim Crosland, the attorney that was engaged was engaged not only to opine on the subject but also to write a letter from the former City Manager Maria Jimenez to David Brown, requesting David Brown and other employees requesting that they give back these funds. As I understand, and I really wanted Mr. Crosland to be here today, that Mr. Crosland never opined that David Brown could keep those funds, quite to the contrary when he was asked to give his opinion; his opinion was definitively not matter-of-factly, definitively that there was no way that the City could go ahead and get those funds back from them without loosing in a lawsuit, because I would personally like to go get them back from him, but I'm hearing that from legal counsel who called me up on the phone and told me that, and I have talked to the City Attorney on specific times, then I just can't proceed knowing that we are going to lose the lawsuit to go after these funds, with two people telling me this legal counsel. Would you please tell me if I'm understanding this situation correctly or not?

City Attorney Hernandez: Vice Mayor let me just, you are at the finishing point correct, but you are chronologically some things are out of context.

Vice Mayor Kerdyk: Alright, go ahead.

City Attorney Hernandez: First of all the City Manager last year, I believe in late summer, issued a rule, my understanding was that department heads had brought it to his attention, it was the implementation of a new computer system, whatever it was, it ended creating a different way of measuring the accrued vacation, the payouts and so forth. The Interim City Manager reviewed that policy, again I was not part of the meetings with the former City Manager, nor was I part of the meetings with the Interim City Manager when they reviewed the policy, and they contacted labor counsel to assist in the drafting of correspondence. Now, I have not spoken to the Interim City Manager, I don't know if she sought an opinion; I was told by our outside labor counsel that an opinion was not sought rather that they were asked to draft a letter. To me its not relevant to my position which was when Commissioner Cabrera found out about this, he asked me what is your position?- can you look at this? I looked at it and I gave him my opinion as the City Attorney as to what are the powers of the City Manager, and I told him as I told you, I'm not telling you whether I think it was good, or bad policy, I'm just telling you that it is within the powers of the City Manager, unless that you can show that they abused their discretion, it would be difficult to win the case and I advised Commissioner Cabrera at the time that in my opinion we would have a minimal chance of successfully litigating such a matter. At that time he indicated to me, would you please seek an additional opinion from the City's labor counsel, which I did, and he gave me his opinion at the last meeting you all asked that, well actually three things were asked; a copy of the opinion rendered to the former Interim City Manager, I was advised there was none; a copy of the invoice from labor counsel which we requested; and each Commissioner specifically wanted to hear from labor counsel as to what they advised the Interim, and what they advised my office afterwards. Those were the things that we were asked to do; those are the things that we did. My position is clear, as the City Attorney one of the responsibilities of my office is to advise this Commission and the Manager on the Charter, and regardless of what Mr. Crosland's opinion would or would not have been, my opinion is and continues to be, we are a strong City Manager form of government, implementation of rules is within the authority of the Manager, and unless the Manager abuses his discretion, the City would not be successful in litigation against the former Manager, or any Manager that has served in that capacity under our Charter and under the laws of the State of Florida. That's the only thing I can offer you in terms of the opinion.

Commissioner Cabrera: So given what you briefed us all as to where we are – Ms. Jimenez did you want to approach us?

Assistant City Manager Jimenez: Well I do and I don't, but quite frankly this is for the record; and I cannot allow the record to say different events that have occurred. I can assure all of you that before I went ahead and sent the notice to Mr. Brown that I did meet with both attorneys, both our inside City Attorney and our outside counsel, and seek their opinion on the matter; perhaps my mistake was not receiving it in writing, but I think that since we are putting it on the record I need to be clear on the record what took place. I would never put this City in a position that it has found itself in now. Thank you.

Vice Mayor Kerdyk: By the way, I was not blaming the Assistant City Manager for anything she has done whatsoever...

Commissioner Cabrera: No, I don't either; I think she acted...

Vice Mayor Kerdyk:...quite to the contrary.

Commissioner Cabrera: I think she acted quite responsibly. OK, you know what?- I heard what our attorney had to say; I tried to speak to outside counsel but we've missed each other. At this point in time I still hold to my position which is I believe we have the responsibility to recapture those funds, and I very much respect my colleague's position on the sensitivity issue, and however else the rest of you feel. If we don't go any further on this, there is one other item that I would like to bring up that has a lot to do with what we just faced with this issue, and that is, I don't know how the rest of you feel, but I want to make sure that this does not happen again, and this is no reflection upon our present Manager; I think he is someone of high professional caliber, but its not about him, its about insuring that this doesn't happen again, and if the City Attorney hold to her position that this is a strong Manager form of government, then it doesn't seem to me like there is going to be a whole lot that we are going to be able to do to make sure that this doesn't occur again.

City Attorney Hernandez: The Commission can adopt ordinances that provide policies and procedures that they want the City Administration to follow.

Commissioner Cabrera: Well, I'm not going to sit there and do it, but I sure would like to see something like that put in place to ensure that this doesn't occur again, learn from this mistake, I mean, it's a \$127,000 mistake; and you know the saddest thing of all is, if I was a former City Manager and I was aware of what happened and I was aware of what transpired, I would return the money, that's what I would do, but I guess I'm not...

Vice Mayor Kerdyk: That's the saddest part of it, that's the saddest part of it, I agree with you – pathetic is the word.

Commissioner Cabrera: That really is the saddest part of it, but enough kicking the guy, you know, but that's really the saddest part of it all. Hey but you know, I won't be in office forever, and we'll run into each other, and I'll let him know how I really feel. I guess we are not going anywhere on this matter.

Mayor Slesnick: Let me ask you this Ralph, would you like to have me or us as a group bring together the sentiments that we have expressed in these meetings, and put them in a letter from us or from me, I'm happy to do it on behalf of the Commission, to him urging that he take action to meet what we consider to be his moral obligation.

Commissioner Cabrera: I think that's a very gentleman-like position for you to take with a great deal of dignity, but I don't think he deserves that much dignity.

Mayor Slesnick: OK.

Commissioner Cabrera: But I mean, if the Commission as-a-whole supported it I would do it.

Vice Mayor Kerdyk: I would sort of like you to do that; I would like you to send him a letter telling him that's our sentiment, if it's shared by everybody else.

Commissioner Withers: Well I think it has to go to everybody. I think it has to go to those folks that are unknowing participants of this also.

Mayor Slesnick: But Chip, I don't totally disagree, but the fact is they only were the participants of monies based on his decision.

Commissioner Withers: I know Don, but I'm saying if we are going to ask someone to give money back, I think we need to ask everyone to give money back.

Mayor Slesnick: I think we have done that.

Commissioner Withers: Well I know...

Mayor Slesnick: It was more of a personal outreach, but see we had nothing to do with the request...

Vice Mayor Kerdyk: Since he implemented the issue, we think that we should reach out and ask him to...

Commissioner Withers: I don't disagree with you, I don't disagree with you guys; but from what I understand this whole policy change was vetted throughout the City; it was vetted with department heads, it was vetted with other...it wasn't just our City Manager that knew this policy from what I understand...

City Attorney Hernandez: The unions...

Commissioner Withers:...the unions knew about it, everybody throughout the City knew about it, so I just think, yeah, we can hold one person accountable for it because I think it was a pretty stupid decision, but the fact is it wasn't as if it was done in the dark, I mean, it was done through the whole...I mean everybody knew about it; and so...

Mayor Slesnick: Let's put it this way; we won't do anything unless we have a consensus.

Vice Mayor Kerdyk: Forget it.

Commissioner Withers: But Don, you don't think we should ask everybody back for the money?

Vice Mayor Kerdyk: We already have asked.

Commissioner Withers: Well that's what I'm saying, so what's the difference?- what do you think is going to get accomplished?

Mayor Slesnick: Remember we didn't hire those people, we hired David, he worked for us.

Commissioner Withers: But what about that...someone did give the money back.

Mayor Slesnick: This is like a personal appeal from his bosses saying, David, we really feel strongly about this; you know, you did great things, you did some things that lead to the downfall of your administration, and at the end...but David this is how we feel, that's all. It was only a proposal of trying to put it on the record...

Commissioner Withers: Is this an attempt to, and I ask this very carefully, is this an attempt to get \$127,000 back into the budget.

Mayor Slesnick: Not my letter, but I think Ralph has expressed that that's an important thing; my letter was just...listen, I was just trying to wrap it up at least to where we take a position.

Commissioner Cabrera: But initially that was my thought process.

Commissioner Withers: That was the original thought. If we are out to challenge somebody's ethics then that's one approach; if we are out to get money back that's another approach.

Mayor Slesnick: You're absolutely right.

Commissioner Cabrera: You know, at the end of the day as negative as I sound, I don't think the former Manager did it because he thought he was leaving; he just thought it was a good policy to adopt, I genuinely feel that way; but I still also feel strongly as I do that he made a mistake, account for it, because made another mistake and doesn't have to account for that one, and that's \$185,000 Grand, plus I'm sure other monies that are out there.

Mayor Slesnick: Well then we'll just move on. I was trying to offer something, but if it's not a consensus let's just move on.

Commissioner Cabrera: Well it's a consensus from the standpoint that I would support your approach, because I think as I said before, its very gentleman and very dignified, but...

Mayor Slesnick: It won't get us anywhere.

Commissioner Cabrera: It won't get us anywhere, I mean, you know...

Commissioner Withers: It will get us nowhere.

Commissioner Cabrera: If I got a letter like that on March 20th saying that I needed to return some monies, I would have returned the phone call; I would have called, I would have done

something, I would have shown some credibility and done what I felt needed to be done in order to right that wrong, but obviously that's not who we are dealing with.

Mayor Slesnick: OK – any other comments on this?

Commissioner Cabrera: No, I think we've beaten this one pretty badly.

[End: 1:17:20 p.m.]