

City of Coral Gables City Commission Meeting
Agenda Item F-2
February 25, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Pat Keon

Commissioner Vince Lago

Commissioner Frank Quesada

City Staff

City Manager, Patrick Salerno

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

F-2 [Start: 10:24:44 a.m.]

Discussion and/or action regarding Commission Aide position.

Commissioner Pat Keon

Mayor Cason: Let's move on to F-2, this is Commissioner Keon's item.

Commissioner Keon: I passed out what I have to say here. Under our Code this issue needs to be addressed in an open session, so I'm here today to do that and I'm asking the Commission as-a-Whole to create the position of Commission Aide, with discretionary duties to be approved by the Commission as a whole, as a confidential and exempt employee to assist the Commission with their Charter functions. This position is established under the direction of the Commission and is not an administrative position. I also ask that we direct the Manager and the HR Department to develop a job description and any legislation necessary to facilitate the creation of this position. The job description of the Commission Aide will be provided to the Commission and approved by the Commission as-a-Whole at the first meeting in March 2014. The Commission will set the salary, review this individual annually and hire the Commission Aide. I

am confident this is within the Commission's authority as set forth in the Code. I rely on the City Attorney who has the ultimate authority to opine on the Code to provide his opinion on this matter. Thank you.

Mayor Cason: I would like to know what the purpose of the Aide would be?- what's the problem that the Aide will fix? What we have right now we've had since, I assume, since 1925, we've had – we've never had Aides like some other cities have. We have assistants – I have an assistant who is confidential and exempt employee, who works within the system – reports to, get efficiency reports done. I make the input, it's done by Human Resources and so on. I wonder what is this person going to do, that the current person is very effective, we all like her.

Commissioner Keon: You want to know what the difference in the position would be?

Mayor Cason: I can see – I would have no problem with being confidential exempt like Evelyn Paz is, but my question is what is this person going to do that this person can't do right now?

Commissioner Keon: Well one is exactly that, that it is an exempt position, that it is a confidential position. It's also that they are no longer subject to the laws as regard to labor, to overtime, that if they work with us beyond maybe their eight-hour day they have the ability to do that and we don't have to go back and seek permission to have that person done. In addition, I think that we have the right to have an individual who will work with us and can even speak to residents on our behalf. They will ask for information from City staff, they are in no position to in any way to direct, it's not an administrative position, they are there to assist us. I also think that and I don't know that maybe in the past it wasn't a problem, but I know now that I do not want a secretary and I do not want an aide who is questioned about who we meet with, when we meet and has to notify someone if someone comes in and asks to meet with all of us. I don't think that, that is appropriate; I don't think it's proper. I want someone who is independent and that works for us.

Vice Mayor Kerdyk: OK. Let me say a couple of things because I have lived it for many years here. I will tell you that I have problems with the issue and I'll explain why, but having said that I can't figure out what the problem is. I mean I know what the problem is, but I can tell you I've dealt years and never had a problem with this, whatsoever. I've had the assistant accompany me at numerous, numerous town meetings, Frank you remember numerous times.

Commissioner Quesada: Yes.

Vice Mayor Kerdyk: I have had them accompany me in other outings and I've never had a problem whatsoever with anybody, I had that issue. I basically have used that person and have other Commissioners in the way you are talking about.

Commissioner Keon: Absolutely.

Vice Mayor Kerdyk: What I don't like is to have one employee for four different bosses.

Mayor Cason: Five different bosses.

Vice Mayor Kerdyk: Five different bosses. I really don't want to get into the point where one Commissioner she is spending 60 percent of the time there or at least her thought process is 60 percent of the time with one Commissioner, she is not giving me enough time; and please this has nothing to do with Danette, she is a super, super, super person. This is the position that you are trying to create, this has nothing to do with that. I think it puts the employee into a bad position. It puts the Commissioners into potential conflict situation regarding the employee. I think it puts the City in a bad position if the employee feels that they are put into an untenable position. I just don't want to see there is the one governing one individual person. If the problem is with the situation that she is being questioned or the problem is with not being to assist a Commissioner or elected official after hours, then we need to turn to the City Manager and tell him to fix that problem, because I don't want to create a position based on the fact that the City Manager, which is the one you are referring to is creating the issue. He needs to come up with a plan to take care of the situation. I firmly believe and I'm a big advocate of the City Manager form of government. If we want to redo the government, then let's make a Mayor's form of government and we'll...

Commissioner Keon: That in no way affects the City Manager form of government that exists in our City today. We continue to have a strong Manager, but I still – you can't deal with the issue of overtime unless this person is exempt. I think no one enforced it. It should have been enforced and it wasn't enforced. Those are the labor laws. It wasn't enforced, it wasn't dealt with. So if we are going to deal within the law with regard to that, then you have to change that position.

Mayor Cason: Let me ask the City Attorney a legal question. Can this person right now, who is the incumbent be designated exempt and confidential and therefore not have to be – without changing anything else; change the title, confidential exempt and therefore not have to get overtime?

City Attorney Leen: I spoke with our outside labor counsel and she may be exempt and confidential now, she was looking into that. It was a little unclear to her actually from when I

spoke to her last. However, the issue about overtime doesn't relate simply to being exempt and confidential, it relates to the tasks that you perform. So if you want her to basically be a salaried employee where she can work as many hours as possible you have to give her tasks that are commensurate with being a salaried employee. Generally assistants like a secretary, an assistant is required to be paid overtime, so if the person has discretion and is acting on your behalf and is meeting like a Commission Aide, I believe you can construct a position that would be salaried as well. So the other thing you could do obviously is you could just simply direct the Manager on this issue that he is to always approve the overtime, if it's requested by a Commissioner and that the only way that can be overturned is by a vote of the whole Commission.

Mayor Cason: I just would like to – let me just make my view known. I'm opposed to this. I've worked in 20 organizations, huge organizations over 40-sum years; I've never seen a situation where you have five bosses for one person. Particularly, this says we don't even know what the person is going to do, so the Manager is supposed to have a job description. I just don't see what the problem is that's being fixed, that can't be fixed right now with that person there and with – look, I've been to 3,000 events as your City Mayor, I have never used overtime one time, never taken an aide with me. Under this apparently, if she is going to be my aide I can take her to my 3,000 events. I think this puts a tremendous burden on the individual there with so many bosses, confusion as to why this is being created.

Commissioner Lago: If I may? Since the moment I got into office ten months ago, I've been dealing with Danette, since she was just recently hired around the same time; and again this is not an issue of whether how does Danette splits her time, because if we are going to talk about splitting time there are many times when I have to come into my office, which by the way is not my office, it's also Commissioner Keon's office, and she is having a meeting and I have to hold my meeting in Commissioner Quesada's office, which by the way is not your office, it's the Vice Mayor's office also. I actually sometimes sit in his desk, so we have all been able to share like adults. My issue comes and why I am in favor of this is because you look at all the municipalities in this County and I'm pretty sure, I got tired of calling, but most of them, not all of them have aides or secretaries which are acting on behalf of the elected official. Her fiduciary responsibilities to me and my responsibility are to the residents of this community. So, I'm going to give you some examples of where and why I'm supporting this discussion item today. Have I asked Danette to attend with me a multitude of events?- no, I have not. I have asked her to attend two events with me, one of them was a MacFarlane-Homestead District and the reason why was my wife was pregnant and was not feeling well, but I had made a commitment to go to the Homeowners Association meeting that night, which started at 7 o'clock. So what I did was I asked Danette to come with me. I would be at the meeting about half the time where we had Code Enforcement speaking dealing with some issues in regards to the neighbors who were also dealing with the trolley stop, which as you know two meetings ago was finally hopefully

approved that would be coming in the first week in May. So I told Danette do me a favor, these individuals in this neighborhood are very familiar with you because you speak to them on the phone, will you mind attending the meeting? She told me she had no issues, it's great, you know that's my job. To make a long story short she attended the meeting. I left half way through she covered the rest of the meeting and then the next day made sure that I was aware of everything that had occurred in reference to the concerns of the residents and the business owners that attended the meeting. That's a simple example of why she is a great asset. But now what the Mayor brings up is correct and I agree with him wholeheartedly. You have one individual serving five Commissioners and Mayor, which again we are the only City that does that and I don't understand why, because I call Danette 20 times a day on a normal basis to discuss everything from a resident's issue on Cotorro to a legal matter to something that has to do with the City Manager, from the most important to the smallest issue. I know that she is handling a whole host of my issues. I can only imagine how she is dealing with the rest of the elected officials here in this community. I think that we are outside of the box and we are not doing what is the norm in reference to the other municipalities here and the other elected officials and I think we need to give Ms. Perez, Danette some relief and I think that relief comes with her having to act on our behalf and I'm pretty good in the sandbox, so I promise that I will share our aide and we haven't had any issues in reference to sharing our offices, I think we will be able to share our aide.

Mayor Cason: But again I missed – she did all this under her current job description.

Commissioner Lago: I'm trying to be discrete Mayor.

Mayor Cason: But I'm saying two times in ten months.

Commissioner Lago: And would have been more if I wouldn't have had so much pushback from the City Manager. Again, I don't want to go into details about the issues, but I just want to tell you this, it makes sense for the "goose and it makes sense for the gander". So this is a no-brainer, this is a win-win situation for everybody, it's a win-win for the employee, it's a win-win for the Commission. I think that it's time that we as a body move into a direction where other municipalities that have strong Manager form of governments embrace the fact that when a Commissioner comes into office or a Mayor comes into office they are in charge of their own staff, that applies to Pinecrest, that applies to City of Miami, that applies to all the municipalities that encompass Miami-Dade County.

Commissioner Quesada: Mayor question for you. Mayor when you said Evelyn Paz is confidential and exempt, I'm not familiar with – define that for me.

Mayor Cason: This was something that I inherited, I asked her if she was confidential and exempt, she said she was. I never had the overtime issue because I do it without...

Commissioner Quesada: What does the word confidential mean the way you are using it?

Mayor Cason: I think it is not used in the sense of – I think it's a legal term. Mr. Manager would you discuss the differences?

City Manager Salerno: Mayor the term confidential is a labor term thereby meaning that from the union contract it means that both Evelyn and Danette their positions are exempt from the union contract, because they are considered confidential. All administrative assistants, meaning all secretaries that provide clerical administrative support to department directors, they are confidential. If they are in the HR function it reaches a little broader because they deal with a lot of collective bargaining type of things, so they are exempt from that standpoint as are other – they are confidential as are other clerical administrative support people to directors and etc. throughout the organization. It just means they don't have the rights to the union contract, for instance, for the grievance process, etc., they are confidential, they are in a way because management is not under the union contract, neither are they.

Mayor Cason: They pay less for their retirement then?- 15 percent versus 17 percent?

City Manager Salerno: I can't recall whether they are under the 15 or the 17 Mayor.

Vice Mayor Kerdyk: But they have the rights to overtime though, is what you are saying.

City Manager Salerno: That's a different issue. The exempt issue means they are exempt from the – exempt only means they are exempt from the Fair Labor Standards Act, so neither Evelyn nor Danette are exempt from the Fair Labor Standards Act today. That merely means that they must get overtime or comp time when they work more than the 40 hours per week. There are standards that are set – we don't set the standards, they are federal standards that you have to meet those requirements in order to become exempt and basically what exempt means is salaried, meaning you are not an hourly employee any more, you are a salary employee, so no matter – you are paid to do a function, you are not paid for a specific time. So for instance, senior management positions, if we worked 24 hours a day 7 days a week we are on a salary, we don't get anything extra for doing that, that part of our job, but also our jobs are at a certain level independent, judgment, professional skills, etc. that meet the requirements of FLSA to be salaried and therefore the term is exempt from FLSA standards for overtime, but neither Evelyn or Danette are exempt, they are subject to that. I've only been asked one time since I've been here that I became aware that a staff member was going was being requested to attend a meeting,

that was the one meeting that the Commissioner mentioned about such and such. We had just actually had a discussion with Danette one of my, only one or two discussions in any regard since she has been here, was about her overtime and that overtime needed to be approved, simple as that. When I was made aware that there was a request, I subsequently approved that and I don't believe I would ever – I don't know that I would had a reason unless it was something that was simply not City business to ever say no to use of overtime by a Commissioner.

Commissioner Keon: Her being exempt would alleviate you of that issue.

City Manager Salerno: Yes it would. Let me just say this. If she was also exempt – if the position was made exempt by either some sort of changing of her duties, changing it in this fashion would in my opinion whether the position reported directly to the Commission or continues as it does today, which is directly reports to the Manager as other employees do, I provide a service to the Commission, I provide those two people. I hired Danette in that regard, and I provide her to the Commission to provide administrative support, clerical support on your behalf, that's what I do. So the issue of that aspect whether she could be exempt or not could be looked at independent of changing the reporting structure.

Commissioner Keon: But if she is the only one that is exempt that makes her a very different person. You know, I don't want to talk about this in terms of Danette because it's not Danette, it is a position, it is a position...

City Manager Salerno: I agree.

Commissioner Keon:...and we are fortunate that we have Danette now as a secretary who could move into that position, so that's our good fortune, but this is not about Danette. This is about this position. So this being the only one that is exempt that in and of itself makes that a little different. Now I know that before I did this and brought this to you, I spoke with Craig, I asked about the Charter, are we allowed to do this under the Charter?- his opinion is yes. I asked him to please ask the Ethics Commission if this is an issue, he spoke with the Ethics Commission, did you speak with outside counsel also?

City Attorney Leen: I spoke with the Deputy General Counsel from the Ethics Commission and I spoke with...

Commissioner Keon: OK. I would like him to, I'm sorry, let you finish and then maybe he can speak to that issue.

Commissioner Quesada: Before we get into the legal issue, I have some questions about the Charter and that kind of thing. I just want to be clear. I've had numerous conversations with the City Attorney, numerous conversations with the City Manager, they have a disagreement as to the legality of it and I did my own research and I haven't had an opportunity to really flush it out with either of them, after I've done my research I want to address that. But in principle what I think works for all of us is that is to have an assistant, an aide, secretary, an admin, whatever you want to call it, that is able to do the administrative work and the clerical work without any kind of obstruction to us. When we want a copy of a document, when we need to get back to a resident we can't make that phone call or we need someone to be at that meeting when we can't make it, or we need additional support. Bill when I was your unpaid legal intern aide/everything else 14 years ago (laughter)....

Commissioner Keon: You can file a complaint (laughter).

Commissioner Quesada: I volunteered for that, I walked into that one.

Vice Mayor Kerdyk: See where it brought you though.

Commissioner Quesada: I'm just giving you some of my perspective from going back to then is, he would go to meetings and he would have Candy at the time or someone else at the time, if it was a big meeting, if it was a big town hall meeting, we had support people signing in and those kinds of things. The whole point of it whether we have to change the Charter or not is, we need to feel comfortable that we have access to that person without any kind of obstruction whatsoever, and I think that's something we all can agree on, so that's my feeling of the situation. Again, copies, meetings, notes, speaking on our behalf, attending a meeting like that. As far as whether it's overtime or not overtime, I've dealt with the Fair Labor Standards Act as an attorney, it's very comprehensive and obviously we need to respect our employees and the time that they put in, so obviously every situation is going to be different. Getting to the Charter issue, so I just want to let you know my feeling as far as what we want here. I want to be able to use, I'm only saying Danette because she is the person in the position now, I want to be able to use Danette when I need her to get a copy of something, I want to be able to call her real quickly. I sent text messages with her, hey I need this, call this person, get me this number, those kinds of things. So I never want to feel that there is any kind of obstruction coming from anywhere or that the City Manager or anyone else on staff is looking over our shoulder with the conversations that they are having with that staff member, which is what I think I'm hearing here.

City Manager Salerno: Commissioner, I thoroughly agree with you with your comment.

Commissioner Keon: That's why I would like it placed in our charge.

City Manager Salerno: I thoroughly agree with you and that is not our practice. I thoroughly agree with as to your comment.

Commissioner Quesada: OK.

Commissioner Keon: Mr. Salerno that has been the practice.

Commissioner Lago: I tried to have a little discretion in regards to that.

Commissioner Keon: I don't want this to go this way on this dais. I don't, but I think everyone has to be very, you need to be very honest about what these relationships have been and what has happened, and I don't want to go there. Please don't.

City Manager Salerno: Commissioner, all I would say is that any time you think that something is not being handled correctly, I would only say, please come to me with the specifics and I would be glad to address that.

Commissioner Keon: And I think that discussion has been had.

Mayor Cason: I want to ask, you have anything else Bill?

Commissioner Lago: I'd like to hear from our City Attorney.

City Attorney Leen: I received two Commission requests independently from two different Commissioners, to give an opinion as to whether the Charter allows the Commission to appoint a Commission Aide. Under 2-201(E)(8) of the City Code, the Commission has given me the authority to make those interpretations on behalf of the Commission. The purpose of that is ultimately I view my role under that provision in interpreting the Charter is to be in a sense neutral between you, and to give my assessment, my best assessment of what the Charter means and that's binding on the City. Now it doesn't mean you have to follow it. Obviously, as a policy matter you can decide not to create the position, that's completely up to you, but in terms of the legality of it, the Code gives me the authority to do that. Of course I want to hear what you think about it though and that might affect my opinion, but I feel pretty strong about this opinion. So in analyzing this particular issue, I'm looking at three things: first, I look at the wording of the Code itself, and here I'm looking at Sections 23 and Section 17, but principally Section 23; in addition, in this particular case, I look at what other Charters that are similar to ours how they have been interpreted, in particularly the County Charter, which our Charter is very similar to, and the County Attorney's office has interpretations on this issue, so I looked at that as well. I

spoke with two of the highest level County Attorneys on the issue, and I also spoke to the Commission on Ethics to their Deputy General Counsel, because there were ethical issues raised and I wanted to make sure if I gave you an opinion and you relied on it that there wouldn't be an ethical matter, so I did that as well.

Vice Mayor Kerdyk: Did they look at our Charter?

City Attorney Leen: I sent them my interpretation.

Vice Mayor Kerdyk: OK, but they read our Charter?

City Attorney Leen: Well my interpretation quotes the relevant parts, but I'll explain to you our interpretation and then you can see why it doesn't really matter from their perspective what our Charter says.

City Manager Salerno: Could I just one thing on that particular issue there. It's my understanding and I as well talked with not the Deputy Director, but Mr. Santorino himself on that issue and I just want to make sure Craig, it's up to you to clarify, they did not rule and interpret that you were correct in your ruling. All they said was that...

Commissioner Keon: That's not what he said....

City Attorney Leen: They have not issued any ruling.

Commissioner Lago: Excuse me, Mr. Manager, excuse me one second please. I need to – let me interject just one second. You are the City Attorney, I am asking for your opinion in reference to the Code, that is what matters to me, that's why you are here, that's why you sit up here, so I'm asking you to perform your job.

City Attorney Leen: So as everyone knows there are different forms of City government; there is the Commission/Manager form of government, there is the strong Mayor form of government, there is a strong Commission form of government. Our government is a hybrid, if you look at our Charter. The County Charter is an example of a strong Mayor form of government; our Charter gives a lot more authority to the Commission if it chooses to use it and the County Charter is a typical Commission/Manager Charter. That is basically expressed in Section 23 of our Charter. I'll read Section 23 and I'm going to point to two parts of Section 23 that I think are crucial in making this interpretation. What it says is “the Commission by resolution duly adopted may direct or require appointments, suspensions or discharges of City officers or employees by the City Manager, but none of the Commissioners may otherwise direct a request the appointment of

any person to or his or her removal from the service of the City by the City Manager or any of his subordinates, except for the purpose of inquiry the Commission and its members shall otherwise deal with that portion of the administrative service for which the Manager is responsible, solely through the Manager and neither the Commission, except in open session nor any member thereof shall give orders to any subordinate of the Manager. Any violation of the provision of this section by a member of the Commission is a work of forfeiture of the office of such member”, and this is why you should come to me, this is an important provision, to give my interpretation. My interpretation again, under the Code is binding on the City and is on behalf of the City. Now when I look at this provision it does two things that a Commission/Manager form of government does not do. First, it allows the Commission to hire and fire directly. You can direct the Manager by resolution to do that, so you have that authority. If for example on someday the City Manager decided to fire, I’m not saying he would, the Commission Aide or Commission Assistant, you can rehire them immediately at the next meeting. You have a lot of authority related to that provision. In addition, it talks about the Manager being responsible for that portion of the administrative service for which he is responsible, which implies that’s it not the entire administrative service, and really the word administrative service the way I’ve always interpreted that is and this is the way the County interprets it as well and they have it as an almost identical provision, which I will talk to you about in a second is that, that is the portion that basically makes decisions on behalf of the City other than the Commission. So for example, the Manager is the one who has discretionary governmental authority to execute the ordinances and resolutions of the City Commission. If there is someone in his chain of command, which could be a Department Director, could be the City Architect, and in fact I have given a prior interpretation which this Commission accepted saying that the City Architect could not be a position placed under the City Commission. Those types of positions exercise discretionary governmental authority that’s vested in the Manager under the Charter so they cannot be moved under the Commission. This is a different issue though and this is where I’m going to move onto Section 17. Now an issue has been raised that Section 17 says that “the Commission may appoint the City Manager, City Clerk, City Attorney, which officers shall hold office at the will of the Commission.” I’ve been asked whether that means that the Commission could never appoint anyone else other than those three people. First, I would say Section 23 goes against that, it does allow appointments, but second, I would say that this is not, as a lawyer the way I look at this is, if it was going to say that you could not appoint anyone else, it would say that, because it’s basically limiting the authority of the governing body of the City. So if it was to mean that you could not appoint anyone but these three it would say it, it would say only, shall only appoint the following or it would say, shall appoint the following and no one else, doesn’t say that. What the City Manager and I’m sure he is going to want to respond to this, but what the City Manager is doing is reading into that provision language that does not exist and that should not be done. The Commission has not been prohibited from appointing someone else, and in fact Section 23 allows you to appoint other people.

Mayor Cason: Craig, one question.

City Attorney Leen: Yes.

Mayor Cason: Are there any documents from when this was written as to the intent of when both of these provisions were written at the same time?

City Attorney Leen: The Charter is – I can look into that if you'd like Mr. Mayor, the Charter is very old. The thing that I thought was more dispositive in this particular case was that these sections of the Charter are patterned after the County Charter and they are very similar, so I would think generally the County Attorney's office, the County Commission on Ethics, they all operate under the County Charter and in fact, let me just go over real fast...

Mayor Cason: Which came first?- ours or the County's?

Vice Mayor Kerdyk: Ours came first, didn't it?

Mayor Cason: Ours came in 1926, wasn't it?

Vice Mayor Kerdyk: I think there's came in 50-something.

City Attorney Leen: Yes, but these specific provisions are almost identical, whether they are taken from a "mother" charter or how it's done, at least as far as I know, we've never interpreted these provisions.

Commissioner Quesada: These provisions of the Charter that are similar to other municipalities have they ever been challenged by a court of law?

City Attorney Leen: I've looked and I've not seen this specific issue come up. I can do more research on that if you'd like, but let me at least tell you why I think under the wording I think it's pretty clear. So the County Charter has stricter language on the Commission; under the County Charter it says, "no Commissioner shall direct or request the appointment of any person to or his or her removal from office by any subordinate of the Mayor or take part in the appointment or removal of officers and employees in the administrative services of the County nor shall any subordinate of the Mayor exceed such direction or request". Then it says, "except where otherwise prohibited by ordinance Commissioners shall be permitted to communicate and make inquiries of the administrative services for the purpose of transmitting constituent inquiries etc., except as provided elsewhere in this Charter Commissioners shall not be permitted to give

orders either publicly or privately to any subordinate of the Mayor”, and then it goes on. What’s interesting about this language is that’s very clear that the administrative service of the County as-a-whole doesn’t even say under the Mayor, basically it says, “the administrative service of the County”. County Commissioners cannot direct people in the administrative service of the County, nevertheless the County Commission has established a County Commission on Ethics, the County Commission has established an Inspector General that’s reportable to them, the County Commission has established a whole host of assistants that work for them in different capacities, including chiefs of staffs, legislative aides, etc.

Commissioner Keon: Commission auditor.

City Attorney Leen: Yes, a Commission auditor. I spoke with the advisor from the County Attorney’s office to the Commission on Ethics who I believe is the third highest person in that office and I also spoke to the First Assistant County Attorney, I sent them my opinion. I raised this issue with them, they thought it was not even a question; it was not a legal issue. It was so clear that you could do this and is so accepted in this County that you could do this that’s it not a legal issue, it’s a policy matter. I also spoke with the Commission on Ethics and I’ll explain to you what they said. I spoke to the Deputy General Counsel, remember the General Counsel advises the Commission, also the Executive Director Joe Santorino, but I spoke with the Deputy General Counsel, I sent her the interpretation. She told me was they do not have jurisdiction over the matter of the Charter, so they are not allowed to even opine on this issue, specifically. What they can opine on and she agreed with my opinion was that the two issues you have to consider in doing this, and this is in my opinion as well. The two issues you need to consider in creating this position is one, the Sunshine Law and two, the ability to direct administrative staff. As I mentioned in my interpretation and this is the issue that I spoke with the Ethics Commission on, the only way that this could ever come up, and by the way it could come up now with the Commission Assistant as well, it could come up now just as much is one, that individual if all five of you have one person working for you, whether they work for the Manager technically or you, they could serve as a liaison between Commissioners that was a concern, that’s true now for Danette. If she passed a message from one of you to the other and back and forth and that’s true for any employee.

Commissioner Keon: But that would be clearly spelled out.

City Attorney Leen: That of course would be something that you should be careful about and I put in my interpretation and I would instruct Danette or whoever you decided to pick, however you decide to handle this, I would instruct them not to do that, but she knows that and I’ve said that. I do an ethics seminar.

Commissioner Quesada: It's an existing issue for everyone.

City Attorney Leen: The second issue is that the Commission Assistant, whether they work with the Commission as-a-Whole or whether they work for individual Commissioners or whether they work for the Manager, they should not direct administrative staff, and the issue would be if they work for you and you tell them individually, by the way this is true again even if they are an assistant. If you go to Danette and right now she works for the Manager, so there is an issue whether you could direct her at all right now. So there are legal reasons why it's better for her to be under the Commission because then you are not directing someone currently in the administrative service of the City. But regardless this has been well accepted in the City for many years, but right now she is under the Manager, but if she is under the Manager or you, you could not individually tell her go to staff and direct them to take this action, and if she did that on your behalf that could constitute a violation of Section 23 of the Charter.

City Manager Salerno: That would be a violation if the Commission was to follow the opinion as well. If she was independent and worked directly for the Commission she still would not be in a position to give directions to staff.

City Attorney Leen: She is not allowed to direct staff on behalf of individual Commissioners...

Commissioner Lago: I don't know about the Commissioners and the Mayor, but I personally have never directed her to direct staff, that's not the purpose. I want to be perfectly clear on that aspect.

City Attorney Leen: I do not view and this is true whatever you decide here. You ask Danette to make a copy for you or to request something, I do not view as direction of staff, that's not what this means. This is talking about telling administrative staff to make a decision or to take some sort of discretionary action or something like that. The Charter gives you the authority to inquire and implies the authority to receive information; you are able to do your oversight function. So finally, I think ultimately what I wanted to say was, that my view of the Charter is that you do have the authority to do this; as long as this individual is not exercising the administrative authority of the City they can assist you in your function. Just like my office can have people work for it, by the way there is nothing in the Charter it just says the City Attorney. There is a City Attorney's office, there is a Code provision saying they act on my direction, that I'm the head of the department, I have the legal authority of the City, they work for me, you have a City Clerk's office, those individuals work for the City Clerk. I believe the City Commission can have people that work for them as well in the performance of their function that is consistent with how other larger municipalities act, the City of Miami and the City of Miami Beach. City of Miami has an Executive Mayor form of government with a strong Manager; the City of Miami Beach

has a strong Manager form of government with a Mayor that sits on the Commission. It's not inconsistent. So I've given you my opinion, I stand by it, I will look at anything you ask me to, but I think ultimately this is a policy issue.

Commissioner Lago: Thank you sir. May I ask you just a quick question Mayor, in reference to you see it's a discussion and/or action regarding the Commission Aide position? If we wanted to request action, obviously this is with all due respect to Commissioner Keon, this is not a resolution, so we would have to put it on the agenda and vote on this issue?- how do we do it?

City Attorney Leen: Under our Code if something is on the agenda the Commission can direct staff by majority vote. If it's not on the agenda it's by unanimous vote.

Commissioner Lago: OK – perfect.

City Attorney Leen: But this is on the agenda and it says discussion and/or action. I spoke with the City Manager about it, he put it on discussion interaction, so it is open to any action you take today. You may want to ask me to come back with something or you may want to direct the Manager or the Manager and the Human Resources Director.

Commissioner Lago: I feel very comfortable. Thank you.

City Manager Salerno: Mayor as the City Attorney said, he is correct I would like to just add a few comments. I'm not the City Attorney and I'm not a lawyer, but I don't agree with that opinion in that regard, I made you aware of my concerns. I believe Section 17 is limiting and when it says, "the City Commission shall appoint the following who shall not be members of the Commission, City Manager, City Clerk, City Attorney, which officers shall hold office at the rule of the Commission", I believe if it was intended in any way remotely that those individuals should, that there are other possible people that could fill that role that it would have said or as otherwise provided for in the Charter or something else. So to just simply say, well it doesn't say it's limiting, it also does not refer to that it can apply to other people. I believe it is limiting, I believe the people that created this form of government knew what they were doing and they said there is going to be three people that work for the Commission directly, the Manager, the City Attorney, and the City Clerk. I think applying and talking about the City of Miami, they have a Mayor/Commission form of government, they don't have a Commission/Manager form of government totally different form of government. The Manager there works for the Mayor and obviously the Mayor there is the Chief Executive Officer for that City. In this City, it's the City Manager. When you start comparing us with one form of government and want to try to use another form of government that's quite different, I think those analogies they fall apart at the base. The Miami-Dade County Charter basically says that the Mayor is the head of the

government and he doesn't work, the Mayor there and the Mayor of Miami do not work for the Commission, OK, they have those executive powers are, they are elected to those posts. They do not share – they don't work for them, therefore obviously in this case the Manager, City Attorney, and the Clerk work for the Commission and that is what that Section 17 says, so use another form of government talk about what their Charter, I believe says and just say when simply their Chief Executive is not responsible for them. I think that's a relevant item to think about when those are purported. I just am concerned that this is a sequitious argument that's raised that well if you can appoint and fire people that work for the Manager that therefore that must mean you got other authorities. I don't see those things as meaning anything else.

Mayor Cason: Let me say one thing. I don't know if the Clerk knows this as well, do we have records back when this was originally discussed, obviously this was a discussion back in the 1920's, are there any records that would allow us what our founding fathers thought about this?

City Attorney Leen: I could look into that, I would look into that and I can bring that back to you, but I want to be – normally the rules of construction say you look at the plain meaning of the Charter and if the Charter does not prohibit something you have the authority to do it. Charters and Constitutions, you don't read things into them to restrict the governing body from being able to act. If it says you can't do it, you can't do it, if it doesn't say you can't do it, then it should not be interpreted that way, but I will tell you one other thing, two things actually. Miami-Dade County used to have a Commission/Manager form of government; all of these provisions were in there when they had a City Manager, County Manager that worked for the County Commission. I was involved in drafting the amendments to the Charter when I was at the County Attorney's office, it was the same and that's one reason I was looking at that Charter. Its true they have a strong Mayor today, but they had the same individuals working for them when they had a County Manager; and then secondly, I do want to raise one other issue – the importance of Section 17 to me as a lawyer the way I read it, is that, that means that the City Commission appoints the Charter officers. For example, the City Manager does not appoint the City Attorney, the City Commission does, it means that the Mayor does not appoint the City Manager, it means the City Commission does, that's why it's important that, that language be in the Charter, but that does not mean that means you cannot appoint anyone else, and that's what's being read into the Charter and that you should be careful about as the governing body.

Mayor Cason: Let me start with Commissioner Quesada; let's work down more discussion before we decide what to do.

Commissioner Quesada: OK. I'm going to give you oral draft motion, I'm not going to ask anyone to second it, this is directed at the City Attorney to tell me if we can even do this, OK, because I'll be honest with you, I'm not 100 percent sold on either interpretation of the Charter. I

got on West Law and I reviewed some other cases as well and there were other cases I came across. Looking at Section 17, there are actually a lot of different municipalities throughout the state that have very similar language, Section 17, but obviously this direct issue doesn't come up, so I would actually even say this is – if this were to be challenged it would be an issue of first impression, so all the interpretations out there I think would be speculative in one way or another, but piggybacking on my previous comments before we started talking about the legal aspect of this. I think what I'm hearing is that, I don't think there is any way any of us can't agree with this. We all want to be able to use the assistance of that position unobstructed in a manner that so that we can carry out our duties as elected officials, whether it's having the person attend meetings, speak on our behalf, take notes, copies, all those kinds of things. So here's my oral draft motion, even if you agree with it don't second it just yet. So, that the position that Danette currently holds, that secretary or assistant position cannot be directed by staff to prevent us – OK, let me start again. That the Manager cannot direct that position to not assist us in setting up meetings or with any necessary functions of the elected officials, including but not limited to copies, meetings, attendance of events, or by other means that the Commission may have. That position cannot give direction to any employees, because I think that's a concern I'm hearing as well and obviously pursuant to Section 23, they can't as it is, whether it's under us and the Charter has changed or whether the Charter does not have to be changed and stays how it is, and also that, that position cannot liaise between Commissioners as is required by the Sunshine Law and our Charter.

Commissioner Lago: So are you saying Commissioner Quesada that, that position would be continued to be hired and fired if that were needed to be by the Manager?

Commissioner Quesada: Technically under the first section of Section 23, and correct me if I'm wrong....

Vice Mayor Kerdyk: That we can undo anything that is done basically.

Commissioner Lago: I'm going to give you my opinion. I think that we need to draw a line in the sand here; I think we are trying to appease everybody and you can't make everybody happy. At the end of the day we made it very clear, I'm not going to waste everybody's time here, I think we need to move forward with, not Danette, with this position like all the other municipalities do have in the case of the Commission's responsibility to fill this position that this individual would have fiduciary responsibility to the Commissioners and to the Mayor. I understand what you are trying to achieve there, but I think there comes a time where we need to be heard and right now is the opportune time to get this position reclassified, there will be no need for any discussions in regards to whether the employee would be helping out after hours or will be dealing with issues that have to go through the City Manager. She will be dealing with issues that are relevant to the

City and to the residents and to the business community. So this is not that much of a big deal, a bunch of other cities does it currently, and the reason why in regards to Section 17, like Commissioner Quesada had stated the challenge in other municipalities. My interpretation the reason why there hasn't been a challenge is because there hasn't been a need to be a challenge, because when Commissioners come into the position they are elected they hire their staff. My brother happens to be Assistant Chief of Staff for Commissioner Suarez for two years, now he is an attorney at a law firm in downtown, but he was hired by Commissioner Suarez. His responsibility and allegiance is to Commissioner Suarez at the City, forget the City Manager, forget anything else, we got the Charter that is the best and only way to do business in my opinion.

Mayor Cason: Bill?

Vice Mayor Kerdyk: I just have a question of Frank. Frank you mentioned in your comments that you were concerned, or not concerned, but you saw both sides of this issue as far as what Craig is saying and the other side of the interpretation of these two...

Commissioner Quesada: And the Manager's interpretation.

Vice Mayor Kerdyk:....maybe you can elaborate why you see that?- and I've got to tell you something, from an intended situation, I think the intent, I don't go back to the 1920's, but I would say the intent was always to have three exempt employees in the City of Coral Gables, that was the intent, at least that's what I've always heard throughout my time in the City and working around the City, so let me just say that, but Frank your thought process on...

Commissioner Quesada: Let me just address something you just said. My motion was trying to get to the heart of this issue; and the heart of this issue is again, we don't want the person who deals with us on a daily basis to be obstructed in any kind of way.

Mayor Cason: Unfettered is the word.

Commissioner Quesada: Yes unfettered.

Vice Mayor Kerdyk: The problem is that's why we are sitting up here....

Commissioner Quesada: And we are fortunate right now that we love the person in that position right now, she does a tremendous job, I think that's what I'm hearing from everyone, that's my perception. So the point is that the Manger can't hang over her head that hey, you work for me, if you do X,Y,Z, you are gone and that's what I'm hearing from Commissioner Lago as well, that

was the point of my motion is that the City Manager cannot direct or do those things. Again, I have a fear with whether this has to go to a Charter vote or not, so that's why I think my motion addresses those points.

Mayor Cason: It could be crafted in a way that it gets to the essence of unfettered.

Commissioner Lago: But the problem is Mr. Mayor with all due respect you have an issue where again, if I ask Danette can you please do me a favor and cover for me at this Homeowners Association meeting, she has to go and ask the Manager, and on this case the answer was no. Hold on, hold on, on this case the answer was no. She called me and stated listen, I was told no and I said, OK, let it be. The next morning she called me again and said, listen the Manager called me and said I was able to go, but that shouldn't even be in question because we are all here for the good of the City. This is a great City we live in, we shouldn't have to be – I'm a firm believer in checks and balances that's what this government, this country, the greatest country in the world was founded on, but this is not about checks and balances, this is about power. So we have a decision to make here and it's a very clear one, this is very, very simple. Are we going to go back and forth on this issue?- or are we going to make an exempt position where it exist already in a multitude of cities throughout the County, so I think the only way to do it is really reclassify the position and move forward on this.

City Manager Salerno: Mayor, I need to address that because a statement was made and I think it's important. Let me say this, I never said no to the answer to that question, this was the first time, the first time since I've been here that the issue of a staff support person was raised as to overtime, first time that I became aware of it, first time I'd ever been asked about it in almost five years. I said I need time to think about it, I will get back to you in the morning. I called back in the morning and I said that's fine. Let me make it perfectly clear, we have the financial resources that if this Commission says, they want at any time for the Commission support person, whether that person is the Mayor's or the Commission's I have no problem in the automatic, you can take my word for it, that there won't be any question and nobody would have to ask is overtime approved, that's not an issue, we can afford that overtime. So the responsibility rests with the individual Commissioner that they are using, I'm fine with that. That is the only reason – I never said no to....I just want you to know that.

Commissioner Lago: Let me explain to you where I come from, OK?- I shouldn't have to ask you for anything, OK...

City Manager Salerno: Yes you should.

Commissioner Lago: If I want my assistant who works for the Commission and the Mayor to do something simple as to help out our residents in a homeowners association meeting, she should have the liberty to come with me to the meeting. This should not be an issue where my assistant who is under the Manager comes to me and tells me, well you know I have to ask the Manager, I said, perfectly, go ask the Manager, please I want you to do everything within the limitations of the Charter. I don't want to have any issues, and the response being, well he told me he has to think about it. We are not asking here for a line item for hundreds of thousands of dollars, we are asking for an individual to attend a homeowner's association meeting. I can go into a multitude of issues and discuss this with you, but it's a very simple matter. Its already 11:20 (a.m.), we can either continue discussing this matter or we can just vote on it and we what your opinion is.

City Manager Salerno: Let me say, first time impression, first time the question came up, I asked for some time just to think about it. I said I would think about it and get back immediately. I did the next morning, and I'm telling you that I have no reason, would not and frankly, I'm perfectly fine with the Commission it being an automatic practice that if Commissioner wants to use Evelyn or Danette after hours that creates overtime it won't come to me, its automatic. That was a first time question that needed to get answered that's all.

Vice Mayor Kerdyk: It also needs to be that you don't question her when they come back and stuff like that, there needs to be some latitude, so it has to be two things: one is that it's an automatic time that you take the person to whatever event that you want to, and the second thing is that the person is not questioned from you.

Commissioner Quesada: I have a question of Commissioner Lago. My motion addresses all those things.

Commissioner Lago: You are 100 percent right, except for the main issue.

Commissioner Quesada: Hire and fire.

Commissioner Lago: No.

Commissioner Quesada: What?

Commissioner Lago: It keeps the employee under the auspice of the City Manager.

Commissioner Quesada: But hold on a second, I agree with you in principle, in theory of all this, OK, the actual carrying it out is what I'm concerned with, with the Charter portion of it. I'm

trying to do it in a way so we don't have any issue with the Charter portion of it, so this motion addresses that.

Commissioner Lago: But hold on, now this is – I agree with you....

Commissioner Quesada: Hold on a second, she is under, I'm just saying Danette, the position, I'm saying Danette for ease of use here, Danette, that position if this motion passes then the Manager whether its Pat Salerno or whoever it is whenever can't direct her in those kind of ways to prevent us from doing our jobs what we need them to do.

Commissioner Lago: Two quick points.

Commissioner Quesada: Yes.

Commissioner Lago: Number one, I still don't want her, that position under the Manager, number one; number two – wait – because number one, I've seen how....and number two, we have a great City Attorney who is giving us an interpretation, why do we have a City Attorney sitting on this dais.....I want an answer.

Vice Mayor Kerdyk: I don't think this is a legal issue, but I want to answer that question for your knowledge. Let me tell you many, many years ago here they had a situation that came in front of the City Commission, the person of course it wasn't Craig, but made an opinion there and each Commissioner took his opinion and joined whatever facility it was. Two years later somebody filed a grievance on it and they were brought up on ethics charges and let me tell you Joe Santorino was the one that was in there now was prosecuting these individual Commissioners. So it's never – I believe and I have great confidence in our City Attorney, but nothing in life is 100 percent. Let me tell you these people had to spend all sorts of money, these Commissioners and the Mayor, all sorts of money rectifying the situation, so it's never 100 percent situation for sure.

City Attorney Leen: The one thing though I want you to remember is, as a City Attorney if I came to you and told you, you could not do this when there is not an expressed provision in the Code, and when the other cities and counties that have the same provision allow it, you should remove me, I mean honestly you should remove me, if I can't even give an opinion like that, and I would actually limit your authority as the governing body and elected representatives of the City unless the Charter itself said that you cannot do it, because the idea of Charters is they limit the authority, but if it doesn't say it you have the authority and under the Code I have the authority. Now whether you should do it, I have no opinion whatsoever, and I understand there is a big debate there.

Mayor Cason: We have your legal opinion; we are talking now about policy. Can we do it in a way that accomplishes what I'm hearing here without having to go into creating a position that's never been created in 86 years of this City. It may exist in other localities, but there they have one Commissioner and one Aide, we are talking about one Aide for five Commissioners, and by the way, who is going to be the backup if that person is away or sick?

Commissioner Keon: No, we don't need a backup, she is a secretary now.

Mayor Cason: You do now you get it from my assistant who provides it.

Commissioner Lago: And when your assistant is gone, Danette does the backup.

Mayor Cason: That's right, but I'm just wondering – that's because they are both working for the same person. You have a motion, can you clarify the motion and let's see if there is a second.

Commissioner Keon: Can I ask you one thing before you do that motion? The difference is as it stays now she is in an administrative position under the charge of the Manager, so even our directing her could be a conflict. By removing her – the biggest issue – the issue here is to make it very, very clear. When I asked you before in that piece of legislation and in the law is that you want bright lines, you want reporting to be very clear, you want things to be done in such a way that it limits interpretation that we know exactly what we are asking for. We know exactly what we are doing, that's all I'm asking is that if she is placed, if this position is created she is placed in the direction of the Commission. We would review her, we would give her a raise, who now reviews her?- the Manager, who terms her salary?- the Manager. I'm asking that we have this person and maybe no, did we do it in 1926, but I'll guarantee you in 1926 we didn't have DVR's either and I'm going to show you DVR's have proved to be very successful in the City. This City has changed, the City has evolved, the City is more sophisticated, there are more issues, it is a different City than in 1926, thank God....

Vice Mayor Kerdyk: It's a City Manager form of government, if you don't like the City Manager get rid of the City Manager, if you don't like what he's doing.

Commissioner Keon: There is no conflict with it being a City Manager form of government that is no conflict whatsoever.

Mayor Cason: You have a motion that you orally made, would you want to make it more precise?- or do you want to...

Commissioner Quesada: It was a draft. OK, you want to go beyond the draft?

Commissioner Keon: Do you not support this if it's as its written here?

Commissioner Quesada: I've got to tell you the City Attorney's most recent statement has given me more confident in his opinion on it. I have the utmost confidence in you Craig.

Mayor Cason: The question is, is it necessary can it be done?- can we "skin the cat" in a different way rather than going this route?

Commissioner Quesada: Commissioner Keon you raised some good points right now as well. I don't want the experience I'm hearing that you guys have had feeling that the obstruction, that needs to stop, that needs to stop. Will my motion as I proposed it stop that?- what you just said made me think of something I didn't realize that the Manager still control the salary of the employee and control in other ways – I'm just assuming it comes to a point that it's very contentious between the elected officials and the City Manager.

Vice Mayor Kerdyk: Doesn't the buck stop with the City Commission ultimately, we make the decision and if not you get rid of the City Manager.

Commissioner Keon: That's not an issue to disrupt our government to that extent. This is an issue to bring peace and whatever to this City and to this office and allow us the opportunity to have someone that we do have the ability to direct that we do set a salary and we do.

Mayor Cason: Do you want to make a motion or not?

Commissioner Lago: Do you want to go with this?

Mayor Cason: Do you want to think about it and come back to the next meeting?

Commissioner Keon: No.

Mayor Cason: Do you want to do it today?- then we need a motion.

Commissioner Quesada: Two minutes?- three minutes?

Vice Mayor Kerdyk: You can adjourn for five minutes to think about it.

Mayor Cason: Let's take a bathroom break for five minutes or recess, you think about it and come back so we have something that we can...Craig please come back at 11:35 a.m.

Commissioner Lago: Thank you sir.

[Note for the Record: The Commission reconvened the meeting at 11:45:43 a.m.]

Mayor Cason: OK. I will turn the floor over to Commissioner Quesada.

Commissioner Quesada: OK. Thank you for that brief recess. I needed to clarify some things with Craig and here it changed a little bit. Take out pens and paper. I'm going to make a motion to move that position under the City Clerk's office. Now, here's what that does and here's the point of that. The City Clerk currently has staff and obviously give Walter a chance to digest that as he's over there transcribing everything (laughter) and here's why. I think it achieves everything that I'm hearing up here, the desires of the Commissioners, and again my goal is to get consensus on all of this, I always try to make it 5-0 if we can, if we come to an agreement, the concerns of the hiring and firing and the salary and the oversight and those kinds of things are addressed, there are no clear conflicts with the Charter in any which way whatsoever, and if you think about it the services that the Clerk's office provides are a lot of those clerical, administrative, but again we can define that a little bit more. I feel I want to pass it over to Craig to address that as well.

City Attorney Leen: I discussed the issue with Commissioner Quesada, the proposal of his proposal to moving under the City Clerk's office. I think that one that is a legal proposal. Our tradition in the City is that we have a City Clerk that does have employees that work for the City Clerk, the City Clerk is the municipal secretary of the City Commission and is really your official secretary for the Commission as-a-Whole, so it makes perfect sense for the position to work under the City Clerk, in fact probably if it was being created that way is preferable for the person to work under the City Clerk because it's a ministerial type of office, it's an office where they are just performing a function for you, they don't have any independent authority, so it seems to me that it's perfectly appropriate to put it under the City Clerk. It's consistent with the tradition in our City and then the City Clerk as the Secretary to the Commission as-a-Whole could also review the individual in his or her work for you individually.

Commissioner Keon: That's fine. What about the issue of being exempt and the overtime issues?- is this a salaried position?- or does it remain a position that is subject to overtime?

Commissioner Quesada: That is not something that we discussed in our meeting back there.

Commissioner Keon: That's why I'm asking you.

Commissioner Quesada: I was trying to think of the vehicle to make it happen.

Commissioner Keon: OK, that should be able to make it happen, but then do we make this you know, a confidential and exempt employee?- a salaried employee?- so the issue of overtime is not an issue?- or do you want to...I mean, I think that we all are respectful of the number of hours that you would expect for someone to work, but I'm asking you I don't want to have to go through that issue every time that we can be respectful and if it's a little later, or a little earlier or whatever, I don't want it to be an issue, and I'm very comfortable with what you said.

Commissioner Quesada: I don't have an opinion either way. I think again what was respectful of the position, if for all these years – did you say, and I'm sorry if I missed it but that Evelyn is exempt so she is a salary employee?- she is?

City Manager Salerno: No.

Commissioner Quesada: No, she's not?

Commissioner Keon: She's exempt, but she is not salaried.

City Manager Salerno: No.

Commissioner Keon: She is exempt and confidential.

City Manager Salerno: Evelyn gets overtime if she works past 40 hours.

Commissioner Quesada: I think traditionally a person in that kind of a position does get overtime.

Commissioner Keon: I think it is the duties of the office that would determine whether or not that person is a salaried or an hourly employee, is that right?

City Attorney Leen: Yes.

Commissioner Keon: OK. And the duties are what?- more discretionary.

City Attorney Leen: The duties have to be more discretionary. I would think, we would obviously talk to outside counsel and make sure that the duties meet whatever regulations are in place, but

generally I would think that if the person is meeting with constituents or is helping you research things or something like that, you can give them a substantial amount of duties, enough duties that they would be a salaried employee, you could do that if you wanted to.

Commissioner Lago: Mayor, may I ask you just a quick question in reference to transferring reclassifying that position and moving it underneath the City Clerk; the City Clerk's employees they answer to the City Clerk, but they answer also as per the Charter as all the employees do to the Manager, correct?

City Attorney Leen: Well my interpretation is that....

Commissioner Lago: That's what I'm asking.....

City Attorney Leen: My interpretation has always been that they answer to the City Clerk and that my employees answer to me. The Manager still has a role because the Manager oversees Human Resources and the Manager oversees the pension issues at least from the City's perspective, benefits, things like that, so the Manager obviously has a role and also the Manager presents the budget to the Commission where my department and Walter's department will present ours and he's generally very respectful of what we propose and we've been able to work that out fine, but my legal opinion is that anyone performing the functions of the City Clerk is under the City Clerk, anyone performing the functions of the City Attorney is under the City Attorney.

City Manager Salerno: Mayor there is a way for us – yes, it's clear that – just let me understand. If it can be done that the duties can be done in a way or established in a way that she is a salaried employee, that's the desire?- is that what you are all saying?- or would you still like to keep her where she is eligible for overtime if she works more than the 40 hours?- that's what I'd like to know.

Commissioner Keon: I would prefer to see her as a salaried employee because I would also like to see her duties have to be spelled out in the job description because she is not just a secretary, she is a secretary/aide whether you want to call it that or not, that's irrelevant, but I think her duties are such that she should be a salaried position.

Commissioner Lago: Who would do her performance evaluation, for example?

City Attorney Leen: That's the issue that came up, the concern was, how would five of you unless you do it in open session, so either – there are two ways you could approach this; you could still create a Commission Aide position under the Commission, but have the City Clerk be

the person that does the reviews for them or as Commissioner Quesada is proposing now, you could just move the person under the City Clerk, have the City Clerk do all of that and then the City Clerk will report to you individually and as a Commission related to the performance of the function.

Commissioner Keon: And could work with us in doing a review and setting a salary and raises and whatever else. I would like to see the piece though that she become that she is confidential, she is exempt, she is salaried.

City Attorney Leen: I do know that the City Clerk would likely raise and this is ultimately up to the Manager and you, but if you do move her you do need to move the budget over to the City Clerk's office too or else he's going to have an issue.

Commissioner Keon: That's fine.

Mayor Cason: You want to make a motion so we can move on.

Commissioner Quesada: Commissioner Lago you put a face, do you have any question or thought?

Commissioner Lago: No, no, I'm fine.

Mayor Cason: OK. Make your motion if you would.

Commissioner Quesada: So I make a motion to move the position that Danette currently holds move that under the guise of the City Clerk and that it also to be a salaried employee as is determined as has been defined as exempt and confidential under our labor contracts and that the budget also, so the budget for that position be shifted from under the guise of the City Manager to the City Clerk's office.

Mayor Cason: Do we have a second?

Commissioner Quesada: You know something?- actually before I make this motion, I think I'd like to hear from Walter just to make sure. Any immediate thoughts Walter?

City Clerk Foeman: No. I mean basically if that's the will of the Commission I'll be more than happy to put it under our office and spell out with particularity what those duties would be consistent with the Commission's view.

Commissioner Quesada: Perfect – exactly what we wanted to hear, so that’s my motion.

Commissioner Keon: I would ask that those duties need to be, her duties now that they would be expanded would have to be laid out, how do you see that happening?

Commissioner Quesada: The duties would be to assist administratively and with clerical work any of the functions that support the elected official’s duty as public officials.

Commissioner Keon: Can we ask that that come back for approval to the Commission as-a-Whole?- her duties as laid out.

Commissioner Quesada: OK....right now is to prepare that language for us so that we can read it one time and we vote at the next meeting.

Commissioner Keon: OK. Let me clarify. You are asking that a position be created under the City Clerk to assist the Commission with discretionary duties to be approved by the Commission as-a-Whole as a confidential exempt and salaried employee, to assist the Commission with their Charter functions.

Commissioner Quesada: With the budget to be transferred.

Commissioner Keon: And the budget is transferred to the City Clerk.

Commissioner Quesada: Yes.

Commissioner Keon: Is that right?

Commissioner Quesada: Yes.

Commissioner Keon: I’ll second that.

Mayor Cason: City Clerk.

Commissioner Quesada: Yes

Commissioner Keon: Yes

Vice Mayor Kerdyk: I just wanted to thank Pat for bringing this up, Commissioner Keon for bringing it up and Commissioner Quesada, that's a good solution, very, very good solution, so yes, yes.

City Clerk Foeman: Continuing roll call.

Mayor Cason: Yes

Commissioner Quesada: You forgot Commissioner Lago.

Commissioner Lago: I think my vote was a yes from the beginning.

Commissioner Keon: I would really like to thank all of you for your collegiality and for your support and for the working relationships that we have, thank you.

Mayor Cason: OK – great.

[End: 11:56:30 a.m.]