

## **City of Coral Gables City Commission Meeting**

### **Agenda Item I-2**

**July 29, 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)**

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I-2 – Pending Litigation

City Attorney Hernandez: In the pending litigation report, I have a couple of matters to update you on, and requesting authority on some matters. On City of Coral Gables versus ADPT, and Rugilio, he now has an attorney representing him on the issues on the surety bond that we are going after them on, so we are probably going to be in mediation and hopefully we will be able to resolve the issue of the index, so that our new vendor doesn't have to reinvent the wheel, that supposedly ADPT has provided. With regard to the Addison case, at the present time the Appellate Court has ruled in favor of the cities, so we will be removing that from the litigation report; and the Fabric versus Salone case, we have moved to consolidate the three cases, and this has to do with the payment of contract amounts by the City, unfortunately the principals in the company have been fighting and so we have three companies claiming the monies; we don't care who gets it, we just want a judge to issue an order so that we can go ahead and pay and resolve the issue. The other issues that I have is the Garcia versus City of Coral Gables case and Franqui cases, we have a potential resolution of three claims and/or lawsuits, the attorneys have been working on this, our labor counsel, and the attorneys for Ms. Franqui and Ms. Maribol, I will give you a proposal as to both claims because they are defendant on one another based on the budget issues. The first one would be Susan Franqui would be hired back by the City to work in the Legal Department replacing Olga Maribol, at the same salary as Ms. Maribol is making, she would release any and all claims against the City, all City officials, and employees, there would be no fees, there are mutual non disparagement provisions in the settlement, and all inquiries on such settlement would be through the City Attorney's office, and she would start working on Monday, this coming Monday, August 3<sup>rd</sup>. With regard to Ms. Maribol, she would dismiss two claims and lawsuits against the City of Coral Gables; she would leave immediately; she would be using up her accrued vacation and sick time and receiving her paycheck through February 2010,

and those monies would be reduced from a total amount of settlement of \$185,000, the remainder of the monies after her salary is reduced would be in a lump sum in February of 2010 from which her attorneys would receive their attorney's fees; the attorney's fees are inclusive of that amount. February of 2010 is her vesting date, her second case would be dismissed with no damages or claims, we would merely pay \$7,500 for her attorney's fees. As you know the City has a claim deductible for each claim that is brought before the City of \$350,000, while we have strong positions with regard to any and all of these three claims, the attorney's fees would be expended; it is my opinion and the opinion of our labor counsel that these settlements would be appropriate and effective and would be in the best interest of the City of Coral Gables, and that's why we are recommending that both those cases be resolved.

Commissioner Anderson: Are they separated?- can we separate the two?- or they have to be voted as one?

City Attorney Hernandez: We would be voting on each of claims...

Commissioner Anderson: Because I'm fine with one and not fine with the other.

City Attorney Hernandez: OK, but our recommendation is to do them together so that we are...

Commissioner Cabrera: Fine with one and not the other?

Commissioner Anderson: Absolutely.

Commissioner Cabrera: Could you... I know you want to get going with this....

City Attorney Hernandez: No, I hear, I apologize, but my...

Commissioner Cabrera: I apologize for interrupting, please continue.

City Attorney Hernandez: My recommendation is that in order to have one employee leave – to have one employee come back, another employee would have to leave, because that is in working with the Manager's budget and in working with how he is addressing the needs of the City citywide. That is my recommendation; basically my recommendation is all or nothing.

Vice Mayor Kerdyk: All or nothing, that's what your recommendation is.

City Attorney Hernandez: You're the boss.

Commissioner Anderson: OK then, if its all or nothing, I want to make a caveat, because I have a person I really care for, Susan, I hope to give you a big hug when you came back in, I really do, but I can't accept...because the other moving part to me just makes me ill to give money away for that situation, but I welcome you back with open arms. I've worn this pin every Commission meeting for about six or seven years, and so I wear that now in your honor as well. So I won't be voting for the whole package...

City Attorney Hernandez: I understand.

Commissioner Anderson:...But I wanted to give Susan that note.

Commissioner Withers: On employee one, and I assume that would be all medical releases and everything in order.

City Attorney Hernandez: Everything – all releases against the City, all the City's employees...

Commissioner Withers: I mean the medical releases to come back to work.

City Attorney Hernandez: Yes.

Commissioner Withers: On employee two, you mentioned all current, would that also mean any future claims also?

City Attorney Hernandez: Any and all claims, yes.

Commissioner Withers: Current and future, because you said current.

City Attorney Hernandez: Future, current, against all the City employees, City officials, non disparagement provisions.

Commissioner Withers: How about individuals?

City Attorney Hernandez: Everybody, everything.

Commissioner Withers: Former City Manager?

City Attorney Hernandez: Yes, we are also obtaining releases from the former Manager as well so there are no claims from him with regard to these cases as well.

Vice Mayor Kerdyk: You finished?

Commissioner Withers: I'm finished, I'm sorry.

Vice Mayor Kerdyk: No, that's fine, I just want to ask. So we have two cases going on...

City Attorney Hernandez: We have three claims, one of which is an official case in Federal Court, one of which is a claim before the EEOC, and the other is notice.....claim.

Vice Mayor Kerdyk: And you mentioned that the threshold that we would have to pay up to our insurance limit is \$300,000, is that correct?

City Attorney Hernandez: Right, for \$350,000.

Vice Mayor Kerdyk: For two cases?

City Attorney Hernandez: For three.

Vice Mayor Kerdyk: For three cases.

City Attorney Hernandez: Per case.

Vice Mayor Kerdyk: And it's your thought that maybe in one, two or three of those cases that might get up towards that limit?

City Attorney Hernandez: Oh absolutely.

Vice Mayor Kerdyk: So, the numbers are it could go, the exposure for the City, could go anywhere from ranging from \$300,000 if it just got up to one case...

Commissioner Cabrera: 350,000.

Vice Mayor Kerdyk: 350,000 to a million fifty if you multiply the \$350,000...

City Attorney Hernandez: That is the potential exposure assuming the City wins on all three cases.

Vice Mayor Kerdyk: And the settlement is far underneath the \$350,000...

City Attorney Hernandez: \$185,000.

Vice Mayor Kerdyk: \$185,000, alright. So even though I have to hold my nose to vote for something based on the fact that I think Commissioner Anderson mentioned one side of the party, from my standpoint the fiscally prudent thing for the City of Coral Gables is to proceed in the direction of the settlement, unless I'm missing something.

Commissioner Cabrera: No, I don't think you are.

Vice Mayor Kerdyk: Again, I think it stinks, I have to hold my nose, but looking for the betterment of the City and getting everything behind us, that's the way it goes

Commissioner Cabrera: I think you and Ms. Anderson hit the nail right on the head, we all feel the same way.

Commissioner Anderson: I wish it wasn't tied together.

Commissioner Cabrera: Right.

Mayor Slesnick: Make a motion.

Commissioner Withers: I'll move it.

Vice Mayor Kerdyk: Second.

Mayor Slesnick: Moved by Mr. Withers seconded by Mr. Kerdyk, any further discussion? Mr. Clerk would you call the roll please.

**Commissioner Cabrera: Yes**

**Vice Mayor Kerdyk: Yes**

**Commissioner Withers: Yes**

**Commissioner Anderson: No**

**Mayor Slesnick: No**

**(Vote: 3-2)**

City Attorney Hernandez: OK, and I have a follow up motion to that because it is a position in my Legal Department and my budget, so I'm asking for a motion to adopt a resolution to amend the budget to provide for resolution of the settlements we just approved.

Commissioner Cabrera: So moved.

Vice Mayor Kerdyk: Second.

Mayor Slesnick: Moved by Mr. Cabrera seconded by Mr. Kerdyk.

Commissioner Withers: I'm sorry, I don't understand that.

City Attorney Hernandez: I will have from now until the end of the fiscal year, I will be paying a paycheck to an individual who will not be here and I will be paying a paycheck to a new person who will be working in my department, so I just need to amend the budget, I think it represents \$25,000 for the end of the fiscal year.

Commissioner Anderson: I'll move that.

Mayor Slesnick: You moved it.

Commissioner Anderson: I moved it.

Mayor Slesnick: I thought it was moved, didn't we already have a motion?- we already had a motion. But I think what you just raised is a good point, but I would like to make, I don't know if its sunk in on this round, it did on my briefing with you, that the money that is being paid to the individual currently employed by the City comes out of the settlement.

City Attorney Hernandez: Yes.

Commissioner Withers: Right.

Mayor Slesnick: I want to make sure that people understand that, that its not that we will be paying a paycheck to a certain point in time and then on top of that paying the amount that we are paying in the paycheck comes out of the settlement figure.

City Attorney Hernandez: Yes sir.

Mayor Slesnick: OK, I want to make sure the citizens understand that.

Commissioner Withers: That's what I was not clear on.

Mayor Slesnick: That's a big difference.

City Attorney Hernandez: It's deducted from the \$185,000.

Commissioner Withers: Six months of pay.

Mayor Slesnick: Deducted from \$185,000. Mr. Clerk if you'd call the roll please.

**Vice Mayor Kerdyk: Yes**

**Commissioner Withers: Yes**

**Commissioner Anderson: Yes**

**Commissioner Cabrera: Yes**

**Mayor Slesnick: Yes**

**(Vote: 5-0)**

City Attorney Hernandez: And I have nothing further Mr. Mayor.

Mayor Slesnick:

[End: 12:42:41 p.m.]