



CITY OF NORTH MIAMI BEACH
Council Chambers, 2nd Floor
City Hall, 17011 NE 19th Avenue
City of North Miami Beach, FL 33162

SEPTEMBER 13, 2010
SPECIAL MEETING MINUTES
(CNMB-CC MINUTES TAPE # 448)

1. ROLL CALL OF THE CITY OFFICIALS

The meeting was called to order at 6:00 p.m. Present were Mayor Myron Rosner, Vice Mayor Beth E. Spiegel (*arrived at 6:03 p.m.*), and Council Members Philippe Derosé, John Patrick Julien, Barbara Kramer, Frantz Pierre and Phyllis S. Smith. Also present were City Manager Kelvin L. Baker, City Attorney Darcee S. Siegel, and Assistant City Clerk Joanne Callahan.

2. PLEDGE OF ALLEGIANCE

Mayor Rosner led the Council in the Pledge of Allegiance.

3. DISCUSSIONS

3.1 Charter Officials Contracts

Councilwoman Smith noted that City Clerk Susan Owens requested her contract be deferred.

City Attorney Contract

Councilwoman Smith posed questions to City Attorney Siegel and various Staff regarding the employee pension contribution percentage and suggested a reduction in salary and benefits relating to pensionable items (cell phone & car allowance) and insurance. She asked that the Council consider the following items for the next budget year: eliminating the insurance clause, evaluating pensionable items, an increase in employee participation for family health insurance coverage or a cost percentage, an increase in employee pension contributions, evaluating salaries and possibly reducing executive allowances.

Councilwoman Kramer noted that she concurred with evaluating the pensionable items and cell phone stipend, and reducing the car allowance. Councilman Julien spoke of vested rights. Councilman Derosé spoke about being fair to employees and residents' feedback that the three (3) employees were being paid too much. He noted that the Council should be fair to the employees without drastic reduction in salaries.

Vice Mayor Spiegel noted that at the budget workshops, she indicated that it was time employees began contributing to their health insurance and that she did not know if she could ask the police officers to contribute. She further noted that when the general employees' union (AFCSME) contract comes due, those employees should have to contribute to their health insurance and not ask the Council's three (3) employees to

contribute. She added that she was indifferent to reducing salaries or the cell phone stipend, but concurred with evaluating the pensionable items. Vice Mayor Spiegel suggested taking a long-term view in modifying the ordinance relating to the percentages that management employees pay for health insurance and retirement (Ordinance 98-53), modifying the ordinance relating to changing the multiplier (Ordinance 2000-10) and changing the lifetime insurance benefit. She also suggested removing the cost of living increase in the contracts.

Councilman Pierre noted the following: 1) Contracts should be reviewed on an annual basis in the month of June; 2) He was not in favor of reducing the City Attorney's salary, but would be in favor, if it was the Council's preference for a 20% reduction; 3) Reduce the annual leave from 20 days to 10 days. 4) Revise the ordinances relating to the insurance.

City Attorney Siegel agreed with Mayor Rosner's suggestion of discussing each item in the contract one by one and to set aside the pensionable items (car allowance and cell phone stipend) to be revised within the management plan. Following discussion, Mayor Rosner passed the gavel to Vice Mayor Spiegel.

Motion made by Mayor Rosner, seconded by Councilman Derosé, to renew the City Attorney's contract with the following amendments: a) RENEWAL/EXPIRATION DATE: The contract shall be for 10 months until July 2011 and will be reviewed and renewed in July of every year. b) SALARY: Employee ("shall" changed to "may") be entitled to receive a cost of living increase annually. Addition to the paragraph: City Attorney did not take a cost of living increase in 2008-2009 and 2009-2010, and will not in 2010-2011. c) BENEFITS: striking the entire clause. d) PENSION: This clause is to come back to the Council at the first meeting in January 2011 subject to pension plan modification. e) HEALTH INSURANCE & DENTAL INSURANCE: add to the last sentence – delete "Resolution 98-53, 2008-51 and Ordinances No. 2000-10 and 2002-30" and add "in accordance with the resolutions and ordinances of the City as the same may be amended from time and time." f) AUTOMOBILE ALLOWANCE: Reduce 10% to \$675.00 and delete "Employee may elect to use a City provided vehicle primarily for City purposes." This clause is to come back to the Council at the first meeting in January 2011 subject to pension plan modification. g) EXECUTIVE ALLOWANCE: Reduce 10% to \$360.00. This clause is to come back to the Council at the first meeting in January 2011 subject to pension plan modification. h) CELL PHONE ALLOWANCE: This clause is to come back to the Council at the first meeting in January 2011 subject to pension plan modification.

Councilwoman Smith suggested reducing the salary by 10%, reducing the auto allowance to \$500.00, reducing the executive allowance to \$200.00 and reducing the annual leave from 20 days to 10 days OR a 15% reduction in salary with 20 days annual leave.

Friendly Amendment Motion made by Vice Mayor Spiegel, seconded by Councilman Julien, to reduce the auto allowance to \$500.00 and to reduce the executive allowance to \$200.00. Mayor Rosner and Councilman Derosé both accepted the friendly amendment. In a roll call vote, all voted in favor of the motion as amended. **(Motion carried 7-0).**

City Manager Contract

Motion made by Councilman Julien, seconded by Councilman Derose, to execute the same contract to the City Manager as to the City Attorney.

Vice Mayor Spiegel questioned if the terms of the contract would include a city credit card for city-related expenses and if the City Manager would be agreeable to the car allowance change. With input from City Attorney Siegel, there was an extensive discussion regarding the cost & liabilities of a city leased car versus a car allowance, which led to the conclusion that offering a car allowance would be the best for the City.

Friendly Amendment Motion made by Councilman Julien, seconded by Councilman Derose, to eliminate the executive allowance from the contract. City Manager Baker stated that he had no concerns with the terms and conditions as presented. In a roll call vote, Vice Mayor Spiegel, Councilman Julien, Councilman Derose and Mayor Rosner all voted in favor of the motion, while Councilwoman Smith, Councilman Kramer, and Councilman Pierre all voted against the motion. **(Motion carried 4-3).**

On behalf of the City Council, Vice Mayor Spiegel thanked the City Attorney and City Manager for waiving their cost of living increases.

Councilman Pierre explained that at a previous council meeting, a motion was made for a vote of confidence for the City Manager and seconded with discussion, but there was no vote carried out. He asked City Attorney Siegel for advice on calling the question. She responded that there would need to be a new motion.

Motion made by Councilman Pierre, seconded by Councilwoman Kramer, to reintroduce the motion to terminate the contract with the City Manager.

Councilwoman Kramer posed questions to City Manager Baker regarding his education, previous employment, additional government education and memberships. Councilwoman Smith spoke about a letter written to the Mayor from the City Manager regarding a sunshine law violation via email involving all Council Members and noted that she did not have a vote of confidence for the City Manager. Vice Mayor Spiegel spoke of the August 25th meeting and the issues that were brought forth by the City Manager. Councilman Julien spoke of the right for freedom of speech, and stated that he did not believe the City Manager was insubordinate and did not believe that he should be terminated. Councilman Derose explained that he did not understand why the council was considering terminating the City Manager. He also spoke of the August 25th meeting. Mayor Rosner requested clarification of the county's "whistle-blower" provision regarding the potential violations by the Council as previously expressed by the City Manager. City Attorney Siegel explained that the State of Florida has a "whistle-blower" act where anyone is entitled to sue and will have to prove that a termination or separation was as a result of that particular "whistle-blower" claim. Vice Mayor Spiegel asked if this issue could be tabled and an executive session could be scheduled with the City's Labor Counsel and the City Attorney to discuss the potential impacts, liabilities and options for the City and Council. City Attorney Siegel explained that there have been allegations of race

discrimination, religious persecutions and sunshine law violations by the council; these allegations could set up possible litigation.

Motion made by Councilwoman Spiegel, to table the issue and schedule an executive session as soon as possible with the Council, Labor Counsel and the City Attorney. **(Motion died for lack of a second.)**

Through other Florida League of Cities Councilmembers, Councilwoman Smith stated she found out that the City Manager had applied for a position with the Hallandale Beach two (2) months ago. She expressed concern for a possible future vacancy and the City Manager's unhappiness. Councilman Julien noted that some of the Council people have told Mr. Baker that he was going to be fired. City Attorney Siegel noted that Commissioner Pierre would need to second Councilwoman Spiegel's motion in order for it to move forward. She also noted that an executive session could occur only for labor negotiations or during a pending lawsuit and did not think it would be proper under these circumstances.

Mr. Baker thanked the Council, Staff and Senior Management Team for the experience and opportunity. He added that it was never his intention to create what was here today, but to express some of things he had been dealing with.

Mayor Rosner spoke of the City Manager's previous budget proposals being turned down by the Council. Extensive discussion took place regarding actions and events leading up to this meeting.

Clarification on the Original Motion: Councilman Pierre noted that he was reintroducing the motion to terminate with cause. Councilwoman Kramer seconded the motion. City Attorney Siegel answered various questions relating to terminating the contract with cause and without cause. She also noted that she had asked Councilman Pierre to clarify his motion because she wanted it to be clear for the record.

Motion made by Vice Mayor Spiegel, seconded by Councilman Pierre, to take a 10 minute recess. **(Motion died for lack of a vote.)**

Attorney Neil Flaxman, (80 SW 8 Street, #3100), representing Mr. Baker explained that a "termination for cause" could never be destroyed because it becomes a public record, and this action could be considered economic death for the City Manager. He added that the burden was on the City to prove the cause.

Councilman Pierre said he was not comfortable with working with someone he did not trust. He said he respected him as a man and as an employee for 16 years. Councilman Pierre added that the residents and employees did not trust him and that he was in the wrong place at the wrong time. With that being said, Commission Pierre **withdrew his original motion**. Councilwoman Kramer withdrew her second to the motion. **Motion** made by Councilman Pierre, seconded by Councilwoman Kramer, to reintroduce the motion to terminate the City Manager.

Councilwoman Smith expressed concern for paying \$100,000 in severance and other benefits knowing that there were facts on tape and questioned if there could be a

negotiation. Councilman Julien noted that the former City Manager was granted his severance with no negotiation.

Mayor Rosner ruled to open the meeting to Public Comment. **Motion** made by Councilman Pierre, seconded by Councilwoman Kramer, to challenge the chair. Vice Mayor Spiegel, Councilwoman Smith, Councilman Julien, Councilman Derose and Councilwoman Kramer all voted in favor of overruling the chair.

Vote: Vice Mayor Spiegel, Councilwoman Smith, Councilwoman Kramer and Councilman Pierre all voted in favor of the motion, while Councilman Julien, Councilman Derose, and Mayor Rosner voted against the motion. (**Motion carried 4-3**).

Councilman Julien left the meeting at 9:55 p.m.

Motion made by Councilwoman Smith, seconded by Councilman Pierre, to appoint Assistant City Manager Roslyn Weisblum as the Acting City Manager. Vice Mayor Spiegel, Councilwoman Smith, Councilman Derose, Councilwoman Kramer, Councilman Pierre, and Mayor Rosner all voted in favor of the motion. (**Motion carried 6-0**).

City Clerk Contract

Motion made by Councilwoman Smith, seconded by Mayor Rosner, to defer the City Clerk's contract. Vice Mayor Spiegel, Councilwoman Smith, Councilman Derose, Councilwoman Kramer, Councilman Pierre, and Mayor Rosner all voted in favor of the motion. (**Motion carried 6-0**).

Vice Mayor Spiegel thanked the Public and Staff for their participation and noted best wishes for the New Year. Mayor Rosner left the meeting at 9:58 p.m. Acting City Manager Weisblum stated that she would do the best she could to get through this time. There was some brief discussion about the advertising options for the City Manager position, but no action was taken.

4. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 10:01 p.m. on a motion made by Councilwoman Smith and seconded by Councilwoman Pierre. By consensus, all voted in favor. (**Motion carried 5-0**).

ATTEST:

(SEAL)


Joanne M. Callahan
Interim City Clerk