



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

**SEPTEMBER 7, 2010**  
**REGULAR MEETING MINUTES**  
*(CNMB-CC MINUTES TAPE #447)*

**1. ROLL CALL OF THE CITY OFFICIALS**

The meeting was called to order at 8:12 p.m. Present were Mayor Myron Rosner, Vice Mayor Philippe Derosé and Council Members John Patrick Julien, Barbara Kramer, Frantz Pierre Phyllis S. Smith and Beth E. Spiegel. Also present were City Manager Kelvin L. Baker, City Attorney Darcee S. Siegel, and City Clerk Susan A. Owens.

**2. INVOCATION**

The invocation was given by Mayor Rosner.

**3. PLEDGE OF ALLEGIANCE**

Mayor Rosner led the Pledge of Allegiance.

**4. REQUESTS FOR WITHDRAWALS, DEFERMENTS AND ADDITIONS TO AGENDA**

**Motion** made by Councilman Julien, seconded by Councilwoman Smith, to defer Item 5.4 (Proclamations Recognizing Loren Howell and Angel Guerrero, City of North Miami Beach Lifeguards); to pull Item 7.1 (Minutes of August 17, 2010) from the Consent Agenda for discussion; and to present Item 7.3 (Resolution R2010-61) at the beginning of the meeting. By consensus, all voted in favor of the motion. (**Motion carried 7-0**).

**Motion** made by Vice Mayor Derosé, seconded by Councilwoman Smith, to introduce Item 7.3. By consensus, all voted in favor of the motion. (**Motion carried 7-0**).

**7.3 Resolution No. R2010-61**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, SUPPORTING A FLORIDA HOSPITAL PATIENT PROTECTION ACT.

**Motion** made by Councilman Pierre, seconded by Vice Mayor Derosé to adopt Resolution No. R2010-61. Lieutenant Pat Superville, registered nurse for the Miami Veteran's Association, provided a detailed overview of the Act. Councilwoman Spiegel questioned why copies of the proposed legislation had not been provided since this item had failed in committee. City Attorney Siegel explained that the committee ran out of time before the legislative session ended, and that they asked Councilman Pierre and the City to urge the legislature to consider the Act this year.

Councilwoman Spiegel expressed concern for the ability of nurses to refuse care to a patient. Lieutenant Superville explained that there was great concern for a patient not getting the proper care due to the patient/nurse ratio and said she could provide a copy of the proposed legislation to the Council via email.

**Vote:** All council members voted in favor of the motion with the exception of Councilwoman Spiegel who voted in the negative. **(Motion carried 6-1).**

## 5. PRESENTATIONS/DISCUSSIONS

5.1 July 2010 CARE Award – Tom Carney, Police Services Manager, Police Department – Presented by City Manager Kelvin L. Baker

5.2 July 2010 Employee of the Month Award – Janice Coakley, Admin. Asst. III, Public Services – Presented by Councilwoman Kramer

5.3 Presentation of Youth Empowerment Program Awards – Presented by Director of Leisure Services Paulette Murphy

**Motion** made by Councilwoman Smith, seconded by Councilwoman Spiegel, to pull Item 7.2 (Resolution No. R2010-60) from the Consent Agenda. By consensus, all voted in favor of the motion. **(Motion carried 7-0).**

## 6. APPOINTMENTS

6.1 Public Utilities Commission (Councilwoman Smith)

**Motion** made by Councilwoman Smith, seconded by Councilwoman Spiegel, to appoint Eric Hyman to the Public Utilities Commission. By consensus, all voted in favor of the motion. **(Motion carried 7-0).**

6.2 Appointment of Vice Mayor

**Motion** made by Vice Mayor Derose, seconded by Councilwoman Smith, to appoint Councilwoman Beth E. Spiegel as Vice Mayor. By consensus, all voted in favor of the motion. **(Motion carried 7-0).**

## 7. CONSENT AGENDA

**Motion** made by Vice Mayor Derose, seconded by Councilman Pierre, to introduce the Consent Agenda as amended. By consensus, all voted in favor of the motion. **(Motion carried 7-0).**

7.4 Resolution No. R2010-62

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO APPLY FOR THE FLORIDA RECREATIONAL DEVELOPMENT ASSISTANCE PROGRAM (FRDAP) GRANT WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR IMPROVEMENTS TO MISHCON PARK AND THE ARTHUR SNYDER TENNIS CENTER.

## 7.5 Resolution No. R2010-63

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ESTABLISHING A SISTER CITY RELATIONSHIP BETWEEN THE CITY OF NORTH MIAMI BEACH AND THE CITY OF ACCRA, IN THE REPUBLIC OF GHANA.

## 7.6 Resolution No. R2010-64

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH FLORIDA ENGINEERING AND DEVELOPMENT, CORP. FOR THE INSTALLATION OF DECORATIVE STREETLIGHTS IN THE HANFORD BOULEVARD DISTRICT ON NE 18TH AVE BETWEEN NE 164TH ST AND SOUTH GLADES DRIVE IN NORTH MIAMI BEACH, FLORIDA.

**Motion** made by Vice Mayor Derose, seconded by Councilwoman Smith, to adopt the Consent Agenda as amended. By consensus, all voted in favor of the motion. (**Motion carried 7-0**).

## 8. CITY MANAGER'S REPORT

City Manager Baker reported that two (2) out of the three (3) City projects had received funding from grant applications: 1) AMR – \$7,000,000, awarded \$2,500,000; 2) Volatile Organic Compounds (VOC), awarded close to \$3,000,000.

## 9. CITY ATTORNEY'S REPORT

### 9.1 Litigation List – *No Discussion*

City Attorney Siegel reported that the September 14<sup>th</sup> Meeting was for the 1st Public Hearing for adoption of the Annual Budget, Millage Rate, CRA with a possible resolution regarding a water & sewer rate increase. She added that Mayor Rosner had requested a special meeting for September 21<sup>st</sup> at 7:30 p.m. for the 2<sup>nd</sup> Reading of Ordinance 2010-22, so it would be in place for the September 28<sup>th</sup> 2<sup>nd</sup> Public Hearing for adoption of the Annual Budget, Millage Rate, and CRA with a possible resolution regarding a water & sewer rate increase.

## 10. MAYOR'S DISCUSSION

Mayor Rosner wished everyone in the Jewish community a Happy and Healthy New Year. He also thanked Patrick Rosiak, IT director, for getting him up to speed with the computer age.

### **Point of Personal Privilege – City Manager Vote of Confidence**

Councilwoman Spiegel explained that at the August 25<sup>th</sup> Budget Workshop, City Manager Baker had requested a "Vote of Confidence". She announced that she was now withdrawing her "vote of confidence" and provided grounds based on previous events that occurred regarding the Mayor's and City Manager's communications and actions regarding possible Florida Sunshine Law violations. Councilwoman Spiegel requested mayor Rosner provide an apology to the Council for being judge and jury for the letter he had sent to the governor, the media and other

county and state officials regarding accusations of the Council violating the Florida Sunshine Law.

Councilwoman Smith expressed concern for the City Manager's unhappiness. She spoke about him being a top candidate for a Broward municipality, the financial condition of the City, the positive support the Council had given him, residents' feedback. She also touched on some of the City Manager's actions and previous events that had occurred. Councilwoman Smith noted that she would be asking the three (3) employees to give back their salaries. In addition, Councilwoman Smith thanked the Police Department for their work.

Councilman Pierre stated that the City has been ridiculed and labeled as racist and that the claims were not justifiable. He noted that people have limitations and that a simple apology would be ok for him, but not for the residents. Councilman Pierre spoke of the budget adjustments, the City's diversity and the citizens' and employees' loss of respect for the City Manager. He noted that his motion was based purely on subordination.

**Motion** made by Councilman Pierre, seconded by Councilwoman Kramer, to terminate the contract with the City Manager **for cause**.

Vice Mayor Derosé noted that his relationship with the City Manager has been positive and commended his achievements. He expressed shock about some of his colleague's unhappiness and disappointment with the City Manager's performance.

Councilman Julien questioned if a unanimous vote was required, since the motion was a non-agended item. City Attorney Siegel noted that the charter stated that a majority vote was needed. Councilman Julien noted that he had a long meeting with the City Manager in the previous week and spoke to several residents. He spoke of trusting Staff, the City Manager and City Attorney volunteering to reduce their salaries. Councilman Julien also referred to various City projects and programs, the revenue-generating and revenue-saving projects, and the 2010 Census. He added that he had the utmost confidence in City Manager Baker, but did not approve or endorse what the City Manager said at a previous meeting.

Mayor Rosner noted that he had recently received a letter from the City Manager regarding Florida Sunshine Law violations involving committee members and council members and that he decided to contact the boards that govern these violations. He spoke of Mr. Baker addressing council member requests and gave a detailed overview of his accomplishments.

Councilwoman Kramer expressed that she had lost trust and respect for the City Manager, and that she was disappointed with the City Manager's accusations of religious persecution, race discrimination, and the Florida Sunshine Law violations. She concluded that she could no longer work with him.

Councilwoman Spiegel spoke of both Mr. Baker's actions and specifically, the Mayor's actions regarding the distribution of the Florida Sunshine Law violations letter to the media and not to the council members first. She asked for an explanation of an assertion of an Ethics Seminar that she was not made aware of. Councilwoman Spiegel expressed disappointment in the City Manager bypassing the City Clerk and City Attorney and him requesting the IT department to retrieve 10,000+ emails for review of possible Florida Sunshine Law violations without any communication to the Council. She also spoke of the City Manager's comments regarding racial discrimination and religious persecution.

Councilwoman Smith noted the NAACP stood for the National Association for the Advancement of Colored People and the ACLU American Civil Liberties Union for religious persecution. She explained that she spoke to representatives of both organizations and others in order to learn and understand. She spoke of her positive experiences as a member of the Council, the importance of mutual respect for each other, and some of the negative events leading up to this meeting. Councilwoman Smith said that she did not want to be told not to go to her office. She expressed disappointment in the City Manager's lack of an apology, and that the City needed to work together. Councilwoman Smith addressed the Mayor and his letter regarding sunshine law violations and stated the Council should have worked together.

Councilman Julien spoke of past conflicts between Council Members and Staff. He stated that an NAACP freedom of information request had been received asking for emails from all Council Members relating to certain information for a specific period in time. Regarding the Florida Sunshine Law violations letter, he clarified that the Ethics Symposium that took place several months ago was not mandatory for Council Members to attend, but was stated in an email that it was mandatory. He also expressed that he was not concerned about the City Manager applying for a position with another municipality.

Councilwoman Spiegel noted that per her request, City Clerk Owens distributed copies of the Florida Sunshine Law violations letters of correspondence to the Council. Mayor Rosner then read the August 31, 2010 letter addressed to him as sent from City Manager Baker. He then read a letter that he had sent to the State Attorney, the Florida Commission of Ethics, the Attorney General, the Miami-Dade Commission on Ethics and Public Trust and the Governor of Florida. Mayor Rosner said that his duty, as Mayor, was to go up the chain of command and put those that are above us at the state, county and agencies that are responsible in guiding us in addressing sunshine law violations. Councilwoman Smith questioned as to why the letters were not copied to the Council. Mayor Rosner said he never thought about it and apologized for not sending the Council copies. He said he was aware of violations that existed. Councilwoman Spiegel questioned as to why he did not report them when he became aware. Mayor Rosner spoke about violations on the CRA Board, PUC Board and between Council Members and stated that all were in public record. Councilwoman Spiegel challenged him on the copies of those records. Mayor Rosner said he believed that the City Manager had copies. Councilman Julien noted that we are charged with reporting these violations, but that the Mayor did nothing with them. Mayor Rosner said he asked the CRA attorney to address the violations. Councilwoman Kramer stated that it was her idea to have an Ethics Seminar because it was a healthy thing to do for the City and stated that the state attorney's office should investigate the issues not the Mayor. Councilman Derosé stated that the letter was a mistake coming from the Mayor and was not the proper thing to do. Councilwoman Spiegel questioned why the Mayor did not seek opinions from the City Clerk and the City Attorney before going to outside agencies. Councilman Derosé said that this was the time that the City Manager was needed the most and did not think this was the right time for transition.

City Manager Baker spoke of the situations being a result of pure politics. He spoke about his departure as being imminent and wished the organization success. City Manager Baker noted that he was not responsible for the NAACP's involvement. He noted that the Council was spending too much time in City Hall causing interference in the day-to-day activity of running the City. City Manager Baker thanked the City and its residents for a 16 year career with the City.

## **Public Comment**

Carmen Kienzel, 1653 NE 158 Street, North Miami Beach, FL, spoke against the City Manager and about his water bill.

Councilwoman Smith and Councilwoman Spiegel both questioned the City Manager sending the letter only to the Mayor and the Mayor's role in writing the letters to other outside agencies and why none of those letters were sent to the other Council Members. City Attorney Siegel noted that she sent a letter to the Police Chief (copied to the State Attorney's Office) indicating that she had received allegations of Florida Sunshine Law violations recommending an investigation be a proper course of action. Chief Raphael Hernandez explained that after receiving the letter the State Attorney's Office was contacted for assistance. He noted that the best course of action was to contact an independent agency, so that there would no negative perception. Chief Hernandez noted that Councilwoman Kramer questioned if he had provided any documents to the media. City Attorney Siegel noted that Willard Sheppard, Channel 6 News, had contacted her and made a public records request for the letter from the City Manager to the Mayor and the letter from the City Manager. She noted that she also sent a copy of her letter to the State Attorney's Office. City Attorney Siegel added that the public records request response was copied to the Police Chief, City Manager, Mayor & Council, and City Clerk.

## **Public Comment**

Ronald Hayes, NMB Public Services employee, 5212 SW 32 Street, North Miami, Beach, FL, spoke in favor of the City Manager.

Marilyn Baumohl, 18635 NE 20 Court, North Miami Beach, FL, expressed disappointment with what had occurred.

Charles R Loeb, 16800 NE 15 Avenue, #112, North Miami Beach, FL, recommended the City Manager set a meeting with the Council, Staff and the City Attorney to address certain issues in a private manner.

Bert Kehren, 3302 NE 171 Street, North Miami Beach, FL, spoke about the "orchestrated" Aug. 25<sup>th</sup> meeting and expressed disappointment with the City Manager's accusations.

Brad Brown, 1<sup>st</sup> Vice President of the Miami-Dade Branch of the NAACP, noted that residents who were members contacted the agency and then he requested email traffic. He also noted that the agency was not contacted by the City Manager and expressed concern for the impact on the City.

Bruce Lamberto, 3420 NE 165 Street, North Miami Beach, FL, spoke about the budget, lack of Council's response and the pensionable items. The City Attorney and City Manager answered various questions about the pensionable items contained in the City Manager, City Clerk and City Attorney contracts.

Mary Hilton, 1950 NE 157 Terrace North Miami Beach, FL, expressed disappointment in the previous comments made by the Mayor and City Manager and noted that the residents have requested a complete investigation of the City and a forensic audit by the State Attorney's Office.

Richard Reiss, 23 NW 169 Street, North Miami Beach, FL, spoke about a personal attack by the City Manager and about the Uleta Gym.

Roslyn Weisblum, NMB assistant city manager, spoke in favor of the City Manager and encouraged everyone to work together.

Mubarak Kazan, 15564 NE 12 Avenue, North Miami Beach, FL, spoke about real racism and believed that the relationship with the City Manager cannot continue the way it is.

Beverly Hobson, NMB human resources director, spoke about her positive experience with the City Manager, the outstanding budget issues and encouraged the Council to think about their action.

Bernard McGriff, NMB assistant city manager, expressed full support of the City Manager and spoke about outstanding budget issues.

**Motion** made by Councilman Derose, seconded by Councilwoman Kramer, to extend the meeting time past 12:00 a.m. In a roll call vote, Councilman Derose, Councilwoman Kramer, Councilman Pierre and Councilwoman Spiegel all voted in favor of the motion, while Councilwoman Smith, Councilman Julien, and Mayor Rosner all voted against the motion. **(Motion died due to a lack of a supermajority 4-3).**

**Original Motion to terminate the City Manager's contract** died due to lack of a vote.

(Even though the following items were not discussed, they still need to be referenced in these minutes and match the published agenda.)

**11. PUBLIC COMMENT** - *Unable to discuss due to time constraints.*

**12. MISCELLANEOUS ITEMS** – *None*

**13. WAIVER OF FEE** – *None*

**14. BUSINESS TAX RECEIPTS** – *None*

**15. LEGISLATION** – *Unable to discuss due to time constraints.*

**7.2** Resolution No. R2010-60

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH COVENTRY HEALTHCARE OF FLORIDA, FOR SINGLE SOURCE FULLY-INSURED GROUP HEALTH PLAN HMO, POS, AND PPO.

**15.1** Ordinance No. 2010-21 (Second and Final Reading)

AN ORDINANCE AMENDING CHAPTER III OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ENTITLED PURCHASING AND IN PARTICULAR SECTIONS 3-3.11c. AND 3-3.11d. TO INCREASE FROM TEN YEARS TO TWENTY YEARS THE CONTRACT TERM AND PERIOD FOR PAYMENTS FOR GUARANTEED ENERGY SAVINGS CONTRACTS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

**15.2** Ordinance No. 2010-22 (Second and Final Reading)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING THE CITY OF NORTH MIAMI BEACH RETIREMENT PLAN FOR

POLICE OFFICERS AND FIREFIGHTERS; CREATING A NEW SECTION 4.02(c) PROVIDING A DIFFERENT SUPPLEMENTAL CONTRIBUTION THROUGH THE 2019 PLAN YEAR, BUT REQUIRING A 70% FUNDED RATIO FOR THE OCTOBER 1, 2020 ACTUARIAL VALUATION (TO DETERMINE THE EMPLOYER CONTRIBUTION FOR THE FISCAL YEAR STARTING OCTOBER 1, 2021); PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

7.1 Meeting Minutes of August 17, 2010

**16. CITY COUNCIL COMMITTEE REPORTS** - *Unable to discuss due to time constraints.*

**17. NEXT REGULAR CITY COUNCIL MEETING** - Tuesday, September 28, 2010 at 7:30 p.m. (Other upcoming meetings include Budget Hearing #1 - Tuesday, September 14, 2010 at 7:00 p.m., and Budget Hearing #2-September 28, 2010 at 7:00 p.m.)

**18. ADJOURNMENT**

Mayor Rosner adjourned the meeting at 12:10 a.m.

ATTEST:

(SEAL)

  
Joanne M. Callahan  
Interim City Clerk