



JULY 19, 2011
REGULAR MEETING MINUTES
(CNMB-CC MINUTES TAPE #473)

1. ROLL CALL OF THE CITY OFFICIALS

The meeting was called to order at 7:46 p.m. Present at the meeting were Mayor George Vallejo, Vice Mayor Philippe Derosé and Council Members Barbara Kramer, Marlen Martell, Frantz Pierre, Phyllis S. Smith and Beth E. Spiegel. Also present were City Manager Lyndon L. Bonner, City Attorney Darcee S. Siegel and City Clerk Pamela L. Latimore.

2. INVOCATION – City Manager Bonner

3. PLEDGE OF ALLEGIANCE

4. REQUESTS FOR WITHDRAWALS, DEFERMENTS AND ADDITIONS TO AGENDA

City Clerk Latimore reported a request Item 15.4 Ordinance 2011-8 (Second and Final Reading) be moved before 15.1 Resolution No. R2011-38A due to guests and attorneys speaking to that item.

5. PRESENTATIONS/DISCUSSIONS - *None*

6. APPOINTMENTS - *None*

7. CONSENT AGENDA - *None*

8. CITY MANAGER'S REPORT

8.1 Comprehensive Annual Financial Report (CAFR) Auditors' Report

Anthony Brunson, CPA, Sharpton, Bruson & Company, P.A., provided a detailed overview of the CAFR and answered questions posed by the Council. A copy of the report was distributed and filed in town records.

Councilwoman Smith recognized State Representative, District 104, John Patrick Julien and Former Councilman Robert Taylor who were both in attendance.

City Manager Bonner reported that a copy of the proposed budget was distributed to the Council and that a potential candidate for the human resources director position would be visiting City Hall on Friday.

9. CITY ATTORNEY'S REPORT

9.1 Litigation List - *No Discussion*

9.2 Settlement of Ruggiero-Raimondi Case #1:10-CV-21263-JORDAN

City Attorney Siegel explained that the \$600,000 settlement was to be paid out over a two (2) year fiscal period: \$300,000 prior to September 30, 2011 and \$300,000 October in 2011. She noted that the funds were earmarked from the Self-Insurance Risk Reserve Fund.

Motion made by Councilman Derose, seconded by Councilwoman Kramer, to approve a \$600,000 settlement for the Ruggiero-Raimondi Case #1:10-CV-21263-JORDAN with the first payment of \$300,000 occurring prior to September 30, 2011 and the second payment of \$300,000 being made in October 2011. In a consensus vote, all voted in favor of the motion. (**Motion carried 7-0**).

9.3 Review of City Attorney Contract (Continued)

City Attorney Siegel spoke about the discussion that took place during the Council Conference Agenda. She noted that she would agree to folding in the cost of car allowance, the cost of executive expense, and cell phone allowance into one flat salary rate of \$188,000, a little more than a 10% overall cut. City Attorney Siegel also suggested that her severance pay be lowered to 20 weeks with the annual review of her contract in August.

Councilwoman Smith inquired as to if any Council Members wanted to discuss the numbers of days off. City Attorney Siegel spoke about the \$19,000 reduction in salary and noted that the days off were fair. She explained that she worked more than eight (8) hours a day, that she came in on the weekends, and attended City functions on the paid holidays. She asked that the days remain and noted that she believed what she was offering was fair to the Council and to the citizens as a whole. Councilwoman Smith explained that the holidays and days off were discussed previously with the possibility of changes and was not speaking specific to this contract, but referring to the Council's three (3) employees.

Motion made by Vice Mayor Derose, seconded by Councilwoman Kramer, to approve the \$188,000 and the 20 weeks of severance pay. Councilwoman Spiegel suggested the following friendly amendment: the \$188,000 is annual compensation; there shall no longer be any car, phone or executive allowance paid to the city attorney; that the City Attorney shall continue to pay insurance premiums in the same manner as other management employees; that the city attorney shall continue to make the pension contribution as set forth in the previous contract which is subject to changes as determined by this city; at this time, there be nothing in the contract about bonus or COLA as given our forecast is not likely to happen; and that her leave stay in her prior year's contract. Both Vice Mayor Derose and Councilwoman Kramer accepted her friendly amendment.

City Attorney Siegel asked that if the economy for some reason proves to be better and there were some monies available, that the discretionary bonus be kept in the contract. In response to Councilwoman Spiegel's inquiry if a bonus was permitted by the state and could it be awarded if a bonus was not budgeted, City Manager Bonner responded that it was the Council's decision and it could be awarded. Councilman Pierre spoke highly of the city attorney and noted that he would go with the majority and that the salary did not reflect the reality of the city in July of 2011. He suggested \$160,000.

Mayor Vallejo verified that the vote was including the discretionary bonus.

Vote: By consensus, all voted in favor of the motion. **(Motion carried 7-0).**

Per Councilwoman Martell's request, City Attorney Siegel confirmed that a resolution regarding the Council's commitment to continue funding of pension plans would be presented at the second meeting in August. She noted that a CRA resolution and the second reading of the general employees' pension plan ordinance would be presented at the next meeting. City Attorney Siegel explained that a response regarding the IRS ordinance language was distributed to the Council.

10. MAYOR'S DISCUSSION

Mayor Vallejo spoke about looking into the future of NMB. He noted discussions that took place about balancing the budget, reforming the pension system, and modernizing the zoning code and reminded everyone that the job was far from over. Mayor Vallejo requested a commitment from the Council to work as a team working towards securing the long-term success of the city. He spoke about political distractions, the temporary band-aid fixes, and making budget cuts with the residents' outcomes in mind.

11. PUBLIC COMMENT - City Clerk Latimore read the rules for Public Comment.

Bert Kehren, 3302 NE 171 Street, North Miami Beach, FL, spoke about the budget, against outsourcing police, cuts and the pension plan.

Charles R. Loeb, 16800 NE 15 Avenue #112, North Miami Beach, FL, wished a Happy Birthday to Councilwoman Smith and John Julien, spoke about "traveling man" from the ½ penny sales tax, John Patrick Julien's Town Hall Meeting, state pension information, property insurance, victims' rights, transportation improvement program, library closings in the county, and about being the 1st war protestor of the new Vietnam 2011.

Chuck Asarnow, president of Eastern Shores Property Owners Association, 1649 NE 31 Avenue, spoke positively about the city manager's Eastern Shores Town Meeting and noted that the general perception on those who attended about the employees was that they could not care less about the people in the city.

Michael Pons, North Miami Beach Police Association, P.O. Box 124, North Miami Beach, FL, spoke about leadership regarding concessions (15%) for the city and about the 24 officers being potentially laid off.

Joe Romero, City of North Miami Beach police officer, expressed concern about police layoffs, spoke about needing better communication, and noted that the police were open to discussion.

Stephanie Kienzle, 1653 NE 178 Street, North Miami Beach, FL, recommended reviewing the entire legal department's salaries and the need for outside counsel for the various departments.

Richard Riess, President of the NMB Civic Association, 23 NW 169 Street, North Miami Beach, FL, spoke about the city attorney's demand for \$188,000 or she would leave, the Miami-Dade County debate, and the spending regarding the sign on West Dixie Highway and the game room. He said he liked what the mayor said and what the police said because these issues were not going to go away. Mr. Riess also spoke about his issue with the street sweeper not working smart.

Muriel Kemp, 1479 NE 178 Street, North Miami Beach, FL, spoke about the lifetime health

insurance benefit and it being illegal, three (3) people submitted for unreimbursed expenses, Resolution R2008-51 (stopped lifetime benefits, but grandfathered everyone in) and recommended the City look into Medicare for those 65 and over.

Bruce Lamberto, 3420 NE 165 Street, North Miami Beach, FL, thanked the mayor for the transparency of the checkbook online and spoke of the following Mishcon Field checks: \$415,000 on a fence and \$20,000 on two (2) soccer goals and paying for consultants. He expressed concern for someone not questioning what the checks were being paid for. He also spoke of the police paying for some of the transportation costs and suggested increasing their pension contribution a bit. Mr. Lamberto also spoke of the community wanting to see more police patrolling, stake outs, and their homes being protected. Mayor Vallejo requested City Manager Bonner to provide him with detailed information regarding the Mishcon Field checks. Councilwoman Smith requested to know the procedure to approve the fence: who checked the invoice, what was the reasoning. City Manager Bonner noted that there was a fence upgrade, a demolition, a rebuild, and it was bid out. He further noted that there was something else involved and would get the details to the Council in the morning.

Volney Nerette, 16121 NE 19 Place, North Miami Beach, FL, spoke about the Library being closed too long, the budget, about receiving complaints about police brutality, and the need for the real professional police more than ever.

Allison Robie, 2131 NE 179 Street, North Miami Beach, FL, spoke positively about the city manager's meeting at Washington Park, the budget, behavior modification: work smarter and more efficient, Robert's Rules of Order regarding the seating arrangements and time limits for Council Members, and the possible layoffs.

Sandra Douglas, 1523 NE 152 Street, North Miami Beach, FL, thanked the city manager for the meeting at Washington Park, expressed concern with the police layoffs, spoke of the Jack Family incident and the quick response time by the police, and recommended salary cuts across the board.

Mubarak Kazan, 15564 NE 12 Avenue, North Miami Beach, FL, showed pictures of his cousins that were serving our country – "what they can do for their county," expressed disappointment to Chief Hernandez regarding the patrolling south of 159 Street (except for Washington Park), spoke about Assistant Director of Public Services Esmond Scott leaving the City, made reference to a *Nightline* investigation regarding pensions, and also spoke about budget cuts.

12. MISCELLANEOUS ITEMS

13. WAIVER OF FEE – None

14. BUSINESS TAX RECEIPTS

14.1 SMG Entertainment, Inc. D/B/A Queen of Diamonds Gentlemen's Club (17450 Biscayne Boulevard, North Miami Beach, FL)

Mayor Vallejo confirmed that there were no representatives present to speak on the application. City Attorney Siegel recommended a postponement to the next meeting.

Motion made by Councilwoman Spiegel, seconded by Vice Mayor Derosé, to postpone the application. By consensus, all voted in favor of the motion. **(Motion carried 7-0).**

15. LEGISLATION

Motion made by Vice Mayor Derose, seconded by Councilwoman Kramer, to introduce Ordinance 2011-8 on Second and Final Reading. By consensus, all voted in favor of the motion. (**Motion carried 7-0**).

15.4 Ordinance 2011-8 (Second and Final Reading)

AN ORDINANCE AMENDING THE POLICE OFFICERS AND FIREFIGHTERS RETIREMENT PLAN OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, PROVIDING FOR COMPLIANCE WITH CHAPTER 2009-97, LAWS OF FLORIDA; AMENDING ARTICLE VII, BENEFITS NOT ASSIGNABLE; AMENDING ARTICLE I, TERMINATION OF PLAN; AMENDING ARTICLE IV, ADMINISTRATION OF FUNDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE, PROVIDING FOR AN EFFECTIVE DATE

Motion made by Vice Mayor Derose, seconded by Councilwoman Spiegel, to adopt Ordinance 2011-8 on Second and Final Reading.

City Attorney Siegel noted that the "title" was changed based on the Council's vote regarding Article V and advertised. Council Members posed brief questions about the revised ordinance.

Vote: In a roll call vote, all voted in favor of the motion. (**Motion carried 7-0**).

Motion made by Vice Mayor Derose, seconded by Councilwoman Spiegel, to introduce Resolution No. R2011-38A.

15.1 Resolution No. R2011-38A

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ESTABLISHING A CITY POLICY REGARDING THE METHOD AND POSITION OF THE COUNCIL'S SEATING ON THE DAIS.

Motion made by Councilwoman Spiegel, seconded by Councilwoman Kramer, to introduce Resolution No. R2011-38B.

15.2 Resolution No. R2011-38B

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ESTABLISHING A CITY POLICY REGARDING THE METHOD AND POSITION OF THE COUNCIL'S SEATING ON THE DAIS.

Motion made by Councilwoman Spiegel, seconded by Councilwoman Kramer, to introduce Resolution No. R2011-38C.

15.3 Resolution No. R2011-38C

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ESTABLISHING A CITY POLICY REGARDING THE METHOD AND POSITION OF THE COUNCIL'S SEATING ON THE DAIS.

City Attorney Siegel provided a detailed overview of the three (3) resolutions.

Councilman Pierre noted that he recalled that the decision would be up to the Mayor, this time, but for future elections, when the time was appropriate, would discuss it. He also noted that he did not sponsor any resolution and suggested tabling all three (3) resolutions and keep the seating as is.

Motion made by Councilman Pierre, seconded by Councilwoman Spiegel, to table all three (3) resolutions and leave the seating as is. In a roll call vote, Vice Mayor Derose, Councilwoman Martell, Councilwoman Spiegel, Councilwoman Kramer and Councilman Pierre all voted in favor of the motion, while Councilwoman Smith and Mayor Vallejo voted against the motion. (**Motion carried 5-2**).

Motion made by Councilwoman Spiegel, seconded by Councilwoman Kramer, to have the voting order on resolutions and ordinances rotate. City Clerk Latimore explained that she was in the process of putting together a policy according to Robert's Rules and Mason's Manual for the Council for the City Council's decision and discussion at the next Council Conference Meeting. There were no objections to the motion.

City Manager Bonner requested certainty as to when the resolutions would be brought back for discussion.

Motion made by Councilwoman Spiegel, seconded by Councilwoman Martell, to reconsider the three (3) resolutions. By consensus, all voted in favor of the motion with the exception of Councilman Pierre. (**Motion carried 6-1**).

Councilwoman Smith spoke about standing up for what was right and that the unwritten standing policy carried from Mayor Mishcon through Mayor Rosner. She noted that if there was going to be a change in policy then the City Council needed to vote on it. Councilwoman Smith explained that the first policy (38A), which called for whatever seat you run for, takes any favoritism, any emotion, and most importantly, any politics from where the Council Member sits. She explained that the resolution would carry from year to year, not from Mayor to Mayor and that the only way the policy could change was with four (4) votes. Councilwoman Smith explained that the second policy (38B) called for the policy that the City Council has had in place for 25 years where seniority was absolutely verified at the last Council Conference Meeting – four (4) people sitting on this dais know that seniority was the policy. She noted again, that if there was going to be a change in policy, then it needed to be discussed and voted on. Councilwoman Smith explained that the third policy (38C) called for the mayor to decide where everyone sits and spoke about wanting to make the following addendum to Section 2c: “that he will dictate where everyone sits.” She read last sentence of Section 2, noted that it seemed a little ambiguous for this council and future councils, and suggested adding the following: either “at the end of the each election” or “at the beginning of each election.” She noted again, that this was about a policy established in our City for many, many years, verified and established, and needed to change the policy with a vote from the Council.

Councilwoman Martell noted that she did not want the changes made to 38C as recommended by Councilwoman Smith and that it was at the discretion of the Mayor. Councilwoman Spiegel explained that she chaired the Charter Review Committee in 2008 and had an intellectual problem with changing the charter to give additional powers to the Mayor. She provided an overview of the current duties and noted that by default, would go with 38B and if Council Members wanted to swap seats, they would be free to do so. Councilman Derosé provided an overview of his seat movement by seniority and expressed in favor of seniority and the value of it in government. He noted that he would support 38B. Councilman Pierre explained that there were far better more important issues than deciding who should sit where and that his original proposition was to accept whatever the Mayor said for now, but before the next election, to bring it up beforehand. He noted that none of the resolutions were perfect and would be up for what the majority wanted. Councilwoman Smith explained that it had nothing to do with my seat, a seat; it was an unwritten policy for many years and was not one of the duties of the Mayor. She further explained that if the policy was to be changed that the Council absolutely discuss it and vote on the change.

Public Comment

Allison Robie, 2131 NE 179 Street, North Miami Beach, FL, made a suggestion of a new seating arrangement and spoke about your voice counting and not being concerned where you were seating.

Mubarak Kazan, 15564 NE 12 Avenue, North Miami Beach, FL, spoke about former standing policies and the impact and time wasted over this issue.

Muriel Kemp, 1479 NE 178 Street, North Miami Beach, FL, spoke about the embarrassment, seniority – one vote per person, playing musical chairs.

Stephanie Kienzle, 1653 NE 178 Street, North Miami Beach, FL, spoke about various types of chairs, the embarrassment, North Miami Beach being the laughing stock of the county, comments on her blog and *The Herald*, and musical chairs.

Robert Taylor, 1951 NE 157 Terrace, North Miami Beach, FL, spoke about his position on the City Council, all seven (7) members of the Council being equal, being in favor of seniority and about being proud of North Miami Beach.

Bert Kehren, 3302 NE 171 Street, North Miami Beach, FL, spoke about divisiveness, own agendas, retaliations, and the embarrassment in the middle of a crisis.

Volney Nerette, 16121 NE 19 Place, North Miami Beach, FL, spoke about City's problems and questioned why the Council was addressing the seat arrangement.

Charles R. Loeb, 16800 NE 15 Avenue #112, North Miami Beach, FL, spoke about the time for public comment. He said if a comparison was done, he believed that the Public spoke very little. It would be worth the investment for the public to speak. Mayor Vallejo noted that he was very happy having the public speak and did not believe that Public Comment was too long.

Carmen Kienzle, 1653 NE 178 Street, North Miami Beach, FL, expressed that this subject was totally ridiculous to even discuss it anymore. He spoke about seniority, working with the Mayor and the time being wasted. Mr. Kienzle encouraged dropping this as soon as possible.

Motion made by Councilwoman Martell to approve Resolution R2011-38C. After a brief discussion regarding how to move forward procedurally, she **withdrew** her motion.

Motion made by Councilwoman Smith to approve Resolution R2011-38A. **Motion died for lack**

of a second.

Motion made by Councilwoman Smith, seconded by Vice Mayor Derose, to approve Resolution R2011-38B. In a roll call vote, Vice Mayor Derose and Councilwoman Smith voted in favor of the motion, while Councilwoman Martell, Councilwoman Spiegel, Councilwoman Kramer, Councilman Pierre and Mayor Vallejo voted against the motion. **(Motion failed 5-2).**

Motion made by Councilwoman Spiegel, seconded by Councilwoman Smith, to approve Resolution R2011-38A. In a roll call vote, Councilwoman Spiegel and Councilwoman Smith voted in favor of the motion, while Vice Mayor Derose, Councilwoman Martell, Councilwoman Kramer, Councilman Pierre and Mayor Vallejo voted against the motion. **(Motion failed 5-2).**

Motion made by Councilwoman Martell, seconded by Councilwoman Kramer, to approve Resolution R2011-38C. Councilwoman Spiegel proposed a **friendly amendment** to delete the last sentence of Section 2 (*The Councilmember shall remain in that location on the dais until the Mayor determines otherwise.*) to which both Councilwoman Martell and Councilwoman Kramer both accepted. In a roll call vote, Councilwoman Martell, Councilwoman Kramer and Mayor Vallejo all voted in favor of the motion, while Vice Mayor Derose, Councilwoman Spiegel, Councilwoman Smith and Councilman Pierre voted against the motion. **(Motion failed 4-3).**

16. CITY COUNCIL REPORTS

Vice Mayor Derose wished Councilwoman Smith a Happy Birthday! He reminded everyone to be careful driving in the rain and spoke of a driver hitting a tree. Vice Mayor Derose spoke of Assistant Director of Public Services Esmond Scott leaving North Miami Beach and that he would be presenting him with a plaque at the next Council Meeting on behalf of his work with the Beautification Committee.

Councilwoman Martell encouraged Residents to get involved in the various boards and committees and noted that the Advisory Committee for Disabled Individuals meets on the 2nd Tuesday of each month at 5:30 p.m. She also reminded everyone that State Representative John Patrick Julien, District 104, was hosting a Town Hall Meeting on Thursday, July 21st, 7:00 p.m. to 9:00 p.m. at the McDonald Center. Councilwoman Martell announced a Free Health Screen for Women event at the Kendall Health Center on Tuesday, July 26th from 10:00 am – 1:00 p.m. located at 11440 SW 88th Street, Suite 103. She also announced that Miami-Dade County Commissioner Sally Heyman was hosting a Town Hall meeting on Wednesday, August 3rd from 6:00 p.m. to 8:00 p.m. at Jackson North Medical Center, 160 NW 170th Street, regarding Jackson North Medical Center issues.

Councilwoman Spiegel echoed Vice Mayor Derose's comments about Assistant Director of Public Services Esmond Scott leaving North Miami Beach. She reminded everyone about State Representative John Patrick Julien, District 104, hosting a Town Hall Meeting on Thursday, July 21st, 7:00 p.m. to 9:00 p.m. at the McDonald Center. She wished Chief of Police Hernandez congratulations for being sworn in as the President of the Police Chief's Association. Councilwoman Spiegel spoke about tonight's discussion as being a part of the democratic process and each Council Member was entitled to bring forth a resolution for discussion.

Councilwoman Kramer wished the very best to Assistant Director of Public Services Esmond Scott and wished Councilwoman Smith a Happy Birthday! She announced that the Multi-Cultural Committee was looking for volunteers.

Councilwoman Smith recognized City Attorney Siegel and her staff for their work regarding the closed session and settlement. She recognized Chief of Police Hernandez for being honored at the Parrot Jungle for his work outside the City. Councilwoman Smith thanked everyone for coming to the meeting, noted that the seating arrangement had nothing to do with Phyllis Smith, how she was treated, where she sits, it was about that she saw something that was not right. She spoke about the need for a Council vote regarding changes to a policy and how it was the democratic way and of bringing this issue back again after the budget to ensure there was a policy in place. Councilwoman Smith spoke about her excitement in chairing her new committee and about moving the committee forward. She explained that she had received 40 to 50 phone calls in the last two (2) weeks with the majority being complaints. She asked, in addition to the budget, pension and all issues before the Council, that the city manager to not make light of the other parts of the city that needed attention. Happy Birthday to me!

Councilman Pierre wished Councilwoman Smith many more beautiful years, stated that she was an asset to the city and that he was proud to serve with her. He noted to the employees that there would be tough times with tough decisions to make and encouraged sticking together as a team and agreeing to disagree without being disagreeable. He congratulated City Attorney Siegel for her re-appointment. Councilman Pierre commended City Manager Bonner for the budget and noted that the Library was opened except on Saturdays due to problems with the air conditioning. City Manager Bonner provided a brief status.

Mayor Vallejo wished Councilwoman Smith a Happy Birthday and made mention of the executive session taking place the next day.

17. NEXT REGULAR CITY COUNCIL MEETING – Tuesday, August 2, 2011

18. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 10:38 p.m. on a motion made by Vice Mayor Derosé and seconded by Councilman Pierre. By consensus, all voted in favor. (**Motion carried 7-0**).

ATTEST:

(S E A L)



Pamela L. Latimore
City Clerk