

REQUESTED COMMISSION ACTION:

Consent	Ordinance	Resolution	x	Consideration/ Discussion	Presentation
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SHORT TITLE	Discussion of two issues brought up during the reports section of the last City Commission meeting of June 28, 2011.				
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Summary of Purpose and Why:

1. The first matter is the concern regarding the fact that union contracts are negotiated and approved by persons who may benefit from participating in the process; and
2. The second matter is the concern regarding contracts directly negotiated by the City Commission without the assistance of city staff.

(1) Origin of request for this action: _____

(2) Primary staff contact: Gordon B. Linn, City Attorney Ext. 4614

(3) Expiration of contract, if applicable: _____

(4) Fiscal impact and source of funding: _____

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
City Attorney	July 5, 2011		See City Attorney's Comm. #2011-1312 <i>ABT</i>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

City Manager *Ann W. Beard*

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 st Reading	1 st Reading	Results:	Results:
_____	_____	_____	_____
2 nd Reading	_____	_____	_____
_____	_____	_____	_____



City Attorney's Communication #2011-1312

July 5, 2011

TO: Mayor and City Commission
FROM: Gordon B. Linn, City Attorney
RE: Discussion Matters

During the reports section at the last City Commission meeting of June 28, 2011, a request was made for the future discussion of two matters. The first matter related to concern regarding the fact that union contracts are negotiated and approved by persons who may benefit from participating in the process. The persons involved in the contract negotiations are those persons on the negotiating team and the City Commission who directs the negotiating team and ultimately approves the union contract.

As a threshold, the City Commission is the ultimate authority as to the approval of a contract and as such, serves as a check on the staff and members of the negotiating team. Second, although the City Commission is voting as to its own benefits, the same is permitted by Florida law, with the electorate serving as a check on any such decisions. Nevertheless, this concern could be eliminated by removing any interest in the outcome of the process. Some time ago, contracts were negotiated by an outside labor counsel. Obviously, outside labor counsel had no interest in the outcome of the proceedings. Any interests in the outcome of contracts of those persons that the City Commission desires to be on the negotiating team could also be eliminated. Presently, the City Manager is under written contract so his interest could not be immediately removed. A copy of the pertinent page from his contract is attached for your review. The pertinent part of the contract states as follows:

C. EMPLOYEE shall receive all the benefits of other regular classified employees of the City unless otherwise provided in this Agreement.

Such right could be eliminated in upcoming negotiations. Any interests that others to the negotiation team may have could be eliminated. The City Attorney and Assistant City Attorneys do not have contracts but were hired by resolution. Most of the resolutions contain the following:

“ . . . and shall be entitled to all employee benefits which are provided to regular classified employees of the city.”

Such could be eliminated by resolution.

The City Commission's interest was granted by Resolution No. 2005-102, which in part states as follows:


"Elected officials shall receive an annual salary of \$28,000.00 subject to increases in accordance with percentage increases for cost of living afforded regular classified employees of the City."

That interest can likewise be eliminated by future resolution. Any benefits to be given to the City Commission and the negotiating team would then have to be approved by resolution of the City Commission annually or as desired. This process, however, could prove difficult with respect to retirement benefits.

The second issue dealt with concerns regarding contracts directly negotiated by the City Commission without the assistance of city staff. Such situations are rare. The City Charter provides that the City Commission shall hire the City Manager, the City Attorney, the City Clerk and the City Auditor. While the Assistant City Attorneys are also hired by the City Commission, their compensation and benefits are reviewed by the City Attorney. Most likely, the City Commission would direct the City Manager and the City Attorney to negotiate any contracts with a new City Clerk or new City Auditor. The contract with the City Manager was negotiated by myself with the assistance of guidelines given by the executive recruiter. Likewise, the contract of a new City Attorney could be reviewed by the City Manager. The City Commission could, if it so desires, contract with an informed individual to assist in these contracts.

In the past, requests by the above individuals for merit increases have been brought to the City Commission directly for approval upon submittal of evidence justifying such increase. The Commission is in a very good position to judge the performance of the individuals and compare salaries of such individuals similarly situated.

This matter will be set for the next City Commission meeting on July 12. There may be other situations which you may wish to discuss at that time.



GORDON B. LINN

GBL/jrm
l:cor/comsn/2011-1312

Attachment

cc: Dennis W. Beach, City Manager

D. EMPLOYEE may also be requested to perform limited duties for the Pompano Beach Community Redevelopment Agency (CRA) as the City Commission sits as the Board of Directors for the CRA.

SECTION 3 - EMPLOYEE SALARY.

A. The CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto at an annual initial base salary of \$175,000.00 payable in installments at the same time as other employees of the CITY are paid.

B. EMPLOYEE shall be entitled to an annual cost-of-living wage increase in the same amount and at the same time as such increase is provided, if any, to other non-bargaining unit CITY employees. EMPLOYEE's initial annual salary may be adjusted by such increases beginning October 1, 2010.

C. EMPLOYEE shall receive all the benefits of other regular classified employees of the City unless otherwise provided in this Agreement.

SECTION 4 - TERMINATION AND SEVERANCE PAY.

A. In the event EMPLOYEE is terminated by the City Commission during the first six (6) months of employment and during such time that EMPLOYEE is willing and able to perform the duties of City Manager, then in that event the CITY agrees to pay EMPLOYEE a lump sum cash payment in an amount equal to the remainder of the then current annual salary. The EMPLOYEE shall also be compensated for all accrued sick leave and vacation time.

B. In the event EMPLOYEE is terminated for "just cause," the CITY shall have no obligation to pay the amounts outlined in Section 4.A of this Agreement. For purposes of this Agreement, "just cause" is defined and limited for purposes of this Agreement to any of the following: