



To: Walter Foeman

From: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in blue ink, appearing to be "C. Leen", is written over the name of the City Attorney.

RE: Legal Opinion Regarding Correction To Section 50-26(c) Of The City Code

Date: April 17, 2015

Pursuant to section 2-201(e)(9) of the City Code, authorizing the City Attorney to correct language in the City Code, along with attached Resolution No. 2008-75, which contains a repealer clause along with an irrevocable election to participate in FRS for elected officials taking office on or after October 1, 2008, and along with state law relating to FRS, which is applicable to the City's elected officials via this irrevocable election, it is my determination that section 50-26(c) of the City Code must be corrected as follows (underlined portion must be added):

(c) Further provided, however, that it shall not be mandatory for any elected official of the city to participate in the system, but such elected official shall have the option of participation in the system. A member of the city commission may exercise his option to decline participation in the system at any time. In the event that any of the elected officials choose to participate in a retirement plan other than the system, the city will contribute a sum not to exceed 6½ percent of the elected official's compensation to that plan. The effective date of the option to participate shall be the date the elected official takes office. Notwithstanding the foregoing, elected officials who take office on or after October 1, 2008 shall become members of the Florida Retirement System in accordance with applicable law, and shall not participate in the city retirement system.

Please inform the Municipal Code Corporation of this correction, which is effective immediately. I am also asking that this opinion be placed into a signed City Attorney Opinion.

Herbello, Stephanie

From: Leen, Craig
Sent: Friday, April 17, 2015 5:45 PM
To: Herbello, Stephanie
Cc: Ramos, Miriam; Figueroa, Yaneris; Chen, Brigitte; Parramore, Carol
Subject: FW: Correction to Section 50-26(c) of the City Code
Attachments: City of Coral GablesFinance Department.pdf

Importance: High

Please include in the opinion folder.

Craig E. Leen, City Attorney

*Board Certified by the Florida Bar in
City, County and Local Government Law*
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Leen, Craig
Sent: Friday, April 17, 2015 1:43 PM
To: Foeman, Walter
Cc: Gomez, Diana; Ramos, Miriam; Figueroa, Yaneris; Herbello, Stephanie
Subject: Correction to Section 50-26(c) of the City Code
Importance: High

Pursuant to section 2-201(e)(9) of the City Code, authorizing the City Attorney to correct language in the City Code, along with attached Resolution No. 2008-75, which contains a repealer clause along with an irrevocable election to participate in FRS for elected officials taking office on or after October 1, 2008, and along with state law relating to FRS, which is applicable to the City's elected officials via this irrevocable election, it is my determination that section 50-26(c) of the City Code must be corrected as follows (underlined portion must be added):

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Please inform the Municipal Code Corporation of this correction, which is effective immediately. I am also asking that this opinion be placed into a signed City Attorney Opinion.

Craig E. Leen, City Attorney
*Board Certified by the Florida Bar in
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City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Leen, Craig
Sent: Friday, April 17, 2015 9:01 AM
To: Foeman, Walter
Cc: Gomez, Diana; Ramos, Miriam; Chen, Brigette
Subject: Fwd: Reso - FRS

Good morning, Walter. I am invoking section 2-201(e)(9) of the City Code to correct section 50-26(c) so that it will be consistent with the repealer discussed below and state law. I will send you the language to provide to municode when I have it ready. The opinion below is effective immediately.

Craig E. Leen
City Attorney

Sent from my iPhone

Begin forwarded message:

From: Jim Linn <jlinn@llw-law.com>
Date: April 17, 2015 at 8:18:15 AM EDT
To: "Leen, Craig" <cleen@coralgables.com>
Cc: "Ramos, Miriam" <mramos@coralgables.com>, "Gomez, Diana" <dgomez@coralgables.com>
Subject: Re: Reso - FRS

OK - will do.

Jim Linn
Lewis, Longman & Walker, P.A.
o 850.222.5702
m 850.443.0086

On Apr 16, 2015, at 5:57 PM, Leen, Craig
<cleen@coralgables.com<<mailto:cleen@coralgables.com>>> wrote:

Jim,

The attached resolution irrevocably causes the City to join FRS for its Commissioners. I assume it was done in compliance with state statutes relating to joining FRS (please confirm though). It also contains a repealer clause for ordinances and resolutions that are in conflict. Although a resolution would not normally supersede an ordinance, it would do so if done in compliance with a state statute authorizing the resolution (as the state statute would take precedence over the ordinance). Accordingly, if the resolution is done consistent with state law, it is my opinion that

this would supersede section 50-26(c) of the City Code and that it could be administratively amended pursuant to the repealer clause and my authority under section 2-201(e)(9) of the City Code [to correct Code provisions superseded by state law]. In addition, I would note that the City has completed joining FRS for its Commissioners, so state law would take precedence over the City Code now regardless of whether the original action should have been done by ordinance or resolution, which again allows me to correct section 50-26(c) under section 2-201(e)(9).

Please provide me revised language for 50-26(c) that is consistent with the attached resolution.

Thanks,
Craig

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
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Email: cleen@coralgables.com<<mailto:cleen@coralgables.com>>

From: Gomez, Diana
Sent: Thursday, April 16, 2015 5:38 PM
To: Leen, Craig
Subject: Fwd: Reso - FRS

Diana M Gomez
Finance Director
City of Coral Gables

Begin forwarded message:

From: "Gomez, Diana" <dgomez@coralgables.com<<mailto:dgomez@coralgables.com>>>
Date: April 16, 2015 at 2:50:52 PM EDT
To: "jlinn@llw-law.com<<mailto:jlinn@llw-law.com>>" <jlinn@llw-law.com<<mailto:jlinn@llw-law.com>>>
[law.com](mailto:jlinn@llw-law.com)>>
Subject: Reso - FRS

Diana M. Gomez
Finance Director
City of Coral Gables
dgomez@coralgables.com<<mailto:dgomez@coralgables.com>>
PH: 305.460.5275
FX: 305.460.5376

Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to

public disclosure.

<City of Coral Gables Finance Department.pdf>



CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2008-75

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES, DECLARING THE CITY'S INTENT TO PARTICIPATE IN THE FLORIDA RETIREMENT SYSTEM FOR ELECTED OFFICIALS, EFFECTIVE ON OR ABOUT OCTOBER 1, 2008; PROVIDING THAT ALL ELECTED OFFICIALS HIRED BY THE CITY ON OR AFTER THE EFFECTIVE DATE OF THE CITY'S PARTICIPATION IN THE FLORIDA RETIREMENT SYSTEM SHALL BECOME MEMBERS OF THE FLORIDA RETIREMENT SYSTEM; PROVIDING THAT ALL ELECTED OFFICIALS WHO ARE PARTICIPATING IN ANOTHER CITY RETIREMENT PLAN ON THE EFFECTIVE DATE OF THE CITY'S PARTICIPATION IN THE FLORIDA RETIREMENT SYSTEM SHALL HAVE THE RIGHT TO ELECT TO CONTINUE PARTICIPATING IN SUCH PLAN OR TRANSFER TO THE FLORIDA RETIREMENT SYSTEM; PROVIDING FOR THE CITY'S PURCHASE OF PAST SERVICE CREDIT UNDER THE FLORIDA RETIREMENT SYSTEM FOR ELIGIBLE EMPLOYEES; AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS WITH THE FLORIDA DIVISION OF RETIREMENT TO ACCOMPLISH THE INTENT OF THIS RESOLUTION; PROVIDING FOR WITHHOLDING SOCIAL SECURITY CONTRIBUTIONS FROM EMPLOYEES' PAY; PROVIDING FOR PAYMENT OF REQUIRED FLORIDA RETIREMENT SYSTEM CONTRIBUTIONS BY THE CITY; PROVIDING FOR THE ESTABLISHMENT, MAINTENANCE AND SUBMISSION OF SUCH RECORDS AS MAY BE REQUIRED FOR PARTICIPATION IN THE FLORIDA RETIREMENT SYSTEM; PROVIDING THAT THE CITY'S DECISION TO PARTICIPATE IN THE FLORIDA RETIREMENT SYSTEM SHALL BE IRREVOCABLE; PROVIDING FOR REPEAL OF ALL ORDINANCES AND RESOLUTIONS IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Coral Gables, Florida has determined that it is in the best interest of the City and its elected officials to join the Florida Retirement System on behalf of the City's elected officials, and has established a target date for participation in the Florida Retirement System of October 1, 2008; and

WHEREAS, under Florida law employees who participate in an existing City retirement plan on the effective date of the City's participation in the Florida Retirement System may elect to continue participating in the City plan, or discontinue participation in the City plan and join the Florida Retirement System; and

WHEREAS, under Florida law, City employees who elect to join the Florida Retirement System are eligible for past service credit under FRS for the period of their participation in a City retirement plan only if they receive no benefit from a City retirement plan for such period of service; and

WHEREAS, in accordance with applicable state law, the City must prepare and submit certain documents to, and enter into certain agreements with, the Florida Division of Retirement, to participate in the Florida Retirement System; and

WHEREAS, the City Commission has determined that adoption of this Resolution is in the best interest of the citizens and residents of the City of Coral Gables;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. The City of Coral Gables, Florida intends to participate in the Florida Retirement System on behalf of the City's elected officials on or about October 1, 2008, or as soon thereafter as administratively feasible in accordance with applicable state law and rules of the Florida Division of Retirement.

SECTION 3. The City hereby authorizes and designates the City Manager to prepare and submit all necessary documents and execute all necessary agreements and amendments thereto, as may be required by the Florida Division of Retirement for participation in the Florida Retirement System.

SECTION 4. All elected officials of the City who take office on or after the effective date of the City's participation in the Florida Retirement System shall become compulsory members of the Florida Retirement System. Elected Officials who, on the effective date of the City's participation in the Florida Retirement System, participate in another City retirement plan, will have the right to elect to continue participating in a City retirement plan, or becoming members of the Florida Retirement System, in accordance with applicable state law.

SECTION 5. Those elected officials who elect to join FRS may elect to either continue participating in a City retirement plan and receive a future benefit from the City plan, or waive their right to receive any benefit from a City plan, thereby becoming eligible for past service credit under FRS. The City will purchase, on behalf of employees who elect to waive their right to receive any benefit from a City retirement plan, credit for past service under FRS. The City will purchase only such past service credit under FRS for the period an employee participated in a City plan. The City shall purchase such past service credit only at the contribution rate for the general employees' class of FRS. Thereafter, the elected officials may upgrade their past service credit under FRS to the Elected Officers' Class rate with each individual elected official bearing the cost of such upgrade in accordance with the laws and rules governing FRS.

SECTION 6. As a condition of participation in the Florida Retirement System, the City will withhold from elected officials' compensation each pay period the social security contributions required by applicable law.

SECTION 7. As a condition of participation in the Florida Retirement System, the City will remit to the Florida Division of Retirement each month the required Florida Retirement System contributions, as established by state law.

SECTION 8. As a condition of participation in the Florida Retirement System, the City will establish, maintain and submit such documents and records relating to the City's participation in the Florida Retirement System as may be required by the Florida Division of Retirement.

SECTION 9. The City acknowledges that its decision to participate in the Florida Retirement System is irrevocable.

SECTION 10. All ordinances and resolutions or parts of ordinances and resolutions in conflict herewith are hereby repealed.

SECTION 11. If any section, subsection, sentence, clause or phrase of this resolution, or the particular application thereof, shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining sections, subsections, sentences, clauses, and phrases shall not be affected thereby.

SECTION 12. This Resolution shall become effective immediately upon adoption.

BE IT FURTHER RESOLVED that a copy of this Resolution fully executed as an original, duly attested by the Secretary, be furnished to the Administrator of the Florida Retirement System.

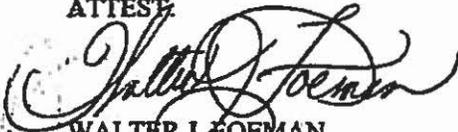
PASSED AND ADOPTED THIS TWENTY-SEVENTH DAY OF MAY, A.D., 2008.
(Moved: Anderson / Seconded: Kerdyk)
(Yeas: Anderson, Cabrera, Kerdyk, Withers, Slesnick)
(Unanimous: 5-0 Vote)
(Agenda Item: H-1)

APPROVED:



DONALD D. SLESNICK II
MAYOR

ATTEST



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ
CITY ATTORNEY