



To: City Commission

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

RE: Legal Opinion Regarding City Code Section 50-230(C) Interpretation

Date: October 25, 2013

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1. This memorandum interprets Section 50-230(c) of the Code of the City of Coral Gables, concerning the retirement plan cost of living adjustment ("COLA"), as well as other relevant provisions of the City Code cited herein. I am writing this memorandum pursuant to Section 2-201(e)(8) of the City Code, which authorizes the City Attorney "[t]o interpret the City Charter, City Code, and Zoning Code on behalf of the City." This memorandum memorializes my interpretation from the May 14, 2013 City Commission meeting, which the Commission supported with a unanimous vote, and provides guidance to the Retirement Board as that board exercises its duties, as well as the City Commission in any review of Retirement Board action.

2. Section 50-230(c) provides that each person who has been in receipt of retirement benefits for the full preceding year will receive a permanent increase in his or her monthly benefit if certain conditions are met. The purpose of this provision is to allow the payment of additional benefits to retirees if there are surplus funds available in the Retirement Trust for Employees of the City of Coral Gables (the "trust fund") beyond the level necessary to meet the City's actuarial obligations.

3. Section 50-230(c) only governs payment of a new COLA from the existing assets of the trust fund. It does not require the City Commission to make additional contributions to the trust fund in order to pay for an increase in monthly benefits. This is made clear by several sections of the City Code. Specifically, Section 50-198 of the City Code provides that "all benefits under this article [creating the retirement system] will be paid from the trust fund." In addition, Section 50-201 of the City Code provides that "[a]ny person having any claim under the [retirement] system will look solely to the assets of the trust fund for satisfaction," and "[i]n no event will the city, or any of its officers, members of its city commission or agents of the city, be liable in their individual capacities to any person whomsoever under the provisions of this

article or of the trust agreement." While the City Commission has discretion to fund an additional COLA benefit, such new funding by the City Commission is not required by Section 50-230(c).

4. Payments from the trust fund may only be made consistent with State law governing retirement systems. Section 112.62, Florida Statutes, provides that the provisions of Chapter 112, Part VII of Florida Statutes "supplement, and to the extent there are conflicts, prevail over the provisions of existing laws and local ordinances relating to such retirement systems or plans."

5. Section 112.61, Florida Statutes, applies to the payment of additional COLA benefits under Section 50-230(c) of the City Code. Section 112.61 provides in relevant part that "[a]ctuarial experience may be used to fund additional benefits, provided that the present value of such benefits does not exceed the net actuarial experience accumulated from all sources of gains and losses." The payment of a new COLA under Section 50-230(c) is an "additional benefit" within the meaning of Section 112.61, because such a new COLA would provide additional financial benefits to retirees which they are not currently receiving. I note that payment of contingent COLA's under Section 50-230(c) was not built into the funding requirements of the retirement plan when Section 50-230(c) was enacted in 1989, and Section 112.61 "prohibit[s] the use of any procedure, methodology or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers."

6. In summary, Section 50-230(c) of the City Code only requires payment of an additional COLA benefit if the terms and conditions set forth in that section, and the provisions of Section 112.61, Florida Statutes, are met. In particular, an additional COLA benefit is required if the market rate of return on the assets of the trust fund is greater than or equal to 10% the previous fiscal year, and the present value of the additional COLA benefit does not exceed the net actuarial experience of the retirement system. In determining whether to provide an additional COLA benefit under Section 50-230(c), the City's Retirement Board must determine whether both sets of conditions are met.

## Hernandez, Cristina

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**From:** Leen, Craig  
**Sent:** Wednesday, October 30, 2013 4:57 PM  
**To:** Hernandez, Cristina  
**Subject:** FW: City Attorney Interpretation  
**Attachments:** City Attorney Interpretation.pdf  
  
**Importance:** High

Please make sure the attached is placed in the opinion folder. Thanks.

Craig E. Leen  
City Attorney

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**From:** Leen, Craig  
**Sent:** Wednesday, October 30, 2013 11:55 AM  
**To:** 'AEGlawyer@aol.com'; Groome, Kimberly; Gomez, Diana  
**Cc:** Foeman, Walter  
**Subject:** City Attorney Interpretation  
**Importance:** High

Please see the attached City Attorney Interpretation of section 50-230(c) and related sections of the City Code. The interpretation was issued pursuant to the authority vested in the City Attorney under section 2-201(e)(8) of the City Code. A copy has been provided to the City Commission, and the City Attorney Interpretation has been made an exhibit to the October 29, 2013 City Commission meeting. Please forward a copy to the Retirement Board members and staff.

Best regards,

Craig E. Leen  
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**CITY OF CORAL GABLES  
OFFICE OF THE CITY ATTORNEY**

**- INTERPRETATION-**

**TO: CITY COMMISSION      DATE: October 25, 2013**

**FROM:**   
**CRAIG E. LEEN**  
**CITY ATTORNEY**

**SUBJECT: City Code Interpretation**

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3. Section 50-230(c) only governs payment of a new COLA from the existing assets of the trust fund. It does not require the City Commission to make additional contributions to the trust fund in order to pay for an increase in monthly benefits. This is made clear by several sections of the City Code. Specifically, Section 50-198 of the City Code provides that "all benefits under this article [creating the retirement system] will be paid from the trust fund." In addition, Section 50-201 of the City Code provides that "[a]ny person having any claim under the [retirement] system will look solely to the assets of the trust fund for satisfaction," and "[i]n no event will the city, or any of its officers, members of its city commission or agents of the city, be liable in their individual capacities to any person whomsoever under the provisions of this article or of the trust agreement." While the City Commission has discretion to fund an additional COLA benefit, such new funding by the City Commission is not required by Section 50-230(c).

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