



To: Diana Gomez, Finance Director for the City of Coral Gables

From: Cristina M. Suarez, Deputy City Attorney for the City of Coral Gables *ms*

Approved: Miriam Soler Ramos, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding Pay and Benefits for Appointed Officials

Date: October 18, 2018

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I have reviewed the resolutions appointing the City Manager, City Attorney, and City Clerk and prior opinions of this office regarding pay and benefits for appointed officials and have also conferred with special labor and employment counsel regarding whether the appointed officials are entitled to the lump sum pay supplement that is due to excluded employees. In my opinion, the appointed officials are entitled to receive the lump sum pay supplement that is being provided to excluded employees because the lump sum pay supplement is a benefit and does not equate to a COLA or CPI increase which increases the base salary.

As you aware, excluded employees will receive the same 2% non-pensionable lump sum payment due to pursuant to the Teamsters' employees pursuant to Article 7 of the Teamsters Collective Bargaining Agreement. Specifically, Article 7 provides:

Members of the bargaining unit shall receive a one-time pay 2% pay supplement based upon the member's base pay as of October 1, 2018. The pay supplement shall be paid in the first full payroll period after October 1, 2018. The pay supplement shall be non-pensionable, paid in a lump sum, and is a supplement for the fiscal year 2018-2019. The pay supplement shall only apply to those employees that are part of the bargaining unit employed by the City on or before April 1, 2018, and who are still employed by the City as part of the bargaining unit on October 1, 2018.

The two most recent resolutions of appointment are Resolution Nos. 2018-258 and 2017-346, which appointed the current City Manager and City Attorney. Each of those resolutions provides that "unless otherwise provided herein or in conflict with the provisions herein, [the City Manager and the City Attorney] shall be entitled to receive benefits and participate in programs which are provided to the other management employees and public officials/officers of

See R-2018-258, Section 19; R. 2017-346, Section 20. Resolution No. 2003-176 states that the City Clerk shall receive “the standard benefit package as provided to all employees in the Excluded Employee Classification.” R. 2003-176, Section 2.

Based on the language in the resolutions and prior opinions of this office, as long as the lump sum pay supplement is a “benefit” that is provided to the other management employees and public officials/officers of the city, the appointed officials should receive the pay supplement. To determine whether the lump sum payment is a benefit afforded to the other management employees (and not a COLA), I have reviewed the memorandum issued by Human Resources on September 11, 2018 and approved by the City Manager which explained that the lump sum payment should be applicable to excluded personnel (including Executives who receive Executive Benefits). The memorandum cites to Article 7 of the Teamsters Collective Bargaining Agreement which describes that the pay supplement “shall be non-pensionable, paid in a lump sum, and is a supplement for fiscal year 2018-2019.” Unlike a COLA increase or increase based on CPI, the one-time pay supplement does not result in an increase to the base salary. Therefore, there are differences between a COLA or CPI increase and the one-time pay supplement and I agree with special counsel’s letter dated November 4, 2014 which explained that the pay supplement is a benefit.

Because the lump sum pay supplement is a benefit being provided to other management employees of the City, the appointed officials are entitled to receive the pay supplement.

This opinion is issued pursuant to section 2-252(e)(1) and (8) of the City Code.

**From:** [Ramos, Miriam](#)  
**To:** [Paulk, Enga](#)  
**Cc:** [Suarez, Cristina](#)  
**Subject:** FW: City Attorney/City Clerk Benefits  
**Date:** Wednesday, October 17, 2018 5:40:07 PM  
**Attachments:** [image001.png](#)  
[image003.png](#)  
[image005.png](#)

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Enga, please publish.

*Miriam Soler Ramos, Esq., B.C.S.*

*City Attorney*

*Board Certified by the Florida Bar in  
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City of Coral Gables*

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**From:** Suarez, Cristina  
**Sent:** Wednesday, October 17, 2018 2:27 PM  
**To:** Gomez, Diana <dgomez@coralgables.com>  
**Cc:** Ramos, Miriam <mramos@coralgables.com>  
**Subject:** RE: City Attorney/City Clerk Benefits

Diana:

I have reviewed the resolutions appointing the City Manager, City Attorney, and City Clerk and prior opinions of this office regarding pay and

benefits for appointed officials and have also conferred with special labor and employment counsel regarding whether the appointed officials are entitled to the lump sum pay supplement that is due to excluded employees. In my opinion, the appointed officials are entitled to receive the lump sum pay supplement that is being provided to excluded employees because the lump sum pay supplement is a benefit and does not equate to a COLA or CPI increase which increases the base salary.

As you aware, excluded employees will receive the same 2% non-pensionable lump sum payment due to pursuant to the Teamsters' employees pursuant to Article 7 of the Teamsters Collective Bargaining Agreement. Specifically, Article 7 provides:

Members of the bargaining unit shall receive a one-time pay 2% pay supplement based upon the member's base pay as of October 1, 2018. The pay supplement shall be paid in the first full payroll period after October 1, 2018. The pay supplement shall be non-pensionable, paid in a lump sum, and is a supplement for the fiscal year 2018-2019. The pay supplement shall only apply to those employees that are part of the bargaining unit employed by the City on or before April 1, 2018, and who are still employed by the City as part of the bargaining unit on October 1, 2018.

The two most recent resolutions of appointment are Resolution Nos. 2018-258 and 2017-346, which appointed the current City Manager and City Attorney. Each of those resolutions provides that "unless otherwise provided herein or in conflict with the provisions herein, [the City Manager and the City Attorney] shall be entitled to receive benefits and participate in programs which are provided to the other management employees and public officials/officers of the city." See R-2018-258, Section 19; R. 2017-346, Section 20. Resolution No. 2003-176 states that the City Clerk shall receive "the standard benefit package as provided to all employees in the Excluded

Employee Classification.” R. 2003-176, Section 2.

Based on the language in the resolutions and prior opinions of this office, as long as the lump sum pay supplement is a “benefit” that is provided to the other management employees and public officials/officers of the city, the appointed officials should receive the pay supplement. To determine whether the lump sum payment is a benefit afforded to the other management employees (and not a COLA), I have reviewed the memorandum issued by Human Resources on September 11, 2018 and approved by the City Manager which explained that the lump sum payment should be applicable to excluded personnel (including Executives who receive Executive Benefits). The memorandum cites to Article 7 of the Teamsters Collective Bargaining Agreement which describes that the pay supplement “shall be non-pensionable, paid in a lump sum, and is a supplement for fiscal year 2018-2019.” Unlike a COLA increase or increase based on CPI, the one-time pay supplement does not result in an increase to the base salary. Therefore, there are differences between a COLA or CPI increase and the one-time pay supplement and I agree with special counsel’s letter dated November 4, 2014 which explained that the pay supplement is a benefit.

Because the lump sum pay supplement is a benefit being provided to other management employees of the City, the appointed officials are entitled to receive the pay supplement.

This opinion is issued pursuant to section 2-252(e)(1) and (8) of the City Code.

Thanks,  
Cristina

**Cristina M. Suárez**  
**Deputy City Attorney & City Prosecutor**  
City of Coral Gables  
405 Biltmore Way, 3rd Floor  
Coral Gables, Florida 33134

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**From:** Gomez, Diana  
**Sent:** Thursday, October 04, 2018 9:57 AM  
**To:** Suarez, Cristina  
**Subject:** RE: City Attorney/City Clerk Benefits  
**Importance:** High

Cristina, I would like you to consider is the following...

There are 2 separate opinions on this issue, but they were issued separately at different times...

The opinion on CPI vs. COLA in Miriam’s email attached was written as the question as to whether or not appointed officials get both a CPI and a COLA (percentage increase to base salary) granted to excluded employees... it was opined that they only get one, the larger of the two... because in a year where there is a CPI increase, the benefit to the excluded employee of a COLA would have ‘otherwise been provided’ and therefore they don’t get both. At the end of Miriam’s opinion she does state that appointed officials are entitled to receive the pay supplement based on outside counsel’s letter.

The opinion on the pay supplement from outside counsel states that appointed officials receive the pay supplement, but there was no discussion as to whether or not they should receive both a pay supplement COLA and a CPI COLA.

In the current year, appointed officials are getting a 3.16% CPI increase and excluded employees are getting a 2% pay supplement COLA. Pay supplements are a tool used by management in union negotiations which provides for a COLA in a lump sum, in advance, that is not pensionable (therefore more affordable)... it is a % increase to the base pay similar to a normal COLA except it’s not pensionable and paid upfront... that pay supplement is then afforded to the excluded

employees through the attached memo by the CM. I believe that there is a conflict for appointed officials to get both (CPI COLA and pay supplement COLA) because they are essentially getting two COLAs. Section 18 of their Resolution states they will receive benefits and participate in programs, “that unless otherwise provided herein or in conflict with the provisions herein...”

I am requesting that you revisit this. Although in a previous year both, a CPI COLA and a pay supplement COLA was provided to appointed officials based on these opinions, Finance is still of the position that it is double dipping because they are in essence receiving two COLAs.

Please let me know your thoughts/opinion. Thanks.

Diana M. Gomez  
*Finance Director*  
City of Coral Gables  
[dgomez@coralgables.com](mailto:dgomez@coralgables.com)  
PH: 305.460.5275  
FX: 305.460.5376



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**From:** Ramos, Miriam  
**Sent:** Thursday, October 4, 2018 8:19 AM  
**To:** Gomez, Diana <[dgomez@coralgables.com](mailto:dgomez@coralgables.com)>; Suarez, Cristina <[csuarez@coralgables.com](mailto:csuarez@coralgables.com)>  
**Subject:** FW: City Attorney/City Clerk Benefits

Diana, you inquired regarding whether appointed officials are eligible to receive the CPI lump sum in addition to a raise in salary based on the CPI. Below is the opinion that I issued when I was Deputy City Attorney regarding a similar issue – car allowance. It seems to me that under the rationale in this opinion any benefits afforded to “other management employees and public officials/officers of the City” or “managerial employees” would also extend to the three appointed officials. However, since the ultimate conclusion reached in this matter will affect me, I am asking Cristina to review the opinion, confer with special counsel, and then issue an opinion on this particular question.

Thank you,

*Miriam Soler Ramos, Esq., B.C.S.*  
*City Attorney*  
*Board Certified by the Florida Bar in*



*City, County, and Local Government Law*

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**From:** Ramos, Miriam

**Sent:** Thursday, November 2, 2017 4:04 PM

**To:** Gomez, Diana <[dgomez@coralgables.com](mailto:dgomez@coralgables.com)>

**Cc:** Green, Karla <[kgreen@coralgables.com](mailto:kgreen@coralgables.com)>

**Subject:** RE: City Attorney/City Clerk Benefits

Hi Diana,

I have reviewed all the documents you have provided and conclude that the City Attorney and City Clerk should receive the special vehicle allowance in the amount of \$650.00. I reach this conclusion based on several factors. On September 29, 2017, the City Manager authored a memorandum detailing a list of Executive Benefits being implemented for Directors, Assistant Directors and Division Chiefs, in which a car allowance of \$650 is provided for “special operational assignments.” In an October 6, 2017 memorandum from the City Manager to the Finance Director, she states that the special vehicle allowance category is reserved for executives that are not issued City vehicles but their duties include 24/7 emergency calls and regular visits to construction sites. As appointed City Officials, the City Attorney and City Clerk must remain available 24/7 for any emergency that may arise at the City and use their personal vehicle for all City business and to arrive at any location necessary.

In the case of the City Attorney, section 7 of Resolution 2011-46, appointing him to the position, sets out a car allowance of \$450. However, section 14 of the same resolution states, “[t]hat unless otherwise provided herein or in conflict with the provisions herein, Mr. Leen shall be entitled to receive benefits and participate in programs which are provided to the other management employees and public officials/officers of the City.” Keeping the City Attorney’s car allowance at \$450 is in conflict with the higher car allowance amount being provided to essential management level employees and therefore,



should be adjusted to the new highest amount of \$650.

In the case of the City Clerk, Resolution 2003-176, appointing him to the position, has two (2) provisions which would be in conflict should the highest car allowance amount not be awarded to him. In paragraph 2, it states that the City Clerk shall be provided "the standard benefit package as provided to all employee in the Excluded Employee Classification..." Paragraph 3, however, states that he shall be provided a car allowance of \$450. As long as the \$450 amount is consistent throughout, there is no conflict. Now, however, that the car allowance amount has been adjusted upward, an internal inconsistency would exist if he was not awarded that same allowance.

Also, in a November 2014 letter to the then-Deputy City Attorney and Finance Director from special labor and employment counsel, it was concluded that the then-Interim City Manager was due the same "pay and benefits" as managerial employees which were granted to the City Manager and that consequently should be granted to the Interim City Manager as a sub-category of the same. The City has only three appointed officials which, in the City's organizational chart, lie directly below the City Commission and above any department director. As such, as a matter of category, any appointed official that does not have a City vehicle, should be provided the highest car allowance available as he/she is in a highest position of City employment.

This opinion is issued pursuant to section 2-201(e)(1) and (8) of the City Code, giving the City Attorney's Office the authority to issue opinions and interpretations on behalf of the City.

Sincerely,

*Miriam Soler Ramos, Esq., B.C.S.*

Deputy City Attorney & City Prosecutor

*Board Certified by the Florida Bar in*

*City, County and Local Government Law*

City of Coral Gables

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**From:** Gomez, Diana  
**Sent:** Monday, October 30, 2017 12:51 PM  
**To:** Ramos, Miriam <[mramos@coralgables.com](mailto:mramos@coralgables.com)>  
**Cc:** Green, Karla <[kgreen@coralgables.com](mailto:kgreen@coralgables.com)>  
**Subject:** City Attorney/City Clerk Benefits  
**Importance:** High

Hi Miriam,

Can you please opine on the following:

The attached City Attorney Resolution Section 7 states “That Mr. Leen shall be provided a \$450.00 monthly car allowance...” and Section 14 states “That unless otherwise provided herein or in conflict with the provisions herein, Mr. Leen shall be entitled to receive benefits and participation in programs which are provided to the other management employees and public officials/officers of the City.”

The new executive benefits that the City Manager approved recently (also attached) provides for an auto allowance of “\$650 for special operational assignments identified by the City Manager. \$500 for Directors. \$300 for Assistant Directors/Division Chiefs (unless City provides a Take Home Vehicle).”

The City Attorney’s auto allowance was increased to \$500 which is the Director Level, comparable to what he had before. The question is whether or not he should be given the \$650 auto allowance because it is a benefit ‘provided to the other management employees...’ even though the City Manager did not specifically identify a special operational assignment for him...?

Also, I have attached the City Clerk’s Resolution. His Resolution states that he gets the \$450 auto allowance, however, his resolution does not have the language similar to section 14 of the City Attorney’s. Can you also opine as to whether or not the City Clerk’s auto allowance should be changed to \$500 (like Directors – comparable to what he had previously) or to \$650 (like special assignments).

I have also attached your previous opinion on CPI increases for reference.

Thank you.

Diana M. Gomez  
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