



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

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

oms

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

RE: Legal Opinion Regarding 2.5% COLA

Date: October 31, 2018

You have inquired how the determination that, for fiscal year 2019, employees in the newly classified "Executive" group will receive a 2.5% cost of living increase instead of the 2% lump sum pay supplement being provided to employees in the "Excluded" group impacts my prior opinion, CAO 2018-30, regarding the pay and benefits provided to the appointed officials. I have reviewed the attached memorandum dated October 24, 2018, conferred with you and with Director Green, and have reviewed prior opinions of this office.

Please note that based on the attached November 2, 2017 opinion of this office and on the November 2014 letter from special labor and employment counsel, the appointed officials are generally entitled to the highest level of benefits available to "other management employees," which includes benefits available to employees in the Executive group (a classification that includes Directors, Assistant Directors, and certain other management employees) and in the Excluded group (a classification that still includes other management employees such as, for example, Code Enforcement Division Manager and Public Works Office Manager). However, based on the attached opinion of this office dated July 6, 2016, the appointed officials should receive a salary increase based on either the Consumer Price Index ("CPI") or a cost of living adjustment ("COLA"). Thus, for fiscal year 2019, the appointed officials should only receive the CPI increase and not the COLA increase that is currently being provided to the Executive group. Moreover, the analysis in CAO 2018-30 does not change and the appointed officials are entitled to the lump sum pay supplement which is a benefit that is provided to other management employees in the Excluded group.

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



DATE: October 24, 2018

TO: All Employees receiving Executive Benefits
(including Fire and Police Executives)

FROM: Karla Green, Human Resources Director

A handwritten signature in blue ink, appearing to read "K. Green", is written over the name "Karla Green" in the "FROM:" field.

SUBJECT: Fiscal Year 2019 COLA

As authorized by the City Manager, all employees receiving *Executive Benefits*, including Executives in Fire and Police will receive a 2.5% cost of living increase effective October 1, 2018. As such, the pay rate adjustment will be reflected in the November 1, 2018 paycheck. Additionally, the corresponding retro payment will also be included in your November 1st paycheck.

As you will be receiving a COLA of 2.5%, the one-time lump sum payment as previously stated in my memorandum dated October 3, 2018 is no longer applicable.

Should you have any questions regarding your pay, contact the Human Resources Department, Compensation section at extension 5523.

From: Ramos, Miriam
Sent: Thursday, November 2, 2017 4:04 PM
To: Gomez, Diana <dgomez@coralgables.com>

Cc: Green, Karla <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

405 Biltmore Way, 3rd Floor

Coral Gables, FL 33134

(305) 460-5218

(305) 460-5084 direct dial

Public Records: This e-mail is from the City of Coral Gables – City Attorney’s Office and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this email in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. The State of Florida has a broad public records law. Most written communications to or from State and Local Officials regarding State or Local businesses are public record available to the public upon request.

Confidentiality: The information contained in this transmission may be legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

From: Gomez, Diana

Sent: Monday, October 30, 2017 12:51 PM

To: Ramos, Miriam <mramos@coralgables.com>

Cc: Green, Karla <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

Finance Director

City of Coral Gables

dgomez@coralgables.com

PH: 305.460.5275

FX: 305.460.5376



November 4, 2014

Bridgette N. Thornton, Esquire
Deputy City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Ms. Diana M. Gomez
Finance Director
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Re: Legal Opinion

Dear Ms. Thornton and Ms. Gomez:

You have asked for our legal opinion as to whether the Interim City Manager, Carmen Olazabal, the City Clerk, Walter J. Foeman, and the City Attorney, Craig E. Leen, Esquire, are entitled to the two (2%) percent pay supplement that was provided to certain Excluded Employees of the City.

Rule 1.14 of the Personnel Rules and Regulations for the City classify "Excluded Employee" into four (4) sub-categories: "(a) appointed, (b) managerial, (c) professional/supervisory, and (d) confidential." In the budget for the fiscal year beginning October 1, 2014 and ending September 30, 2015, Excluded Employees in sub-categories (b), (c) and (d) (i.e., managerial, professional/supervisory and confidential) were provided with a two (2%) percent pay supplement that was non-pensionable.

The Interim City Manager, City Clerk and City Attorney are all Excluded Employees of the City falling within the "appointed" sub-category. Each of these classifications are subject to a resolution setting forth the terms and conditions of employment. Pursuant to the terms of those resolutions, it is clear that these employees are entitled to the pay supplement.

Resolution No. 2014-90, Section 2 (copy attached), states that the Interim City Manager "will continue to be entitled to all of the pay and benefits she received as Assistant City Manager...." The two (2%) percent supplement constitutes "pay and benefits." The classification of Assistant City Manager is classified in the sub-category of managerial employee, and individuals in this classification received the pay supplement. Ms. Olazabal would have received the pay supplement in the classification of Assistant City Manager and, thus, she should receive it as the Interim City Manager.

Bridgette N. Thornton, Esquire
Ms. Diana M. Gomez
November 4, 2014
Page 2

Resolution No. 2011-46, Section 14 (copy attached), states that 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." The pay supplement is a benefit that was provided to all other management employees of the City and, thus, Mr. Leen, as the City Attorney, should receive the pay supplement.

Resolution No. R-2003-176, paragraph numbered 2 (copy attached), states that the City Clerk shall receive "the standard benefit package as provided to all employees in the Excluded Employee Classification." The pay supplement was a "benefit" provided to the majority of Excluded Employees and, thus, Mr. Foeman, as City Clerk, should receive the pay supplement.

If you have any questions regarding this, please do not hesitate to contact us.

Very Truly Yours,

BRYANT MILLER OLIVE P.A.



Denise M. Heekin

Enclosures

Gomez, Diana

From: Ramos, Miriam
Sent: Wednesday, July 06, 2016 3:30 PM
To: Gomez, Diana
Cc: Leen, Craig
Subject: FW: CPI vs. COLA adjustments for Appointed Officials
Attachments: 11 4 14 opinion ltr.pdf

Diana, please use this slightly edited version instead.

Thank you,

Miriam S. Ramos, Esq.
Deputy City Attorney
City of Coral Gables
405 Biltmore Way, 3rd Floor
Coral Gables, FL 33134
(305) 460-5218
(305) 460-5084 direct dial



PUBLIC RECORDS:

This e-mail is from the City of Coral Gables – City Attorneys Office and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this email in error, please notify the sender immediately, delete your e-mail from your computer and do not copy or disclose it to anyone else. The State of Florida has a broad public records laws. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public upon request.

CONFIDENTIALITY:

The information contained in this transmission may be legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited

From: Ramos, Miriam
Sent: Wednesday, July 06, 2016 3:02 PM
To: Gomez, Diana
Subject: RE: CPI vs. COLA adjustments for Appointed Officials

Dear Diana,

Appointed Officials should receive *either* the salary increase based on the Consumer Price Index (CPI) or the Cost of Living Adjustment (COLA) given to excluded employees. Pursuant to Ordinance No. 2003-53 (quoted below), Appointed Officials shall receive the CPI. In years where the CPI is zero, however, Appointed Officials should

receive the COLA or be permitted to participate in programs which are provided to other management employees.

Pursuant to Ordinance No. 2003-53, "appointed officials, City Manager, City Clerk and City Attorney shall receive an annual increase in salary based on the Consumer Price Index for urban wage earners and clerical workers." The most recent Resolution of appointment is No. 2014-249, which appointed the current City Manager. Section 3 of that Resolution states that her "salary shall increase each fiscal year per Ordinance No. 2003-53, as with other appointed officials." Section 18 of the same Resolution states, "that unless otherwise provided herein or *in conflict with* the provisions herein, [the City Manager] shall be entitled to receive benefits and participate in programs which are provided to other management employees and public officials/officers of the City." COLA is an example of such a "program." (Resolution No. 2011-46 (As Amended), which appointed the current City Attorney contains the same language in Section 14.) In years where the CPI is zero, no conflict is created under Section 18 thereby allowing for a COLA to be provided to the Appointed Officials. Based on the language of Ordinance No. 2003-53, all three Appointed Officials should be treated in the same fashion.

Although you did not directly pose the question, I will note that, for the reasons explained in Special Labor and Employment Counsel's Letter of November 4, 2014 (attached), Appointed Officials are entitled to receive the pay supplement currently being provided to excluded employees.

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

Sincerely,

Miriam S. Ramos, Esq.

Deputy City Attorney
City of Coral Gables
405 Biltmore Way, 3rd Floor
Coral Gables, FL 33134
(305) 460-5218
(305) 460-5084 direct dial



PUBLIC RECORDS:

This e-mail is from the City of Coral Gables – City Attorneys Office and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this email in error, please notify the sender immediately, delete your e-mail from your computer and do not copy or disclose it to anyone else. The State of Florida has a broad public records laws. Most

From: [Ramos, Miriam](#)
To: [Paulk, Enga](#)
Cc: [Suarez, Cristina](#)
Subject: Fwd: 2.5% COLA
Date: Wednesday, October 31, 2018 1:53:29 PM
Attachments: [image001.png](#)
[ATT00001.htm](#)
[ATT00002.htm](#)
[image001.png](#)
[ATT00003.htm](#)
[Scanned from a Xerox Multifunction Printer.pdf](#)
[ATT00004.htm](#)
[RE City AttorneyCity Clerk Benefits.msg](#)
[ATT00005.htm](#)
[Opinion on CPI and COLA M Ramos.pdf](#)
[ATT00006.htm](#)
[Opinion on pay supplement - BMO.pdf](#)
[ATT00007.htm](#)

Enga, please publish.

Miriam Soler Ramos, B.C.S.
City Attorney
City of Coral Gables

Begin forwarded message:

From: "Suarez, Cristina" <csuarez@coralgables.com>
Date: October 31, 2018 at 1:50:52 PM EDT
To: "Gomez, Diana" <dgomez@coralgables.com>
Cc: "Ramos, Miriam" <mramos@coralgables.com>
Subject: FW: 2.5% COLA

Diana:

You have inquired how the determination that, for fiscal year 2019, employees in the newly classified "Executive" group will receive a 2.5% cost of living increase instead of the 2% lump sum pay supplement being provided to employees in the "Excluded" group impacts my prior opinion, CAO 2018-30, regarding the pay and benefits provided to the appointed officials. I have reviewed the attached memorandum dated October 24, 2018, conferred with you and with Director Green, and have reviewed prior opinions of this office.

Please note that based on the attached November 2, 2017 opinion of this office and on the November 2014 letter from special labor and employment counsel, the appointed officials are generally entitled to the highest level of benefits available to "other management employees," which includes benefits available to employees in the Executive group (a classification that includes Directors, Assistant Directors, and certain other management employees) and in the Excluded group (a classification that still includes other management employees such as, for example, Code Enforcement

Division Manager and Public Works Office Manager). However, based on the attached opinion of this office dated July 6, 2016, the appointed officials should receive a salary increase based on *either* the Consumer Price Index (“CPI”) or a cost of living adjustment (“COLA”). Thus, for fiscal year 2019, the appointed officials should only receive the CPI increase and not the COLA increase that is currently being provided to the Executive group. Moreover, the analysis in CAO 2018-30 does not change and the appointed officials are entitled to the lump sum pay supplement which is a benefit that is provided to other management employees in the Excluded group.

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

Cristina M. Suárez

Deputy City Attorney & City Prosecutor

City of Coral Gables

405 Biltmore Way, 3rd Floor

Coral Gables, Florida 33134

Main Phone: (305) 460-5218

Direct Dial: (305) 476-7231

Email: csuarez@coralgables.com