To: Cathy Swanson-Rivenbark, City Manager for the City of Coral Gables

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

RE: Legal Opinion Regarding Establishing a Labor Relations Officer

Date: November 23, 2015

You have asked whether the City Manager may establish a labor relations officer, which would report directly to the City Manager through the Assistant City Manager/ Director of Public Safety. The officer would be responsible for administering and participating in collective bargaining, and would oversee risk management and workers compensation functions and personnel. You have asked whether this office could be created through the City Manager's administrative authority, and whether the office could be filled through direct recruitment. For the reasons stated below, the answers are yes you could create the position as part of your office, and yes you could fill the position through direct recruitment.

As an initial matter, the City Manager is the Chief Executive Officer of the City with broad Charter authority over the duties and employees placed in her charge. *See* City Charter Secs. 20, 21, 22, 23, and 24; *see also* CAO 2012-025, CAO 2014-058. In my legal opinion, this includes the power to supervise these employees, to oversee collective bargaining and establish a collective bargaining team (*see* Fla. Stat. Sec. 447.309), to administer and maintain City property (and mitigate risk), and to provide for the health and welfare of employees. The City Manager may create any office she wishes that will exercise a portion of her direct authority as City Manager, such as the Director of Public Safety (who is also an Assistant City Manager) or a labor relations officer. These offices are ultimately exercising the authority of the City Manager herself. *See* CAO 2015-014. There is no question that you can create such an office within your department to exercise a slice of your delegated authority, particularly as you are retaining the human resources department as a separate standing department with substantial authority over recruitment, training, and retention of employees (i.e., most day-to-day personnel issues). This is consistent with section 26 of the Charter.

In terms of structuring the different responsibilities of the labor relations officer and Human Resources Director, the City Manager has substantial discretion. Indeed, as much of the authority of the Human Resources Director is established by the personnel rules (*see, e.g.*, Rule 2.10), the City Manager has extensive authority to modify this authority (the City Manager is not bound by, and may amend, the personnel rules – *see* Rules 2.5, 2.9, 2.11). As for Code requirements, the term "human resources" is only referenced in two sections of the City Code and is not referenced at all in the City Charter or Zoning Code. The first City Code reference

involves the appointment of the human resources director as a member of the pension board. *See* City Code Sec. 50-83. It is evident that this responsibility to be on the pension board goes with the title of Human Resources Director. It is my understanding that you intend for the Human Resources Director to continue this responsibility so I will not address it further. The second City Code reference relates to building standards in Chapter 105 of the City Code. The Code refers to "Human resources – risk management," and also to the "human resources department" as having certain authority over liability insurance requirements for construction staging. *See* City Code Sec. 105-28. The bulk of the references to risk management in the City Code, however, refer solely to the "risk management division," without referring in any way to the human resources department. *See, e.g.,* City Code Sec. 2-1007 (containing multiple references to the risk management division when discussing risk management and insurance requirements in procurement). It is my opinion that the risk management division could be supervised by the City Manager's Office, particularly as the management of risk and City properties relate, in my opinion, to core functions of the City Manager under the Charter. The references in the City Code to human resources and risk management together are isolated, and are descriptive in nature (i.e., describing the fact that risk management is presently part of human resources), and notably do not impose a mandate that the risk management division be part of the human resources department. I would still recommend that these portions of the Code be revised to reflect any action you take. Finally, in addition to amendment of personnel rules, to the extent any movement of authority would modify the role of the Human Resources Director under a collective bargaining agreement, such agreements would need to be amended through memorandums negotiated with the respective unions (which, at most, would likely be an amendment as to the title of the position referenced in such agreement). This is an overview of how the action you propose would be implemented. Ultimately, and most importantly, the action you propose is consistent with the City Manager's authority under the City Charter.

As for the direct recruitment question, it is clear that the labor relations officer is intended to have significant discretion, and would be exercising a core management function where the City Manager's authority is greatest (i.e., overseeing collective bargaining). *See* Fla. Stat. Sec. 447.309. It is my opinion that the logic and analysis of CAO 2015-014 applies, which indicates that direct recruitment would be permissible since the office would be exercising a portion of the City Manager's direct authority, and it remains crucial "for the City Manager to have complete discretion in making this selection, . . . as the City Manager must have full confidence in the person exercising this authority." In such circumstances, "[i]f the City Manager has already determined based on experience whom she would like to serve in this position, she has the authority to appoint this individual without having to conduct any further process."

To conclude, the City Manager has the authority under the City Charter to create a labor relations officer in the Office of the City Manager as described above, and the City Manager has the authority to fill that appointment through direct recruitment. This opinion and interpretation is issued pursuant to sections 2-201(e)(1) and (8) of the City Code.

From: Leen, Craig
To: Paulk, Enga
Subject: FW: Labor Relations, Risk Management and Workers Comp
Date: Friday, November 20, 2015 6:28:07 PM
Attachments: image001.png
image002.png

Please publish.

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From: Leen, Craig
Sent: Friday, November 20, 2015 6:28 PM
To: Swanson-Rivenbark, Cathy
Cc: Fernandez, Frank
Subject: RE: Labor Relations, Risk Management and Workers Comp

Cathy,

You have asked whether the City Manager may establish a labor relations officer, which would report directly to the City Manager through the Assistant City Manager/ Director of Public Safety. The officer would be responsible for administering and participating in collective bargaining, and would oversee risk management and workers compensation functions and personnel. You have asked whether this office can be created through the City Manager's administrative authority, and whether the office could be filled through direct recruitment. For the reasons stated below, the answers are yes you can create the position as part of your office, and yes you can fill the position through direct recruitment.

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From: Swanson-Rivenbark, Cathy
Sent: Tuesday, November 10, 2015 8:41 AM
To: Leen, Craig
Cc: Fernandez, Frank
Subject: Labor Relations, Risk Management and Workers Comp

I am interested in forming a new office consisting of Labor Relations, Risk Management, and Workers Compensation which will report directly to the Office of the City Manager through the Assistant City Manager/Director of Public Safety. The Human Resources Department would focus on recruitment, retention, and training of City Employees. Please let me know how I should structure the position consistent with applicable laws and if I may pursue direct recruitment.

Cathy

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