

VERBATIM MINUTES
COUNCIL MEETING
DECEMBER 9th, 2014

**TAB #Q DISCUSSION REGARDING CITY ATTORNEY AUTOMATIC
RENEWAL OF EMPLOYMENT CONTRACT**

Mr. Etienne: (reads presentation by title only)

DISCUSSION REGARDING CITY ATTORNEY
AUTOMATIC RENEWAL OF EMPLOYMENT
CONTRACT

Chair Joseph: Do we need public hearing on that?

Councilman Galvin: Mr. Mayor, I'd motion that we...I'm seeing people now looking and saying so. I'd motion that we have public discussion if you so choose.

: Good evening everyone.

Councilman Bien-Aime: Mr. Mayor, before we open public hearing on the item, can we have some explanation about it before we move? What it is exactly?

Chair Joseph: Okay, yeah what exactly that we are discussing. Mr. Clerk or is it Mr. Manager?

Councilman Bien-Aime: Or Councilwoman Keys, she's the one who sponsored the item.

Councilwoman Keys: Do you want me to speak before public hearing sure.

Councilman Bien-Aime: No to know exactly...

Chair Joseph: Just to explain what the discussion will be about.

Councilman Bien-Aime: Because we don't want people to start talking and then that's not your intention.

Councilwoman Keys: First of all we have a contract with our City Attorney. It's one of our larger contracts. And what came to my attention and this is one of the main reasons for the discussion is, that there is an automatic renewal of our City Attorney's contract. It's a three-year contract and there's a provision that if we do not supply written notice followed by resolution the contract will automatically renew. That time for notifying our attorney that we're...what we want to do about this...if we are not going to automatically renew this contract, we need to give notice I think today or tomorrow. My displeasure is, I want to know Mr. Manager, who is our City is responsible for notifying the Council? It is the Council's responsibility to approve, ratify, terminate our City Attorney's contract? Our Council, our City Clerk is a keeper of the contracts. Does our Clerk just keep them in a drawer and not look at them?

City Clerk Etienne: Yes.

Councilwoman Keys: Okay, you have that answer. But we can't let this happen. I did not realize this. This was brought to me by various emails by residents. It's a little embarrassing. And someone said to me, you know there's a 90 provision. I said I knew the contract was up in March, I did not realize there was a written requirement for notification. So that is the reason I put this on the agenda was because us as a Council need to discuss. Are we going to let this contract automatically renew? Are we going to do a search? Are we going to renegotiate? We have to discuss what we want to do with our Attorney's contract this evening and that is the purpose for the discussion. My personal thoughts on this and I've spoken to the Attorney and we've had a discussion. I think there are some clauses and I'm not going to into particulars. And it's not my intention to terminate anybody this evening. And it's not my intention to negotiate a contract this evening. But there are certain provisions in the contract especially this 90 written notice.

Chair Joseph: That can be discussed you know afterwards. Are we willing to go into this now?

Councilwoman Keys: No we don't have to. That's the main issue. Is I think what I would like to do is make a decision. If it's the Council's pleasure that...we have to make a decision tonight. We either terminate, automatic renew and the third option is to give notice this evening that we are not going to automatically renew the contract. I would like to renegotiate some of the terms.

Councilwoman Steril: Are you making a motion?

Councilwoman Keys: No, I'm just discussing. We've got public hearing. I'm just telling you what I'm thinking cause you asked me. And Ms. Monestime is here with us until March 11th for her contract. I would hope that maybe we could negotiate some of the terms that we're not happy with in that contract and come to an agreement before the expiration. But I do feel if we're not going to automatically renew, then I'm going to rely on our Attorney to give the proper written notice and prepare whatever resolution that is required so that the contract is not automatically renewed if that's not the pleasure of the Council. I'm not up here to terminate the Attorney this evening. I'm just here to give notice to Council and the world.

Chair Joseph: (Inaudible) to ask to terminate her?

Councilwoman Keys: No I'm not asking to terminate. I'm just here to bring up the fact that we have a 90 day written notice requirement. And if we don't do something and we don't make a decision this evening, we have a three year contract that's going to automatically renew.

Chair Joseph: Public hearing is open.

Councilman Bien-Aime: If I understand Councilwoman Keys, if I read the contract. And I think tonight we need to make a decision. Because when we are looking at Section 3 term, it said 90 days before the expiration of the contract the City Council need to make a decision. If we don't do so, the contract will be automatically renewed for the same terms and conditions. That mean tonight we need to say okay, either we want to renew the contract as it is or we want to renew the contract with any amendments we want to bring on the table. If I...if that's what I read. City Attorney, is that correct?

City Attorney Monestime: Yes sir.

Councilman Bien-Aime: Okay, thank you. Now you can open public hearing Mr. Mayor if you want.

Chair Joseph: Public hearing is open.

Ms. Jarbath: Greetings everyone. For those who don't know me my name is Fritznie Jarbath, I'm the current president of the Haitian Lawyers Association. A lot of you may not know me and I am not 100% caught up on all the issues that may have led to this particular item being placed on the agenda. I appreciate Councilwoman Keys for explaining some of the issues before us. I'm currently out on maternity leave but I felt very strongly about this so I decided to come out. And I wanted to show my support. I believe that based on her record,

she's been the City Attorney for the past six years. Based on her record and the things that she's done, it reflects that her contract should be renewed. I mean while she has been a City Attorney here, she's done countless of things. Some of the things that I can mention is the fact that she's worked on the...excuse me. Worked on the Biscayne Landing, she's worked on that and that's something that's been in works for a very, very long time. It's very difficult, very time consuming and something that I think every resident in here knows about. And it was her role in that was key in making that happen. She was also...she's also spearheaded successfully rewrote the Charter, which needed to be rewritten. Which is again part of her job responsibilities and duties but she did that very well. And I think again her record here reflects that. I wanted to also mention that she's well respected by her peers. She's a good member of the Florida Bar. And again as an individual and as a member of the Haitian Lawyers Association, which she was also past president of, which she did that very well as well. I would like to show my support in the City opting not to terminate her contract and renewing it. And letting her termination if that may come to a point before comps. Thank you.

Ms. Joseph: Good evening members of the Council and Staff. My name is Dottie Joseph and my address is 11925 N.E. 2nd Avenue right here in North Miami Beach. First of all...

Councilman Galvin: North Miami.

Chair Joseph: You said North Miami Beach.

Ms. Joseph: North Miami Beach is where I work so I'm used to saying that. Please forgive me. Right here in North Miami, raised here and spent a lot of time here. I understand the concern and I just wanted to point out that if you look at the provisions of the contract it clearly stipulates that there's three months. It's not three months today. Three months from March 12th is not three months from right now to the extent that it needed to be addressed today. I understand there might be some additional issues looming. It might be helpful to address whatever those underlying...

Chair Joseph: There's no issue. Our next Council meeting is in January.

Ms. Joseph: No, no I understand. I'm just saying to the extent that there are other issues precipitating this, it might be helpful to address those underlying issues. Not right now, whenever you deem appropriate but in the public.

Chair Joseph: I think we should stay at the issues at hand which is not be interpreting any presumptions or assumptions of anything. Let's stay within the subject please.

Ms. Joseph: But of course, I'm saying to the extent if there are such. If there are none, then there's nothing to address.

Chair Joseph: There are none.

Ms. Joseph: Okay that's fine.

Chair Joseph: So let's not start any.

Chair Joseph: Okay Mr. Mayor, are you going to permit me to speak or should I...

Chair Joseph: Yes, go ahead.

Ms. Joseph: Okay, thank you kindly. As it pertains the provision that allows for 90 days, I think it's only fair to allow somebody...just that she would have to give you 90 days, that you give her 90 days. Regardless of what...if you want to terminate her, if you want to move in that direction, I don't see the reason to address the automatic renewal provision. With any job you negotiate these terms. To the extent that there are other terms that you would like to negotiate beyond just the termination...well not just the termination but the automatic renewal provision, it will be useful to identify those issues so that they can be addressed. So those are some of the other issues I was referring to Mr. Mayor because she alluded, she meaning Councilwoman Keys alluded to other concerns. That being the case, all I'm asking for is fair notice. I think that's more than reasonable to request in any circumstance because it goes both ways. Thank you very much.

Chair Joseph: Thank you. Public hearing is still open.

Mr. Champagne: Good evening Mayor and Councilmembers. First of all I must begin by saying that I'm not here to...

Chair Joseph: Use the mic.

Mr. Champagne: First of all I must say that...

Chair Joseph: Name.

Mr. Champagne: I'm sorry. Richard Champagne, 11900 Biscayne Boulevard, Miami Florida. I'm not here to advocate for the immediate termination of the current City Attorney or disparage her in any way. And I'm here solely to focus the Council's attention on what is the issue here with the City Attorney's contract. Which is a purely legal matter. And here it is, now to the best of my knowledge there is no similar contract like this by any City in this County, in South Florida, in the State and in fact in the entire United States. And here is why no other City Attorney has such a contract. First of all with every employment contract the employee can always terminate the employment with good cause. Now in other words that ever employment contract if an employee does not do his or her job, the employee can be terminated. If an employee does something against the interest of his or her employer or perhaps gets arrested, the employee can effectively be terminated. If an employee commits fraud or any act of non (inaudible), miss (inaudible), mal (inaudible), the Attorney can be terminated or the employee. Well if the employee has a conflict of interest, the employee can also be terminated. But not in this case. Not in the contract the Council is currently reviewing. Under this contract the City cannot terminate the City Attorney under any circumstances unless she is actually convicted of a crime involving moral (inaudible). So two days from now, for the sake of argument, that the City finds out that the City Attorney engaged in some improper or bad act, perhaps a month ago or a year ago. The City cannot fire her for a cause and the City would have to pay the City Attorney for three years, which would cost the City approximately \$700,000.00. And I'm not sure exactly when the City found out about this. It appears to me that Councilwoman is the one who sponsored this agenda item. So I'm assuming that that's something that was fairly recently brought to your attention. Now I can tell the Council that the reason being that we're here today is because the City was not being properly represented at the time that the contract was being negotiated. And another thing that I can tell the Council is that in respect to the provision for the actual conviction. I'm going to direct your attention to paragraph four, the beginning of paragraph four where it says the contract may be terminated by the Council upon 90 days written notice to the City Attorney. So it has to be a written notice and a duly adopted resolution of the Council. Which letter shall specify the effective date of termination, which shall not be less than 90 days from the date set written notice is given. Therefore, I disagree with the interpretation of my colleague Dottie Joseph regarding the actual notice requirement. Because it says that it cannot be less than 90 days. And it actually needs to be written. And not only that, this Council needs to pass today an actual resolution approving the termination effective March 11th, 2015. Otherwise we all know exactly what the potential liability that the City faces. Now I'm not sure that anyone in this country or any other State or perhaps even if you work for Goggle or Microsoft that you're actually going to find a contract with a similar provision. And that is because companies (inaudible) that sometimes people do all kinds of wrong things and we're not saying that Ms.

Monestime did anything unethical or illegal. But the City definitely needs to have something in the contract to protect its interest. Now if you do decide down the line that there are some ethical violations and I'm not saying that that is the case now, the City's hands are pretty much tied. There's nothing that can be done. Because if we look at paragraph 4C of the contract, it clearly says and there's absolutely no (inaudible). That the City Attorney is terminated for clause which shall be defined as fraud or conviction of a criminal offense involving no turpitude. That's what it says. Now the third reason I would say to the Council that the City was not properly represented is because of this automatic renewal provision. Nowhere else in this country would you see this automatic renewal provision. Now that's why we're here at the last minute where we actually have to do something to protect the City's interest. Now I'm not sure exactly whether the City Attorney herself did notify Council. I'm sure the question was asked of Mr. Etienne. But the reality is that we need to do something about this today. Now it's important for the Council to ask itself how in the world did we end up with a lopsided contract that exists nowhere else in this country. It's also equally important for the Council to ask itself why it has the contract with the only employee in the country that can never be terminated without a conviction, not even an arrest...what the person does. If a Council member does something, here I bet money if you're indicted or something happens, the Governor's going to intervene. Nowhere else in the country is someone...does someone has a similar contract. Now it's also important for the Council to ask itself why does it have the distinction of having the only employee with a lifetime contract. In reality, assuming that the contract is automatically renewed today. Now given the seriousness of this automatic renewal provision...

Chair Joseph: (Inaudible) seconds.

Mr. Champagne: Sure. I'm not quite sure exactly why even Councilwoman Carol Keys is the only one who sponsored it. I'm not quite sure why it is because of some...

Councilwoman Steril: She's a lawyer, I'm not.

Mr. Champagne: I understand. (Inaudible) that you were unaware of the situation as well. Now since the Council is now aware of this fraud and lopsided agreement, it has a responsibility which is effectively terminate the agreement. And we're not asking to fire Ms. Monestime, all we're saying is that we need to terminate the current agreement because the City has to protect its interest. And there's only one way that it can be done. We have to pass a resolution today with the effective date of the termination of March 11th, 2015. And a written notice needs to be given today. Now I'm also in closing that no one

is entitled to a life time employment. Not the President of the United States and certainly not any City employee.

Chair Joseph: Thank you very much.

Mr. Champagne: Thank you.

Chair Joseph: Public hearing is still open for anyone who wishes to be heard. Going once...

Unidentified Male Voice: Good evening. For the record my...1525 N.W. 121st Street. Unfortunately I don't have the full details of the agreement. But I will hate to see that there are some issues that the residents are not aware of it. For the legality of the agreement I understand that if it's a 90 day concern that we feel that it's going to renew. But if it's based off performance, I don't see why the City is not...the issue was not being represented at that moment. Because I remember that the time that they agree on the contract. Every single Council member praised the contract. I don't know if the Council members was aware of the final agreement. The City Manager only because I'm not in public administration. But I don't see why now it's such...if it's such an important issue, why not at that last moment it's being discussed now. As a resident I'm concerned about that. As a personal friend that I've known Regine for a long time, I know there is no full lifetime employment. But I also believe that the City needs qualified employees. If the job is being done, I don't see why it's a concern that it shouldn't be renewed if she's performing...if she's representing the City's interest. And I hope that if it's going to...if the agreement is being addressed but not to terminate her contract because I feel like the residents are being represented legally. Thank you.

Mr. Prevatel: William Prevatel, 11...

Chair Joseph: I believe Mrs. Montgomery...I was going to call you Ms. Montgomery.

Ms. Montgomery: She's my sister.

Chair Joseph: Ladies should always before. What's wrong with you man?

Ms. Hilton: Okay. Good evening Beverly Hilton, 12495 N.W. 6th Avenue. We select, we rely on the Council to protect our...protect the citizens. We do not want to be...to end up in another law suit. In the past we have paid thousands of dollars to City Managers and other officials leaving our City

prematurely. And in light of this, I want to thank Councilwoman Keys to bring this out. We do not want to have someone...to hire someone lifetime and automatic renewal. I hope you all correct this this evening and thank to the person who...I didn't do my homework because I rely on the Council to do that. So in this to hire Council and City Managers. So please correct this situation for us. Thank you.

Chair Joseph: Thank you very much.

Mr. Prevatel: William Prevatel, 11950 North Bayshore Drive. I thought the points that were brought up by this gentleman were quite remarkable, quite noteworthy and I would like to thank you for bringing those to our attention. And I wish that type of scrutiny and attention was given to every contract that the City has. Whether it be employment or land sales or other service contracts. I'd like it applied every time. Please and this is not personal, this is not personal against our current City Attorney. But if that is the prudent course of action that we should be taking and to possibly adopt a more standardize form of employment, I'm sure everything would go along fine that way. Rather than leave us to additional exposure or complications down the line. So I'd like to see us rather than the unique contract on the contrary. I'd rather have us be in that 80, 90 percentile range of contracts that is more workable. And really fair to everybody and protecting the City as well as our employee. Thank you for your consideration.

Chair Joseph: Thank you.

Chief Each: Kenneth Each, 776 N.E. 125th. I thank God I was a Police Officer for 33 years and not an attorney because I don't know where we're at with this. Very simple thing here, we're looking at renewing the contract that the City Attorney agrees to waive the renewal provision then we could renegotiate the contract in January. And that's a very simplistic way of doing it. If she agrees tonight to waive the reemployment option, we start renegotiating in January and that's without the benefit of law school. Thank God.

Chair Joseph: Thank you very much. You've had enough man. We gave you six and seven minutes. We'll take the last one.

Ms. Montgomery: Annie Montgomery, 2082 Laurel Lane. I totally agree with Kenneth Each. I feel if the City Attorney will agree to renegotiate the contract, I don't think there should be provision in it at this point to eliminate our City Attorney. I think I've attended most meetings, I didn't always agree with her decisions. I think many of them were political but I don't think she should get...I think we should keep her as our City Attorney and renegotiate the terms of the

contract. Because it seems like the contract wasn't really clearly read before we agreed to it. Thank you.

Chair Joseph: Thank you very much Ms. Montgomery. Public hearing is now closed.

Unidentified Female Voice: Mr. Mayor, if I may?

Councilman Galvin: If we let one person come back and start again, we have to let everybody come back and start again.

Unidentified Female Voice: But there were points that were addressed...

Councilman Bien-Aime: No it's not a debate.

Councilman Galvin: Procedurally if we let one do it, we must let everybody do it.

Chair Joseph: Forty-five seconds.

Councilman Galvin: Then we have to let Richard have 45 seconds.

Chair Joseph: I'll give Richard 35 seconds, he's a man.

Ms. Joseph: Reiterating what I started off with before. If that particular provision meaning the automatic renewal is the concern, I just...I'm just encouraging you for fair notice. So if that and any other provisions are bothering you, just articulate it and negotiate it as opposed to moving for a termination right now. I understand that something needs to be done. But if you renegotiate the contract or the provisions that are an issue, then that can be addressed. Thank you.

Mr. Champagne: Here is the issue that we have. It's not that anybody wants to terminate Ms. Monestime. It's just that that's the only provision that the City has with the current version of the contract. That's the problem. And Ms. Monestime is well aware that a court is powerless to rewrite a contract to make it more reasonable or advantageous to one of the parties. That's *Fernandez versus HomeStar 935, 72, 547, 551*. Courts are all powerless to write contracts or interfere with the freedom of the contract or substitute their judgment for that of the parties of the contract. It's well settled. And if we look at the provisions of the contract, it says that paragraph 15, the provision of this agreement constitute the entire understanding between the parties. Paragraph C, page 5 no alteration, modification or amendments to the terms of this agreement shall be effective

unless contained in writing and executed by the City and the City Attorney. That means even if the Council wanted to get the option of modifying the agreement or renegotiate it, it cannot do it under the current terms.

Chair Joseph: Thank you very much. Public hearing is now closed. I don't know why anyone would have any idea that we came here tonight to fire Ms. Madam Attorney, Regine Monestime. That has never been the idea. But of course you know rumors can spread very fast. As a matter of fact if I go out there and say that I'm giving money for people to just go around on Biscayne Boulevard until they get tired, people will probably come. And whereas, it's just a rumor. And the reason why this item is on the agenda is simply to address the issue at hand of the automatic renewal. And it says it very clearly in terms in clause number three, the term of the contract shall automatically renew unless the contract is terminated by Council. The contract is not being terminated. The contract is expiring in 90 days. There is a difference between expiration of contract and termination of contract. I am not an attorney by any means. But I know that termination does not...expiration of a contract does not constitute by any means termination of that contract. It's being expired. So if your contract is being expired it behooved us, when I was knocking on doors, one promise that I made to every single constituent is that and I took that oath on November 12th. That I will defend the interest of the City of North Miami and the State of Florida. We on the Council, it is our duty, first of all to defend the interest of the City and its residents. To see to it that we will make decisions that will contribute not to its detriment but to have a...to its wellbeing. And we love Madam Attorney and I trust that she's done a wonderful job. She has not been involved in any...as far as I know, she has not been called downtown for unethical behavior. And I don't know that she's been indicted for anything. I don't know that she's been involved in any malicious activities that would contribute to the shame of the City. So the only reason why this item is in the agenda today is because we want to make sure that this contract is actually...that we go back maybe to the drawing table and sit down with Ms. Madam Attorney here and maybe she will ask us for less money. Maybe she'll be generous enough and decide, you know what doc, you know what Council, I don't have a need for that much money. You guys can just cut it in half. You never know, she might say that. And I think this is the road that we are taking. We are simply being...we have to be civil. We have to understand, life is not as complicated as we make it. It is our emotions that usually get in the way and make us behave like uncivil people. We are a civil society. Before we act on emotions we have to dip in our repertoire of wisdom. And that's what we fail to do most of the time. And that's what create a lot of the animosity that we see in our society today. That's all I want to say.

Councilwoman Steril: That was your quote?

Chair Joseph: Yeah.

Councilman Galvin: Mr. Mayor is it your suggestion that we officially allow the contract to expire and renegotiate a newer contract over the next month, couple of weeks, six weeks?

Chair Joseph: Yeah.

Councilwoman Steril: So Madam City Attorney, what is the legal ways?

City Attorney Monestime: You may certainly renegotiate my contract prior to March 12th, 2015.

Chair Joseph: March 11th.

City Attorney Monestime: March 11th, 2015.

Councilman Bien-Aime: But in order to do so we have to vote on an amendment of section 3.

City Attorney Monestime: We can negotiate the terms...

Councilman Bien-Aime: In order to renegotiate that...actually I'm going to make the motion to withdraw the second sentence where it says the term of the contract shall automatically renew unless the contract is terminated by Council member. That means that will be my motion. Then we can renegotiate.

Councilwoman Steril: I second that.

Councilman Bien-Aime: Because we need to do that in order to start the negotiations.

Councilwoman Steril: Any lawyer want to work for free tonight?

Councilman Galvin: We're almost done.

Councilwoman Keys: We can't amend a contract unless our attorney agrees to the amendment.

City Attorney Monestime: I agree. Thank you.

Councilwoman Keys: So we don't...so are we comfortable that we do not need anything else in writing or resolution memorializing the fact that we are going to go forward and renegotiate the terms of your contract?

City Attorney Monestime: Correct. Thank you.

Chair Joseph: She's on record.

Councilwoman Steril: Do we have to vote on it?

Councilwoman Keys: You can't say that you weren't given legal notice by our attorney.

City Attorney Monestime: No I cannot.

Chair Joseph: Mr. Clerk.

Councilwoman Steril: There is a motion and a second.

City Clerk Etienne: There's a motion on the floor. Now your motion was to remove a particular section.

Councilman Bien-Aime: Section three where it says term.

Chair Joseph: The last sentence.

Councilman Bien-Aime: The last sentence. Oh you don't have it.

City Clerk Etienne: Michael come on, you've got to get a full copy of the agenda in front of you.

Councilman Bien-Aime: (Inaudible – simultaneous discussion) shall automatically renew unless...are you...

City Clerk Etienne: Okay, this is what I'm saying. Councilman Bien-Aime, can you just state your motion on the record and read the language from the contract so we can have it.

Councilman Bien-Aime: My motion is to withdraw the second sentence of section 3 titled term. Remove it completely where it says, the term of the contract shall automatically renew unless the contract is terminated by Council pursuant to section four below.

City Clerk Etienne: Go it. Okay so right now we have a motion on the floor. The motion is to amend the current contract with the approval of the City Attorney, which she approved on the record. Motion is made by Councilman Bien-Aime. And the motion is, section three of the current contract to eliminate portions of section three of the current contract and the verbiage. The language that is being eliminated is the following, the terms of the contract shall automatically renew unless the contract is terminated by Council pursuant to section four below. That particular provision would be stricken from the current contract. That is an amendment. It was approved by the City Attorney. And that motion was seconded by Councilwoman Steril. Anyone wishes to record a no? Item passes 5 – 0. So effective now, this contract has effectively been amended to eliminate that language.

Councilwoman Keys: So the contract stays in effect through March 11th?

Councilman Bien-Aime: Yes. No, we're going to...we can open negotiations now.

Chair Joseph: Yeah now we can open negotiations. Now do we have to make a motion to give them a task to the Manager to start negotiating with the City Attorney?

Councilwoman Steril: It's early, you still have four months.

Councilman Bien-Aime: We have plenty of time.

Councilwoman Keys: Do we need to do an amendment to the contract, an addendum or?

Councilwoman Steril: Why would that be?

Chair Joseph: Why do you say you have four months?

Councilman Bien-Aime: The only problem now it's because of that language. We said if we don't make a decision right now, the contract will be automatically renewed. Now we're changing that language from now until March 11th, we can negotiate and bring a new contract under Council.

Councilwoman Steril: If that's what it is Madam City Attorney. Since you are our own attorney and ours as well, help us.

City Attorney Monestime: Yes, that is the amendment and we can certainly put that in writing as well.

Councilman Galvin: So via this vote tonight we're effectively letting her contract expire in order to negotiate a new one. But the obvious intent is not that we're trying to let you go. It's just to comply with legal language that we let it expire to negotiate some new terms.

City Attorney Monestime: Correct.