



To: Raquel Elejabarrieta

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

RE: Legal Opinion Regarding Scrivener's Error in Collective Bargaining Agreement and Related Pension Ordinance

Date: July 21, 2016

As indicated below, a scrivener's error was contained in the collective bargaining agreement with the Teamsters, as well as the related pension ordinance that was adopted on first reading (and will be heard on second reading at the July 26th City Commission meeting). The words "total earnings" should be replaced by the word "compensation." Please note, the corrections are non-material changes, which simply ensure that the correct and defined terminology is used. I would also note that the Teamsters did not object to the correction of the scrivener's error. Accordingly, pursuant to sections 2-201(e)(9) of the City Code, I hereby correct the scrivener's error in the collective bargaining agreement and the related pension ordinance as indicated herein and in the emails below.

The collective bargaining agreement with the Teamsters should be corrected to replace "total earnings" with "compensation" in Article 24. The corrected version of the ordinance, replacing "total earnings" with "compensation," should also be placed on the agenda for second reading.

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Cc: [Ramos, Miriam](#); [Suarez, Cristina](#); [Chen, Brigette](#)
Subject: FW: City Attorney Opinion
Date: Thursday, July 21, 2016 1:33:27 AM
Attachments: [image001.png](#)

Please publish.

Craig E. Leen, City Attorney

*Board Certified by the Florida Bar in
City, County and Local Government Law*
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Leen, Craig
Sent: Thursday, July 21, 2016 1:31 AM
To: Elejabarrieta, Raquel
Cc: Jim Linn; Gomez, Diana; Ramos, Miriam; Davis, Yolande; Foeman, Walter; Swanson-Rivenbark, Cathy; Fernandez, Frank
Subject: City Attorney Opinion

City Attorney Opinion

Mr. Clerk,

As indicated below, a scrivener's error was contained in the collective bargaining agreement with the Teamsters, as well as the related pension ordinance that was adopted on first reading (and will be heard on second reading at the July 26th City Commission meeting). The words "total earnings" should be replaced by the word "compensation." Please note, the corrections are non-material changes, which simply ensure that the correct and defined terminology is used. I would also note that the Teamsters did not object to the correction of the scrivener's error. Accordingly, pursuant

to sections 2-201(e)(9) of the City Code, I hereby correct the scrivener's error in the collective bargaining agreement and the related pension ordinance as indicated herein and in the emails below.

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Craig E. Leen, City Attorney

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From: Leen, Craig
Sent: Wednesday, July 13, 2016 9:11 AM
To: Elejabarrieta, Raquel
Cc: Jim Linn; Gomez, Diana; Ramos, Miriam; Davis, Yolande; Foeman, Walter
Subject: Re: Draft Ordinance - First Reading Section 50-29

I agree and have the same opinion as to the related ordinance (the City Attorney may correct scrivener's errors under section 2-201(e)(9) of the City Code). I would note that I view the corrections as non-material as well, and not a substantive change. I will proceed to replace the draft CBA attached to the resolution with the one you provided. Also, we will use the corrected version of the ordinance provided by Jim Linn.

Craig E. Leen
City Attorney

Sent from my iPhone

On Jul 13, 2016, at 8:59 AM, Elejabarrieta, Raquel <relejabarrieta@coralgables.com> wrote:

Craig – attached is the final version of the CBA that the Teamsters will be executing which has the correct “compensation” language in it. Since it is a scrivener’s error the Teamsters did not have any objection in correcting the error and we also do not think it needs to be ratified by the union members and commissioners for that same reason.

Raquel Elejabarrieta, Esq.

Director of Labor Relations and Risk Management

2801 Salzedo Street, Coral Gables, FL 33134

Office: 305.722.8686

Email: relejabarrieta@coralgables.com

<image005.png>Get the app <image006.png> Be our friend

From: Leen, Craig

Sent: Wednesday, July 13, 2016 8:55 AM

To: Jim Linn; Elejabarrieta, Raquel

Cc: Gomez, Diana; Ramos, Miriam; Davis, Yolande

Subject: Re: Draft Ordinance - First Reading Section 50-29

Raquel, I have the Teamsters CBA resolution that I am reviewing. The draft CBA that is attached has the total earnings language. Are we correcting with the compensation language and, if so, do you have a draft of the corrected CBA?

Sent from my iPhone

On Jun 24, 2016, at 3:57 PM, Jim Linn <jlinn@lw-law.com> wrote:

Craig – Kim is correct that “compensation” is the defined term in the retirement plan that pertains to general employees, both Teamsters bargaining unit members and excludeds. The plan definition of “total earnings” applies only to police officers and firefighters.

However, the language concerning employee contributions in the Teamsters collective bargaining agreement pension article says “total earnings” – at least the last version I saw on June 8.

If it is still possible to change “total earnings” to “compensation” in the collective bargaining agreement that would be ideal. If it is not possible to change the CBA at this point, then I believe it would still make sense to use the correct word (compensation) in the

ordinance. I believe this amounts to correcting a scrivener's error.

A revised ordinance is attached. Please call me if you have any questions or wish to discuss.

Jim

James W. Linn | Shareholder
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[vCard](#) | [Website](#) | [Bio](#) | [join us online](#)
<image003.jpg>

Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any tax advice contained herein is not intended or written to be used for the purpose of avoiding tax penalties that may be imposed by the Internal Revenue Service. If this advice is or is intended to be used or referred to in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement, the regulations under Circular 230 require that we advise you as follows: (1) this writing is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on a taxpayer; (2) the advice was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by the written advice; and (3) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

From: Leen, Craig [<mailto:cleen@coralgables.com>]
Sent: Friday, June 24, 2016 7:10 AM
To: Groome, Kimberly <kgroome@coralgables.com>
Cc: Gomez, Diana <dgomez@coralgables.com>; Alan Greenfield (aeglwyer@aol.com) <aeglwyer@aol.com>; Jim Linn <jlinn@llw-law.com>
Subject: Re: Draft Ordinance - First Reading Section 50-29

Jim, please see below and advise. Thanks.

Sent from my iPhone

On Jun 24, 2016, at 6:39 AM, Groome, Kimberly <kgroome@coralgables.com> wrote:

Diana,

When I was preparing to email the attached ordinance (approved on first reading at the City

Commission meeting 6/14/2016) to GRS for an impact statement, I noticed that the capping of the contributions states that the percent is on “total earnings”.

To be specific: “...shall contribute 17 percent of total earnings effective September 30, 2013 until September 30, 2014, and shall contribute 15 percent of total earnings effective September 30, 2014 until September 30, 2016. Effective October 1, 2016, participants in the bargaining unit represented by Teamsters Local Union 769 shall contribute in accordance with the cost-sharing provisions of subsection (a) of this section and section 50-34, subject to a maximum cap of 15% of total earnings.”

The Teamsters’ CBA also includes this in their document.

However, since this is going into the ordinance as a cap on the cost-sharing shouldn’t the ordinance be consistent with the definitions in the Code regarding “total earnings” versus “compensation”?

Compensation is what is currently used for pensionable pay for non-excluded general employees and excluded general employees. Total earnings is what was used prior to 10/1/2010 for final compensation. The only reason I bring this to attention is that the total earnings before the changes meant “all remuneration pay by the City” and it seems to be reasonable to use the current definition of compensation after the pension changes after 9/30/2010 for all general employees including excluded general employees.

Kim

*Kimberly V. Groome
Administrative Manager
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Coral Gables, FL 33134*

305-460-5281 (*direct*)

305-569-1826 (*fax*)

<06-14-2016 - Draft Ordinance - First Reading -
Pensions - Section 50-29.pdf>

Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

<CG Gen Pension Ordinance extending 15% cost sharing cap for teamsters unit 6.24.16 (00675993xBA9D6).doc>

<Coral Gables Teamsters 2015-2017 Final.doc>