

# City of Clearwater

*Main Library - Council Chambers  
100 N. Osceola Avenue  
Clearwater, FL 33755*



## Meeting Minutes

Thursday, June 8, 2023

6:00 PM

**Main Library - Council Chambers**

**City Council**

## Roll Call

**Present:** 5 - Mayor Brian Aungst Sr., Vice Mayor Mark Bunker, Councilmember David Allbritton, Councilmember Kathleen Beckman and Councilmember Lina Teixeira

**Also Present:** Jennifer Poirrier – City Manager, Michael Delk – Assistant City Manager, Owen Kohler – Lead Assistant City Attorney, Rosemarie Call – City Clerk and Nicole Sprague – Deputy City Clerk.

*To provide continuity for research, items are listed in agenda order although not necessarily discussed in that order.*

### *Unapproved*

#### **1. Call to Order – Mayor Aungst, Sr.**

*The meeting was called to order at 6:00 p.m.*

#### **2. Invocation – Major Tom Morris from The Salvation Army**

#### **3. Pledge of Allegiance**

#### **4. Special recognitions and Presentations (Proclamations, service awards, or other special recognitions. Presentations by governmental agencies or groups providing formal updates to Council will be limited to ten minutes.) – Given.**

- 4.1 LGBT+ Pride Month Proclamation, June 2023 - Trevor James, Clearwater Pride Community Committee Chair

#### **5. Approval of Minutes**

- 5.1 Approve the minutes of the May 18, 2023 city council meeting as submitted in written summation by the City Clerk.

**Councilmember Beckman moved to approve the minutes of the May 18, 2023 city council meeting as submitted in written summation by the City Clerk. The motion was duly seconded and carried unanimously.**

#### **6. Citizens to be heard re items not on the agenda**

*Beth Davis thanked Council for their deep dive conversation regarding Drew Street and urged Council to request FDOT and Forward Pinellas*

*to lower the speed limit on Drew Street to 35 mph.*

*Jennifer Haithcock urged all to attend a homeless services meeting hosted by Pinellas County Continuum of Care at the Largo Public Library on June 13 at 5:30 p.m.*

*Norm Bild said he had been working with the former city manager on a July 4 celebration at MacDill AFB and reviewed a recent event he attended near Command Central.*

*Lynn Talio supported tree preservation and expressed concerns with trees being removed at Island in the Sun without a permit,*

*Michael Mastruserio said speeding is the problem on Drew Street and it needs to be enforced.*

*Jeffrey Barrett expressed concerns with the algae in the lake located behind his property and requested assistance.*

*Mike Riordon said the City received the Silver Bell Seal award for workplace mental health. He thanked the Mayor for walking Drew Street with him and stated that the pedestrians are not the ones speeding on Drew Street. He urged Council to stay the course on Drew Street.*

*Kathy Flaherty expressed concerns with the debris found in Stevenson Creek.*

*Rebecca Kaye expressed concerns with vehicular speeding on Drew Street and urged Council to spend more money in other areas of the city, not downtown or the beach.*

*Trevor Rosin thanked the City for the LGBT+ Pride Month proclamation and stated that queer joy is essential to queer survival.*

*Mr. Holuba expressed concerns with City levying charges often without delivering any services.*

*The following individuals submitted emails regarding Drew Street: Maura Hedrich, Beth Davis, Pat Page (see pages 20-23).*

*The following individuals submitted emails regarding affordable childcare: Elizabeth Smith, David Williams, Mary Brown, Daniella Miller, Linda Davis, James Rodriguez, Adam Fuentes, Christopher Garcia, and Patricia Jones (see pages 24-32).*

*Uzi Dre submitted an email regarding staff (see pages 33 - 51).*

## **7. Consent Agenda – Approved as submitted.**

- 7.1** Approve Technical Revisions to the City of Clearwater Local Housing Assistance Plan (LHAP) for FY2021-2022 through 2023-2024 and authorize staff to submit for review and approval to Florida Housing Finance Corporation. (consent)
- 7.2** Approve an amendment to the Affordable Housing policies of the Fiscal Year 2022 city council allocation of General Fund budget, related to the receipt of Revenue Recovery Funds provided by the American Rescue Plan Act - Local Fiscal Recovery Funds. (consent)
- 7.3** Approve a purchase contract between the City of Clearwater and Habitat for Humanity of Pinellas County, Inc./Clearwater Neighborhood Housing Services, Inc. for real property located at 1454 South Martin Luther King Jr. Avenue and authorize the appropriate officials to execute same. (consent)
- 7.4** Authorize a purchase order to Cintas Corporation of Cincinnati, OH for the purchase of first aid and safety supplies and services, rental and purchase of uniforms and facility services in the not-to-exceed amount of \$2,000,000.00 through October 31, 2027, pursuant to Clearwater Code of Ordinances Section 2.563(1)(c), Piggyback or Cooperative purchasing, through Omnia Partners Contract No. R-BB-190002 and authorize the appropriate officials to execute same. (consent).
- 7.5** Approve an increase to the purchase order to Central Florida Contractors, Inc. of Seminole, Florida, for the 2021 Sidewalks project (20-0026-EN), in the amount of \$500,000 for years three and four, increasing the contract from \$1,500,000 to \$2,000,000 annually on a unit price basis pursuant to Invitation to Bid (ITB) 20-0026-EN, and authorize the appropriate officials to execute same. (consent)
- 7.6** Approve a purchase order to Cale America, of Clearwater, FL, for the purchase of parking kiosks and associated parking payment technology, in an amount not to exceed \$433,796, pursuant to Clearwater Code of Ordinances Section 2.563(1)(c), Piggyback, and Section 2.563 (1)(d), non-competitive purchase, and authorize the appropriate officials to execute same. (consent)
- 7.7** Approve a Sidewalk and Public Utility Easement from property owner Clearwater Neighborhood Housing Services for the installation, repair, and maintenance affecting real property at 1205 Roosevelt Avenue, located in Clearwater, Florida. (consent)
- 7.8** Approve the Aerial Easement request by Duke Energy on behalf of HEP (Homeless Empowerment Program) to install, operate, and maintain an overhead crossing power line supporting outdoor safety lighting at 1260 Engman Street, Clearwater. (consent)

- 7.9** Approve Change Order 4 to Gibbs and Register, Inc. of Winter Garden, FL, for the construction of Cleveland Street Streetscape Phase III in the amount of \$698,800.50, increasing the contract from \$16,424,852.45 to \$17,123,652.95, and authorize the appropriate officials to execute same. (consent)
- 7.10** Authorize a purchase order to CDW-G, of Vernon Hills, IL for backup devices, software, and maintenance in the amount of \$383,656.00 (City of Mesa, AZ) pursuant to Clearwater Code of Ordinances Section 2.563(1)(c), Piggyback or Cooperative Purchasing, and authorize the appropriate officials to execute same. (consent)
- 7.11** Authorize a purchase order to CDW-G, of Vernon Hills, IL, for storage devices in the amount of \$289,132.00 (State of Minnesota NASPO Master Agreement No. MNWNC-125), pursuant to Clearwater Code of Ordinances Section 2.563(1)(c), Piggyback or Cooperative Purchasing, and authorize the appropriate officials to execute same. (consent)
- 7.12** Approve a Purchase Order to Andritz Separation of Arlington, TX, for Centrifuge, Belt Filter Press and Appurtenant Sludge Dewatering Equipment Parts and Service in the annual amount of \$300,000.00 for the period of June 6, 2023 through June 5, 2024, with the option for two, one-year term extensions, pursuant to Clearwater Code of Ordinances Section 2.563 (1)(d), Non-competitive purchase (impractical), and authorize the appropriate officials to execute same. (consent)
- 7.13** Appoint Bryan Voliton to the Public Art and Design Board to fill the remainder of an unexpired term through February 28, 2026. (consent)
- 7.14** Approve extension of closing regarding PSTA land exchange. (consent)

**Vice Mayor Bunker moved to approve the Consent Agenda as submitted and authorize the appropriate officials to execute same. The motion was duly seconded and carried unanimously.**

## **8. City Manager Reports**

- 8.1** Amend Clearwater Code of Ordinances, Chapter 22, Parks, Beaches, Recreation, by amending Article II, Use Regulations, and Article III, Special Events, and pass Ordinance 9689-23 on first reading.

Article II of Chapter 22 sets forth the rules and use regulations that govern activities on park property and public beaches. Article III of Chapter 22 is known as the Special Events Code and governs the process for obtaining a special

event permit and the conditions upon which a special event may occur. These Articles have not been amended or updated since 2014. This Ordinance is needed to clarify, modify, and revise use regulations for park property and public beaches and to revise and modify the Special Events Code. These changes are as follows:

Sec. 22.24 - Updates the hours of operations. This section includes new hours of operation for Coachman Park from being closed from 9:00 PM until 6:00 AM to being closed from 12:00 AM to 5:00 AM and changes the name of Clearwater Country Club to Clearwater Golf Club.

Sec. 22.28 - Removes requirement that metal detectors need permit. Prohibits items from being tied to trees, plants, or ground.

Sec. 22.33 - Prohibits fires, grills, or other cooking devices at the Courtney Campbell Recreation Area. Prohibits vessel trailers from certain areas at the Courtney Campbell Recreation Area and Sand Key Bayside Park.

Sec. 22.35 - Updates fishing regulations.

Sec. 22.36 - Prohibits grills or other cooking devices at the Courtney Campbell Recreation Area.

Sec. 22.37 - Revises use of restrooms.

Sec. 22.38 - Prohibits camping at the Courtney Campbell Recreation Area.

Sec. 22.39 - Adds gel guns to listed of prohibited weapons.

Sec. 22.40 - Updates regulations relating to domestic animals.

Sec. 22.41 - Prohibits horseback riding on the public beaches and the Courtney Campbell Recreation Area.

Sec. 22.45 - Removes scooter from list of prohibited vehicles.

Sec. 22.47 - Adds drones to the list of prohibited aerial apparatuses.

Sec. 22.48 - Prohibits vessels from being repaired on park property, except in emergencies.

Sec. 22.55 - Clarifies that public address systems and electrical amplifications are subject to Section 3-1508.

Sec. 22.59 - Clarifies that alcoholic beverages are permitted pursuant to a special event permit or under the terms of an agreement approved by the City.

Sec. 22.89 - Updates application process for alcoholic beverage special event permit.

Sec. 22.90 - Revises alcoholic beverage special event conditions. Deletes subsection 4 which will now allow liquor to be sold at a special event along with beer and wine. Clarifies that applicant must obtain all necessary state beverage licenses prior to City issuing permit.

*One individual opposed changing the name of the facility, expressed concerns with water discharge from the site impacting Stevenson Creek, and questioned the expense of replacing the irrigation system.*

*Parks and Recreation Director Art Kader said the golf course is operated via a lease that was approved by City Council. The vendor pays for all of the operating and capital costs, including the irrigation system. He said, per the lease agreement, the vendor provides the City 3% of the gross income annually.*

**Ordinance 9689-23 was presented and read by title only.**

**Councilmember Teixeira moved to amend Clearwater Code of Ordinances, Chapter 22, Parks, Beaches, Recreation, by amending Article II, Use Regulations, and Article III, Special Events, and pass Ordinance 9689-23 on first reading. The motion was duly seconded and upon roll call, the vote was:**

**Ayes:** 5 - Mayor Aungst Sr., Vice Mayor Bunker, Councilmember Allbritton, Councilmember Beckman and Councilmember Teixeira

- 8.2** Approve the Use of Admission Tickets and VIP passes for City-Sponsored Events, Co-Sponsored Events and Events at The Sound City Council Policy and authorize the appropriate officials to execute same.

**GENERAL ADMINISTRATION  
COUNCIL POLICY #5-8**

**Use of Admission Tickets and VIP passes for City-Sponsored Events, Co-Sponsored Events and Events at The Sound.**

**Policy**

It is a policy of the City Council to establish guidelines for distributing and reporting entrance tickets, VIP passes or parking passes for special events sponsored or co-sponsored by the City of Clearwater and events at the Sound.

**Procedure**

The Parks and Recreation Department receives entrance tickets and VIP

Passes for Special Events as part of contract negotiations. These tickets are distributed to the Elected Officials in the City Manager's Office, employees, and volunteers to promote City representation or employee/volunteer appreciation. Every attempt will be made in each contract or agreement to specify not only the number of tickets to be distributed but also the people they are inviting to the event.

The Parks and Recreation Department will issue all special event tickets (i.e., VIP passes, parking tickets, entrances, etc.) and maintain a distribution log. The Department Director shall submit a copy of the reporting forms to the payroll department biweekly in accordance with the payroll department's payroll schedule to accommodate any applicable tax reporting.

#### **1. Distribution Process**

- A. When an agreement specifies the individuals, the tickets are designated for, every effort will be made to request the attendance of those people. If those individuals specified cannot attend, the sponsor and/or co-sponsor will specify if the tickets can be used by other city employees.

When an agreement does not specify how the tickets are to be distributed and are limited in number, but someone from the administration and/or elected officials are desired to be present, they will be offered in the following manner:

1. Elected Officials
2. City Manager, City Attorney, Assistant City Managers
3. Department Heads & Assistant Department Heads

When an agreement does not specify how the tickets are to be distributed and they are of such quantity that they can be offered to a large group of employees they will be distributed on a first come first served basis (i.e., Sugar Sand, Thresher Tickets).

For tax and reporting purposes the value of the tickets or passes must be determined prior to offering the invitation to attend.

#### **B. Tickets to the Sound - Section 5.3 City Ticket Allocation (i.e., Venue License Agreement)**

The City will receive 24 tickets for distribution. These tickets will not need to be purchased, however for tax and reporting purposes a value for the tickets will be declared and posted for city officials or city employees use.

- Six tickets in first five rows
- Six tickets in the highest price level
- 12 tickets in a section of Licensee's choosing

1. Ruth Eckerd Hall releases dates for entertainment coming to The Sound



2. Ruth Eckerd Hall provides cost of the various tickets.
3. Once the event is released to the public, tickets are placed on a ticket roster managed by Parks and Recreation.

**1. Six tickets in First Five Rows**

- a. City Council members can reserve up to two tickets per event for themselves or for any person of their choosing.
- b. Order of distribution: Mayor; Council Member by seniority; Council Member starting by lowest seat number.
- c. Seniority shall be based on the total number of years serving regardless of whether such years are contiguous.
- d. Tickets will be capped at a maximum of two tickets for initial distribution.
- e. Mayor; City Council Members must reserve their tickets within two weeks after being posted.
- f. If tickets remain after initial distribution, then up to two tickets will be available to the City Manager.
- g. If tickets remain, then up to two tickets will be available to the City Attorney to use or give to staff.
- h. Any tickets remaining at that point will go to Assistant City Managers.

**2. Six tickets in the highest price level**

- a. The six tickets in the highest price level but not in the first five rows shall be available in pairs to any Councilmember(s) who did NOT receive tickets to the first five rows of the show.
- b. Remaining tickets will be offered in order as outlined above.
- c. For any remaining tickets up to two are available to City Manager, City Attorney, Assistant City Managers for their use or to donate to anyone of their choosing.
- d. City Council members, City Manager, Assistant City Managers and City Attorney must reserve their tickets within two weeks after being posted.
- e. Any unclaimed tickets will be available to all city employees.

**3. 12 tickets in a Section of the Licensee's Choosing**

- a. City employees desiring to attend one of the concerts must submit their names for the concert they want to attend, and a drawing will be held to choose the employee who can reserve a ticket. Details will be provided by the Parks and Recreation Department.
- b. In addition, extra tickets may be used as giveaways at other city events, special events, employee events, or part of an employee recognition program. Details will be provided by the Parks and Recreation and Human Resources Department.

**C. Ticket Purchase Availability**

1. Subject to ticket availability, the Licensee shall afford the City Council Members and other City Officials an opportunity to purchase additional tickets beyond the 24 free tickets described above.
2. The timing of this opportunity shall coincide with a pre-sale period

- determined by the Licensee in the exercise of reasonable discretion.
3. Any additional tickets purchased by the City Council and other City Officials pursuant to this provision shall be paid by the City Council Member and/or City Official at full retail price, including any fees, surcharges, and taxes that would normally be assessed to any other retail purchaser.
  4. Tickets purchased in this manner should be for the use of the City Council Members and/or City Officials and staff only.
  5. Tickets will be available after donors but before the public can purchase tickets. Tickets will need to be purchased through online service provided by Ruth Eckerd Hall.
  6. There is no guarantee that the additional seats purchased will be next to the city allotted ticketed seats.

**Note:** Any tickets distributed by the Parks and Recreation Department cannot be sold to another person or third-party entity. Persons issued the tickets are responsible for the behavior and comportment of the persons using the tickets.

## 2. Reporting Requirements

- A. For purposes of tracking the distribution of tickets, a representative from the Parks and Recreation Department shall be responsible for completing a report (Exhibit A) that identifies the individuals to whom the tickets are issued, purpose of use (i.e., whether attendance is within scope of employment, etc.) and the number/value of ticket(s) and/or amenities provided. The value of attendance, which includes the ticket(s) provided and food/beverage, is to be determined in accordance with Florida Statutes, Section 112.3148(7)(h): Entrance fees, admission fees, or tickets shall be valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater.
- B. In addition, pursuant to Florida Statutes, certain “reporting individuals,” “procurement employees” and others required to file public disclosure of financial interests, (as defined in §112.3148), must report gifts more than \$100.00. The law requires each government entity that has given a gift to a reporting individual or procurement employee to provide that individual with a statement of the gift (having a value more than \$100.00). The report shall contain a description of each gift, the date the gift was given and the value of the gift. In line with these requirements, the Parks & Recreation Department shall issue a statement to such individuals to whom issues a “gift” more than \$100.00 on the form attached as Exhibit “B”. Public Officials such as city councilmembers and other employees of the city may be categorized as such and be required to report the tickets as gifts under Section 112.3148(8), Fla. Stat. It is the recipient’s responsibility to determine his or her obligation to report as an individual under the statute.

At the June 5 work session, there was council consensus to add language regarding the distribution of tickets by councilmembers. Staff has amended the policy as follows:

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**C. Ticket Purchase Availability**

1. Subject to ticket availability, the Licensee shall afford the City Council Members and other City Officials an opportunity to purchase additional tickets beyond the 24 free tickets described above.
2. The timing of this opportunity shall coincide with a pre-sale period determined by the Licensee in the exercise of reasonable discretion.
3. Any additional tickets purchased by the City Council and other City Officials pursuant to this provision shall be paid by the City Council Member and/or City Official at full retail price, including any fees, surcharges, and taxes that would normally be assessed to any other retail purchaser.
4. Tickets purchased in this manner should be for the use of the City Council Members and/or City Officials and staff only.
5. Tickets will be available after donors but before the public can purchase tickets. Tickets will need to be purchased through online service provided by Ruth Eckerd Hall.
6. There is no guarantee that the additional seats purchased will be next to the city allotted ticketed seats.

**Note:** Any tickets distributed by the Parks and Recreation Department cannot be sold to another person or third-party entity. Persons issued the tickets are responsible for reporting who uses the tickets and for the behavior and comportment of the persons using the tickets.

**2. Reporting Requirements**

- A. For purposes of tracking the distribution of tickets, a representative from the Parks and Recreation Department shall be responsible for completing a report (Exhibit A) that identifies the individual whom the tickets are issued, individual who uses the tickets, purpose of use (i.e., whether attendance is within scope of employment, etc.) and the number/value of ticket(s) and/or amenities provided. The value of attendance, which includes the ticket(s) provided and food/beverage, is to be determined in accordance with Florida Statutes, Section 112.3148(7)(h): Entrance fees, admission fees, or tickets shall be valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater.

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**Councilmember Allbritton moved to approve the Use of Admission Tickets and VIP passes for City-Sponsored Events, Co-Sponsored Events and Events at The Sound City Council Policy and authorize the appropriate officials to execute same. The motion was duly seconded and carried unanimously.**

**8.3 Approve amendment to the Clearwater Code of Ordinances, Chapter 21, Offenses,**

repealing Section 21.12 relating to prostitution and pass Ordinance 9675-23 on first reading.

Chapter 21, Section 21.12 of the Clearwater Code of Ordinances contains the offense of prostitution. Because the offense of prostitution is already codified in Section 796.07 of the Florida Statutes, Section 21.12 in the Code of Ordinances is redundant, and is not being used to enforce the prohibited act of prostitution within the City's municipal boundaries and should be repealed.

*One individual questioned the purpose of the amendment.*

*Interim Police Chief Michael Walek said the Department no longer uses the city ordinance when citing offenses of prostitution; the City cites the Florida Statute.*

**Ordinance 9675-23 was presented and read by title only.**

**Councilmember Beckman moved to approve amendment to the Clearwater Code of Ordinances, Chapter 21, Offenses, repealing Section 21.12 relating to prostitution and pass Ordinance 9675-23 on first reading. The motion was duly seconded and upon roll call, the vote was:**

**Ayes:** 5 - Mayor Aungst Sr., Vice Mayor Bunker, Councilmember Allbritton, Councilmember Beckman and Councilmember Teixeira

**8.4 Approve amendment to the Clearwater Code of Ordinances, repealing Chapter 21, Article 2, relating to the Registration of Ex-Convicts and pass Ordinance 9676-23 on first reading.**

Chapter 21, Article 2, of the Clearwater Code of Ordinances requires a registry of ex-convicts to be kept by the Clearwater Police Department. Florida Statute, Section 775.13, requires the county sheriff to keep a registry of convicted felons, therefore, Chapter 21, Article 2 in the Code of Ordinances is redundant, and should be repealed.

Florida Statute, 775.13, imposes a registration requirement for anyone convicted of any felony in the State of Florida. Convicted felons are required to register with the sheriff within 48 hours of entering any county within the State of Florida. The required registration includes being fingerprinted and photographed. Furthermore, the registration requirement also applies to anyone convicted of a felony in any state or federal court outside the State of Florida. In accordance with Florida Statute 775.13, convicted felons register at the Pinellas County Sheriff's Office, AFIS Division, 4645 145th Avenue North, Clearwater, Florida, Monday - Friday 08:00 AM - 4:30 PM.

*One individual questioned the purpose of the amendment.*

*It was stated that it was the same reason as Item 8.3 (City cites the Florida Statute).*

**Ordinance 9676-23 was presented and read by title only.**

**Vice Mayor Bunker moved to approve amendment to the Clearwater Code of Ordinances, repealing Chapter 21, Article 2, relating to the Registration of Ex-Convicts and pass Ordinance 9676-23 on first reading. The motion was duly seconded and upon roll call, the vote was:**

**Ayes:** 5 - Mayor Aungst Sr., Vice Mayor Bunker, Councilmember Allbritton, Councilmember Beckman and Councilmember Teixeira

- 8.5** Approve amendment to the Clearwater Code of Ordinances, Chapter 21, Offenses, repealing Section 21.20, relating to the offense of sitting or lying down in the Clearwater Downtown Core Redevelopment Zone, the Gateway Corridor, and the Clearwater Beach Core Tourist Zone and pass Ordinance 9677-23 on first reading.

Chapter 21, Section 21.20, of the Clearwater Code of Ordinances prohibits sitting or lying down upon the publicly owned rights-of-way sidewalks, piers, docks, boardwalks, including public-access boardwalks, and the entryways to or exit-ways from publicly owned buildings located in the Clearwater Downtown Core Redevelopment Zone, the Gateway Corridor, and the Clearwater Beach Core Tourist Zone is not being used as other ordinances (Section 21.09 - Prohibited acts on piers, bridges and seawalls, Section 21.11 - Disorderly Conduct; obstruction of public places, and Section 21.21 - Unlawful lodging out-of-doors prohibited) are commonly used as tools of enforcement across the city. Therefore Chapter 21, Offenses, Section 21.20 is redundant and no longer utilized by the Clearwater Police Department.

*One individual spoke in opposition.*

**Ordinance 9677-23 was presented and read by title only.**

**Councilmember Teixeira moved to approve amendment to the Clearwater Code of Ordinances, Chapter 21, Offenses, repealing Section 21.20, relating to the offense of sitting or lying down in the Clearwater Downtown Core Redevelopment Zone, the Gateway Corridor, and the Clearwater Beach Core Tourist Zone and pass Ordinance 9677-23 on first reading. The motion was duly seconded and upon roll call, the vote was:**

**Ayes:** 5 - Mayor Aungst Sr., Vice Mayor Bunker, Councilmember Allbritton, Councilmember Beckman and Councilmember Teixeira

- 8.6** Approve amendment to the Clearwater Code of Ordinances, repealing Chapter 21, Offenses, Specifically Section 21.15 of the Code of Ordinances, relating to the offense of requesting payment in exchange for watching parked motor vehicles and pass Ordinance 9678-23 on first reading.

Chapter 21, Section 21.15, of the Clearwater Code of Ordinances prohibits requesting payment in exchange for “watching” parked motor vehicles. Section 21.15 is no longer utilized by the Clearwater Police Department and should be repealed.

**Ordinance 9678-23 was presented and read by title only.**

**Councilmember Allbritton moved to approve amendment to the Clearwater Code of Ordinances, repealing Chapter 21, Offenses, Specifically Section 21.15 of the Code of Ordinances, relating to the offense of requesting payment in exchange for watching parked motor vehicles and pass Ordinance 9678-23 on first reading. The motion was duly seconded and upon roll call, the vote was:**

**Ayes:** 5 - Mayor Aungst Sr., Vice Mayor Bunker, Councilmember Allbritton, Councilmember Beckman and Councilmember Teixeira

- 8.7** Approve amendment to the Clearwater Code of Ordinances, repealing Chapter 30, Article 6, relating to cruising control and pass Ordinance 9679-23 on first reading.

Chapter 30, Article 6, of the Clearwater Code of Ordinances prohibits cruising. The Clearwater Police Department no longer utilizes or enforces Chapter 30, Article 6 of the Code of Ordinances relating to cruising, it should be repealed. Cruising ordinances have faced considerable controversy across the United States. Citizens charged with cruising have challenged the ordinance on the grounds that they impose an impermissible restriction on the right to intrastate travel in violation of the 14th Amendment to the Constitution of the United States and allege it is “targeting” specific individuals.

**Ordinance 9679-23 was presented and read by title only.**

**Councilmember Beckman moved to approve amendment to the Clearwater Code of Ordinances, repealing Chapter 30, Article 6, relating to cruising control and pass Ordinance 9679-23 on first reading. The motion was duly seconded and upon roll call, the vote was:**

**Ayes:** 5 - Mayor Aungst Sr., Vice Mayor Bunker, Councilmember Allbritton, Councilmember Beckman and Councilmember Teixeira

- 8.8** Approve amendments to the Clearwater Code of Ordinances, amending Chapter 22,

Articles 1 and 2, relating to adding a definition of electronic cigarette, prohibition of smoking and vaping on city owned public parks and beaches and pass Ordinance 9680-23 on first reading.

Florida Statute 386.209 enacted and signed into law by the Governor on June 24, 2022, effective July 1, 2022, amended the Florida Clean Air Act (Chapter 386, part II, Florida Statutes) to provide that counties and municipalities may restrict smoking within the boundaries of any public beaches and public parks the local government owns, with the exception of restrictions on the smoking of unfiltered cigars which is preempted to the State.

Cigarette butts are one of the most commonly found items of litter on Florida's beaches. The litter caused by those who improperly dispose of cigarette butts or other tobacco products on the Public Beach and in Public Parks is difficult to remove from the beaches, can cause ingestion hazards to wildlife, can significantly detract from a healthy environment, and reduce the enjoyment of the City's public beaches and parks for those individuals and families who want to enjoy a healthy environment, free of smoking-related pollution and hazards. The Florida Legislature in its staff analysis of the amendment to Chapter 386, part II noted that exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and to other potentially fatal diseases. Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker. The Ordinance authorizes the Clearwater Police Department to issue a class IV civil infraction to people smoking tobacco products except for unfiltered cigars within city parks and beaches.

*In response to questions, Interim Police Chief Michael Walek said the ban will be used as an education tool. The ordinance provides an avenue for enforcement if one relentlessly violates the ordinance. If approved by Council, staff will provide beach hotels and restaurants with an informational flyer that can be shared with patrons and visitors. He said it will take some time to educate visitors and tourists and it will require staff to use print and social media tools to spread the word. Having designated smoking areas will be difficult to enforce as it will require many along the beach. He said individuals could walk to the beachwalk and smoke there. The ordinance addresses the public bathing beaches that are maintained by the City, not the private beaches. Staff can work with city departments regarding the placement and signage of cigarette butt receptacles.*

*One individual opposed the ban but supported the placement of receptacles for cigarette butts and informational signage.*

*Three individuals spoke in support.*

*One individual expressed concern with the City's trash collection schedule.*

*Discussion ensued with suggestions made to designate smoking areas, place cigarette butt receptacles along the beach, and implement an educational awareness program. It was stated that the County has adopted the ordinance and the City could partner with them and provide a warning period as the ordinance is implemented.*

**Ordinance 9680-23 was presented and read by title only.**

**Vice Mayor Bunker moved to approve amendments to the Clearwater Code of Ordinances, amending Chapter 22, Articles 1 and 2, relating to adding a definition of electronic cigarette, prohibition of smoking and vaping on city owned public parks and beaches and pass Ordinance 9680-23 on first reading. The motion was duly seconded and upon roll call, the vote was:**

**Ayes:** 5 - Mayor Aungst Sr., Vice Mayor Bunker, Councilmember Allbritton, Councilmember Beckman and Councilmember Teixeira

**8.9 Approve revisions to the City of Clearwater Employees' Pension Fund of 2011 and pass Ordinance 9690-23 on first reading.**

The Employees' Pension Plan contains a series of rules relating to reemployment of former employees and retirees. In relevant part, the plan says that any retiree of Clearwater's pension plan will have his/her pension benefits suspended if the retiree rejoins the City of Clearwater as a full-time police officer or firefighter.

The proposed changes will loosen these restrictions by allowing a retiree of the Clearwater Police Department or Clearwater Fire Department to continue receiving their retirement benefits if the retiree is reemployed as the Police Chief or Fire Chief.

*One individual spoke in opposition and expressed concerns with the ordinance signature line.*

*Lead Assistant City Attorney said the City Attorney is the attorney for the Pension Trustees. It is not uncommon to change a name listed on the ordinance prior to it being executed.*

**Ordinance 9690-23 was presented and read by title only.**



**Councilmember Teixeira moved to approve revisions to the City of Clearwater Employees' Pension Fund of 2011 and pass Ordinance 9690-23 on first reading. The motion was duly seconded and upon roll call, the vote was:**

**Ayes:** 5 - Mayor Aungst Sr., Vice Mayor Bunker, Councilmember Allbritton, Councilmember Beckman and Councilmember Teixeira

Daniel Holuba submitted emails regarding Ordinance 9690-23 (see pages 52-57).

**8.10** Amend Rule 1, Section 2 of the City Council Rules, to provide for a 1:30 p.m. start time for work sessions and adopt Resolution 23-09.

Section 2.08 of the Clearwater City Charter requires the City Council to determine its own rules and order of business; and the City Council desires to change the start time for council work sessions from 9:00 a.m. to 1:30 p.m.

**Resolution 23-09 was presented and read by title only.**

**Councilmember Allbritton moved to amend Rule 1, Section 2 of the City Council Rules, to provide for a 1:30 p.m. start time for work sessions and adopt Resolution 23-09. The motion was duly seconded and upon roll call, the vote was:**

**Ayes:** 5 - Mayor Aungst Sr., Vice Mayor Bunker, Councilmember Allbritton, Councilmember Beckman and Councilmember Teixeira

Drew Street

*The City Manager said staff is prepared to provide an update on Drew Street; no action is needed from Council.*

*City Engineer Tara Kivett said staff met with FDOT yesterday morning; FDOT expressed concerns with a pilot project that only involved striping as it would not accurately mimic the proposed project, from a traffic operations perspective, and would not support the pilot. FDOT supports a phased construction approach, which would not include the medians the City has expressed concern with or the bike lane in the first segment, and make adjustments as necessary after a monitoring period. FDOT is moving forward with design and staff anticipates 60% by summer. Construction is expected in late 2024 or early 2025. She said FDOT has offered an advanced traffic analysis via computer model and allow city staff and the consultant to provide input on parallel roadway corridors to consider. The analysis will take approximately four to six months to complete and cost \$150,000. She said FDOT will pay for the analysis.*

*In response to questions, Ms. Kivett said FDOT stated that the construction delay will not impact funding. Staff can request FDOT to come before Council when the 60% plans are completed. The 15% plans did not include cutouts for buses to pull over.*

*It was stated that cutouts are not possible because there is not enough right-of-way.*

## **9. City Attorney Reports – None.**

## **10. Closing comments by Councilmembers (limited to 3 minutes)**

Councilmember Beckman said she is proud that Clearwater is the first city in the County to partner with Habitat for Humanity and Clearwater Neighborhood Housing Services to add more housing, specifically 24 owner occupied affordable townhomes with solar panels and ev charging capabilities provided. She said she is looking forward to the publication of the new public housing dashboard that is coming soon. She urged residents to review the Comprehensive Plan chapters that were presented to Council at Monday's work session and encouraged residents to attend one of two public meetings at the end of June to provide feedback. She reviewed upcoming events.

Vice Mayor Bunker said he is critical of the Scientology organization, but not of Scientologists. He said Scientologists are good, smart, dedicated people who are trying to save the planet. He said Mike Rinder, formerly in charge of the Scientology Office of Special Affairs, had him followed and tried to get him arrested years ago. He said Mike Rinder is now a friend and changed his thinking on Scientologists and he has learned how one can be convinced to do things that are deplorable but seem like the right thing to do. Mr. Rinder is going through a health crisis, and he wishes him nothing but the best. Mr. Rinder made amends by helping those who have been abused by Scientology. He said he is thinking about Mike and his family.

Councilmember Teixeira said she wants residents to know that she is listening. She said there are concerns from residents who do not have time to attend a Council meeting to raise issues, or are not comfortable speaking in public, or do not want attention or backlash. She assured the public that no matter the communication method, she is listening.

Councilmember Allbritton said PSTA, HART, and Hernando County Transit all launched a contactless payment system, and it is the same payment method across all agencies. PSTA ordered 60 electric buses and the first one has been received. A new electric bus should be received every couple of weeks. He said PSTA held a budget workshop on Wednesday where it was decided that the Central Avenue trolley service would be cut back as the new SunRunner service covers the same route.

**11. Closing Comments by Mayor**

*The Mayor said Clearwater beach was named #1 beach by USA Today. The City takes great care of the beach and it is why it is one of the best in the world.*

**12. Adjourn**

*The meeting adjourned at 7:38 p.m.*

Attest

\_\_\_\_\_  
Mayor  
City of Clearwater

\_\_\_\_\_  
City Clerk

## Call, Rosemarie

---

**From:** Maura Hedrich <m4hedrich@yahoo.com>  
**Sent:** Tuesday, June 6, 2023 10:01 AM  
**To:** ClearwaterCouncil  
**Subject:** Safety is far more important

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Mayor Aungst and Council Members,

How many more accidents need to happen along Drew Street before the project moves forward? How many more residents have to die from driving, biking or walking along Drew Street? There is NO valid reason to delay the project. It's very obvious that outside pressures have influenced some members on the council to delay the project.

This is what happens every time Clearwater residents who live and work along Drew Street between Keene Rd and Myrtle Ave do numerous times a day when they back out of their driveways or try to make a left turn onto a side street or into a business hold their breath and say a prayer. They pray that someone does not hit them as they turn left and they pray that they don't get hit from behind while waiting. All too many times over the years the prayers have not worked. Recently one 88 year old resident got hit by oncoming traffic. She was not the first nor will she be the last one to be hit by a car. You might say for goodness sakes the city needs to improve Drew Street and keep residence safe and that would be correct. Numerous studies have been done, accident reports have been studied, FDOT has allotted \$8 million and the Clearwater City Council had already voted to finally move the project forward. Until former Mayor Frank Hubbard resigned and Interim Mayor Aungst took the position. Now the project is being slow walked by several people who do not even live along Drew Street. Who have not even been traumatized by an accident on Drew Street or have had a loved one die from an accident. Drew Street is unsafe. The state of Florida rated it as an unsafe road. Clearwater residences need the project to move forward now. No more studies. No more 'what ifs'. No more studies. Finalize the plans and let's keep people safe. Start the project now not in two more years. How many more people will die on Drew Street in the next two years due to the delay? Start the project.

Maura Hedrich

## Call, Rosemarie

---

**From:** beth davis <beth.g.davis@gmail.com>  
**Sent:** Monday, June 5, 2023 8:30 AM  
**To:** ClearwaterCouncil  
**Subject:** Drew Street- The facts and history say it all, 18 accidents in February

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### **CNC requested Drew Street Safety in 2017.**

**This is not a new conversation.**

- **4 school zones exist here, gas lines and utilities are fixed at the edge of both sides**
- **Drew Street from Keene to Myrtle is a substandard road.**
- **9 ½ foot lanes vs.the 11 ft minimum.**
- **39 cross streets, with 2-3 driveways on each side.**
- **FDOT defines as “ High Injury Network, “ Hot Spot”**

**Application to FDOT was in May 2017, to create Complete Street plan for Drew.**

- **Since 2017, Every 2 years a newly elected council has continued to approve this.**
- **2018 five focus groups, plus two mailed surveys in May 2018, and all staff input, got us to this FDOT plan for July 1 2023 start.**
- **Emergency access was reviewed by staff, double bike lanes make this work.**
- **Forward Pinellas Board approved May 12, 2021.**

**Safety now..**

***Multiple accidents weekly since 2012, 18 this past February.***

**Traffic Delays, insurance rates on damaged cars, weekly schedules for families turned upside down, the soft issues on safety and lifestyle are just as important.**

**Average speed between Keene and Missouri is often 55 mph, racing to catch the next light.**

**Rear end, angle lane change, side swipe, all because there is no left turn lane and many streets to access.**



Enhancing trail connections at both ends of the corridor has always been a goal.  
Double bike lane allows emergency vehicle passage when needed.

The Sound events are evening traffic; most accidents occur during the day, work traffic.

Over 6 years of multiple groups of community leaders have had the time to discuss, debate, study, challenge and review this plan.

This is not a one person, one group issue.

This is the *historic and dense residential neighborhoods* Amber Park, Skycrest, Marymont, Country Club estates, Greenwood, Glenwood, Drew and Park Plaza, Harbor Bluffs, Coachman Ridge and more. Downtown will not be wonderful without a safe Drew Street.

If this were a referendum, we would not stop this.

Create our future; beautiful safe downtowns win.

Safety Harbor, Dunedin, St Pete, Largo and more .. entertaining very successfully at 25 and 30 mph. Do not change your Vote!

Thank you for your work.

Beth Davis

1962 Harding Plaza, Clearwater

727 742 3797, text is best

## Call, Rosemarie

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**From:** Pat Page <patannpage@gmail.com>  
**Sent:** Friday, June 2, 2023 1:28 PM  
**To:** ClearwaterCouncil  
**Subject:** Make Drew St Safe Now

**CAUTION:** This email originated from outside of the City of Clearwater. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello im reaching out because my sisters home borders on Drew St. Ive lived on Clearwater Beach fpr 20 yrs and travel to see her frequently. And the drive down Drew is so dangerous and nerve wracking compared to other streets I travel in pinellas county. Congestion is only getting worse and when drivers need to turn left its sudden stop and go. The lanes are nkt wide enough either.

I hear the council is not proceeding with the 8 million that fdot has allotted for the lane modification. And the mayor wants more studies. This has been going on too long already. And who is gonna pay for my studies? The people who actually live on Drew St. cant even back out safely, the people who travel most sbould be listened to. What is it gonna take and how many more fatalities before a decision to move forward with project is made?

## Call, Rosemarie

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**From:** Elizabeth Smith <lizmarysmith2001@gmail.com>  
**Sent:** Friday, June 2, 2023 11:00 AM  
**To:** ClearwaterCouncil  
**Subject:** Public Comment / Clearwater City Council

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Dear City Council,

As a retired early educator and passionate advocate for child care, I am absolutely thrilled to hear that the WeeCare program is being funded. This is a significant step forward in ensuring that our community's children have access to high-quality early learning experiences.

Having dedicated my career to nurturing and educating young minds, I understand the critical role that child care plays in a child's development. The WeeCare program's focus on helping child care providers will undoubtedly benefit countless families who have been struggling to find quality child care options.

By investing in this program, the Council is not only supporting working parents but also providing a strong foundation for our children's future success. I am confident that the WeeCare will stabilize the industry and fill an urgent need in our community.

Thank you for your dedication to this cause and for making a positive impact on the lives of our children and families.

Gratefully,  
Liz



## Call, Rosemarie

---

**From:** David Williams <williamsdavey1967@outlook.com>  
**Sent:** Thursday, June 1, 2023 6:29 PM  
**To:** ClearwaterCouncil  
**Subject:** Commenting on CDBG Program

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Hi there,

My name is David, and I am writing to wholeheartedly express my support for the proposed funding of childcare programs in our city. As a working father of two young children, I believe that investing in accessible and high-quality childcare is of utmost importance for the well-being of our families, the development of our children, and the prosperity of our community.

Being a dedicated working parent, I understand the challenges and juggling act that comes with balancing professional responsibilities and ensuring the best care for our children. Accessible and affordable childcare options alleviate the burden faced by working families like mine, enabling us to focus on our careers while providing our children with a safe and nurturing environment to grow and learn.

By investing in our children's future and supporting working parents like myself, we can create a thriving community that values the well-being and success of all its residents.

Thank you for considering my perspective and the perspectives of countless working parents in our city. Your commitment to funding childcare programs will make a significant difference in the lives of families and have a lasting positive impact on our community. I eagerly anticipate the positive outcomes that will arise from your support.

All the best,  
David

## Call, Rosemarie

---

**From:** Mary Brown <maryjunebrown088@gmail.com>  
**Sent:** Thursday, June 1, 2023 4:00 PM  
**To:** ClearwaterCouncil  
**Subject:** Public Comment - Clearwater City Council Meeting June 2, 2023

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Dear Councilmembers,

As a dedicated working mother of two young children, I am delighted to express my support for the Council's proactive efforts to address the pressing issue of affordable, high-quality child care. It brings me great joy to witness the Council's commitment to investing in programs and services that will significantly ease the challenges faced by working parents in accessing safe and reliable care for their beloved children. This forward-thinking approach will undoubtedly enhance the well-being of families like mine and contribute to the overall prosperity of our community.

Thank you for your time and attention.

## Call, Rosemarie

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**From:** Daniella Miller <danmill1973@gmail.com>  
**Sent:** Thursday, June 1, 2023 2:44 PM  
**To:** ClearwaterCouncil  
**Subject:** Public Comment for City Council Meeting

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Dear City Council,

As a single mother, I want to express my deep appreciation for the consideration of funding initiatives and programs to address the crucial issue of affordable and accessible child care in Clearwater. I understand the challenges faced by working parents like myself, and I firmly believe that investing in these initiatives will bring significant positive changes to our community.

By allocating resources towards improving child care services, the Council has the opportunity to empower families and create a more supportive environment for parents who strive to balance their work and parenting responsibilities. I am confident that these efforts will alleviate the immense stress and overwhelming burden that many of us face on a daily basis.

I am grateful to the Council for recognizing the importance of addressing this pressing issue and taking steps to make a positive difference in the lives of families like mine. Your commitment to investing in affordable and accessible child care will undoubtedly lead to a brighter future for our community.

Thank you for your unwavering dedication and time devoted to this matter.

With gratitude,  
Daniella

## Call, Rosemarie

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**From:** Linda Davis <lindapdavis1981@gmail.com>  
**Sent:** Thursday, June 1, 2023 1:45 PM  
**To:** ClearwaterCouncil  
**Subject:** Upcoming program awards

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Hello Councilmembers,

I am writing to express my enthusiastic support for the proposed funding of a child care program in our city. As a concerned community member and advocate for early childhood education, I believe that investing in high-quality child care is crucial for the well-being and development of our children, the success of our families, and the overall growth of our city.

Early childhood education has been proven to have a profound impact on a child's cognitive, social, and emotional development. It sets the foundation for their future learning, academic achievements, and life outcomes. By ensuring accessible and affordable child care options, we create an environment that supports the working families in our community and gives children the best possible start in life.

Thank you!!!

- Linda

## Call, Rosemarie

---

**From:** James Rodriguez <jimprodgriguez@gmail.com>  
**Sent:** Thursday, June 1, 2023 11:00 AM  
**To:** ClearwaterCouncil  
**Subject:** Public Comment Clearwater City Council Meeting 6/2/2023

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Council Members, I love to be an active member of the community, and I was so excited to see that Clearwater is starting to use their funds for programs that support childcare in our community. I've raised 3 children here, and while I love most things about the community, my family's biggest struggle was always finding quality child care. My wife and I believe the WeeCare program will help. Please support this program.



## Call, Rosemarie

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**From:** Adam Fuentes <merchmaze22@gmail.com>  
**Sent:** Thursday, June 1, 2023 10:16 AM  
**To:** ClearwaterCouncil  
**Subject:** June 5 City Council - Public Comment Submission

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I am writing to express my concern about the lack of accessible and affordable child care services in our City. As a single dad and childcare volunteer, I have witnessed firsthand the struggles that families go through in order to find quality child care that fits their needs and budget. It is essential that our city recognize the importance of providing safe and nurturing environments for children to grow and thrive. Access to high-quality early childhood education and care not only benefits children but also supports working families by allowing parents to pursue their careers. The struggle to find child care was one of the main reasons I started volunteering, which allowed me to stay close to my son and ensure he was receiving quality care. I hope the City starts taking initiative to support child care workers and families with little children. I have not heard of cities offering this kind of support and it is extremely important to a healthy economy, helping families maintain employment and making sure our kids have a safe place to learn and grow. Thanks for your time!

## Call, Rosemarie

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**From:** Christopher Garcia <chrisgarcia486@aol.com>  
**Sent:** Wednesday, May 31, 2023 11:46 PM  
**To:** ClearwaterCouncil  
**Subject:** Public Comment June 5 Meeting

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To whom it may concern,

My name is Christina Garcia and I am a resident of Clearwater where I live with my husband and children, 5-year old and 8-year-old. I am also the owner of a home daycare business. I have been in the field of child care for 15 years and in my recent location for over 2 years. I am currently licensed for 6 children and care for 5 children.

Being a family child care provider is very rewarding because I get to see the impact of the work that I do within my community. I get to see families and their children grow-up and be part of their lives. Last year I was invited to the high school graduation of one of the children that I used to take care of when they were little. Knowing that I have contributed to this family in a positive way is what keeps me motivated to stay open. As a mother, being able to impact my community and take care of my own family, as well as being able to financially contribute to my household is important for me. Being able to raise my children and be here for my family is the best part.

One of the biggest challenges that I face, and many other of my fellow childcare providers, are the low wages and compensations. I currently have one family, and I would like to take more families, but the rates are so low and it does not allow me to operate my business efficiently. If my husband did not work, I would not be able to keep my doors open.

If the wages were higher, I would be able to invest in myself, my education, and professional development. I would also be able to provide a better learning environment for the children I care for. As the children grow up, their needs expand and I would love to be in a position to help foster their growth and development.

Thank you for taking the time to read my story. I would like to ask that you consider us, the home family child care providers in your future budget planning. This will not only increase the quality of life for me and my family, but also my colleagues, all the families we care for and our community. Please invest in child care!!

## Call, Rosemarie

---

**From:** Patricia Jones <mspatriciajones@aol.com>  
**Sent:** Wednesday, May 31, 2023 11:24 PM  
**To:** ClearwaterCouncil  
**Subject:** June 5th City Council Meeting Public Comment

**CAUTION:** This email originated from outside of the City of Clearwater. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Support WeeCare!!! My business is barely making ends meet and I need help. My friend told me about WeeCare and I have been looking into it lately and all of a sudden the City is considering partnering with WeeCare. What about the mothers on the Council, do you remember how important your childcare providers were? We take care and educate and love the most important people in your life. We have helped you maintain employment and move up in your jobs. Now our jobs need help and no one is speaking up for us!? SUPPORT CHILD CARE WORKERS!

Take a look at what the President is doing about childcare if you want to understand how important this issue is nationally.

<https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/18/fact-sheet-biden-harris-administration-announces-most-sweeping-set-of-executive-actions-to-improve-care-in-history/>



## Call, Rosemarie

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**From:** Uzi Dre <truefiendspurchasing@gmail.com>  
**Sent:** Wednesday, May 31, 2023 2:43 PM  
**To:** ClearwaterCouncil  
**Subject:** City Attorney Complaint  
**Attachments:** Office Depot Scan 05-26-2023\_12-21-17-292.pdf

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On May 9th 2023 the City Of Clearwater Attorney Michael Fuino has personally represented two individual city employees in civil court against me. The city of Clearwater attorney Michael Fuino requested the Judge Caresses to invoke the rules of civil procedure in case #23-001911-SC

The Civil claim was filed on city employees Jared Copeland and Stephen Wannos in their individual, not involving the City Of Clearwater Municipal Corporation. The city of Clearwater Attorney Michael Fuino took the initiative to go above and beyond to incorporate the city of Clearwater Minnesota corporation into the civil claim against the individuals. The City Of Clearwater Attorney Michael Fuino is intentionally and has disrupted the Civil Court proceeding and has refused to set a trial date and has represented discrimination requesting to invoke the rules of civil procedure in civil small claims court in and for Pinellas County.

The City Attorney shall represent the City in legal proceedings and shall perform any other duties prescribed by federal and state law, by the City Charter, or by ordinance or resolution. The appointment of the City Attorney shall be in accordance with the City Charter and Code.

Under the **entity model**, the lawyer has only the organization as a client, and not its individual elected officials, department heads, agents or other "constituents." *Legler*, citing G. Hazard & W. Hodees, *The Law of Lawyering*, 387 (2nd ed. 1993) ("The Law of Lawyering") when a mayor and council are at odds over an issue involving legal issues, who is the city attorney's client? These issues are not unique to municipal corporations. They have long been a source of debate among corporate lawyers as well as lawyers for other governmental entities.

The City of Clearwater Attorney Michael Fuino also violated (B) The City Attorney Ethical Issues (4) define who the public lawyer represents (a) The Entity itself is the Client, Not it's Officer's (*Montgomery versus* Superior Court, California government code section 41805 grants Express authority to a council to relieve its City attorney of the duty to prosecute on its behalf and it may retain other council for this purpose. Rule 3-600 governs the ethical obligations of a lawyer who represents an entity rather than a natural person the room makes it clear that the client in such a representation is the entity itself as embodied in the highest authorized officer, employee, body or constituent overseeing the particular engagement. This rule is consistent with the case law with respect to public lawyers. And entity lawyer who is aware of the conduct of an entity agent which may be or is a violation of law reasonably imputable to the organization or is likely to result in substantial injury to the organization, they take the ladder to the highest internal authority within the organization that may not disclose any confidential information beyond the organization. The attorney retains the right to resign employment. The entity lawyer must avoid creating any impression that the agent for the entity is entitled to have information withheld from The entity itself, especially where the information may be adverse to the agent, personally.

Respectfully Submitted.  
Andre T Johnson



## **B. City Attorney Ethical Issues<sup>1</sup>**

### **1. Introduction**

This paper was originally prepared to provide a framework of ethical principles to guide city attorneys in the performance of their multi-faceted duties. However, many of its conclusions are equally applicable to other public lawyers such as county counsels and attorneys general. The rules which inform and constrain the day to day ethical judgments of city attorneys and other public lawyers have their genesis in two basic bodies of law: the law applicable to lawyers in general and to public lawyers in particular, and the law which regulates the conduct of public officials in general and of city attorneys, county counsels and other specific public lawyers in particular.

### **2. City Attorneys are Subject to the Ethical Standards for Lawyers**

#### **a. State Bar Rules of Professional Conduct**

Ethical standards for California lawyers are derived mainly from the Rules of Professional Conduct of the State Bar of California (hereafter "Rules") which are set forth in the Appendix to the Civil and Criminal Rules of Court.<sup>2</sup>

The California courts have made it clear that public lawyers are governed by the Rules and the ethical standards of the profession.<sup>3</sup> However, not all duties imposed on California lawyers are delineated in the Rules, nor are the Rules intended to supersede common law.<sup>4</sup>

#### **b. The Status of the American Bar Association's Model Rules of Professional Conduct**

In 1983, the American Bar Association's ("ABA") House of Delegates adopted the Model Rules of Professional Conduct (hereafter "Model Rules") which have been amended from time to time since then. The ABA committee which prepared the Model Rules prepared them in an alternative format called the Model Code of Professional Responsibility (hereafter "Model Code"). The Model Code was never presented to the House of Delegates and has no official status, even in the ABA. The major difference between the Model Rules and the Model Code is that the latter consists of both aspirational statements called "Ethical Considerations" and rules of conduct called "Disciplinary Rules".

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<sup>1</sup> Prepared by Manuela Albuquerque, city attorney of Berkeley, for the 1993 City Attorney's Spring meeting.

<sup>2</sup> The Bar publishes a compendium on professional responsibility, a loose-leaf two-volume binder, which contains the current rules and the ethics opinions of the Bar and of local bar associations. The most useful feature of the compendium is its index. It includes a heading for "government lawyers" which is further broken down into particular subjects pertaining to government lawyers.

<sup>3</sup> See e.g., *People ex. rel Deukemejian v. Brown*, 29 Cal. 3d 150, 172 Cal. Rptr. 478 (1981) (Bar rule prohibiting taking of a position adverse to a client precludes Attorney General from suing client department on a matter on which he advised that department); accord, *Santa Clara County Counsels Association v. Woodside*, 7 Cal. 4th 525, 548 (1994) ("duty of loyalty for an attorney in the public sector does not differ appreciably from that of the attorney's counterpart in private practice"); *Civil Service Commission v. Superior Court*, 163 Cal. App. 3d 70, 75-78, 209 Cal. Rptr. 159 (1984) (county counsel may not represent county board of supervisors in suit against county's civil service commission because county counsel's office advised commission when it reversed discharge at issue in the suit and county counsel failed to obtain the commissions' informed written consent to subsequent adverse representation of the board of supervisors in its suit to invalidate the commission's decision.)

<sup>4</sup> *Santa Clara County Counsel Association v. Woodside*, 7 Cal. 4th 548.

The ABA Model Rules have no binding effect except in states which have adopted the rules. California does not follow the Model Rules but has its own Rules of Professional Conduct which differ in significant respects from the Model Rules. Notwithstanding the fact that the ABA Model Rules have no official effect in California and that the Model Code is not even an officially adopted document of the ABA, California courts have looked to both to inform their understanding of the role of lawyers in general and of public lawyers in particular.

**c. Courts Have Articulated Higher Ethical Responsibilities for Public Lawyers than For Members of the Private Bar**

The courts have enunciated the principle that public lawyers have special ethical obligations to further justice. In People ex. rel Clancy v. Superior Court, 39 Cal. 3d 740, 745, 218 Cal. Rptr. 24 (1985), a private attorney retained by a city under a contingent fee arrangement to prosecute civil nuisance abatement actions was ordered disqualified, in the interests of justice, because his personal stake in the actions was inconsistent with the neutrality required of a government lawyer when prosecuting a nuisance abatement action. Id. The court relied on Ethical Consideration ("EC") 7-14 set forth in the Model Code and held that the heightened ethical responsibilities of government lawyers apply irrespective of whether they are prosecuting criminal actions or representing the government in a civil action.<sup>5</sup>

EC 7-14 was also the basis, in part, for a holding that a city attorney in a condemnation case committed misconduct. The city attorney had claimed there was no need for airport parking (a claimed highest and best use of the condemned property), even though the attorney knew that his condemnor city had itself determined there was a need for airport parking.<sup>6</sup>

**3. Additional Statutes and Principles Constrain the Conduct of Public Lawyers**

A mosaic of laws regulate the public lawyer's practice beyond the ethical principles derived directly from the Model Rules or the Model Code. These include the conflict of interest laws, the Tort Claims Act, various statutes defining the role of specific public lawyers and prosecutors, and due process or other constitutional and statutory constraints on the client city's procedures which, in turn, affect the public lawyer. Since many of these principles operate in concert to guide the course of conduct for the public lawyer, they are discussed together to the extent they are applicable to the circumstances presented to the public lawyer in a particular case.

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<sup>5</sup> EC 7-14 provides as follows: "A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results." People ex rel Clancy v. Superior Court, 39 Cal. 3d at 746.

<sup>6</sup> City of Los Angeles v. Decker, 18 Cal. 3d 860, 871, 135 Cal. Rptr. 647 (1977).



A city attorney holds a public office.<sup>7</sup> Thus the city attorney may not hold incompatible public offices.<sup>8</sup> Nor may the city attorney engage in incompatible activities for compensation.<sup>9</sup> As a public official, the city attorney is, of course, subject to conflict of interest laws such as the Political Reform Act. This paper does not discuss the application of rules which generally apply to public officials but merely points out that city attorneys need to be aware of these additional constraints on their conduct when confronting any particular dilemma.

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<sup>7</sup> People ex. rel Chapman v. Rapsey, 16 Cal. 2d 636 (1940).

<sup>8</sup> Id. (The office of city judge is incompatible with the office of city attorney).

<sup>9</sup> Cal. Gov't Code § 1126.

The duties of city attorneys are set forth in either the charter of the city, or, in the case of general law cities, in several provisions of the Government Code. In such general law cities, the council may appoint a city attorney<sup>10</sup> who holds office at the pleasure of the council,<sup>11</sup> receives the compensation allowed by the council,<sup>12</sup> advises on all legal matters pertaining to city business,<sup>13</sup> frames all ordinances and resolutions required by the council<sup>14</sup> and performs all legal services required from time to time by the council.<sup>15</sup> With the consent of the district attorney, the city attorney may prosecute all state misdemeanors if the city charter or local law so authorizes,<sup>16</sup> but has no mandatory duty to do so.<sup>17</sup> An incumbent appointed to the position of city attorney has all the powers of the office even if those powers are not specifically spelled out in the contract between the city and the incumbent; however, not all contracts for special counsel constitute the appointment to the office of city attorney.<sup>18</sup> In some instances, the appointment of special counsel to perform the task specifically required of the public lawyer, when the public lawyer is willing and able to perform the task, may be an improper expenditure of funds.<sup>19</sup>

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<sup>10</sup> Cal. Gov't Code § 36505.

<sup>11</sup> Cal. Gov't Code § 36506.

<sup>12</sup> Cal. Gov't Code § 41805.

<sup>13</sup> Cal. Gov't Code § 41801 (city attorney in general law city may not stipulate to arbitrate contract dispute where council considered but did not agree to such arbitration but asked for further report from city attorney.) Tri-Cor, Inc. v. City of Hawthorne, 8 Cal. App. 3d 134, 87 Cal. Rptr. 311 (1970). But see Floystrup v. City of Berkeley, 219 Cal. App. 3d 1309, 1317-1320, 1326-1328, 268 Cal. Rptr. 898 (1990) (stipulation concerning actions of parties pending trial of pending case, which was subsequently dismissed without prejudice, will be construed as precluding charter city from enforcing city laws against adverse party in prior case.)

Some years ago, the following off-hand comment in the California Supreme Court opinion of Arnel v. City of Costa Mesa, 28 Cal. 3d 511, 514 n.3, 169 Cal. Rptr. 904 (1980) caused consternation in city attorney ranks. "Apparently believing that his duty is to represent the city council instead of the voters of Costa Mesa, the city attorney did not defend the initiative. When the Court of Appeal held the initiative invalid, he did not petition this court for a hearing."

The comment seemed to strongly suggest that the city attorney had acted improperly. It does not appear that any court has picked up on the language in Arnel and it appears from Rule 3-600, many charters, the Tort Claims Act and the Tri-Cor case that the governing body controls any litigation filed on behalf of the entity.

<sup>14</sup> Cal. Gov't Code § 41802.

<sup>15</sup> Cal. Gov't Code § 41803.

<sup>16</sup> Cal. Gov't Code § 41803.5.

<sup>17</sup> Montgomery v. Superior Court, 46 Cal. App. 3d 657, 669-670, 121 Cal. Rptr. 44 (1975) (when exercising role of prosecutor, city attorney has the power to issue subpoenas in criminal cases for violation of state or local law in same manner as district attorney.) See Cal. Gov't Code § 41803.7.

<sup>18</sup> 28 Op. Att'y Gen. 362 (1956).

<sup>19</sup> Jaynes v. Stockton, 193 Cal. App. 2d 47, 14 Cal. Rptr. 49 (1961) (the Jaynes case describes the cases in this area. It involved an attempt by the school district to bypass the disfavored opinion of the county counsel and shop for a more favorable opinion from outside counsel. The court said:

If the general power to employ any qualified person for special services in legal or other matters be interpreted to include services already available from public sources as well as those which are not so available. . . in some controversial matters each school district in the county might be acting



Rule 3-600 governs the ethical obligations of a lawyer who represents an entity rather than a natural person. The rule makes it clear that the client in such a representation is the entity itself as embodied in the "highest authorized officer, employee, body or constituent overseeing the particular engagement."<sup>20</sup> This rule is consistent with the case law with respect to public lawyers.<sup>21</sup> An entity lawyer who is aware of the conduct of an entity agent which may be or is a violation of law "reasonably imputable to the organization" or "is likely to result in substantial injury to the organization", may take the matter to the "highest internal authority within the organization" but may not disclose any confidential information beyond the organization. The attorney retains the right to resign employment.<sup>22</sup>

The entity lawyer must avoid creating any impression that the agent for the entity is entitled to have information withheld from the entity itself, especially where the information may be adverse to the agent, personally.<sup>23</sup>

**b. Dual Representation of an Entity and Officer is Forbidden in the Absence of the Entity's Consent, Given by an Officer Other Than the One Seeking Dual Representation**

One of the most interesting aspects of Rule 3-600 is that it clearly resolves the age old question: "Who is the client of the public lawyer?" The rule states clearly that it is the entity itself. Thus, for the city attorney, the client is the city, the municipal corporation. The rule further recognizes that the "highest authority overseeing the particular engagement" means that the entity may be embodied in various constituent parts for purposes of the particular matter on which the representation is being sought. The rule goes on to state that an entity lawyer's dual representation of the entity along with its directors, officers, or other constituents may only occur with the entity's consent. Moreover that consent may not be given by the individual officer who is requesting personal representation.

In short, under this rule, the city attorney may not define the individual council member as the client and offer that individual confidentiality. Individual advice to a council member should only be given in that individual's capacity as an officer of the entity and any joint representation of the council member and the council itself requires the council's consent except for litigation in which such representation may be mandated under the Tort Claims Act, as discussed below. When an individual council member has a conflict of interest which could result in the invalidation of the council's decision under sections 91003 or 1090, for example, it is the city council which must be advised about the consequences of the conflict. Individual representation of the council member is improper under Rule 3-600 without the consent of the "appropriate constituent of the organization other than the constituent who is to be represented."<sup>24</sup> The practice of some city attorneys to advise their councils that they will not disclose to the council itself any conflict of interest advice which has been given to an individual council member appears to be in direct violation of this rule.<sup>25</sup>

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<sup>20</sup> Rule 3-600 (A).

<sup>21</sup> Ward v. Superior Court, 70 Cal. App. 3d 23, 138 Cal. Rptr. 532 (1977) (county counsel's client is County of Los Angeles and not county assessor in his individual capacity and thus county counsel was not disqualified from representing the county in a suit brought against it by county tax assessor). See also U.S. v. Troutman, 815 F.2d 1428, 1437-1439 (10th Cir.1987) (United States Attorney General is not precluded from prosecuting violation of Hobbes Act merely because he advises officials in their official capacity since there was no evidence that they disclosed any personal confidential information to Attorney General which would result in disqualification). Compare People ex rel Deukemejian v. Brown, 29 Cal. 3d 150, 172 Cal. Rptr. 478 (1981) (where Attorney General had given confidential advice to client board, he is subsequently precluded from suing the board on very same matter).

<sup>22</sup> Rule 3-600 (C).

<sup>23</sup> Rule 3-600 (D).

<sup>24</sup> Rule 3-600 (B).

<sup>25</sup> The Bar's comment to the rule makes it clear that the Bar intends neither to create artificial distinctions within entities nor to obliterate any distinctions which do exist. The Bar recognizes that internal relationships may make it difficult to ascertain where exactly the duty lies. Presumably, this comment from the Bar suggests that where city

4. **Defining Who the Public Lawyer Represents**
  - a. **The Entity Itself is the Client, Not its Officers**

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under conflicting opinions; all the while the designated advisor for these districts would be required either to disregard the duties imposed upon him, agree with the special advisor or assume a hostile position; and the ensuing overall state of affairs, mildly described would be chaotically unsatisfactory.

Id. at 55.

Recently, Jaynes was distinguished in Montgomery v. Superior Court, because California Government Code section 41805 grants express authority to a council to relieve its city attorney of the duty to prosecute on its behalf and it may retain other counsel for this purpose.



**c. One Government May Consist of Two or More Organizations, Which May Be Adverse to One Another and May Each be the Client of the Public Lawyer**

Although it is clear that an organization and not its officers is the client under Rule 3-600, the more murky question is whether a city can consist of more than one organization, each of whom is the client of the public lawyer, and whether such organizations may end up having conflicting interests with respect to one another which necessitates the disqualification of the public lawyer from representing one or both of the entities.

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attorneys have made a good faith attempt to conform their conduct to the rules in circumstances where the duties are unclear, the Bar will provide guidance rather than reproof.

In the case of the State and its relationship with the Attorney General, the California Supreme Court has held clearly that the Attorney General has more than one client entity and can have a conflict of interest with respect to them.<sup>26</sup> A county counsel's office has more than one client where one of its boards is quasi-autonomous, in that it can render binding final decisions, and the legislative body sues to invalidate the board's decision.<sup>27</sup> However, that case was decided before the promulgation of Rule 3-600 in 1989 and thus it is not clear whether the decision is still good law.<sup>28</sup>

**5. Rule 3-310 Prohibits an Attorney From Representing an Interest Adverse to that of a Client Without the Client's Prior Informed Consent**

Rule 3-310 prohibits an attorney from representing "more than one client as to any matter in which the interest of the clients actually conflict" or "potentially conflict" without disclosure to them of the actual foreseeable adverse consequences of continued joint representation and the clients' written consent to the representation.

**a. Two Client Boards with Conflicting Interests**

If, indeed, a quasi-autonomous board has standing to sue and be sued by the legislative body, each body *ipso facto* becomes a separate organizational client of the public lawyer and, in the absence of their informed written consent, the lawyer would have a conflict of interest representing either with respect to the dispute between them. In other words, when a city or other local government determines that it can sue a constituent board or commission, which has quasi-autonomous authority, it is inevitable that, for purposes of Rule 3-600, each entity will be deemed a separate client of the public lawyer and the prohibition against the representation of conflicting interests will be triggered under Rule 3-310.

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<sup>26</sup> D'Amico v. Board of Medical Examiners, 11 Cal. 3d 1, 10, 112 Cal. Rptr. 786 (1974) (Attorney General can represent only one of two state boards with adverse positions and may authorize other board to hire outside counsel pursuant to explicit statutory authority.)

<sup>27</sup> Civil Service Commission v. Superior Court, 163 Cal. App. 3d at 75-78.

<sup>28</sup> It is the opinion of this writer that the Civil Service Commission case was wrongly decided and should have been resolved on standing grounds. The county should not be able to sue itself any more than a dissident commissioner is allowed to use the courts to advance a dissenting point of view. See Carsten v. Psychology Examining Commission, 27 Cal. 3d 793, 800, 166 Cal. Rptr. 844 (1981) (dissenting member of commission has no standing to maintain tax payer action to challenge actions of her own commission; courts should not become forum for political disputes between warring factions.) However, if standing to bring such intra-entity disputes exists, then conflict of interest issues are triggered.

In a trial court decision involving the City of Los Angeles, the court held that the city council had the power to settle litigation filed by the police chief challenging his placement on administrative leave notwithstanding the fact that a separate commission had the power under the charter to take the personnel action to place the chief on administrative leave. The commission's power was deemed subordinate to the explicit power of the city council under the charter to control litigation.



Moreover, the public lawyer will be required to withdraw from representation of either client entity if the suit involves a matter on which the attorney has already provided advice to either entity or one which is "substantially related" to that matter,<sup>29</sup> unless prior written and informed consent was obtained from both clients that the attorney would continue to represent one of them even after their interests became adverse.<sup>30</sup> In other words, Rule 3-310 prohibits the attorney from continuing with the favored client adversely to the other.

Thus, the financial consequences of constituent parts of a public agency suing one another are severe; two sets of outside counsel will have to be employed to represent the opposing interests. The best way to avoid such a conflict is to allow the decision of the board with final authority to stand without litigation. Any policy disputes can always be resolved by the superior legislative body changing the underlying law which the quasi-autonomous body enforces or to limit the body's future authority.

**b. Representing the Entity and Employee in the Same Suit**

Although, the public lawyer's client is the entity itself, sometimes the client is also an individual employee to whom the city owes a defense under California Government Code section 825 for suits alleging an act or omission which arose out of the course and scope of the public employment and as to whom, by operation of law, the entity consents to dual representation. The entity may refuse to undertake a joint defense where a specific conflict of interest would result;<sup>31</sup> however, the costs of a separate defense must then be paid by the entity.<sup>32</sup>

Where a counsel for the insurer also defends the insured under a reservation of rights as to whether there is coverage, the insurer's attorney will not be able to represent both the insurer and the insured because their positions in the litigation are adverse; the insurer has an interest in arguing that the insured acted in a manner which would not be compensable under the policy, and the insured's interests are to argue to the contrary in order to obtain a defense and indemnification at the insurer's expense.<sup>33</sup> Where the insurer does not defend under a reservation of rights, the mere fact that punitive damages are sought in the action and are not payable by the insurer does not create a conflict of interest for one attorney to represent both the insured and the insurer.<sup>34</sup>

The case law concerning conflicts between counsel retained by insurance companies and the insured appears on its face to apply to public entities because it addresses the ethical obligations of the insurer's attorney not to represent conflicting interests. Yet, in a subsequent case involving the County of San Diego, the court suggested that the insurance cases are inapplicable to the duty to defend under the Tort Claims Act.<sup>35</sup> This suggestion is dictum because the court relied on one of the insurance cases to point out that the mere fact that punitive damages are prayed for and not subject to indemnification by the public entity, as a matter of right, did not create a conflict of interest between the police officer in that case and the public entity, since the entity did not defend under a reservation of rights.<sup>36</sup>

<sup>29</sup> Western Continental Operating Co. v. Natural Gas Corp. of California, 212 Cal. App. 3d 752, 261 Cal. Rptr. 100 (1989).

<sup>30</sup> Elliot v. McFarland Unified School District, 165 Cal. App. 3d 562, 571, 211 Cal. Rptr. 802 (1985).

<sup>31</sup> Cal. Gov't Code § 995.2.

<sup>32</sup> Cal. Gov't Code § 996.

<sup>33</sup> See San Diego Navy Federal Credit Union v. Cumis Ins. Society, 162 Cal. App. 3d 358, 208 Cal. Rptr. 494 (1984).

<sup>34</sup> Foremost Ins. Co. v. Wilks, 206 Cal. App. 3d 251, 253 Cal. Rptr. 596 (1988).

<sup>35</sup> Laws v. County of San Diego, 219 Cal. App. 3d 189, 200, 267 Cal. Rptr. 921 (1990).

<sup>36</sup> Id. at 198-200.



Accordingly, the public lawyer's joint representation of an individual employee and the entity itself, in a suit filed against both for acts or omissions arising out of the course and scope of the individual's employment, are permissible in the absence of specific facts which would render the interests of the two adverse to one another. The mere fact that the entity has no obligation to pay an award of punitive damages unless it chooses to do so, after making certain findings,<sup>37</sup> does not create a conflict between the entity and the employee in the litigation.<sup>38</sup> A conflict may also arise with respect to the public attorney's representation of the employee if the entity is taking other action adverse to the employee, at least where the adverse action involves the same issue as the case on which the employee is being defended. There appear to be no California cases which have considered this specific question.

#### **6. Conflicts Arising Out of Suits by Attorney/Employees to Redress Legal Wrongs by Client/Employers**

Public lawyers who are employed by their client entity may sue to enforce collective bargaining rights guaranteed them as public employees under the Meyers-Milias-Brown Act ("MMBA") California Government Code sections 3500 *et seq.*<sup>39</sup> Although the courts have the inherent power to regulate the practice of law under article VI of the California Constitution, the Legislature may adopt reasonable regulations in this area.<sup>40</sup> A statute such as the MMBA will not be struck down as a violation of the separation of power between the legislature and the courts unless "a direct and fundamental conflict exists between the operation of the statute in question, as it applies to attorneys' settled ethical obligations, as embodied in this state's Rules of Professional Conduct or some well-established common law rule."<sup>41</sup>

Merely suing a client employer to redress wrongs under the MMBA does not violate any ethical duty of the employee public lawyer.<sup>42</sup> The lawyer may not violate any ethical duties to the client by delaying or otherwise failing to faithfully and competently perform legal work.<sup>43</sup> Finally, the employer may not discharge the attorney for exercising rights under the MMBA. The anti-retaliation provisions of the MMBA are an exception to the general rule, codified in the Code of Civil Procedure section 284, that a client may discharge an attorney at any time with or without cause.<sup>44</sup> However, the client has the power to reassign cases in the labor relations area to outside counsel or attorneys who are not represented by a union.<sup>45</sup>

The California Supreme Court's holding in the Santa Clara County Counsel's Association v. Woodside case seems to apply with equal force to other statutory employee rights such as the right to be free from discriminatory treatment or to enjoy civil service protections. In short, although public attorneys are entitled to the statutory protections afforded other public employees, they may never use their special position as the employing entity's counsel to obtain advantages for themselves as employees. Moreover, they must transcend any animosity they may feel toward their

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<sup>37</sup> Cal. Gov't Code § 825.

<sup>38</sup> See Laws v. County of San Diego, 219 Cal. App. 3d at 199-200; Foremost Insurance Co. v. Wilks, 206 Cal. App. 3d at 251.

<sup>39</sup> Santa Clara County Counsel Association v. Woodside, 7 Cal. 4th 542, 543.

<sup>40</sup> Id. at 543.

<sup>41</sup> Id. at 544.

<sup>42</sup> Id. at 553.

<sup>43</sup> Id. at 552 - 553.

<sup>44</sup> Id. at 554-558.

<sup>45</sup> Id. at 557-558.



client entity, as employees and give their clients skilled, and loyal representation.

**7. Due Process Principles May Require More Than One Attorney to Advise the Public Agency as to the Same Matter**

Although the governmental entity itself and not its constituent parts is deemed to be the client of the public lawyer under Rule 3-600, recent cases suggest that the different constituent elements of an entity may need to be represented by two or more separate lawyers in order to protect the due process rights of the individual who is subject to the administrative procedure in question.<sup>46</sup>

The law in this area is confusing, but a trend seems to have emerged. First, at least two state appellate districts (the first and second) were of the view that since it is not violative of due process to combine the investigative and prosecutorial functions in a single agency, it is not impermissible to allow the same county counsel's office to represent both functions.<sup>47</sup> The court in one case drew this conclusion although the counsel who advised the board conducting the post-termination hearing had previously advised the department doing the termination.<sup>48</sup>

However, the fourth district has held that the same lawyer cannot be the one defending the termination and advising the department and if the two lawyers are from the same office, they must be completely segregated from one another.<sup>49</sup> The fifth district has likewise held that in an equalization board hearing, the attorney representing the assessor must be different from the one who advises the equalization board since the hearing is quasi-judicial in nature.<sup>50</sup>

In these cases, one attorney appeared as an advocate in the actual quasi-adjudicatory hearing and the courts ruled that the same attorney advocate could neither advise nor influence legal advice to the board which sat as the adjudicator.

There are no cases which have considered the propriety of merely advising both prosecutorial level staff and the legislative body which acts as an adjudicator. The due process limitation on an attorney who performs prosecutorial and adjudicatory roles have involved attorneys who actually presented the case before the tribunal which their office was required to advise.

It is important to stress that the due process limitation is inapplicable to a lawyer who advises two or more decision making bodies as to the same matter. In most such cases, each level of the administrative process, (e.g., the staff, the planning commission, or the council) are acting as adjudicators. Hence, the same lawyer can advise each. The due process prohibition only forbids a single lawyer from acting both as the prosecutor and as legal adviser to the decision makers in the very same proceeding.

**8. The Prosecutorial Function is Subject to Special Limitations**

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<sup>46</sup> See Howitt v. Superior Court, 3 Cal. App. 4th 1575, 5 Cal. Rptr. 2d 196 (1992) (unless county counsel's office meets burden of establishing that attorney in office who advised county's appeals board was completely segregated from attorney representing the department which terminated employee, county counsel will be disqualified from advising county appeals board; role of advocate is inconsistent with role of neutral decision maker). See also Walker v. City of Berkeley, 951 F.2d 184 (9th Cir. 1991) (where jury determined that city attorney advising city manager on post termination appeal was the decision maker and that attorney also represented the city in arguing that suit filed by employee during the pendency of administrative appeal was premature, city violated employee's right to neutral decision maker because attorney's role as advocate for city was inconsistent with role of a neutral decision maker.)

<sup>47</sup> Ford v. Civil Service Commission, 161 Cal. App. 2d 692, 697, 327 P.2d 148 (1958); Greer v. Board of Education, 47 Cal. App. 3d 98, 119-120, 121 Cal. Rptr. 542 (1975).

<sup>48</sup> Greer v. Board of Education, 47 Cal. App. 3d at 119.

<sup>49</sup> Howitt v. Superior Court, 3 Cal. App. 4th at 1585-1587.

<sup>50</sup> Midstate Theaters, Inc. v. County of Stanislaus, 55 Cal. App. 3d 864, 870-879, 128 Cal. Rptr. 54 (1976).



A related question is whether an elected city attorney with the power to prosecute violations of the Political Reform Act under 91001.5 is precluded by a conflict of interest from prosecuting a violation of the Act as to a matter on which he or she gave advice. The Attorney General concluded that such a prosecution would be precluded where the city attorney provided confidential advice to the individual.<sup>57</sup> This Attorney General's opinion was issued prior to the adoption of Rule 3-600 which appears to preclude the city attorney from choosing an individual council member as the client, especially where the interests of the entity and the individual conflict, as they seem to do here, because the entity would wish to preserve the integrity of its decisions and the individual has participated improperly in a decision which may render that decision invalid. The Attorney General's opinion turned on the assumption that the advice was given to the council member in confidence. Since Rule 3-600 appears to prohibit the city attorney from shielding advice given to an officer from the entity itself, there does not appear to be any conflict between the elected city attorney's dual role as civil adviser to the entity and criminal prosecutor of individual violators. Where the city attorney advises that there would be a conflict and the individual official proceeds to participate, the city attorney's advice is another dimension of his or her role as a prosecutor; both the prosecution and the advice are undertaken in order to obtain compliance with the law. In this sense, the elected city attorney is acting like the Fair Political Practices Commission when it provides assistance to city officials as to how to comply with the law.

#### **c0      Effect on Criminal Defense Practice**

In addition to the special ethical constraints on how cases may be prosecuted, there are special constraints on city attorneys concerning their private legal work. There is an ongoing debate within the courts, the legislature and the profession as to whether the representation of criminal defendants by a city attorney's partners or firm is improper even as to violations of state law. In People v. Rhodes, 12 Cal. 3d 180, 115 Cal. Rptr. 235 (1974) the California Supreme Court adopted a seemingly per se rule of criminal procedure, holding that such representation resulted in inadequate representation of criminal defendants and would erode public confidence in the integrity of the criminal justice system.<sup>58</sup>

In 1975, apparently in an attempt to limit the effect of the People v. Rhodes decision, the legislature amended Cal. Gov't Code section 41805 to allow for a city attorney and his or her firm to represent criminal defendants in cases other than violations of city laws, as long as the firm has been expressly relieved of all prosecutorial responsibilities on the city's behalf and the accused had been expressly informed of the defense counsel's role as city attorney and had waived any conflict created by it.

In People v. Pendleton, 25 Cal. 3d 371, 158 Cal. Rptr. 343 (1979), the city attorney failed to comply with Cal. Gov't Code section 41805 in that he was not expressly relieved of the duty of prosecuting municipal code violations yet was engaged in defending a criminal defendant for violations of state law. Moreover, the criminal defendant had not been expressly advised of and waived any potential conflict. Nevertheless, the court found that, since the city attorney did not, in fact, prosecute city crimes and had aggressively represented the criminal defendant, there was no prejudice to the criminal defendant as a result of the city attorney's failure to comply with Cal. Gov't Code section 41805 and thus the conviction of the criminal defendant would not be reversed.

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<sup>57</sup> 71 Op. Att'y Gen. 255 (1988).

<sup>58</sup> Cal. Bus. & Prof. Code § 6131 (It is a crime for a public prosecutor to aid in the defense of a case which he or she prosecutes. This section was held to have no bearing on the situation in People v. Rhodes because the city attorney only prosecuted violations of local law and the firm was defending criminal defendants for violations of state law.)

Subsequently, the Los Angeles Bar Association issued an ethics opinion reiterating that firms who engage in prosecutorial work in enforcing violations of the city's municipal code may not, as an ethical matter under Cal. Gov't Code section 41805, represent criminal defendants. Even though the ethical misconduct under section 41805 may not result in per se reversals of criminal convictions, such representation was clearly a violation of section 41805 and the Supreme Court decisions. 453 L.A. (April 1991). The ethical prohibition on criminal defense practice reflected in the cases and in section 41805 applies to city attorneys and their firms if they engage in the prosecution of municipal infractions since they are defined as crimes.<sup>59</sup>

**9      Public Lawyers Have Additional Statutory Duties to Act as a Check On Improper Governmental Action and to Represent the People Directly**

In addition to a public lawyer's role as an adviser or advocate for his or her entity, the public lawyer appears to have an additional duty, directly to the public, to act as a check on governmental action and to accurately advise the public. Moreover, the public lawyer may have direct authority to enforce certain laws.

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<sup>59</sup> See Cal. Penal Code § 16.



In the following instances, the public lawyer's advice as to the legality of the entity's conduct appears to be intended to act as a check on illegal entity conduct: where the attorney has a duty imposed under a charter or provisions of general law to approve the legality of claims or contracts and thus has a duty to refer violations of section 1090 to the district attorney for prosecution;<sup>60</sup> and when the city attorney's written consent is required prior to the destruction of any city records.<sup>61</sup>

In some functions it is clear that the public lawyer's only duty is to the public, for instance, when the city attorney prepares a true and impartial title and summary of an initiative measure, both prior to its circulation and when it appears on the ballot.<sup>62</sup> It has been held that a similar duty imposed on the Attorney General with respect to state initiatives is a ministerial one which must be performed even where the Attorney General intends to sue to invalidate the measure.<sup>63</sup> The primary purpose of the requirement that an impartial summary be prepared is to avoid misleading the public.<sup>64</sup>

Although there appear to be no cases expressly dealing with the advisory role played by a public lawyer within the entity, the public lawyer is often called upon to ensure that the entity follows applicable law designed to protect the public interest and create rights in citizens vis a vis their city. One common example of the public lawyer's performance of this role is when the lawyer is called upon to advise a government department concerning its disclosure obligation to the public with respect to the Public Records Act.<sup>65</sup>

In addition, city attorneys and other public lawyers are often granted the right to bring certain civil enforcement actions, often in the name of the people, such as the abatement of nuisances,<sup>66</sup> violations of the Unruh Civil Rights Act,<sup>67</sup> or shutting down property used for drug dealing.<sup>68</sup>

#### **10 Public Lawyer's Right to a Defense and Indemnification for Official Acts and Omissions**

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<sup>60</sup> Cal. Gov't Code § 1096. See e.g., 28 Op. Att'y Gen. 291 (1956) (county counsel's role to approve all claims for reimbursement submitted by the board of supervisors does not conflict with his role as attorney for the board of supervisors or the fact he is appointed to serve at their pleasure).

<sup>61</sup> Cal. Gov't Code § 34090.

<sup>62</sup> Cal. Elec. Code §§ 4002.5, 5011.

<sup>63</sup> Schmitz v. Younger, 21 Cal. 3d 90, 92-93, 145 Cal. Rptr. 517 (1978).

<sup>64</sup> Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208, 243, 149 Cal. Rptr. 239 (1978).

<sup>65</sup> Cal. Gov't Code § 6250 et. seq.

<sup>66</sup> Cal Penal Code § 373a; Cal. Civ. Proc. Code § 731.

<sup>67</sup> Cal. Civ. Code § 52.

<sup>68</sup> Cal. Health & Safety Code § 11571.5.



There has been some suggestion of late that city attorneys may be liable to their own clients for negligent advice. The only reported law is to the contrary. The city attorney is a public official who is entitled to defense and indemnification as to acts or omissions arising out of the course and scope of the city attorney's employment.<sup>69</sup> Where charges are filed with the state bar against the public lawyer, which constitutes the initiation of an administrative proceeding, the public entity has no duty to provide the public lawyer with a defense, but has the discretion to do so.<sup>70</sup> The public lawyer is acting in his or her capacity as an employee when making a request for representation in such an administrative proceeding and thus should be sure to so advise the entity and to recommend that it seek legal advice from independent counsel as to the legality or propriety of providing the public lawyer with such representation.

## 11 Conclusion

In conclusion, several principles emerge from a review of the relevant law applicable to the conduct of public lawyers. First, it is clear that the public lawyer is subject to the ethical rules applicable to lawyers generally but he/she also has special ethical duties to further justice and not merely to advance the articulated desires of the officers embodying the entity in any particular matter, especially when the public lawyer is acting as a civil or criminal prosecutor. Second, the public lawyer's client is always the entity itself, as embodied in the legislative body of the local agency as a whole, but may sometimes include quasi-autonomous boards or individual employees to whom the entity owes a defense. Third, where these clients have adverse interests, the public lawyer may be precluded from representing one or both of the adverse parties and must identify the conflict to the clients and recommend the appointment of separate counsel for those clients as to whom there is a conflict of interest. Fourth, the public lawyer performs additional duties as a public official which create obligations directly and sometimes exclusively to the public. Finally, the obligations and constraints applicable to the public lawyer's conduct depend on the situation which the lawyer and the entity confront, and may vary from one set of circumstances to another.

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<sup>69</sup> Firemen's Fund Ins. Co. v. City of Turlock, 170 Cal. App. 3d. 988, 1004-1005, 216 Cal. Rptr. 796 (1985) (city's insurance carriers not entitled to reimbursement from city attorney's insurance carrier even though disclosure of confidential personnel settlement by city attorney resulted in liability to city; city attorney entitled to defense and indemnification from the city for acts arising within course and scope of employment, "not the other way around".)

<sup>70</sup> Cal. Gov't Code § 995.6 (requires city to determine act or omission in question arose out of scope of employment, that such defense would be in best interest of the entity, and employee acted or failed to act in good faith without actual malice and in apparent interests of the entity.)

**COUNTY COURT, PINELLAS COUNTY, FLORIDA  
SMALL CLAIMS DIVISION**

ANDRE JOHNSON,  
Plaintiff,

v.

Case No.: **23-001911-SC**

JARED COUPLAND, STEPHEN WANNOS, and  
THE CITY OF CLEARWATER, a municipal  
corporation,  
Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO INVOKE THE RULES OF CIVIL  
PROCEDURE**

THIS MATTER came upon the Court's attention on the motion to invoke the rules of civil procedure filed by Defendants JARED COUPLAND, STEPHEN WANNOS, and THE CITY OF CLEARWATER, a municipal corporation ("the Defendants") on May 9, 2023. Present was Michael Fuino, counsel for the Defendants, and the plaintiff ANDRE JOHNSON ("the Plaintiff"). After consideration of the motion, and otherwise being fully advised of the premises, it is hereby

**ORDERED AND ADJUDGED:**

1. The Defendants motion is GRANTED. The Plaintiff and the Defendants shall proceed under the entire panoply of the Florida Rules of Civil Procedure.

**DONE AND ORDERED** in Chambers, at Pinellas County, Florida, this \_\_\_\_\_ day of May, 2023. A true and correct copy of the foregoing has been furnished to the parties listed below.

  
23-001911-SC 5/9/2023 5:10:00 PM  
County Judge John Carassas  
23-001911-SC 5/9/2023 5:10:00 PM

\_\_\_\_\_  
Honorable John Carassas  
County Court Judge

cc: Andre Johnson  
Michael Fuino, attorney for Defendant

[LT23-9830-116/304124/1]



## The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

Joshua E. Doyle  
Executive Director

850/561-5600  
[www.FLORIDABAR.org](http://www.FLORIDABAR.org)

May 22, 2023

Mr. Andre T. Johnson  
1368 South Washington Avenue  
Clearwater, FL 33756

Re: John Carassas; RFA No. 23-11995

Dear Mr. Johnson:

This office is in receipt of your inquiry concerning the above referenced judge. Under Article V, Section 12 of the Florida Constitution, complaints against sitting judges are within the exclusive jurisdiction of the Judicial Qualifications Commission, P.O. Box 14106, Tallahassee, FL 32317.

Because we have no jurisdiction, this matter has been closed effective May 19, 2023. Pursuant to the Bar's records retention schedule, the computer record and file will be disposed of one year from the date of closing.

Sincerely,

Teresa Goodson, Bar Counsel  
Attorney Consumer Assistance Program  
ACAP Hotline 866-352-0707

cc: Hon. John Carassas (with enclosure)



## Call, Rosemarie

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**From:** Daniel Holuba <dholuba12@yahoo.com>  
**Sent:** Wednesday, June 7, 2023 9:00 AM  
**To:** ClearwaterCouncil; Call, Rosemarie  
**Subject:** Fw: Your unethical recommendation regarding proposed city charter change 9690-23

MS Call, Please add these comments to the public record regarding the proposed city charter change.  
VTY Mr. Holuba

----- Forwarded Message -----

**From:** Daniel Holuba <dholuba12@yahoo.com>  
**To:** Tracey McManus <tmcmamus@tampabay.com>; nweber@tampabay.com <nweber@tampabay.com>; David Margolis <david.margolis@myclearwater.com>; Kathleen Beckman Clearwater Vice Mayor <kathleen.beckman@myclearwater.com>; Brian Aungst Sr <brian.aungst@myclearwater.com>; Jennifer Poirrier <jennifer.poirrier@myclearwater.com>; Mark Bunker <mark.bunker@myclearwater.com>; David Allbritton <david.allbritton@myclearwater.com>; Eric Gandy <eric.gandy@myclearwater.com>; Lina Teixeira <lina.teixeira@myclearwater.com>  
**Sent:** Wednesday, June 7, 2023 at 07:54:30 AM CDT  
**Subject:** Your unethical recommendation regarding proposed city charter change 9690-23

08-07-2023

Mr. Margolis,

I do appreciate your response.

I will likewise respond to your response line by line.

- 1) If the installation of Slaughter as Assistant City Manager was not a factor in your recommendation to change the city charter, then it must have been to accommodate Eric Gandy, or has no purpose whatsoever.
- 2) You do have personal reasons to appease and accommodate the city council in their obvious attempts to conceal MS Poirrier's shortcomings and ineptitude overall, but particularly regarding her toxic hiring practices. How much are you paid monthly? Over \$24,000? That is your personal reason to cow down to the city council requests, no matter the ethical consequences, or bad optics.
- 3) Just because something is permissible, does not automatically make it a good municipal policy. This is particularly true given the poor public perception of government in general, and the management of Clearwater in particular. I find your application of "logic", holding up the IRS rules in this instance is just wrongheaded and a bastardization.
- 4) Mr. Margolis, you are paid (over \$280,000 per year?) to advise the city council on legal matters. Yes, we elect the council, however when you make poor recommendations to the council to smoke over their mistakes, (Id Est Poirrier) at their request. you wield an overwhelming disproportionate influence on the council as opposed to any citizen comment. I believe this constitutes unethical behavior on your part.

Again, Thank you for your response.



## Call, Rosemarie

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**From:** Daniel Holuba <dholuba12@yahoo.com>  
**Sent:** Tuesday, June 6, 2023 11:14 PM  
**To:** ClearwaterCouncil; Call, Rosemarie  
**Subject:** Fw: Double Dipping

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

MS Call, Please add these comments to the official record as provided for under the agenda guidelines pertaining to item # 9690-23.

Mr. Holuba

----- Forwarded Message -----

**From:** Daniel Holuba <dholuba12@yahoo.com>  
**To:** nweber@Tampabay.com <nweber@tampabay.com>  
**Sent:** Tuesday, June 6, 2023 at 09:20:15 AM CDT  
**Subject:** Fw: Double Dipping

----- Forwarded Message -----

**From:** Daniel Holuba <dholuba12@yahoo.com>  
**To:** David Margolis <david.margolis@myclearwater.com>; Jennifer Poirrier <jennifer.poirrier@myclearwater.com>; Brian Aungst Sr <brian.aungst@myclearwater.com>; Tracey McManus <tmcmamus@tampabay.com>; Mark Bunker <mark.bunker@myclearwater.com>; Kathleen Beckman Clearwater Vice Mayor <kathleen.beckman@myclearwater.com>; David Allbritton <david.allbritton@myclearwater.com>  
**Sent:** Tuesday, June 6, 2023 at 08:59:16 AM CDT  
**Subject:** Double Dipping

06-06-2023

Mr. Margolis,

I watched your presentation regarding double dipping. You may not have a problem with it (perhaps for personal reasons) however, many others do, myself included. The bad public optics you referred to is a very real thing.

Your position that double dipping is "revenue neutral" regarding law enforcement is simply fallacious when you conveniently fail to mention the possibility of disbanding CPD and contracting with PCSO. It most certainly is not revenue neutral for the individual who claims retirement benefits, and then returns to work for the same entity in their old capacity or a different one. Just ask Eric Gandy. Therein lies the bad optics.

I believe even you can see that Poirrier, faced with her inability to hire for rank-and-file positions, as well as management positions, is grasping at straws. Of course, Poirrier wants to change the pension plan to justify installing Slaughter as assistant city manager.

Any employee who leaves the job and claims retirement benefits not only should not be allowed to double dip, but they should not be allowed to be reemployed in any case. It is just a bad practice. Even your speech pattern and hand gestures belie the flawed reasoning in this proposal. Presenting the IRS position on this issue is also disingenuous. You presented the flawed argument that if the IRS says it's ok, then it's ok for Clearwater. *Petitio principii*.

Sir, As I'm sure you are well aware armed with your doctorate in Jurisprudence, the law only professes minimum standards. I believe the citizens of Clearwater deserve something better than minimum standards. Double dipping is morally wrong. It causes your presentation to be somewhat morally suspect.

Changing the charter to allow the morally wrong double dipping will not solve the recruiting problem clearwater faces (with Poirier as a prime example of a functional and morally wrong promotion) it will only exacerbate the problem.

I would most certainly appreciate your thoughts by return email.

Mr. Holuba



## Call, Rosemarie

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**From:** Daniel Holuba <dholuba12@yahoo.com>  
**Sent:** Tuesday, June 6, 2023 11:11 PM  
**To:** ClearwaterCouncil; Call, Rosemarie  
**Subject:** Fw: Approve revisions to the City of Clearwater Employees' Pension Fund of 2011 and pass Ordinance 9690-23 on first reading.

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

MS Call, Please add these comments to the official record as provided for under the agenda guidelines Mr. Holuba

----- Forwarded Message -----

**From:** Daniel Holuba <dholuba12@yahoo.com>  
**To:** Jennifer Poirrier <jennifer.poirrier@myclearwater.com>; Brian Aungst Sr <brian.aungst@myclearwater.com>; Mark Bunker <mark.bunker@myclearwater.com>; Tracey McManus <tmcmamus@tampabay.com>; David Allbritton <david.allbritton@myclearwater.com>; David Margolis <david.margolis@myclearwater.com>; nweber@tampabay.com <nweber@tampabay.com>; Rosemarie Call <rosemarie.call@myclearwater.com>; Eric Gandy <eric.gandy@myclearwater.com>  
**Sent:** Tuesday, June 6, 2023 at 10:06:17 PM CDT  
**Subject:** Approve revisions to the City of Clearwater Employees' Pension Fund of 2011 and pass Ordinance 9690-23 on first reading.

06-06-2023

MS Porrier,

I recognize your desire to change this particular city ordinance to install Eric Gandy as the new police chief and allow him to continue his double dipping practices; however, are you really so foolish and inept as to request the council make this change listing Cretekos as mayor? One again you prove you have no idea what you are doing and have been promoted way beyond your capabilities. You are widely disliked which is the reason no new outside persons will come to work for you. Just ask Mr Halios, or Mr. Mariabelli what they think of you. You have a limited pool of available "talent" due to the way you operate. Apparently, you have brought forward your poor work performance from your previous position as personnel director.

Keep on pulling people out of their jobs and placing them on top. Sooner or later your Jinga of personal management will fall and everyone, including the city council will realize you don't possess the ability to even manage your way out of a wet paper bag.

Mr. Holuba

ORDINANCE NO. 9690-23 AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA; AMENDING CHAPTER 2, ARTICLE V, DIVISION 3, EMPLOYEES' PENSION PLAN, AMENDING SECTION 2.414 "PARTICIPATION"; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE. WHEREAS, the City of Clearwater Employees' Pension Plan (the "Plan") governs the payment of retirement benefits for City employees; WHEREAS, the City is desirous of attracting and retaining employees to be the Police Chief and Fire Chief; WHEREAS, the Police Chief and the Fire Chief may opt out of the Pension Plan; WHEREAS, the City wants to clarify that a Police Chief or Fire Chief who is rehired after normal retirement and who opts out of the System is entitled to an in-service distribution of their retirement benefits after their rehire; WHEREAS, the Plan's actuary has studied the cost of this amendment; WHEREAS, the Board of Trustees of the City of Clearwater Employees' Pension Plan has prepared this ordinance; NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA, THAT: Section 1: Section 2.414 of the Code of Ordinances of the City of Clearwater is hereby amended to read as follows: Section 2.414. Participation (a) Participation. (1) Unless

otherwise provided herein, all employees of the employer shall be required to make the contributions specified in section 2.415 and shall be required to participate in the plan, except that the Police Chief and Fire Chief may opt out of participation in the Pension Plan as provided for in Florida Statutes §185.02(16) and 175.032(11); (2) Any employee who is a participant and who has been or may be appointed to a regular full-time position exempt from the civil service classified service system of the employer shall be eligible to continue participation in the plan in the same manner as any other employee. 2 Ordinance 9690-23 (b) Reemployment. (1) If a participant terminates employment with the employer and receives a return of employee contributions and is subsequently reemployed within the five-year period following his termination of employment, the former participant shall again be eligible to participate in the plan and his credited service shall be based on all periods of employment, provided he a. Again satisfies the definition of "employee" set forth in section 2.412, and b. Reimburses the plan in accordance with subparagraph (4) of section

2.419. (2) Notwithstanding the foregoing, an employee who is reemployed in a regular full-time position other than that of a firefighter or police officer after his benefits have commenced under the plan (other than disability benefits pursuant to section 2.418) shall not be eligible to participate in the plan upon his subsequent reemployment. Reemployment may not commence until at least 30 days after the initial separation from employment with the city. Upon reemployment, the employee will be required to participate in the federal social security program. (3) In the event that a retiree is reemployed as a full time police officer or firefighter, he shall be required to become a member in the fund. Receipt of benefits shall be suspended for the period of reemployment. Upon ending the period of reemployment, benefits shall be recalculated, taking into account any additional credited service or change in final monthly compensation. Notwithstanding the foregoing, if a hazardous duty employee is rehired after normal retirement as the police chief or fire chief, they may opt out of participation in the Pension Plan and be entitled to receive or continue receiving an inservice distribution of the normal retirement pension benefit. If the police chief or fire chief is rehired after early retirement, no in-service distribution can be made until the Chief reaches the age required in Section 401(a)(36) of the Internal Revenue Code, as it may be amended. Any rehire of a member as Police Chief or Fire Chief is subject to a 30 day period from the date of the initial separation of employment with the City to the rehire date. \* \* \* Section 2: It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City Clearwater, that the sections of the Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word. Section 3: If any clause, section, or other part or application of this Ordinance shall be held in any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and shall not affect the validity of the remaining portions or applications which shall remain in full 3 Ordinance 9690-23 force and effect. Section 4: All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict. Section 5: This Ordinance shall become effective immediately upon adoption, unless otherwise provided. PASSED ON FIRST READING \_\_\_\_\_ PASSED ON SECOND AND FINAL

\_\_\_\_\_, READING AND ADOPTED \_\_\_\_\_ George N. Cretekos Mayor  
Approved as to form: Attest: \_\_\_\_\_ David Margolis  
Rosemarie Cal