

**City of Gulfport Florida**  
**Special City Council Meeting Minutes**  
**Tuesday, July 7, 2009**

To begin immediately following the regularly scheduled City Council Meeting which convenes at 7:00 p.m. in City Hall, City Council Chambers.

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The Special City Council Meeting of the Gulfport City Council was held pm Tuesday, July 7, 2009, in City Hall, City Council Chambers, 2401 53<sup>rd</sup> Street South, Gulfport, Florida.

Michael J. Yakes, Mayor, called the meeting to order following the regularly scheduled City Council Meeting which convened at 7:00 p.m.

**Roll Call.**

Present were: Councilmembers Samuel Henderson, Michele King and Judy Ryerson; Vice Mayor Robert Worthington; Mayor Michael J. Yakes, Interim City Manager James O'Reilly; City Attorney Timothy Driscoll and City Clerk Lesley DeMuth.

City Attorney Driscoll advised Council the agenda item before them is consideration of the city attorney position as a full-time or part-time position and the discussion should center on that particular issue. He provided and discussed a report with the figure he believed will be the city's costs if they went to a full-time city attorney; \$259,984 per year. The current arrangement is a retainer for non-litigation work, and litigation work at an hourly rate of \$125.00. These rates were established in 2003 and have not been increased since that period of time. The City has paid an average of \$85,000 over the last three years, although it has been increasing. City Attorney Driscoll explained he also provided Council with an alternative agreement which provides for a fix retainer covering litigation and non-litigation at the rate of \$108,000 per year. This retainer will cover all of the city's legal services and he thought it would be far less than if Council chose to go with a full-time attorney. City Attorney Driscoll stated he included in the new agreement that he will spend a day at City Hall each week and he is willing to do whatever he could to facilitate whatever issues Council might have with the city attorney position. City Attorney Driscoll stated he has been the City Attorney for 19 years, and has attended every Board Meeting he has been requested to attend, and would be glad to do more of that if this is something that is on Council's mind. City Attorney Driscoll stated he wanted to set Council's minds at ease if they did decide to make this a full-time position, that he will make sure the transition is smooth and will stay on as city attorney until replaced by that position.

**Public Session.**

Jim Greenwald, 4747 Tradewinds Drive, did not feel a full-time attorney is needed.

Jim Shatts, 2814 Kipps Colony Drive South, spoke in support of a full-time attorney.

Ann New, 2815 Tifton Street South, spoke on her sailboat foreclosure case with the City, and spoke in favor of a full-time attorney.

Art Padula, 2508 50<sup>th</sup> Street South, felt a full-time city attorney will provide better service to the City on a consistent basis.

Janet Schaffer, 2405 York Street, advised Council she is a contract attorney for the State of Florida and spoke on attorney salaries.

Lee Stapella, 3025 York Street South, said there is no evidence the City can afford a full-time attorney or examples of other small towns proceeding down this path, and questioned what is driving this action. She spoke regarding a Councilmembers personal attorney representing the City, and felt a City Council has a legal and fiduciary responsibility to their residents and having inexperienced counsel does not rise to that obligation.

Mark Epstein, 4803 29<sup>th</sup> Avenue South, felt a change is required on how the City hires and employs the city attorney, and asked Council to make the vote to move Gulfport forward.

Dave Steinke, 5953 Seabird Drive, spoke on the City paying the city attorney extra to litigate, and was in favor a full-time attorney.

Jeri Reed, 5213 11<sup>th</sup> Avenue South, urged Council to come to a conclusion once and for all on this issue, whether that meant an interim full-time or a permanent full-time attorney.

Tommy Minkoff, 1635 Royal Palm Drive South, advised Council he is committed to assisting the City with a better way of managing its legal affairs, and has met on occasion with each one of them to discuss that. Mr. Minkoff stated he is proposing to represent the City on an interim basis for a period of four to six months at a flat contract fee of \$9,000 per month plus expenses. Mr. Minkoff provided a preliminary job description and resume, and stated he has no interest in being the city's permanent city attorney, only an interest in helping the city develop what an attorney's role will be in our government and to assist Council with competent full-time legal services during this process.

### **1. Consideration of the City Attorney position as a part-time or full-time position.**

Mayor Yakes stated he is the one who proposed this as far back as three-years ago. He spoke on his opinion for the need for a full-time attorney as Gulfport is a full service community and the upcoming issues and changing times. Mayor Yakes provided copies of a recent St. Petersburg Times article on the layoff of attorneys.

Councilmember Henderson stated this is not a personal issue and has nothing to do with Tim's performance in his mind. He has been very forthcoming with him and accessible when he has tried to contact him. He felt this is an issue of economic benefit for the City. Councilmember Henderson reviewed the previous year's expenses incurred by the City, and gave the income average of attorney's per the Bureau of Labor Statistics; nationwide \$89,320, in Florida \$113,780. Councilmember Henderson pointed out the costs provided to Council by the City Attorney included a cost for a legal assistant with benefits. He felt something that could be considered is a second or third year intern from Stetson University to act as legal assistants. Councilmember Henderson suggested paying a full-time attorney eliminates budget uncertainty, and felt the City should find someone with a proactive and preventative philosophy to fill a full-time attorney position for the city.

Vice Mayor Worthington stated he had hoped everyone on Council has taken the opportunity to talk to Mr. Morrison of the Florida League of Cities on this subject. Mr. Morrison is of the opinion if the City has a full-time attorney they will need a legal assistant, office space, law books, computer systems and benefits. Vice Mayor Worthington stated he has not had any issues in contacting Attorney Driscoll, and if it is decided to have a full-time attorney, he wanted

it open to everyone to submit their resumes and costs for Council's review. Vice Mayor Worthington pointed out that Council can change the position tonight, as stated on the agenda, from part-time to full-time, but the agenda did not say to change attorney.

Councilmember King stated she felt this is about Tim and not about should it be a full-time attorney or part-time attorney. She spoke on the City's expenses since 2005 of over \$300,000 of legal fees on the Pasadena Properties case and Tim Driscoll making \$19,000 on this case and the Plaintiff's attorney since 2003 making \$24,000. Councilmember King felt this is not an issue about office space, law books, or assistants. Councilmember King stated she votes for a full-time attorney, and has a vote of no confidence in the attorney we have.

Councilmember Ryerson stated she felt the City does not have enough work for a full-time attorney. She spoke on a list of nine items which are the major items the attorney is dealing with at this time and it does not constitute full-time work. Councilmember Ryerson reviewed her costs estimates for a full-time attorney, and agreed with Vice Mayor Worthington that the agenda item is not to change attorneys. Councilmember Ryerson stated she felt there are some people who may have the misconception that if the City has a full-time attorney that attorney will be available to the citizens for their needs, which will not be the case.

In response to a question by Mayor Yakes on if the Council wished to resolve this tonight, it was the consensus of Council that they did.

Mayor Yakes stated he did not think Council had enough information to make an intelligent decision, and believed the City needed to advertise an RFP to have a scope of services, pay range and benefit package if there is to be one. Mayor Yakes stated he does not have a problem with Tim Driscoll getting back to him; the problem he has is with the people who talk to him of the issues they have.

Vice Mayor Worthington stated the City has an attorney that could stay on while the search is being conducted and felt this search could be accomplished by a firm that deals with municipal law. He felt if the City goes to a full-time attorney, there will have to be a tax increase, and reiterated the agenda item for consideration is the city attorney position as a part-time or full-time position.

Councilmember Henderson stated his interpretation is if the Council votes on a full-time position they are essentially voting to close out a part-time position in the City and open up a full-time position. He did not feel it is a transfer from one to the other. Council would have to open this position to the application and interview process.

City Attorney Driscoll stated if Council's vote is to create a full-time city attorney position, they could do that tonight and as he said he would stay on until the new person is appointed. City Attorney Driscoll did not think he should be involved in the process of developing a scope of services for that position and suggested Council seek outside help perhaps with doing that. City Attorney Driscoll stated Council could vote to approve this as a full-time position since there seems to be a consensus to do at least that.

A motion was made by Councilmember King that the City move to a full-time city attorney position and appoint Tom Minkoff as the interim attorney for four to six months to help Council work through the process so they can get to where they can to appoint a full-time attorney.

Councilmember Henderson stated he did not want to see the City Attorney walking out of here without a job tomorrow morning. He did not want to treat anyone in the City that way.

Mayor Yakes stated he supports a full-time attorney and has not seen anything that discourages him from going to a RFP. He felt there should be an interim attorney during this period of time, and allowing Tim to be an applicant is the correct way to do that.

City Attorney Driscoll explained he will continue to do the City's legal work in the interim while Council goes through this process. What he has suggested is that he continues to do the City's legal work until Council fills the position. City Attorney Driscoll stated if Council makes this transition, he has been here 19 years serving the City faithfully and holds no ill will to anyone. He is going to do the job, he has a professional and ethical obligation to do so and resented any implication that he would not do anything but serve the City's best interest during that period.

The motion was seconded by Councilmember Henderson for discussion only.

Vice Mayor Worthington stated he felt it inappropriate for a practicing attorney to come before Council and put in his job application. He suggested if there is a push to put Mr. Driscoll out tonight that Council hire an independent firm in the interim. He thought before Council accepted any ones application, that everyone who is interested be able to put in an application. He believed an attorney who has represented an individual on City Council should not be a person representing our city, and he would pursue an Ethics Commission ruling on this if it is pursued.

Councilmember Henderson felt if the vote went to for a full-time attorney, Council needed to discuss afterward some kind of severance for Tim Driscoll. He would like to see at least two other candidates be considered for the interim position if Council chose to go that route.

Councilmember King stated an interim position is not a position that you put out to bid. There are very few people who are going to do a job for four to six months. The idea of putting someone in for the interim is to be able to get to the point where you can actually put the job out to bid. She did not think the law firm that handles employee and insurance issues for the City is the law firm that has municipal experience and or would be there to help us go though the transition. Councilmember King felt the fact that Attorney Minkoff may have helped her personally on an issue has nothing to do with this. He is not her attorney; he was hired and let go when the situation was over. Councilmember King stated that she does not work for or has ever worked for Weichert Realty.

Mayor Yakes reiterated his feelings of the need for an RFP, but felt the Council was back where they were three years ago, and asked that the meeting be adjourned. The motion was seconded by Vice Mayor Worthington.

Councilmember King reminded Mayor Yakes that there is a motion on the table with a second. Mayor Yakes recalled his motion.

Councilmember Ryerson stated she was afraid there might be another issue involved in that Mr. Minkoff has contributed to some of the Councilmembers campaigns.

Councilmember Henderson asked City Attorney Driscoll if he is able to answer the question about the ethics of what was brought up with Tom Minkoff having worked for Michele in the past, but not currently working for her.

City Attorney Driscoll stated if there is no current attorney-client relationship with them, he would not see a conflict.

Councilmember Ryerson asked about campaign donations, and City Attorney Driscoll replied that he did not think that creates a legal conflict whether or not there is a campaign contribution.

In response to a question by Councilmember Henderson, City Attorney Driscoll stated the motion on the floor is full-time with appointing Mr. Minkoff as an interim city attorney.

Motion by Councilmember Henderson, second by Vice Mayor Worthington to amend the motion on the floor to make the city attorney position full-time.

Vice Mayor Worthington believed if Council is going out to bids that they entertain both thoughts on a full-time or part-time City Attorney.

ROLL CALL:	COUNCILMEMBER HENDERSON	YES
	VICE MAYOR WORTHINGTON	NO
	COUNCILMEMBER KING	YES
	COUNCILMEMBER RYERSON	YES
	MAYOR YAKES	YES

MOTION CARRIED: 4 TO 1.

City Attorney Driscoll stated the motion has been amended and Council will need to vote again on making the city attorney's position a full-time position.

ROLL CALL:	COUNCILMEMBER HENDERSON	YES
	VICE MAYOR WORTHINGTON	NO
	COUNCILMEMBER KING	YES
	COUNCILMEMBER RYERSON	NO
	MAYOR YAKES	YES

MOTION CARRIED: 3 TO 2.

Councilmember King asked what is going to happen without an attorney.

City Attorney Driscoll stated he is still the City Attorney. He will continue to represent the City while Council pursues this full-time position and Council can change that situation at any time.

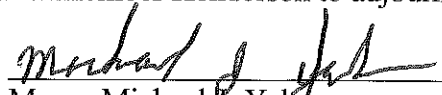
Councilmember Henderson asked that Council schedule a time within the next few days to discuss the other parts of this. A Special Council Meeting was scheduled for July 10, 2009, at 2:00 p.m.

**2. Adjournment.**

Motion by Vice Mayor Worthington, second by Councilmember Henderson to adjourn.

Approved: 8-4-2009

  
Lesley DeMuth, City Clerk

  
Mayor Michael J. Yakes