

RESOLUTION NUMBER 2009-

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELTONA RELATING TO THE ABANDONMENT OF OFFICE OF THE CITY ATTORNEY AND THE CAUSES FOR THE FAILURE OF THE CITY ATTORNEY TO BE ABLE TO CONTINUE TO SERVE AFTER THE SUSPENSION ACTION TAKEN BY A MAJORITY OF THE CITY COMMISSION; PROVIDING FOR RESOLUTION OF MATTER AND APPROPRIATE ACTIONS IN THE PUBLIC INTEREST; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article II, Section 8 of the *Constitution of the State of Florida* relates to “Ethics in government” and provides that “A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse” and the City Commission of the City of Deltona desires that the government of the City of Deltona be of the highest operational and ethical quality and that even the appearance of impropriety be avoided; and

WHEREAS, the City Commission desires to adopt Findings of Fact concerning the evaluation, discipline and abandonment of office by the City Attorney, whom this Commission suspended on July 6, 2009; and

WHEREAS, the City Commission hereby desires to take necessary actions to provide for continuing adequate legal services for the City of Deltona after the City Commission meeting of Monday, July 20, 2009, at the end of which meeting Mr. Cino’s appointment as Acting City Attorney expires; and

WHEREAS, the City Commission desires to provide for the temporary continuing provision of legal services and exchange of information with Acting City Attorney Charles Cino, Esquire, to determine his status and availability; and

WHEREAS, the City Commission desires to deliberate and take any other action with respect to suspended City Attorney that may become necessary as it receives further news of statements or actions on his part and as such actions are necessary and in the public interest; and

WHEREAS, each City Commissioner has his or her own knowledge or information concerning the facts that are found to exist in this Resolution and with regard to the conduct of the suspended City Attorney; and

WHEREAS, the recitals (whereas clauses) set forth in this Resolution are hereby incorporated as additional findings to the findings set forth in the body of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELTONA AS FOLLOWS:

SECTION 1. FINDINGS OF FACT RELATIVE TO THE SUSPENDED CITY ATTORNEY.

1. The City Commission hereby finds and determines the following facts relative to the actions of the suspended City Attorney:

(a). He has asserted to the news media between July 6 and July 10, 2009, that he has a legal claim against the Commission and is in an adversarial position with a majority of the City Commission. By reason of his adversarial posture, the suspended City Attorney has abandoned his position as legal

advisor to the City in the midst of his suspension. He cannot by law be both advocate against the City Commission and legal advisor to the City Commission.

(b). He instructed the prior Human Resources Director to cut off severance payments to former City Manager Steve Thompson, thus violating an order of the Commission granting Mr. Thompson those severance payments and violating the law of Thompson's employment contract with the City Commission.

(c). He instructed the prior Human Resources Director, herself an attorney, to violate the law governing the City's contractual obligations to Steve Thompson and the ethical rules of the legal profession, which resulted in that Director's decision to resign after only eight (8) days of employment with the City, as documented in her letter of resignation

(d). He violated Rule 4-1.4, Rules Regulating the Florida Bar, by not communicating with City Commissioners in a timely manner and providing his legal opinions, and specifically failing to disclose, as requested by a Commissioner, the opinions he personally authored; failing to disclose how many opinions he personally authored; misrepresenting the Commissioner's request to him as being for more than one hundred (100) opinions of the City Attorney's Office; failing to disclose those so-called more-than one hundred (100) opinions in which he claimed to have some part in authorship; falsely stating his authorship was involved in all opinions issued by his office (including providing a legal opinion addressed **to** him, not **from** him); and claiming not to remember the only written opinion of the City Attorney's Office that he had ever provided to that Commissioner.

(e). He advised Mayor Mulder or others about legal matters and did not disclose such advice to other Commissioners, or what advice he gave to others, or even that he gave any advice.

(f). He misrepresented the advice that he gave to Mayor Mulder about the Mayor's February 16, 2009, motion which contradicted the Mayor's public statements that he had cleared the motion with the then-City Attorney.

(g). He has treated members of the City Commission disparately and has treated some publicly with contempt or a lack of respect, confirming his adversarial posture.

(h). He violated Sections 119.021(b) and 119.07, *Florida Statutes*, by not maintaining the requested legal opinions that he authored since November, 2007 in a readily accessible way, and by not producing those records within a reasonable time when requested.

(i). During normal business hours, the suspended City Attorney has had the contractual obligation to work on City matters. Section 12 of his employment contract with the City relating to "outside activities" provides that:

"Attorney shall be permitted to engage in any activities during non-work time so long as such activities are not in conflict with the interests of the City. The City shall be the sole judge of any conflict and notify Attorney to cease any further activity within a reasonable time to cure any such conflicts. Any identified conflict shall not be considered a default or cause for termination of this agreement unless Attorney fails to cure such conflict."

Contrary to this limitation on his after-hours work, he refused to tell the City Commission who his private clients are, thereby frustrating the ability of the City Commission to determine if the outside activities create a conflict of interest or a

conflict with his primary obligations to the City under his contract. His refusal to disclose requested information also constituted a failure to cure his conflicts and his default. He has defaulted under his contract by denying the City Commission the information needed to measure: (1) whether a conflict of interest exists relative to the legal matters which he handles for private clients; (2) whether his clients' cases may require him, as in litigation or real-estate closings, to work for the private clients during the City Attorney's Office's ordinary business hours; or (3) whether the suspended City Attorney's private clients may be of a nature that could bring discredit to the City.

(j). He operates a private law firm at 1709 Providence Boulevard in the City of Deltona on property that is zoned residential and not commercial while the City Code provides that a law office could only be approved as a home occupation at that location if the home occupation is clearly incidental and subordinate to the residential use. To the contrary, a review of the law firm's Web site (http://principlelegal.com/Our_Law_Firm.html) indicated a full-fledged law firm operates at that residential site.

(k). He allowed the well-staffed and well-funded "full time" City Attorney's Office to also pay over \$100,000.00 in public tax dollars for outside legal services that he could not or would not provide to the City, while he was using his time to operate a private law firm (the Principle Legal Offices, P.A.) a short distance from City Hall.

(l). While other City employees are being discharged to decrease the City's financial obligations, he allowed his automatic pay raise to occur

without the City Commission acting on the matter and did not take timely action to put his Annual Review on the City Commission Agenda, and failed to advise us of the automatic nature of his contractual pay raise and the City Manager's.

(m). He violated Section 166.045(b), *Florida Statutes*, by ordering the appraiser, Lee Lobban, MAI, to change his opinion of value from \$3,000,000.00 as the lands to be purchased actually were zoned, to a higher value based upon a hypothetical "commercial" zoning that did not exist, producing a hypothetical value of about \$7,600,000.00, which he then used to falsify the average of 2 appraisals and thereby evade the statutory requirement that, "If the agreed purchase price exceeds the average appraised price of the two appraisals, the governing body is required to approve the purchase by an extraordinary vote" and he further gave false legal advice to the Commission that a supermajority vote of 5-2, the "extraordinary vote" required by the statute, was not required. This caused serious financial damage to the City, of as much as \$4,600,000.00, by its entering into a contract to purchase land for about \$7,600,000.00 that was appraised by one of the two appraisers at the sum of \$3,000,000.00.

(n). He advised City employees to violate a City ordinance granting churches and schools exemptions from the local business tax by advising the Fire Department and the Building Department that fire inspectors could and should issue notices of violations to churches and schools for not having obtained and displayed the local business tax receipt.

(o). He violated the legal requirements for applying for an Attorney General's Opinion, and the rights of his clients, by applying for an opinion from the Attorney General concerning actions of Commissioners without having the prior approval of the City Commission.

(p). In the course of a public records request in which the office of the Attorney General was involved, he caused false information to be transmitted to the Attorney General's office with regard to the actions of a citizen requesting public records under the statutory and constitutional law of the State of Florida.

(q). He has generally taken the position as a policy maker within City of Deltona government as opposed to a legal advisor.

(r). He has failed to devote adequate time to provide expertise to the City Commission in local government legal matters, and has not personally authored even one official Opinion of the City Attorney in the more than one year he has held that office.

2. The City Commission hereby finds and determines that the actions of the suspended City Attorney have resulted in his abandoning his position and, in any event, were and are cause for termination and would necessitate termination under controlling legal principles. The Commission therefore finds as a fact that this Resolution, to recognize the suspended City Attorney's abandonment of his office, can be adopted by only the simple majority vote of the Commission, 4 votes. Adoption of this Resolution does not require a 5-vote supermajority that might otherwise be required by the Charter for termination.

3. The City Commission hereby expresses its desire to have a quality legal advisor with capabilities proportional to the needs of the City of Deltona and whose full-time commitment to provide legal advice and counseling to and on behalf of the City Commission is not biased by his or her taking sides in matters of policy or politics.

SECTION 2. RESOLUTION OF THIS MATTER.

The City Commission of the City of Deltona hereby finds as a fact that the suspended City Attorney, George Trovato, Esq., has abandoned his office, effective the date of suspension without pay, July 9, 2009, and recognizes that he no longer holds the office of City Attorney.

However, in order to more amicably resolve this matter, the City Commission of the City of Deltona hereby allows, until the close of business on the weekday following adoption of this Resolution, the suspended City Attorney to personally deliver in writing, to the City Manager or Deputy City Clerk, his unqualified resignation effective July 9, 2009, and which resignation specifically accepts the payment of his contract's severance package in full settlement of all his claims.

SECTION 3. FUTURE ACTIONS.

The City Commission of the City of Deltona hereby determines to hire an outside law firm, on a temporary basis to handle the duties formerly entrusted to an in-house City Attorney, through the City's procurement process, and to simultaneously conduct a search for a new City Attorney. The contract of the Acting City Attorney, Charles Cino, Esq., is extended for two more weeks, until

midnight of August 4, 2009, or until the time of his reappointment as Special Magistrate, whichever comes first.

SECTION 4. CONFLICTS.

All resolutions or part of resolutions in conflict with this Resolution are hereby repealed.

SECTION 5. SEVERABILITY.

If any section, sentence, phrase, word, or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Resolution not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION 6. EFFECTIVE DATE.

This Resolution shall take effect immediately upon passage and adoption.

Adopted by the City Commission of the City of Deltona this 20th day of July, 2009.

**City Commission of the City of Deltona,
Volusia County, Florida**

Dennis Mulder, Mayor

Attest:

Faith Miller, City Manager/City Clerk

Approved as to form and
Legality for the use of the City
Commission only:

Charles Cino, Esquire
Acting City Attorney