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**CITY OF DELTONA, FLORIDA  
SPECIAL CITY COMMISSION MEETING  
THURSDAY, JULY 9, 2009**

A Special Meeting of the Deltona City Commission was held on Thursday, July 9, 2009 at the City Hall Commission Chambers, 2345 Providence Boulevard, Deltona, Florida.

**1. CALL TO ORDER:**

The meeting was called to order at 4:35 p.m. by Vice Mayor Carmolingo.

**2. ROLL CALL:**

Mayor	Dennis Mulder	Absent (Excused)
Vice Mayor	Michael Carmolingo	Present
Commissioner	Zenaida Denizac	Present
Commissioner	Janet Deyette	Absent (Excused)
Commissioner	Michele McFall-Conte	Present
Commissioner	Paul Treusch	Absent (Excused)
Commissioner	Herb Zischkau	Present
City Manager	Faith G. Miller	Present
Acting City Attorney	Charles Cino	Present
Deputy City Clerk	Joyce Kent	Present

Also present: Human Resources Director Tom Acquaro; Building Official Cy Butts; Deputy City Manager Dave Denny; Parks & Recreation Director Steve Moore; Deputy Fire Chief Robert Rogers; and Fire Chief Robert Staples.

**3. BUSINESS:**

**A. Discussion re: City Attorney position.**

Commissioner Zischkau asked who had the power to excuse Mayor Mulder from the meeting because he did not remember it coming up before the Commission. He stated he would like to make a motion as to whether or not the Commission should excuse Mayor Mulder because he believed no one could excuse a Commissioner but the Commission. Commissioner McFall-Conte stated per the City Charter a Commissioner needs to notify the City Manager of their absence to a meeting. Commissioner Zischkau withdrew his offer of a motion. Vice Mayor Carmolingo stated if that is the case then the two (2) Commissioners who are absent will also be excused.

Vice Mayor Carmolingo stated there will be no public comments.

**Motion by Commissioner Zischkau to raise Mr. Cino's hourly billable rate from \$125 to \$165 an hour for the next week and a half till the end of the next Regular City Commission meeting.**

**The Motion died for lack of a second.**

Commissioner McFall-Conte stated she appreciated Mr. Cino for stepping in and stepping up to the

1 plate at the price he did. She thanked Ms. Miller for taking what was done Monday night and getting  
2 with all of the Commission over the past few days to make sure it was translated correctly. She stated  
3 some things have happened over the past few days and she feels Mr. Trovato has violated the terms of  
4 his suspension. She stated one of the things is Mr. Trovato asked a staff member to set up meetings  
5 with members of the Commission to meet with him and also the comments in the paper which were a  
6 full reflection of her evaluation.

7  
8 Commissioner Denizac agreed with Commissioner McFall-Conte's comments. She stated Mr.  
9 Trovato chose to contact the media to express outrage and trash a Commissioner. She stated instead  
10 of trying to make the situation better it seems like Mr. Trovato wants to make it worse and any other  
11 City would have terminated him a long time ago.

12  
13 **Motion by Commissioner Zischkau, seconded by Commissioner Denizac that the Commission**  
14 **resolve that Mr. Trovato is in breach of his contract with the City and that breach justifies**  
15 **stopping payments of salary to him which shall be effective immediately.**

16  
17 Commissioner McFall-Conte asked what the breach of contract was. Commissioner Zischkau replied  
18 his refusal to provide the legal opinions he personally authored, he applied unilaterally for the  
19 Attorney General Opinions whether text messages or personal notes were public documents, he  
20 interfered with the City Manager's management of her new Human Resources Director and many  
21 others.

22  
23 Mr. Cino stated the Commission needs to formally decide what his role is between now and July 20<sup>th</sup>.  
24 He stated currently he serves as the City's Special Master and if the Commission wants him to serve  
25 as the Acting City Attorney until July 20<sup>th</sup> he would have to resign as the Special Master effective  
26 immediately.

27  
28 Mr. Cino stated there is nothing in the City Attorney's contract that says the Commission can  
29 terminate him for breach of contract. He stated the four (4) reasons the City Attorney can be  
30 terminated for are a felony, unethical conduct, a crime of moral turpitude and an illegal act. He stated  
31 there is a provision to withhold salary at which time the City Attorney has the option to resign and  
32 take severance pay.

33  
34 Mr. Cino suggested designating someone to be Mr. Trovato's point of contact and Commissioner  
35 Zischkau stated he assumed based on Monday's motion that the City Manager would be the point of  
36 contact.

37  
38 Commissioner Zischkau asked to clarify with the City Manager that the night after the meeting IT  
39 shut down Mr. Trovato's access to the email system and Ms. Miller replied IT shut down his  
40 computer access that evening, he gave her his keys and he came in Tuesday to remove personal items  
41 from his office. Mr. Narvaez stated after the meeting at the direction of the City Manager he turned  
42 off Mr. Trovato's active directory access which is how he would login to the City network. He stated  
43 he cannot in the building or remotely access his email account.

44  
45 Commissioner Zischkau asked who has access to everyone's email accounts and Mr. Narvaez replied  
46 the City Manager's office, the City Clerk's office, IT staff and his senior analyst. Ms. Miller clarified  
47 that it is not the whole departments, she has access as City Manager and the Deputy City Clerk and

1 Records Coordinator have access because of the volume of public record requests received for emails  
2 and IT has two (2) people with access.

3  
4 Commissioner Denizac asked if the previous City Manager had access to everyone's email and Mr.  
5 Narvaez replied not to his knowledge. Commissioner Denizac stated it is one thing for the City Clerk  
6 to have access due to the public record request but, when she researched this issue it is out of the  
7 norm. Mr. Cino stated he agreed but, tonight's meeting is to discuss the City Attorney position.

8  
9 **Motion carried with members voting as follows: Commissioner Denizac, For; Commissioner**  
10 **McFall-Conte, For; Commissioner Zischkau, For; and Vice Mayor Carmolingo, For.**

11  
12 **Motion by Commissioner Zischkau, seconded by Commissioner McFall-Conte to hire**  
13 **Charles Cino as Acting City Attorney until the next Regular City Commission meeting at the**  
14 **hourly marketable billable rate of \$165 per hour and simultaneously accept his resignation**  
15 **as Special Magistrate without prejudice.**

16  
17 **Motion carried with members voting as follows: Commissioner Denizac, For; Commissioner**  
18 **McFall-Conte, For; Commissioner Zischkau, For; and Vice Mayor Carmolingo, For.**

19  
20 Commissioner Zischkau asked Vice Mayor Carmolingo if he had any advice as to how the  
21 Commission should proceed to supervise the passage of legal activity from Mr. Trovato to Mr.  
22 Cino between now and the next Regular City Commission meeting. Vice Mayor Carmolingo  
23 replied no but, he has asked Ms. Miller to call the Assistant City Attorney back from his vacation.

24  
25 Commissioner Zischkau stated after speaking with Mr. Cino he learned that he would be willing to  
26 support the Assistant City Attorney as a consultant if the Commission chose to put him in charge  
27 at some point after or at the next Regular City Commission meeting and he could make a motion  
28 where the Commission could prepare for that provisionally that the Commission would offer a  
29 consulting agreement on the same terms to Mr. Cino if the Assistant City Attorney is willing to  
30 accept the responsibility of Acting City Attorney at the next meeting. Commissioner Denizac  
31 stated that is something she would not support and Commissioner McFall-Conte stated the  
32 Commission needs to wait until the outcome at the July 20<sup>th</sup> meeting.

33  
34 Commissioner Denizac suggested the City Manager look at options in case Mr. Trovato decides to  
35 take the severance package. Commissioner Zischkau stated he thinks the Commission could use  
36 Randal Hanson in his current capacity as Assistant City Attorney. Ms. Miller stated the City  
37 Charter requires the Commission to appoint an Acting City Attorney. Mr. Cino stated there is no  
38 time limit to appoint an Acting City Attorney and it could take months to replace the City  
39 Attorney but, he is willing to help and he will provide the City Manager with the name of two (2)  
40 law firms that might be willing to work with the City.

41  
42 Commissioner McFall-Conte asked to add to the next Regular City Commission meeting an item  
43 to make Mr. Cino the City's Special Magistrate and in the mean time if the City Manager could  
44 get a list of law firms that might work with the City.

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46 **4. ADJOURNMENT:**  
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1 There being no further business, the meeting adjourned at 5:15 p.m.  
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6 **ATTEST:**

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**Michael Carmolingo, VICE MAYOR**

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**Joyce Kent, DEPUTY CITY CLERK**

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