

**RESOLUTION:** \_\_\_\_\_

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3 A Resolution of the Mayor and City Commission of the City of South Miami,  
4 Florida, expressing the City Commission's intent to indemnify and defend its  
5 currently appointed officials from claims made against them based on  
6 decisions or actions they have taken or will take within the course and scope  
7 of their duties; and providing an effective date.

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9 Whereas, Section 768.28(9)(a), Fla. Stat., provides that “No officer, employee, or  
10 agent of the state or of any of its subdivisions shall be held personally liable in tort or named  
11 as a party defendant in any action for any injury or damage suffered as a result of any act,  
12 event, or omission of action in the scope of her or his employment or function, unless such  
13 officer, employee, or agent acted in bad faith or with malicious purpose or in a manner  
14 exhibiting wanton and willful disregard of human rights, safety, or property”, and  
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16 Whereas, Section 111.07, Fla. Stat., provides that, “Any municipality, is authorized  
17 to provide an Attorney to defend any civil action arising from a complaint for damages or  
18 injury suffered as a result of any act or omission of action of any of its officers, employees, or  
19 agents for an act or omission arising out of and in the scope of his or her employment or  
20 function, unless, in the case of a tort action, the officer, employee, or agent acted in bad faith,  
21 with malicious purpose, or in a manner exhibiting wanton and willful disregard of human  
22 rights, safety, or property. Defense of such civil action includes, but is not limited to, any  
23 civil rights lawsuit seeking relief personally against the officer, employee, or agent for an act  
24 or omission under color of state law, custom, or usage, wherein it is alleged that such officer,  
25 employee, or agent has deprived another person of rights secured under the Federal  
26 Constitution or laws”; and  
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28 Whereas, the City Commission desires to indemnify its current appointed officials to  
29 the full extent authorized by law to enable those officials to fulfill their duties without fearing  
30 being subjected to liability in their individual capacities for decisions they make; and  
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32 Whereas, there are pending matters which the City needs to investigate to defend  
33 itself against anticipated litigation, as well as potential fraud, dishonesty or acts of bad faith  
34 that may occur against the City; and  
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36 Whereas, current appointed officials, agents and employees of the City, including but  
37 not limited to the Acting City Manager, the City Attorney, and the City Clerk, routinely act  
38 within the scope of their duties and of our Charter; and  
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40 Whereas, current appointed officials of the City, from time to time leave the  
41 employment of the City for various reasons, wherein they are no longer officials of the City  
42 of South Miami; and  
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44 Whereas, there is no clear provision in our code to protect current appointed officials  
45 of the City after they leave the employ of the City from being sued; and  
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47 Whereas, the duties of the City Commission to indemnify said current appointed  
48 officials, does not stop if said officials leave the employment of the City.

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2           Whereas, it is thus necessary and proper to continue to protect, indemnify and hold  
3 harmless current City appointed officials acting within the scope of their duties, even after  
4 they leave the employment of the City.

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6 **NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY**  
7 **COMMISSION OF THE CITY OF SOUTH MIAMI, FLORIDA:**

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9           **Section 1:** that it is hereby declared the policy of the City of South Miami, Florida, to  
10 protect, defend, and indemnify current City appointed officials who have legally acted within  
11 the scope of their duties and under the Charter, from any and all lawsuits, losses, damages,  
12 settlements, claims, costs, expenses, or liabilities of every and any kind, including attorneys  
13 fees, in connection with or arising directly, or indirectly in carrying out the wishes of the City  
14 Commission, and acting legally and properly during the course of their employment with the  
15 City of South Miami.

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17           **Section 2:** Thus the scope of protection afforded to current City appointed officials  
18 of the City, including the Acting City Manager, the City Attorney and the City Clerk shall be  
19 extended so that protection shall be continued to be offered to them, even after they leave the  
20 employ of the City. Thus this resolution is intended to solely apply to the following current  
21 appointed officials, even if they leave the employ of the City, the Acting City Manager,  
22 Roger M. Carlton, City Attorney, Laurence Feingold, Deputy City Attorney Mark A.  
23 Goldstein, and City Clerk Maria M. Menendez.

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25           **Section 3.** This Resolution shall take effect immediately upon adoption, but shall  
26 not operate retroactively so as to apply to past appointed officials of the City.

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28           PASSED AND ADOPTED this \_\_\_\_\_, 2010.

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30 ATTEST:

APPROVED:

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33 CITY CLERK

MAYOR

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36 READ AND APPROVED AS TO FORM  
37 AND SUFFICIENCY:

COMMISSION VOTE:

Mayor Stoddard:  
Vice Mayor Newman:  
Commissioner Beasley:  
Commissioner Harris:  
Commissioner Palmer:

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41 City Attorney