

RESOLUTION NO. R2015-

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, CENSURING AND DENOUNCING COUNCILMEMBER FRANTZ PIERRE FOR HIS VIOLATIONS OF DECORUM AND CONDUCT UNBECOMING A MEMBER OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH BY MAKING FALSE AND MISLEADING COMMENTS DURING COUNCIL DISCUSSION REGARDING THE CITY'S PROCUREMENT PROCESS RELATED TO CITY RFP 2014-08; DIRECTING THE CITY ATTORNEY TO TRANSMIT A COPY OF THIS CENSURE RESOLUTION TO THE MIAMI-DADE COMMISSION ON ETHICS & PUBLIC TRUST FOR ITS EVALUATION OF COUNCILMAN PIERRE'S COMPLIANCE WITH APPLICABLE ETHICS LAWS.

WHEREAS, in accordance with the City of North Miami Beach's mission and goal to ensure municipal "financially responsibility"¹ while maintaining a high quality of service to the public, the City has responsibly explored ways to reduce the cost (both to the City as well as to its residents) of service delivery, including fiscal assessment of cost-savings achieved by contracting with private businesses; and

WHEREAS, consistent with said directive, the City conducted a financial evaluation of its solid waste collection services, which revealed an annual savings to the City of over \$2.5 million by privatizing the City's solid waste collection services; and

WHEREAS, in recognition of significant cost savings and enhanced services, the City Council at its July 21, 2015 meeting adopted Resolution No. R2015-59, awarding City RFP No. 2014-08 to Waste Management Inc. of Florida to perform solid waste collection, disposal, and recycling services for all residents and commercial establishments within the City²; and

¹ The City of North Miami Beach Council ranked "excellent municipal services" in a "financially responsible manner" within its most important Mission Goals of City Government, per the City's current Strategic Plan.

² City Resolution No. R2015-59 authorized the City Manager to negotiate a contract with Waste Management for the City's solid waste collection and recycling services, further providing for negotiation with the second-ranked firm Waste Pro of Florida, Inc., if negotiations with Waste Management proved unsuccessful.

WHEREAS, during the City Council's July 21, 2015 deliberation on the RFP award, City Councilman Frantz Pierre stated that he saw an advertisement depicting a photograph³ of City Mayor George Vallejo with a Waste Pro corporate officer proclaiming that the Company would be "Coming soon to North Miami Beach", and expressed his concern that this photograph presented a "taint" and an "impediment to the credibility of the [City's procurement] process," further suggesting that the Mayor and City staff would wrongfully put the "squeeze" on the first bidder, [Waste Management] so that the second bidder [Waste Pro] would be awarded the contract; and

WHEREAS, at the immediately following City Council meeting of August 4, 2015, the photograph was produced⁴, followed by Mayor Vallejo's explanation that the photograph (published in Waste Pro's newsletter and independently sent by it) was in fact taken at a local Chamber of Commerce event, depicting the Mayor's handing to Waste Pro its Chamber membership plaque⁵, and which newsletter was devoid of any language (as previously alluded to by Councilman Pierre) which would suggest that the City's contract award was in any way a "done deal" or that the related procurement process was otherwise "tainted". When provided an opportunity to explain his reasoning for stating that the photograph suggested a "taint" on the process or an endorsement by the Mayor, Councilman Pierre was silent, offering no explanation; and

WHEREAS, it is a well-recognized rule of law that a City's award of a contract for municipal services based upon competitive bidding has been mandated to protect against collusion, favoritism, and fraud in the award of public contracts. However, rather than benefiting the public by participating in a well-reasoned/fact-based resolution of the instant solicitation for contract award⁶, Councilman Pierre presented false and unfounded implications that the City's procurement

³ Councilman Pierre failed to produce the photograph at the Council meeting, and stated that he could only recall that he saw the photograph "somewhere".

⁴ During the public comment portion of the Council meeting, an individual purporting to represent City Sanitation employees submitted into the record the subject photograph, requesting that the City "reconsider all this contracting out...".

⁵ The Mayor further stated that he has customarily (as the City's ceremonial head) been photographed a countless number of times handing Chamber membership plaques to "hundreds" of Chamber members, and that such photographs on their face have never constituted an endorsement.

⁶ Understandably, the subject contract award was politically sensitive and controversial, involving the City's privatization of Sanitation services currently serviced by City employees.

process was tainted, and that certain City personnel related to that process (including the Mayor as well as members of the City Administration) were misusing their official positions, all of which had the effect of disrupting and unnecessarily questioning the City's procurement process; and

WHEREAS, it is further well-recognized that elected officials in the City of North Miami Beach are subject to mandatory compliance with the Miami-Dade County Ethics Code which prohibits City officials from providing false information to the public⁷, and further prohibits City elected officials from misusing their official positions for the benefit of themselves or a third party (not otherwise sanctioned by law)⁸. The above record-statements reflect that Councilman Pierre knowingly provided false and misleading information to the public, which action appears to have been made to impact a contract award for the benefit of himself (via garnering favor with those objecting to the City's contract) and/or another person (i.e., persons objecting to the City's contract); and

WHEREAS, pursuant to the City's Home Rule powers and in accordance with Robert Rules of Order⁹, the Mayor and City Council hereby censure and denounce Councilman Frantz Pierre for making false and misleading statements, inferring that the City's procurement process in relation to City RFP 2014-08 was tainted, for the false and unfounded statements inferring that certain City personnel related to the City's subject procurement process (including the Mayor as well as members of the City Administration were misusing their official positions), and for Councilman Pierre's related violations of decorum, as set forth hereinabove. The Mayor and City Council further direct the City Attorney to transmit a copy of this Censure Resolution to the Miami-Dade County Commission on Ethics and Public Trust for its evaluation as to allegations set forth therein in order to determine Councilman Pierre's compliance with County ethics rules.

⁷ See, Miami Dade County Charter, Citizens' Bill of Rights at (A)(2): *Truth in Government*: "No...Municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public"; and City Charter, sec. 36 (A)2.

⁸ See, Miami-Dade County Code sec. 2-11.1(g): *Exploitation of official position prohibited*. No [City Councilmember] shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the [City Council].

⁹ Robert's Rules of Order has been adopted by the City as its parliamentary law applicable to members of the City Council. See, City Code section 2-1.4. (See, Robert Rules of Order Newly Revised⁹, 11th ed. (Da Capo Press, 2011) at sections 43, 60 and 61.)

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of North Miami Beach, Florida.

Section 1. The foregoing recitals are true and correct.

Section 2. The Mayor and City Council hereby censure and denounce Councilman Frantz Pierre for the above-referenced false and unfounded statements inferring that the City's procurement process in relation to City RFP 2014-08 was tainted, for the false and unfounded statements inferring that certain City personnel related to the City's subject procurement process (including the Mayor as well as members of the City Administration were misusing their official positions), and for Councilman Pierre's related violations of decorum, as set forth hereinabove.

Section 3. The Mayor and City Council hereby further direct the City Attorney to transmit a copy of this Censure Resolution to the Miami-Dade County Commission on Ethics and Public Trust for its evaluation as to allegations set forth therein in order to assess Councilman Pierre's compliance with County ethics rules (including but not limited to County Charter's Bill of Rights section (A)2, and County Code section 2-11.1(g)).

Section 4. This Resolution shall become effective immediately upon adoption by a majority vote of the City Council.

APPROVED AND ADOPTED by the City of North Miami Beach City Council at the regular meeting assembled this ___ day of **August 2015**.

ATTEST:

PAMELA L. LATIMORE
CITY CLERK

(CITY SEAL)

GEORGE VALLEJO
MAYOR

APPROVED AS TO FORM:

JOSE SMITH
CITY ATTORNEY

Sponsored by: Councilwoman Marlen Martell