



## CITY OF TAMARAC'S CONFIDENTIAL EMPLOYMENT INVESTIGATION REPORT



*Conducted by Levi G. Williams, Jr., Esq.*

*December 30, 2019*

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# THE CITY OF TAMARAC

## CONFIDENTIAL EMPLOYMENT INVESTIGATION REPORT

**Date:** December 30, 2019

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**RE:** COMMISSIONER MARLON BOLTON'S CONDUCT RESULTING IN HR AND RESIDENTS' COMPLAINTS

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### INTRODUCTION

The City of Tamarac (the "City") is home to a wonderfully diverse melting pot of residents including American Indians, Pacific Islanders, African Americans, Hispanics, Asians and many others. According to the Census 2018 database<sup>1</sup>, 39.3% of Tamarac residents refer to themselves as: White (non-Hispanic); 28.6% of Tamarac residents refer to themselves as Black or African American; and 27.5% of Tamarac residents refer to themselves as Hispanic or Latino (*Exhibit 1*). The City is experiencing the same demographic changes as all other cities in the South Florida region. The population is becoming younger and more diverse, and the City is positioning itself to meet the service demands of its new residents.

The City of Tamarac covers an area of 12 square miles and is one of Broward County's newer additions, having been incorporated in 1963. The City Manager is the chief administrative officer<sup>2</sup> and is responsible to the Commission for the administration of all City affairs placed in his charge by or under the City's Charter. *Code of Ordinances City of Tamarac, Florida Codified through Ordinance No. O-2019-01, enacted January 23, 2019. (Supp. No. 100).*

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<sup>1</sup> <https://www.census.gov/quickfacts/fact/table/tamaraccityflorida/PST045218#>

<sup>2</sup> C. MANAGER/ADMINISTRATOR The council-manager form of municipal government provides for a separation of legislative and executive powers. Legislative authority is vested in the council, while a manager, appointed by the council, serves as chief administrator. Depending on local preference, the administrator position may be titled "manager" or "administrator." *The Florida Municipal Official's Manual: A publication of the Florida League of Cities with the assistance of the John Scott Dailey Florida Institute of Government, 2013.*

The many stakeholders within the City contributed to the “2014/15 Strategic Plan: Getting Us There from Here” (Exhibit 2)<sup>3</sup> which was based on the following five (5) strategic goals adopted a few years ago:

1. Inclusive Community;
2. Healthy Financial Environment;
3. Dynamic Organizational Culture;
4. Clear Communication; and
5. A Vibrant Community

In Exhibit 2 the City’s own reported demographics are 48.0% White, 23.5% Hispanic, and 22.5% Black, showing 9-5 percentage points off from the Census data. The City’s reported “City employee demographics” shows the following data: 48.0% White, 21.0% Hispanic, and 24.0% Black. The reported community demographics are remarkably close to the City’s employees’ demographics.

The five (5) strategic goals dovetail in the City’s Vision, Mission and Values, as stated below (Exhibit 3):

**Vision:** *The City of Tamarac, our community of choice,-Leading the Nation in quality of life through safe neighborhoods, a vibrant economy, exceptional customer service and recognized excellence.*

**Mission:** *It is our job to foster and create an environment that:*

- *Responds to the Customer*
- *Creates and Innovates*
- *Works as a Team*
- *Achieves Results*
- *Makes a Difference*

**Values:** *As Stewards of the public trust we value:*

- *Vision*
- *Integrity*
- *Efficiency*
- *Quality Service*

This investigation revolves around allegations made by City employees, residents, and Broward residents involved in the City’s election of 2018 against City Commissioner Marlon Bolton. The

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<sup>3</sup> <https://www.tamarac.org/141/Strategic-Planning>

allegations range from allegations that his actions created a hostile work environment to campaign violations.

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The City opt to appoint a special counsel to perform this particular investigation due to the fact that the Respondent is a sitting commissioner to whom the City Manager, and necessarily exempting his subordinate(s) (the HR Director/Department), and the City Attorney all whom report as direct reports. The special counsel assignment is intended to provide the City employees with an objective, fair and impartial investigation of their complaints free of any taint of political bias.

#### PARTIES

City Complainants<sup>4</sup>: Robyn Thalenfeld; Elise Boston; John Coates; Billy Duesler, and Chris Dixon.

Resident Complainants: Larry Goehrig and Ana Fusco.

Respondent: Marlon B. Bolton, Commissioner Dist. 1

#### EVENT LOCATION

This investigation involved multiple events from July 2017 to present in various locations including: City Hall, the Caporella Aquatic Center, and the Tamarac Library.

#### EMPLOYER

The employer is the City of Tamarac, a body politic and corporate.

#### CONFIDENTIALITY

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<sup>4</sup> Prior to this Investigative Report being submitted as a final work product, the following individuals withdrew their complaints: Linda Probert, Rance GaedeZach Steiner, and Mildred Velasquez. Ergo, their complaints and associated statements will not appear in this Investigative Report. However, as any written complaint is a public record, it is important to protect the objectivity of this investigation in preserving the Respondent's responses to these complaints as there are no other writings to ensure his responses are preserved. Consequently, same will appear in this Investigative Report.

The Florida's Public Records Act, codified in F.S. §119.01 *General state policy on public records*, states: (1) It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency. This is not an opinion on whether or not this report or any portion of this report is confidential as that determination is a legal determination to be made by the City Attorney.

## INTERVIEWS

All interviews were performed at the City of Tamarac, 7525 NW 88<sup>th</sup> Ave., Tamarac, FL 33321. The following individuals were interviewed in this investigatory process:

1. 11/26/18 Mildred "Millie" Velasquez, Tech-HR Risk Management-Complainant\*
2. 11/26/18 Robyn Thalenfeld, Executive Assistant to the City Manager-Complainant
3. 12/12/18 John Coates, Lieutenant-Complainant
4. 12/12/18 Billy Duesler, Captain-Complainant
5. 12/13/18 Chris Dixon, Captain-Complainant
6. 12/13/18 Larry Goehrig, Resident/Candidate Distr. 2.-Complainant
7. 12/13/18 Zach Steiner, Water System Operator, Complainant\*
8. 12/13/18 Rance Gaede, Recreation Superintendent, Witness\*
9. 12/13/18 Linda Probert, Asst. Director of Parks and Recreation, Complainant\*
10. 12/14/18 Elise Boston, Public Info. & Media Specialist-Complainant
11. 12/14/18 Pat Teufel-City Clerk-Witness
12. 12/14/18 Ana Fusco, Pres. BTU-Complainant
13. 02/17/19 Marlon B. Bolton, Commissioner Dist. 1-Respondent
14. 03/06/19 Michelle J. Gomez, Mayor-Witness
15. 04/04/19 Debra Placko, Vice Mayor/Dist. 4-Witness
16. 04/09/19 Mike Gelin, Commissioner Dist. 2-Witness
17. 04/09/19 Julie Fishman, Commissioner Dist. 3-Witness

## SUMMARY OF EVIDENCE

### ROBYN THALENFELD:

Ms. Thalenfeld provided me with a copy of notes she made of the 7/10/17 incident recounting Commissioner Bolton's interactions with Ms. Velasquez and Elise Boston, and same was considered in full in the analysis of this investigation. (*Exhibit 6*).

In her interview with this investigator, Ms. Thalenfeld advised that she has worked for the City from 1996 to present as the Executive Assistant to the City Manager, and part of her duties involved overseeing the administrative Coordinator position that was held by Ms. Velasquez until she sought reassignment.

Ms. Thalenfeld advised that Commissioner Bolton's involvement in city management started after his election in 2016. Further, his 2017 travel budget was an all-time high at approximately

\$19,000.00. She stated that the City runs monthly travel accounts based on a standard mathematical process. The public records request for the commissioners' travel budget was a projection based on what we think would be spent for the selected travel itineraries. However, for FY 2018 she stated that the average commissioner's travel budget was around \$8,500.00 and the Mayor's was approximately \$10,000.

Ms. Thalenfeld recounted that in March 2017, Commissioner Bolton flew to DC for an event. While in Washington he advised that he had to fly back that Friday because his son had an asthma attack. He then flew back to DC on Sunday. Upon his return he demanded to be reimbursed for the additional costs without presenting an invoice for the interim trips and alleged that the City was "nickeling and diming [him]."

On July 10, 2017, Ms. Velasquez called Ms. Thelenfeld and advised her that she was coming upstairs because Commissioner Bolton wanted to change the budget. He followed her upstairs and screamed that we were talking about him and we can talk to his face. He was loud and demanding that we change the values on the spreadsheet otherwise he would send emails to his constituents that staff makes errors. He made me feel extremely uncomfortable and he was unprofessional. He stated we have nowhere to go because of his position. He was raging at Ms. Velasquez so much so that she thought she was going to lose her job.

Additionally, prior to 2016 the commissioners were reimbursed for their travels. After 2016, the City paid in advance using the Pro Card and advanced per diems for Commissioners Bolton and Fishman. Also, Prior to 2016 there was a set budget for commissioners' travel and additional documentation was required before a commissioner blew the budget. She confirmed that Commissioner Bolton wanted his rewards linked to his Jet Blue and Marriott rewards accounts.

Ms. Thalenfeld advised that she was with Ms. Boston when Commissioner Bolton initially called regarding his City pictures. She stated that Ms. Boston answered on speaker phone so she could hear Commissioner Bolton screaming at her something to the effect of "...you make me look like an ape or a gorilla/or monkey...is this a joke...my head is so big." He accused Ms. Boston of doing it intentionally and advised that he was going to use his own photographer. She felt that his interaction with Ms. Boston qualified as bullying, was thuggish, accusatory, and generally unprofessional.

Ms. Thalenfeld also confirmed that he heard Commissioner Bolton tell "Millie" "Why do I need you...you are obsolete."

Ms. Thalenfeld advised that she would accept the findings and remedies presented by HR.

LIEUTENANT JOHN COATES, JR.:

Lieutenant Coates served the City as a firefighter for twenty-one years. He asserts that over the years he has worked with the City's administration and elected officials over the years with no problems individually or as a union.



Lieutenant Coates complaint revolves around the end of early voting in 2018 due to the fact that the Tamarac Fire Department were endorsing the opponents Mike Gelin and Elvin Villalobos. Lieutenant Coates alleged that Commissioner Bolton violated the elections laws in distributing campaign flyers in contradiction to law and an Order of 11/2/2018 (CACE 18-025690), which prohibited the distribution of said campaign flyers.

Additionally, Lieutenant Coates alleged that Commissioner Bolton violated the requirement of no electioneering within 100 feet of the entrance to the polling room to advise voters that to vote their “skin color,” indicating African-American, and that Michelle Gomez is a Republican, in a nonpartisan race for Mayor. Lieutenant Coates was further annoyed that Commissioner Bolton and County Commissioner Dale Holness were allowed to have music and people (Party at the Polls), including the “tamarac talk,” within 100 feet of the polling entrance.

He further alleged that Commissioner Bolton, at the polls, stated that when Mike Gelin and Elvin Villalobos gets in they were going to have a meeting as he (Commissioner Bolton) had two years to go after his (Lieutenant Coates) pension. Lieutenant Coates also asserted that Commissioner Bolton advised that they were going to fire the City Manager and install Chief Sayles. This is in addition to the rumors that Ilene Lieberman and Commissioner Bolton, presumably if the elections had gone their way, would also fire the City attorney.

Lieutenant Coates recounts another exchange with Commissioner Bolton where he was engaged in a campaign debate with two other firefighters, Omar Jirau and Donny. Commissioner Bolton allegedly became upset and advised that he was going to have Mr. Jirau terminated or reassigned. Lieutenant Coates interjected and advised Commissioner Bolton that he could not do that to which Commissioner Bolton advised that “I have two on my list, you will be three.”

Lieutenant Coates did not file a grievance pursuant to the CBA.

WILLIAM DUESLER:

Captain Duesler advised that he has worked for the City for almost fifteen years. In that time he had never had a problem with a manager or an elected official, it has previously been a positive experience. He has been the IAFF Loc. 3080 President for the past two years, and was Assistant President for the four years prior.

He recounted that in October 2016 then Mr. Bolton approached him to not endorse the incumbent, Pam Bushner, and to endorse him instead. He advised Mr. Bolton that the choice was made by a previous Union President. Commissioner Bolton won in that race.

In June or July of 2018, Commissioner Bolton approached Captain Duesler again regarding an endorsement. He requested that the Union endorsed Mike Gelin. We were supporting Larry Goerhig because we had concerns about a rumor that if Commissioner Bolton’s candidates got elected they would fire the City Manager and make Ilene Lieberman the new city manager and place her husband as the city attorney. Captain Duesler also advised that at that encounter Commissioner Bolton stated “I hope you are hiring Black firefighters.”

The next encounter was during Early voting in 2018. He alleged that Commissioner Bolton had illegal palm cards, plus there was some wrongful allegations regarding the signage for his candidates-“Signgate.” He showed very little respect for the City’s firefighters as he pulled our cards out of voter’s hands to replace it with his own, as witnessed by Lt. Mike Boyhan. The first day Captain Duesler was out at the polls he alleged that he heard other poll workers commenting on how an elected official could act so badly in demanding that voters only vote for Black people. Captain Duesler alleges that the second day he was at the polls he heard Commissioner Bolton tell a voter that Michelle Gomez was a White Jew-don’t vote for her-Ms. Gomez confronted Commissioner Bolton. He asserts that he left because it bothered him.

Captain Duesler alleges that on election day he was driving around the polls with relief supplies with Chris McCarthy in the Sabal Palm area. Danny Acosta told him that he heard Commissioner Bolton tell a voter to vote the color of their skin, Black. Captain Duesler said that information “pissed” him off he felt it was racist and made him feel terrible. As a firefighter he said we do charity events for all people and he run into burning buildings, sacrificing his life, for all residents regardless of race or religion. He ended with, “I will always work for the residents.”

Captain Duesler did not file a grievance pursuant to the CBA.

CHRIS DIXON:

Captain Dixon has been a firefighter for the City since 1998 and a Member of the IAFF Local 3080. Captain Dixon recounted his experience at the polls and stated he does not like identity politics. While at Early Voting at the Tamarac Library he alleges that he saw Commissioner Bolton, Mr. Villalobos and Mr. Gelin take cards out voters’ hands and replace it with their own. He also heard Commissioner Bolton tell voters that Ms. Gomez is a Republican...she is a Trump supporter...she can’t even speak Spanish...and that she is a White Jew. Ms. Gomez retorted that he didn’t knowing anything about her. He heard from Daniel Acosta and Lt. Korte that Commissioner Bolton also stated to voters that they should not listen to the firefighters just vote Black. It is his understanding that Commissioner Bolton threatened Lt. Coates with termination or reassignment.

Captain Dixon also voiced the rumor that if Mr. Gelin and Villalobos won that Commissioner Lieberman would come in and bring her husband.

Captain Dixon believes that Commissioner Bolton has made the working environment hostile for him and others. He is somewhat in shock at his behavior and certainly has a level of fear as to his own tenure with the City.

Captain Dixon expects his elected officials to have an attitude that reflects leadership, professionalism and courtesy to all.

Captain Dixon did not file a grievance pursuant to the CBA.

LARRY GOEHRIG:

The City provided me with a copy of Mr. Goehrig's statement and same was considered in full in the analysis of this investigation. (*Exhibit 7*).

Mr. Goehrig ran against Commissioner Gelin in the last race. Mr. Goehrig provided this Investigator with videos and emails in support of his campaign law violations. The sum and substance of which is the allegation that Commissioner Bolton intentionally violated the election laws and even a Court's Order (*Exhibit 8*), in the palm cards he was allegedly handing out all the way up to and through election day. Unfortunately, the City's HR venue is not the venue for relief.

Mr. Goehrig however, advised that he heard Commissioner Bolton tell a voter that "we don't need another White cracker on the board." When he challenged Commissioner Bolton about the statement, Commissioner Bolton allegedly said "there is nothing you can do about it."

Mr. Goehrig further advised that Commissioner Bolton was very intimidating and bullying at the polls and the Commissioner allegedly even videotaped him and cursed at him. Mr. Goehrig witnessed Commissioner Bolton doing the same things to the firefighters and teachers.

PAT TEUFEL:

Ms. Teufel is the City Clerk. She advised that she has worked for the City for fifteen years and she had not seen a commissioner act the way that Commissioner Bolton acted in July of 2017. She advised that after the workshop she needed each Commissioner to sign the documents for a bond closing. She sought out Commissioner Bolton and came up on him having a loud conversation with Ms. Velasquez about travel. See *Exhibit 4* and *Exhibit 5*. He had a very angry tone. He was derogatory and nasty. She said it was sad but morale is good in general with the other commissioners. The City is weary from Commissioner Bolton and he refused to sign the bond documents.

ELISE BOSTON:

Ms. Boston has worked for the City for almost six and a half years as the Public Information & Media Specialist. She cites the seminal event between her and Commissioner Bolton as occurring on or about July 10, 2017. On or before this date, the media had requested the travel expenses for the commissioners. Ms. Boston left the workshop and went upstairs to speak with Robyn Thalenfeld, the Executive Assistant to the City Manager. Millie Velasquez also came up to speak with Ms. Thalenfeld. Ms. Velasquez was working on the numbers for Commissioner Bolton's travel expenses and they had started a brief discussion regarding Ms. Velasquez efforts. Allegedly, Commissioner Bolton came into the City Manager's Office and shouted at Ms. Boston: "Don't talk about me...I am right here. You are trying to make me look bad...I am going to send a blast email to my constituents about you." Ms. Boston stated that this was not the first time he had bullied her, but it was the first time it had affected her so greatly. She had to go to a Historical

Society Luncheon and she did so shaken and holding back tears throughout the event. Ms. Boston felt Commissioner Bolton's behavior was needless, unconscionable, and abusive.

Ms. Boston advised of a second impacting incident. This incident revolves around Commissioner Bolton's Commission picture. Ms. Boston contracted with a professional photographer to take all the Commissioners' pictures. The photographer took two series of photos of Commissioner Bolton from which the Commissioner could select the photo for use by the City.

Photos were sent to Commissioner Bolton for selection with instructions. He sent back photos with touch-up instructions. The photos were touched up and returned to the Commissioner. On or about 2/15/17 Ms. Boston alleges that Commissioner Bolton said, "is this a joke? I look like a dead monkey in a casket. It's offensive and I don't like it. I am going to tell everybody at the Commission Meeting about the poor quality of your work. You make me look like a freaking female monkey." Ms. Boston alleges that Commissioner Bolton's comments from the dais was not only offensive but also colored her in the public light as a racist.

Ms. Boston further alleges that Commissioner Bolton continued to retaliate against her. At a Special Meeting, Ms. Boston presented her budget, which included a new hire (Marketing Specialist). Commissioner Bolton insisted from the dais that the person hired for the position needs to be young, in violation of the law. Ms. Boston advised that she wanted to advise him of this error so he could correct it from the dais, but his hostile and wrongful treatment of her has had a chilling effect upon her and her ability to perform her duties as it relates to Commissioner Bolton.

As evidence of the hostile work environment and chilling effect brought on by Commissioner Bolton, Ms. Boston advised of an initiative (Community Outreach) she brought before the Commission for review and approval. Commissioner Bolton immediately became upset and his response to this item was "I am not supporting it because when I brought it up the Commissioners would not do it...it's my program and I want my program." Because of his response the program died on the vine.

Ms. Boston asserts that if Commissioner Bolton had any issues with her performance, he should have followed the chain of command. The City Manager is in charge of all staff issues and Commissioner Bolton could have advised him of any dissatisfaction he had with her job performance for the City Manager to address, instead of his bullying and belittling statements from the dais at a public meeting.

ANA FUSCO:

Ms. Fusco is the President of Broward Teachers Union. She also owns a home in the City. Her issues revolve around Early Voting and the General Election. She advised that while campaigning for the Union's endorsed candidates Commissioner Bolton would walk up to voters and tell them that "That's not the palm cards to use," "the Teachers Union did not vet everybody," and while Commissioner Bolton did not personally take her cards out of voters' hands; he saw others doing it and refused to stop the behavior.

Ms. Fusco alleged that she heard Commissioner Bolton arguing with a firefighter over endorsements. Then she heard Commissioner Bolton say “I can only hope that a natural disaster will happen next election and firefighters will be pulled away to help victims and not be worried about a election.”

She alleged that she saw Commissioner Bolton, while at the polls, taking pictures of her friend’s, Liliana Ruido, backside after she stood up to walk away. She confronted the Commissioner and told him to leave her alone.

Commissioner Bolton attempted to intimidate me by commenting to several people about voting me out of office.

COMMISSIONER MARLON BOLTON:

This investigator met with Commissioner Bolton and shared the complaints of the complainants with him. He responded to most of them:

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ZACH STEINER:

Commissioner alleged that he was getting ready to leave his home when he heard Mr. Steiner shouting at his 100 year old neighbor. He looked outside and saw a white City van blocking his driveway. He alleged that Mr. Steiner was angry and venomous with his neighbor so he came outside to ask him to move his vehicle and was ignored by Mr. Steiner. He said that Mr. Steiner moved his vehicle but that was spot he was going to move his vehicle to so he asked him to move it again and he was angry and came back banging on his neighbor’s door. Commissioner Bolton said he told Mr. Steiner he was a Commissioner and was a lot more courteous but he looked like he was on drugs but Mr. Steiner allegedly told him that the City had him under stress. Commissioner Bolton alleged he emailed the City Manager on 8/1/18 and provided with a copy of the email. See *Exhibit 10*.

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LINDA PROBERT:

Commissioner Bolton stated that he was volunteering for Elvin Villalobos at the Aquatic Park and was told that he could bring campaign materials into the facility. He advised that there was a policy to allow it and he emailed it to Greg Warner. (*Exhibit 11*). He further alleged that Larry Goehrig was inside handing out campaign materials. He provided me with a picture, but the picture shows only that the campaign materials was in Mr. Goehrig’s back pocket. He further advised that the League of Women Voters said only advocacy for ballot questions was allowed; but he saw it as the same thing. He alleged that he emailed the City with the issue on 9/29/18 at 12:28pm. He further alleged that Michelle James (an opponent) had a contract with Parks and Recreations insinuating that friendship may be a motive as to why he was treated differently.

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ELISE BOSTON:

Commissioner Bolton alleges that he only interacted with Ms. Boston through the City Manager and had very nominal one-on-one interaction with her. He acknowledged that he had some conflicts with her:

1. The first was regarding the Commission pictures. He did not like the pictures that were taken so he had a friend airbrush the pictures. He alleged that Ms. Boston got upset when he asked her to use the touched-up pictures and said no. He later sought and received approval from the City Manager. He denied making any comment regarding “monkey” or “ape.”
2. At one point the Sun Sentinel was looking into commissioners’ travel patterns. He alleged that he went to look at the numbers and when he walked in he heard Ms. Boston saying “I can’t stand him etc.” When He asked her to repeat herself, he alleged that Ms. Boston said “I would rather not.” He denied that he threatened to send an email blast regarding the competency of City staff. However, he alleged that when he inspected the budget, he saw that he was over budget but knew it was an error. He communicated with Robyn Thalenfeld, and Ms. Boston admitted that they miscalculated his travel budget at approximately \$17,000. He acknowledged that he did not understand the budgeting process during his first year as he does now. He alleged that his travel budget never reached the \$22,000 or \$27,000 anticipated; but asserted that Ms. Boston reported the mistaken budget sum purposely to impact him negatively in the press. Regarding the use of personal reward points, he alleged that everybody applies city trips to their personal rewards program.

Additionally, Commissioner Bolton alleged that Ms. Boston has been dismissive of him from day one. He stated that she never says good morning to him and passes him with her head down. He alleged that she never uses his title but does so for other commissioners. He denied calling Ms. Boston a racist publicly. He noted that Ms. Boston allegedly did not include Boyd Anderson in Leadership Tamarac, and the program was composed of very majority leaning schools.

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MILLIE VELAZQUEZ:

Commissioner Bolton acknowledged that Ms. Velazquez was his Assistant but has no memory of any negative interactions with her.

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ANA FUSCO:

Commissioner Bolton alleged that Ms. Fusco made allegations about everyone that BTU did not endorse. He did not comment on her allegations against him simply stating that they were unfounded and without merit.

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LARRY GOEHRIG:

He did not want to discuss Larry Goehrig.

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JOHN COATES:

Commissioner Bolton alleged that he was not aware of a court injunction regarding the campaign materials he was allegedly handing out in support of his candidates. He alleged that on the first day Lt. Coates advised him that he had a grievance with the City and the City owes him a lot of money and whether Commissioner Bolton was going to help him get his money. He said I am going to follow you like a hawk to which Commissioner Bolton said I can’t talk about this stuff. Commissioner Bolton alleged that Lt. Coates followed him for the length of early voting.

Commissioner Bolton denies that he threatened Lt. Coates retirement as he had already retired or is about to retire and there is no list. Commissioner Bolton advised that he recently voted yes for the CBA.

We discussed some of the comments regarding telling people how to vote. Commissioner Bolton said that he told people to vote their conscience not to vote their skin color. Further, he cited an occasion where a Hispanic lady walked up and asked him if Mr. Villalobos was going to be the first Hispanic commissioner; she said Ms. Gomez was the first Hispanic commissioner. He advised her that “our beloved Mayor is a White Jewish individual and only claims to be Hispanic because she spent two years in a Hispanic household.” Commissioner Bolton alleged that he said this to help Mayor Gomez; as Tamarac is predominantly White and Jewish and this was a positive thing, but she should be mindful of identity politics.

He alleged that he never threatened anyone with reassignment. But as they were tormenting him and his candidates, he did threaten to call Billy to have them reassigned to a different polling location.

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CHRIS DIXON:

Commissioner Bolton alleged that the only time he met Mr. Dixon was during the campaign. Further, he denied that all he did was remind Ms. Gomez of her pledge against using identity politics. He viewed his actions as more of a mediator versus an agitator insisting that Ms. Gomez tell people that she is a White Jewish female. He witnessed Elvin Villalobos telling voters that he was Hispanic which may have forced Ms. Gomez to tell voters that she was Hispanic, but to also tell voters that she was adopted for couple years by an adoptive farther who was from Spain.

He denied ever telling any voter to vote Black or that “we don’t need another White cracker on the board.” He denied using religion to support candidates.

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MISCELLANEOUS:

As to allegations of firing the City Manager and/or the City Attorney if he had a solid voting bloc, Commissioner Bolton advised that he has the utmost respect for each of them and enjoys working with them.

Commissioner Bolton stated that he does not write articles for the Tamarac Talk, but does send in press releases from time to time without any compensation. He further alleges that someone placed a tracker on his car, which his mechanic found, and have been trying to hack his phone.

Regarding the D.C. trip, Commissioner Bolton alleged that his son was sick so he bought a one-way ticket so that he could return home to his son if needed.

MAYOR MICHELLE J. GOMEZ:

Mayor Gomez first covered certain campaign behaviors of Commissioner Bolton that she found offensive. She advised that a few days after the 10/27/2018 shooting at the synagogue in Pittsburgh where 11 faithful were killed; Commissioner Bolton told residents that came to early voting “you

can't vote for her; she is a Jewish White woman who can't speak a lick of Spanish." This upset Mayor Gomez who said she responded, "yes I am Jewish." She alleged that Commissioner Bolton went further in indicating to Melinda Gordon that she should "vote for this..." pointing to his skin and stating to Diamond Morgan that she should vote for a Jamaican.

The Mayor also asserts that Commissioner Bolton misappropriated the City's name and/or logo for purely political purposes. She asserts that he utilized the City's name and/or logo in a political advertisement for Residents United (presumably associated with Residents United Network from California- addressing affordable housing, homelessness and economic opportunity), with its membership base being members of Commissioner Bolton's church congregation.

The Mayor advised that all commissioners went through Tamarac University where they learned the many facets of the City's governmental operations. She advised that Commissioner Gelin attended Tamarac University in 2009.

As to the specific allegations of the complainants, the Mayor noted as follows:

---

LIEUTENANT JOHN COATES:

The Mayor cited an occasion during the campaign where Commissioner Bolton stated that the City's plan to purchase a fire truck was a waste of resources. He was very antagonistic.

---

ELISE BOSTON:

While the Mayor did not witness the encounter between Commissioner Bolton and Ms. Boston, she did observe that Millie Velasquez was visibly shaken afterwards.

Mayor Gomez asserts that each Commissioner should be responsible for their individual actions. As it relates to Commissioner Bolton, Mayor Gomez does not believe he is fit to serve due to his unbecoming behavior as a representative of the City. We discussed possible discipline to be levied by the Commission, as a body corporate, if the allegations of the City's employee complainants are found to have merit. The Mayor asserts that the following disciplinary sanctions should be considered: (1) Removal from office, (2) Suspension, and/or (3) Censure.

VICE MAYOR DEBRA PLACKO:

Vice Mayor Placko advised that she would like to see the Commission commit to respecting each other, refrain from interrupting each other on the dais, and exhibit common courtesy towards each other. She noted that the new members interrupt the Mayor or speak over on a regular basis.

While she did not witness the event between Commissioner Bolton and Ms. Velasquez, she did hear a loud conversation that caused her to come out of her office. She saw that the tension was too much for "Millie" so she recommended that "Mille" take a private office to gather herself.



COMMISSIONER MIKE GELIN:

Did not have any independent knowledge or observations to contribute in regard to the complainants' allegations against Commissioner Bolton. He was, however, able to share his observations of certain complainants.

Commissioner Gelin noted that the firefighters endorsed, Larry Goehrig, who was running against Elvin Villalobos, a candidate supported by Commissioner Bolton. He felt that the firefighters were "very aggressive" and "targeted Marlon and Elvin to incite a physical reaction." He places no value in the complaints of Lieutenant Coates.

Commissioner Gelin voiced a number of concerns that he believes if addressed would alleviate the discord between the Commissioners. The first is that he believes that the Commissioners should have more detailed on-boarding. He advised that although Commissioners are elected for their leadership, the City fails to communicate the required processes involved in the day-to-day operations and decision making for the various departments that are responsible for the functioning of the City. This makes it difficult for Commissioners to make recommendations for change or enhancements in a way that City personnel can better receive them for action. Second, the Commission Meetings should be more structured-clear and decisive rules. Commissioner Gelin alleges that the Mayor changes the rules of the meeting when applied to African Americans. He cites the passing over of Commissioner Bolton for Vice-Mayor, the denial of County Commissioner Dale Holness from speaking at a City Commission meeting while, as a practice, allowing others to speak who were not on the agenda, and changing the location of Commissioner Report from the beginning of the agenda to the end when most residents have already left.

Although Commissioner Gelin did not have any personal or independent knowledge regarding the complaints made against Commissioner Bolton, he advised that if found to have merit, he believes a public reprimand or censure would be appropriate.

COMMISSIONER JULIE FISHMAN:

Commissioner Fishman's interview mostly revolved around the functional process of the commission meetings and peer-to-peer interaction by and between the commissioners. Her main point as to Commissioner Bolton is the need for him and all commissioners to respect the process. She is generally supportive of the idea of the Commission adopting a civility policy. She gave as an example the fact that at the last Commission Meeting two commissioners were shouting over the Mayor who was trying to get the meeting back on track. Commissioner Fishman insists upon all Commissioners maintaining a professional decorum and civility in representing the City and working with staff and each other.

Additionally, Commissioner Fishman has identified that some Commissioners feel that they need additional help in exercising their duties and have asked for a Legislative Aid position to be created and assigned to each Commissioner. The idea presented would only have three (3) such positions created which would report directly to the City Manager, as is required by the City's Codes. She

asserts that Commissioners Bolton and Gelin pushed back on the reporting requirement to have the Legislative Aids report directly to the Commissioners without consideration of the fact that such a change would require a charter amendment.

The lack of professionalism between Commissioners is of great concern. Commissioner Fishman expressed her annoyance and disappointment in her fellow Commissioner's behaviors. She believes that the unprofessional interactions directed towards her upon the dais is an effort to publicly shut her down and make her look like the "bad guy" in furtherance of preparations for the next election. She characterizes this behavior as being "sexist" and gives examples of Commissioner Gelin laughing and/or shaking his head as subtle attempts to invalidate her thoughts or ideas both on and off the dais. We discussed possible amelioration ideas which included appointing a Sergeant-at-Arms, having each Commissioner review Robert's Rules of Order, and developing more detailed board rules.

Commissioner Fishman was able to provide her observations regarding the complaints filed against Commissioner Bolton by employees and other stakeholders. We discussed the individual claims made by the employees.

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Elise Boston:

Commissioner Fishman has observed that the unprofessional actions of Commissioner Bolton towards Ms. Boston has "soured her to the job." She cited Commissioner Bolton's castigation of Ms. Boston's performance from dais as being "inadequate" or "poor" as examples. She believes that any criticism he may have of Ms. Boston's performance should have been addressed in private. She believes that his criticism of Ms. Boston publicly "took a difficult situation and made it worst."

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Millie Velasquez:

Commissioner Fishman did not observe the exchange between Commissioner Bolton and Ms. Boston as it related to Ms. Velasquez, but she heard Commissioner Bolton's voice as he was talking and it was loud enough for her to leave her office to see what was going on in the lobby area. She observed that Commissioner Bolton was upset at something Ms. Velasquez had done. Commissioner Bolton was allegedly shouting at Ms. Velasquez and waving his arms. Ms. Velasquez appeared intimidated, leaning as far back in her chair as possible cowering from the actions of Commissioner Bolton. Commissioner Fishman advised that Ms. Velasquez stepped out for a few moments and then later requested a transfer out of the department. It is Commissioner Fishman's understanding that Ms. Velasquez did so as she did not want to work with Commissioner Bolton anymore.

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LIEUTENANT JOHN COATES:

Commissioner Fishman advised that Lieutenant Coates shared with her that Commissioner Bolton advised him that he was going to make sure that certain firefighters were fired and that the service went to contract with BSO.

Generally, Commissioner Fishman believes that Commissioner Bolton practices discrimination on and off the dais in verbiage and behavior. Commissioner Bolton looks at the outside of a person and makes determinations based on color and race. She based this observation on a few examples

including his comments about the Mayor from the dais and comments during Early Voting. During Early Voting she observed Commissioner Bolton advising voters that Mayor Gomez was not really Hispanic but was just a “White Jewish woman.” She believes that he has a disregard for anybody that doesn’t look like him. Further, his belittling comments from the dais has created a hostile work environment for the City Attorney, City Manager, Greg Warner, Elise Boston, and Linda Probert.

While she had no independent knowledge regarding the circumstances surrounding Linda Probert, she advised that the Hispanic Vote event was a private event and since it is a 501(c)(6) they had requested that no campaign materials be brought into the event.

Commissioner Fishman believes that a reasonable Commission based sanction for Commissioner Bolton’s behavior would include censure and a public apology. She acknowledged that she has observed a sincere effort on his part to behave more appropriately over the last four (4) Commission meetings.

#### BARBARA TARNOVE:

The City provided me with a copy of Ms. Tarnove’s statement, a City resident and nonemployee, and same was considered in full in the analysis of this investigation. (*Exhibit 9*). Ms. Tarnove was not interviewed.

### ANALYSIS AND FINDINGS

#### STANDING:

Generally, the *City Complainants*: Mildred Velasquez; Robyn Thalenfeld; Elise Boston; John Coates Billy Duesler, and Chris Dixon; as well as the *Resident Complainants*: Larry Goehrig and Ana Fusco, each have standing to file a complaint/suit pursuant to the City Code Sec. 2-274. - Enforcement by suit: *The city commission or any resident or group of residents of the city may bring any appropriate suit to compel compliance with the provisions of this article.*

In reviewing the specifics of Larry Goehrig’s complaint and that of Ana Fusco, it is apparent that, while offensive and potentially in violation of F.S. 104 et seq., if true, their complaints would have been better resolved if lodged with the Florida Ethics Commission for the campaign violations alleged. Ergo, this Investigator will not address the matters alleged in either of their complaints in the analysis or findings.

#### LEGAL LIMITATIONS:

This matter has proven to be most difficult as the allegations were not by and between “employee and employee” or employee and employer/manager.” Instead, the operative complaints were made by City employees against a sitting City Commissioner. Under normal circumstances, we could

find guidance for a remedy in the City’s personnel manual<sup>5</sup>. The City policies that would normally be at issue, include but are not limited to the following: 2.01 General Provisions-Equal Employment Opportunity and Prohibited Discrimination; 2.02 Prohibited Discrimination-General; 2.03 Prohibited Harassment-General; 2.06 Responsibility to Report Discrimination and/or Harassment; 2.07 Retaliation; 2.08 Complaint Procedure; 2.09 Compliance; 10.01 A. and C.-Code of Ethics; 10.03 A. and B.-City Property; 11.01 Employee Discipline-General Overview; 11.03 Employee Discipline –All Employees Except at Will Employees; and 11.04 Examples of Reasons for Termination.

Further, as many of the allegations in the statements taken involve racial discrimination elements it is only natural that we consider the potential federal and state laws that could be in violation in this matter. Clearly, the preeminent body of law regarding racial discrimination would be *Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §§2000e et seq.* and the *Florida Civil Rights Act ("FCRA"), Sections 760.01 - 760.11, Florida Statutes*. Somewhat less known and used body of law that could also be applied in this matter for racial discrimination would be the *Civil Rights Act of 1986, 42 U.S.C.A. §1981*. The difference between §1981 and Title VII is that, unlike Title VII, §1981 does not have any caps and individual managers may have individual liability.

Commissioner Bolton is not considered an employer as the *42 U.S.C.A. §§2000e et seq.* defines an employer as:

(b) The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5 [UNITED STATES CODE]);

Nor is he considered an employee, as that term is defined as:

(f) The term “employee” means an individual employed by an employer, except that the term “employee” shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

Although not applicable here, the City’s policy on harassment is clear:

### 2.03 PROHIBITED HARASSMENT -GENERAL

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<sup>5</sup> *“City of Tamarac Personnel Manual.”* Effective January 1, 2015.

All employees are entitled to perform their work in an environment free from illegal harassment, either overt or covert, regardless of their race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability. The use of any derogatory terminology by any employee to refer to any identifiable group or individual is prohibited.

Any conduct which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment for that individual or group of individuals is prohibited.

However, as many of the complainants feared reprisal for coming forward and, indeed, two opt to withdraw their complaints based on such fears, it is important for this Investigator to articulate with specificity the laws against hostile work environment and retaliation in an effort to deter any such actions being encouraged or otherwise supported by the City Commission, whether intentionally or unintentionally:

#### HOSTILE WORK ENVIRONMENT RETALIATION

Title VII prohibits employers from retaliating against an employee “because [s]he has opposed any ... unlawful employment practice ... or because [s]he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.” 42 U.S.C. § 2000e-3(a). *Gowski v. Peake*, 682 F.3d 1299, 1311 (11th Cir. 2012).

To establish a prima facie case of retaliation, the plaintiff must show that (1) [s]he engaged in statutorily protected activity; (2) [s]he suffered a materially adverse employment action; and (3) there was a causal link between the two. *Dixon v. The Hallmark Companies, Inc.*, 627 F.3d 849, 856 (11th Cir.2010); *Gowski v. Peake*, 682 F.3d 1299, 1311 (11th Cir. 2012).

The requirement that the harassment be “severe or pervasive” contains an objective and a subjective component. *Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1276 (11th Cir.2002). “Thus, to be actionable, this behavior must result in both an environment that a reasonable person would find hostile or abusive and an environment that the victim subjectively perceive[s] ... to be abusive.” Id; *Gowski v. Peake*, 682 F.3d 1299, 1312 (11th Cir. 2012).

Discrete acts cannot alone form the basis of a hostile work environment claim. *See Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 970 (11th Cir.2008) (emphasis added); *see also McCann v. Tillman*, 526 F.3d 1370, 1378 (11th Cir.2008) (as opposed to “[d]iscrete acts such as termination, failure to promote, denial of transfer, or refusal to hire,” a hostile work environment claim addresses acts “different in kind” whose “very nature involves repeated conduct,” such as “‘discriminatory intimidation, ridicule, and insult.’ ” (quoting *Nat'l R.R. Passenger Corp. v.*

*Morgan*, 536 U.S. at 117, 122 S.Ct. 2061)); *Gowski v. Peake*, 682 F.3d 1299, 1312–13 (11th Cir. 2012).

#### RETALIATION; ADVERSE EMPLOYMENT ACTION

Retaliation means [discharging] [or] [demoting] [or] [suspending] [or] [taking certain adverse employment action against] an employee because the employee engaged in [a] protected activity.

An adverse employment action is retaliation if it affects the terms and conditions of employment and would discourage a reasonable employee in claimant's position from engaging in a protected activity. *F.S.* 448.101(5) and case law *Donovan v. Broward Cnty. Bd. of Comm'rs*, 974 So.2d 58, 60 (Fla. 4th DCA 2008); and *In re Standard Jury Instructions in Civil Cases--Report No. 2011-01 (Unlawful Retaliation)*, 95 So. 3d 106, 109–10 (Fla. 2012)

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**FINDING: WITH THE AFOREMENTIONED LEGAL ANALYSIS IN MIND, IT IS THE FINDING OF THIS INVESTIGATOR THAT AFFECTED EMPLOYEES MAY ONLY SECURE A REMEDY FROM THE CITY COMMISSION AND/OR THE GOVERNOR OF FLORIDA.**

#### COMPLAINTS:

The complaints of Mildred Velasquez; Robyn Thalenfeld; Elise Boston; John Coates Billy Duesler, and Chris Dixon all deal with a level of harassment, retaliation, and Commissioner Bolton's violation of City Code of Ethics, Sec. 2-400 *et seq.*, which is applicable whether conducting City business or on his personal time. Additionally, Commissioner Bolton's insistence on staff changing his travel budget report may be a violation of F.S. 838.022(1)(a) as well.

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**FINDING: EACH OF THE COMPLAINTS FILED BY THE CITY COMPLAINANTS ARE FOUND TO HAVE MERIT AND SUPPORT COMMISSIONER BOLTON'S VIOLATION OF CITY CODES. ALTHOUGH COMMISSIONER BOLTON PROFFERED EXPLANATIONS FOR THE ALLEGATIONS LEVIED AGAINST HIM, THIS INVESTIGATOR FOUND THEM TO BE WANTING AND SELF-SERVING AND WITHOUT MERIT.**

#### WITNESS STATEMENTS:

The witness statements of the Commissioners provided information relative to the allegations made by the City employees, but was riddled with many of their own complaints as to the functioning of the commission, the effectiveness of commission meetings, and the general lack of civility and professionalism being the root cause of what ails the proper function of the City Commission.

These complaints are relevant as they elucidate upon the behaviors alleged by the City complainants and we will attempt to address them in the recommendation section.

## ACTION TO RESOLVE COMPLAINTS:

As mentioned previously, Commissioner Bolton is not subjected to the authority of the City's HR Department nor is he an employee subject to the disciplinary policies of the City and the final decision of the City Manager. Thus, only the City Commission as a body politic and corporate may enter a final resolution to these matters, short of the Governor of Florida removing Commissioner Bolton under F.S. 112.50 *et seq.*

The City Commission has the following options:

1. Set a Special Set Commission Meeting to address this matter, as the only matter on the agenda;
2. Formally adopt this Investigator's Final Report, inclusive of evidence, analysis and findings;
3. Formally make any other findings that the Commission desires in this quasi-judicial process; based on facts and law (including the City Charter, policies and procedures);
4. Provide Commissioner Bolton with an opportunity to respond to any and all findings at the Special Set Meeting;
5. If the Commission as a body corporate so finds, publicly censure Commissioner Bolton<sup>6</sup>.
6. Adopt a civility policy reaffirming certain sections of the City Code and providing a structure for the Commission and the employees to move forward with confidence of no further violations.

## RECOMMENDATIONS

This investigator only tenders the following recommendations for the City Commission's consideration and provides further recommendations as follows:

1. This investigator has taken the liberty to prepare a proposed *Commission Code of Civility and Operating Procedures* for your consideration and attached hereto. It is recommended that the City Commission, in conjunction with the City Attorney and City Manager, consider the terms and conditions therein for adoption, subject to changes deemed appropriate.

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<sup>6</sup> Censure can include forfeiture of any position held by Commissioner Bolton that he was elected to or assigned by the City Commission, including the position of Mayor. *See Exhibit 12 (Johnson v. City of DeBary, Case No.: 2016-11483-CIDL, 17<sup>th</sup> Judicial Circuit for Volusia County, Florida.*

2. The Commission’s regular meeting process is spelled out in Tamarac City Code, Ch. 2 Sec. 2-29; 2-34. Under Sec. 2-34, (g) *Order of business* – (3), the Code allows for the “Commission Report” to occur at the beginning of the meeting; before actions and following the “Proclamations/special recognitions.” Also, Sec. 2-29(d) and (d)(1) does give the mayor discretion as to when members of the public may speak, even though Sec. 2-34(g)(3)(g) places “Public participation” before the commission’s action item agenda. Commissioners can add items to the agenda that he or she may deem appropriate Sec. 2-34(j)(2); however, this apparent discretion is still subjected to the terms of Sec. 2-34(e) and specifically 2-34(e)(5) which does require a majority vote to modify the contents of the commission agenda. The City Commission may consider participating in a workshop to further explain the Commission Meeting process and decide on a final format or reaffirm that which is already noted in the City Codes.

It is important to remember, Tamarac City Code, Sec. 2-29(d)(3)-(4) provides the mayor with instructions on what topics are allowed for comments by the public and, if applicable, limited as “quasi-judicial.” However, the public may make general comments at the “Public participation” stage of the meeting.

Thus, to the extent that Commissioner Gelin’s grievance regarding the allegation of the Mayor placing of the Commission Report at the end of the meeting and denying County Commissioner Holness an opportunity to make an impromptu presentation at a particular commission meeting, it was in the Mayor’s discretion to act as she saw fit to keep the commission meeting moving in an orderly manner. However, I do make the following recommendations:

- a. Insert the following language in Sec. 2.34(g)(3) in between “d. Proclamations/special recognitions” and “e. Commission reports”: *Deletions and changes to the agenda.*
- b. The Commission may wish to consider adding the following introductory paragraph to Sec. 2-29:

*General procedures.* The following procedures are intended by the City Commission of the City Tamarac to, where practicable, be used for the orderly conduct of meetings. The Chair of the City Commission will utilize these rules as a general guideline for the orderly conduct of city meetings. The Chair should always refer to him/herself as the Chair. All actions of the City Commission shall be by proper motion, seconded and passed by the appropriate vote, unless provided otherwise in the City Charter, and subject to the laws of the United States and the State of Florida. In general, the procedures of business may be guided by *Robert's Rules of Order (Revised)*. All motions, unless otherwise designated by the City Commission, may be made orally. The City Commission will meet as prescribed by the Charter. The time and date of the regular meetings will be set by the Commission. A schedule of the regular meetings shall be published.



3. Recommend that the mayor or presiding officer utilizes the services of the city attorney, who has been designated the parliamentarian for the commission, to interpret *Robert's Rules of Order* as a persuasive effort to resolve any procedural contention at a public meeting by and between fellow commissioners. Code of the City of Tamarac, Florida, Ch. 2 Sec. 2-34(d)(2).
4. Recommend that the Commission opt to amend its Charter, Art. 1.-Creation and Powers, Sec. 1.01 to add: "**Commission-manager form of government.** - The form of government of the City of Tamarac, provided for under this Charter, shall be known as the "commission-manager" form of government."<sup>7</sup>

#### RETENTION OF INVESTIGATIVE RECORDS

Unless advised otherwise by the City Attorney, the City shall retain records received and relative to this investigation for the greater of a period of five years or the minimum retention period required by law.

#### RELEASE OF INVESTIGATIVE RECORDS

Unless advised by the City Attorney or required by law, the City shall not release any investigative files, including interviews and findings.

Any information obtained and reported by third parties employed or engaged by the City concerning an employee's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living will be considered to be a "consumer report" under the Fair Credit Reporting Act. Accordingly, the City will provide notice to the employee that such reports have been received. The employee may request and obtain a copy of the consumer report.

#### NOTICE TO GOVERNMENT AGENCIES

Before notifying any government agency concerning a City investigation, the City Attorney will conduct a full review of the investigation and will determine what information, including documents, should be released to the government agency, if required by law or contract.

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<sup>7</sup> "As defined in The Commission-Manager Form of Government: "the commission-manager form is the system of local government that combines the strong political leadership of elected officials in the form of a commission or other governing body, with the strong managerial experience of an appointed local government manager. The form establishes a representative system where all power is concentrated in the elected commission and where the commission hires a professionally trained manager to oversee the delivery of public services." Proponents of this form of government argue that the separation of administrative and legislative functions is necessary to increase efficiency and supplement the functions of elected supervisors, who are part-time in many counties, and that the issues are now so complex that a full-time expert in administration is needed. (Salant, 1989)". *The Commission-Manager Form of Government*, NACo, October 2009.

## DISCLOSURES TO THIRD PARTIES

No City employee or agent may make any disclosure to third parties (e.g., lawyers, investigators, insurance representatives, media reporters) regarding the particulars of any City initiated investigation without prior approval from the City Attorney.

## CONCLUSION

The allegations herein are very unfortunate for all involved. There were many statements taken in this matter. The findings and/or opinions of this investigator are not designed to castigate any of the witnesses or parties in this matter or cast aspersion upon that which they have recounted.

Instead, it is the intent of the investigator to provide the City of Tamarac with a professional legal analysis of the facts as applied to the laws and/or policies that are relevant in this matter for its own independent decision-making processes.

As always, we remain available to you should you have any further requirements of us in completing this investigation.

*Respectfully submitted,*

By: \_\_\_\_\_

Levi G. Williams, Jr., Esq.

Fla. Bar No.: 0057169

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*Tamarac HR Investigator*

U.S. Department of

**QuickFacts**  
**Tamarac city, Florida**

QuickFacts provides statistics for all states and counties, and for cities and towns with a *population of 5,000 or more*.

**Table**

Race and Hispanic Origin		Tamarac city, Florida
Population estimates, July 1, 2018, (V2018)		66,041
PEOPLE		
<b>Race and Hispanic Origin</b>		
White alone, percent		▲ 63.3
Black or African American alone, percent (a)		▲ 28.6
American Indian and Alaska Native alone, percent (a)		▲ 0.2
Asian alone, percent (a)		▲ 3.3
Native Hawaiian and Other Pacific Islander alone, percent (a)		▲ 0.0
Two or More Races, percent		▲ 2.7
Hispanic or Latino, percent (b)		▲ 27.5
White alone, not Hispanic or Latino, percent		▲ 39.3

**EXHIBIT**  
**1**

Is this page helpful? <sup>X</sup>  
 Yes  No

About datasets used in this table

**Value Notes**

▲ Estimates are not comparable to other geographic levels due to methodology differences that may exist between different data sources.

Some estimates presented here come from sample data, and thus have sampling errors that may render some apparent differences between geographies statistically indistinguishable. Left of each row in TABLE view to learn about sampling error.

The vintage year (e.g., V2018) refers to the final year of the series (2010 thru 2018). *Different vintage years of estimates are not comparable.*

**Fact Notes**

- (a) Includes persons reporting only one race
- (b) Hispanics may be of any race, so also are included in applicable race categories
- (c) Economic Census - Puerto Rico data are not comparable to U.S. Economic Census data

**Value Flags**

- Either no or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates is an interval of an open ended distribution.
- D Suppressed to avoid disclosure of confidential information
- F Fewer than 25 firms
- FN Footnote on this item in place of data
- NA Not available
- S Suppressed; does not meet publication standards
- X Not applicable
- Z Value greater than zero but less than half unit of measure shown

QuickFacts data are derived from: Population Estimates, American Community Survey, Census of Population and Housing, Current Population Survey, Small Area Health Insurance Estimates, Poverty Estimates, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits.

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 Yes  No

Strategic Planning and Performance



Did you ever wonder what the future holds for the City and, maybe even more important, how we're going to get there?

There is a plan - a detailed strategic plan based on resident and business input, financial projections and demographic analysis. This plan is not developed in a vacuum; it's based on the five strategic goals that Tamarac adopted a number of years ago:

• GOAL #1 - INCLUSIVE COMMUNITY (scorecardId=1697&object-objective/objectId=12934&periodId=39907.html)
• GOAL #2 - HEALTHY FINANCIAL ENVIRONMENT (scorecardId=1697&object-objective/objectId=12935&periodId=39907.html)
• GOAL #3 - DYNAMIC ORGANIZATIONAL CULTURE (scorecardId=1697&object-objective/objectId=12936&periodId=39907.html)
• GOAL #4 - CLEAR COMMUNICATION (scorecardId=1697&object-objective/objectId=12937&periodId=39907.html)
• GOAL #5 - A VIBRANT COMMUNITY (scorecardId=1697&object-objective/objectId=12938&periodId=39907.html)

With these goals in mind, each year the City reviews input received through our various communications feedback channels: community meetings, transactional surveys, customer requests and personal conversations. We also do an environmental scan which charts any changes in each area of service we provide and makes financial forecasts based on projected property values, capital improvement projects and anticipated sources of revenue. Every two years, this information is supplemented with the results of our resident and business surveys. These take a statistically significant "pulse" of our community and help narrow the scope of areas on which to focus, so as to use limited dollars as prudently as possible.

Helpful hints:

The fiscal year runs from October 1st to September 30th.

Click on the blue measure title to view additional information.

The colored status indicators next to the item name belong to the specific time period (typically, the month of September).

- Meets or exceeds target
- Slightly below target
- Below target

DEPARTMENTAL GOALS AND PERFORMANCE

To view departmental goals and performance, please select a department using the drop down menu below.

Departmental Goals and Measures ▾

2014-15 Strategic Plan

Strategic Goals



EXHIBIT  
2

# OUR FIVE GOALS

*Playing Our PART...* The City of Tamarac's Five Strategic Goals. How does your job link with these goals?



STRATEGIC GOAL #1

## Inclusive Community

The City of Tamarac is committed to providing programs and services that meet the needs of an increasingly diverse community.



STRATEGIC GOAL #2

## Healthy Financial Environment

The City of Tamarac will utilize financial management to develop and maintain a healthy financial environment, encouraging and supporting economic development and redevelopment.



STRATEGIC GOAL #3

## Dynamic Organizational Culture

The City of Tamarac will create and sustain a culture conducive to development and retention of a skilled workforce.



STRATEGIC GOAL #4

## Clear Communication

The City of Tamarac will ensure effective communication within the organization and throughout the City, and enhance the visibility of City programs and services.



STRATEGIC GOAL #5

## A Vibrant Community

The City of Tamarac will provide resources, initiatives and opportunities to continually revitalize our community and preserve the environment.

# Strategic Planning and Performance

## COT workforce diversity compared to COT community diversity

City Manager

### What is it?

We compare how closely the City's workforce diversity (percentage of minorities) mirrors our community diversity.

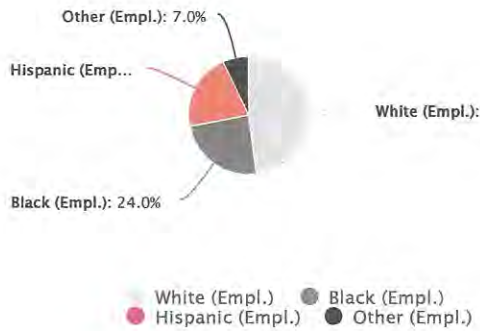
### Why is it important?

Because our staff composition is representative of our community, we can make sure that we understand the needs and culture of the community members we serve. A diverse staff also brings a variety of views and experiences that contribute to the achievement of Strategic Goal # 3 - Dynamic Organizational Culture.

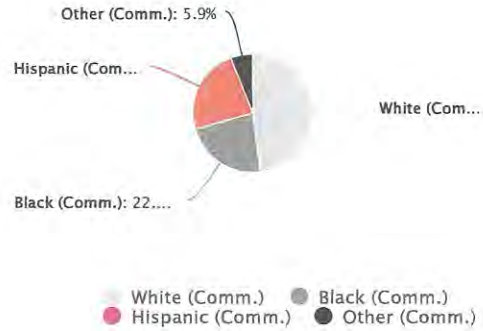
### What do we do to achieve the goal?

The City of Tamarac is an Equal Employment Opportunity employer. Our goal is to hire the best person for the job regardless of race, color, sex, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, or disability. Our fair hiring practices ensure that the workforce reflects our community. We are committed to continuous monitoring of this indicator.

City employee demographics



Tamarac community demographics



### Helpful hints:

The fiscal year runs from October 1st to September 30th.

Click on the blue measure title to view additional information.

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# Strategic Planning and Performance

## GOAL #3 – DYNAMIC ORGANIZATIONAL CULTURE

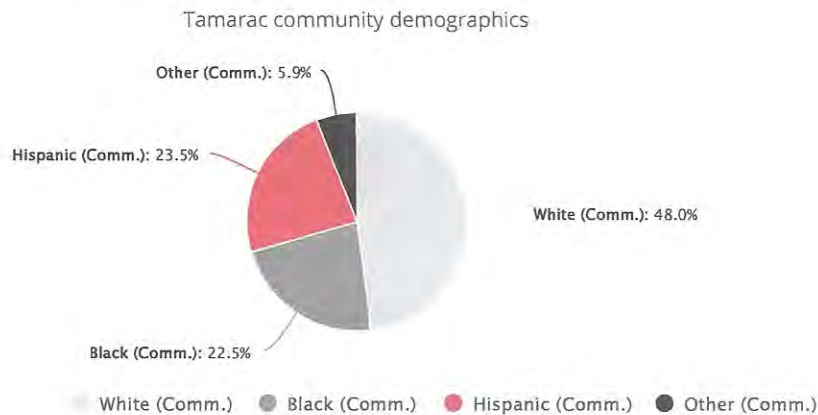
City of Tamarac

*The City of Tamarac will create and sustain a culture conducive to development and retention of a skilled workforce.*

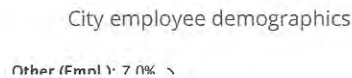
To promote employee engagement to better serve our customers, the City has planned a number of projects over the next five years, including the following key initiatives:

- Implement upgrades to information technology systems
- Continue to employ and/or create new cross-functional teams to identify and implement process improvements

City of Tamarac workforce diversity will mirror community diversity  
(scorecardId=2098&object=measure&objectId=83087&periodId=39907.html)



City of Tamarac workforce diversity will mirror community diversity  
(scorecardId=2098&object=measure&objectId=83087&periodId=39907.html)



### Helpful hints:

The fiscal year runs from October 1st to September 30th.

Click on the blue measure title to view additional information.

The colored status indicators next to the item name belong to the specific time period (typically, the month of September).



# Strategic Planning and Performance

## Employee Engagement City Manager

### What is it?

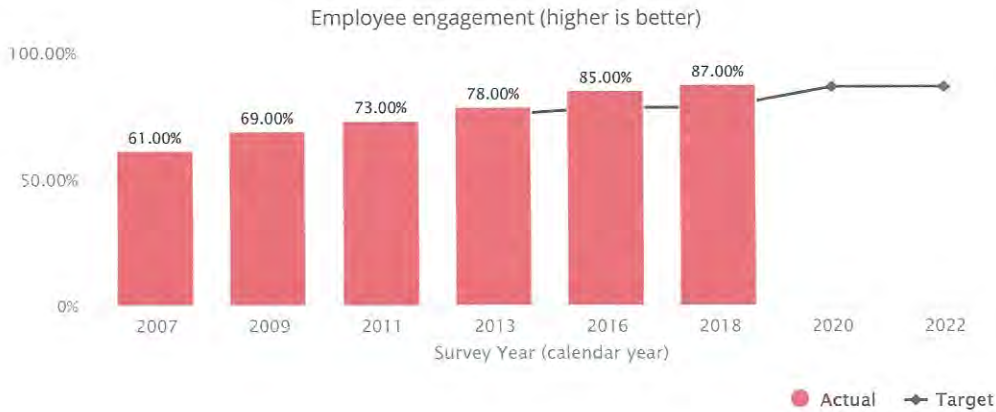
We evaluate employee engagement when we conduct our employee surveys. We average the percent of employees who "agree" or "strongly agree" with several statements. This allows us to learn whether City employees believe that they have the ability and support to address customer concerns independently. We look at whether staff members feel that their input in decision making counts. We also evaluate whether employees understand how their job contributes to meeting department and City goals.

### Why is it important?

Higher employee engagement translates into higher employee satisfaction, productivity, and retention. The City's high engagement levels help us achieve excellent customer service delivery and meet Strategic Goal #3 - Dynamic Organizational Culture.

### What do we do to achieve the goal?

The City strives to create an environment where all employees are knowledgeable and empowered to resolve customer issues independently. We also make every effort to involve all employees in decision making and share important strategy, budget, and performance information across the organization. To ensure that employee engagement remains high, we regularly conduct employee surveys and involve employee teams in identifying improvements.



### Helpful hints:

The fiscal year runs from October 1st to September 30th.

Click on the blue measure title to view additional information.

The colored status indicators next to the item name belong to the specific time period (typically, the month of September).

## Strategic Planning and Performance



(Citywide) Our goal is "Customer Service, Second to None". Did we meet your expectations?  
City of Tamarac

### What is it?

This represents the percent of customers who "agree" or "strongly agree" that the City staff they interacted with met their expectation for "Customer Service, Second to None". It combines data from the daily customer satisfaction surveys of all City Departments.

### Why is it important?

To ensure that we meet our residents' expectations, we regularly monitor customer satisfaction with the aspects of service that you told us were important to you. This indicator keeps track of overall customer satisfaction with the quality of our customer service. It's one of the measures that help us determine whether we are doing a good job of achieving Strategic Goal #1 - Inclusive Community.

### What do we do to achieve the goal?

Each department reviews their customer satisfaction responses monthly and the City leadership reviews citywide performance on a quarterly basis to determine whether additional training or resources are needed to achieve a 95% customer satisfaction rating.

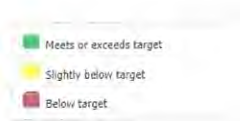


### Helpful hints:

The fiscal year runs from October 1st to September 30th.

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The colored status indicators next to the item name belong to the specific time period (typically, the month of September).



## DEPARTMENTAL GOALS AND PERFORMANCE

To view departmental goals and performance, please select a department using the drop down menu below.

Departmental Goals and Measures ▾

[2014-15 Strategic Plan](#)

[Strategic Goals](#)

## Strategic Planning and Performance



### (P) Were we professional and courteous? City of Tamarac

#### What is it?

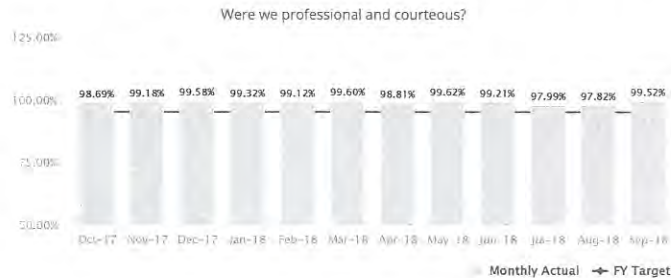
This represents the percent of customers who "agree" or "strongly agree" that the City staff they interacted with were professional and courteous. It combines data from the daily customer satisfaction surveys of all City Departments.

#### Why is it important?

To ensure that we meet our residents' expectations, we regularly monitor customer satisfaction with the aspects of service that you told us were important to you. This indicator keeps track of customer satisfaction with staff professionalism. It's one of the measures that help us determine whether we are doing a good job of achieving Strategic Goal #1 - Inclusive Community.

#### What do we do to achieve the goal?

Each department reviews their customer satisfaction responses monthly and the City leadership reviews citywide performance on a quarterly basis to determine whether additional training or resources are needed to achieve a 95% customer satisfaction rating.

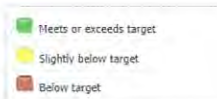


#### Helpful hints:

The fiscal year runs from October 1st to September 30th.

Click on the blue measure title to view additional information.

The colored status indicators next to the item name belong to the specific time period (typically, the month of September).



## DEPARTMENTAL GOALS AND PERFORMANCE

To view departmental goals and performance, please select a department using the drop down menu below.

Departmental Goals and Measures ▾

[2014-15 Strategic Plan](#)

[Strategic Goals](#)

# Strategic Planning and Performance



## (A) Were your questions addressed promptly and completely?

City of Tamarac

### What is it?

This represents the percent of customers who "agree" or "strongly agree" that the City staff they interacted with addressed their questions promptly and completely. It combines data from the daily customer satisfaction surveys of all City Departments.

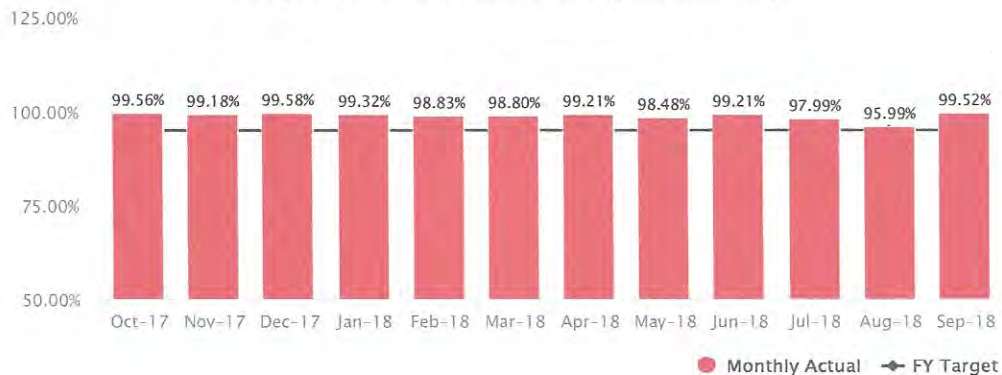
### Why is it important?

To ensure that we meet our residents' expectations, we regularly monitor customer satisfaction with the aspects of service that you told us were important to you. This indicator keeps track of customer satisfaction with the accuracy of information. It's one of the measures that help us determine whether we are doing a good job of achieving Strategic Goal #1 - Inclusive Community.

### What do we do to achieve the goal?

Each department reviews their customer satisfaction responses monthly and the City leadership reviews citywide performance on a quarterly basis to determine whether additional training or resources are needed to achieve a 95% customer satisfaction rating.

Were your questions answered promptly and completely?



### Helpful hints:

The fiscal year runs from October 1st to September 30th.

Click on the blue measure title to view additional information.

The colored status indicators next to the item name belong to the specific time period (typically, the month of September).

# Strategic Planning and Performance



## (R) Were we attentive and helpful? City of Tamarac

### What is it?

This represents the percent of customers who "agree" or "strongly agree" that the City staff they interacted with were attentive and helpful. It combines data from the daily customer satisfaction surveys of all City Departments.

### Why is it important?

To ensure that we meet our residents' expectations, we regularly monitor customer satisfaction with the aspects of service that you told us were important to you. This indicator keeps track of customer satisfaction with staff responsiveness. It's one of the measures that help us determine whether we are doing a good job of achieving Strategic Goal #1 - Inclusive Community.

### What do we do to achieve the goal?

Each department reviews their customer satisfaction responses monthly and the City leadership reviews citywide performance on a quarterly basis to determine whether additional training or resources are needed to achieve a 95% customer satisfaction rating.



### Helpful hints:

The fiscal year runs from October 1st to September 30th.

Click on the blue measure title to view additional information.

The colored status indicators next to the item name belong to the specific time period (typically, the month of September).

# Strategic Planning and Performance



## (T) Did we respond in the timeframe promised?

City of Tamarac

### What is it?

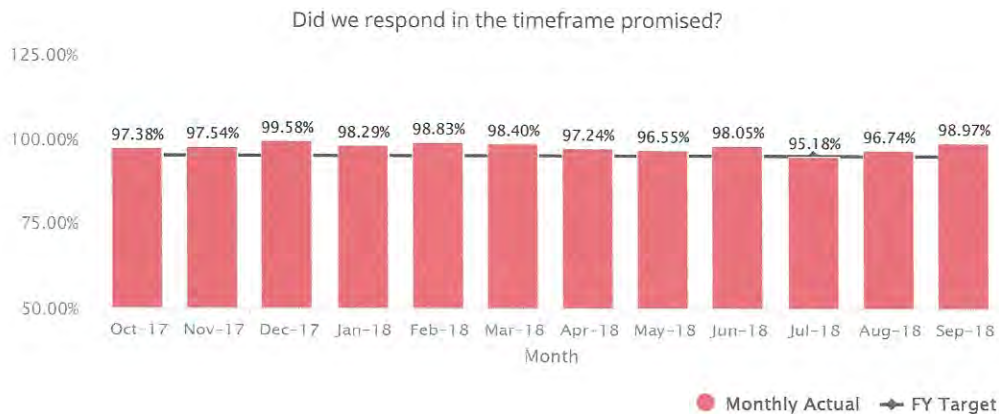
This represents the percent of customers who "agree" or "strongly agree" that the City staff they interacted with responded in the timeframe promised addressed their questions promptly and completely. It combines data from the daily customer satisfaction surveys of all City Departments.

### Why is it important?

To ensure that we meet our residents' expectations, we regularly monitor customer satisfaction with the aspects of service that you told us were important to you. This indicator keeps track of customer satisfaction with timeliness. It's one of the measures that help us determine whether we are doing a good job of achieving Strategic Goal #1 - Inclusive Community.

### What do we do to achieve the goal?

Each department reviews their customer satisfaction responses monthly and the City leadership reviews citywide performance on a quarterly basis to determine whether additional training or resources are needed to achieve a 95% customer satisfaction rating.



### Helpful hints:

The fiscal year runs from October 1st to September 30th.

Click on the blue measure title to view additional information.

The colored status indicators next to the item name belong to the specific time period (typically, the month of September).

# *Vision, Mission & Values*

## **Our Vision:**

*The City of Tamarac, Our Community of Choice -  
Leading the nation in quality of life through safe neighborhoods,  
a vibrant economy, exceptional customer service and recognized excellence.*

## **Our Mission:**

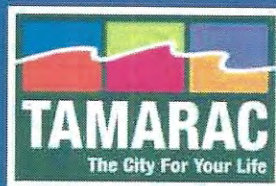
*We are:  
"Committed to Excellence . . . Always"*

*It is our job to foster and create an environment that:*  
*Responds to the Customer*  
*Creates and Innovates*  
*Works as a Team*  
*Achieves Results*  
*Makes a Difference*

## **Our Values:**

*As Stewards of the public trust, we value:*

*Vision*  
*Integrity*  
*Efficiency*  
*Quality Service*



## Regina Skenandore

---

**From:** Marlon Bolton  
**Sent:** Wednesday, November 15, 2017 10:37 AM  
**To:** Mildred Velasquez  
**Cc:** Robyn Thalenfeld  
**Subject:** Re: NLC Sessions

**EXHIBIT**

**4**

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Mildred:

My idea of an assistant is to assist me to; discover, engage and explore tasks, remember tasks, execute tasks and stay on top of tasks:

It would have been nice for you to bring me a list of special sessions so that I can indicate interest. If I have to do it myself that it makes your purpose obsolete.

Yours In Service,  
Commissioner Marlon Bolton  
Your District 1 Representative  
Mobile: 954-275-3850  
<http://www.tamarac.org/marlonbolton>  
Find me on Facebook at <http://www.facebook.com/CommissionerMarlonBolton>

Need to schedule a meeting with your representative? Email my assistant: [Mildred.Velasquez@tamarac.org](mailto:Mildred.Velasquez@tamarac.org)

Need to attend a commission meeting?

The City Commission holds a workshop meeting on the Monday prior to each regular commission meeting at 9:30 am in City Hall, Conference Room 105, where agenda items are discussed at length. Regular commission meetings are held on the second and fourth Wednesday of the month at 9:00 am or 7:00 pm, respectively, in the City Hall Commission Chambers. Special topic workshops are scheduled as needed.

Sent from my iPhone

On Nov 15, 2017, at 10:30 AM, Mildred Velasquez <[Mildred.Velasquez@tamarac.org](mailto:Mildred.Velasquez@tamarac.org)> wrote:

Good Morning Commissioner,

You are only registered for the general sessions. There were no special sessions you indicated a desire to attend. If you are interested in any of the special sessions ask if you can register there and have them bill us.



<image002.jpg> **Mildred Velasquez**  
Administrative Coordinator  
Mayor and City Commission Office  
7525 NW 88<sup>th</sup> Ave, Tamarac, FL 33321  
Tel: 954-597-3460 Fax: 954-597-3470  
[www.tamarac.org](http://www.tamarac.org)

**From:** Marlon Bolton  
**Sent:** Wednesday, November 15, 2017 9:24 AM  
**To:** Mildred Velasquez <[Mildred.Velasquez@tamarac.org](mailto:Mildred.Velasquez@tamarac.org)>  
**Cc:** Robyn Thalenfeld <[Robyn.Thalenfeld@tamarac.org](mailto:Robyn.Thalenfeld@tamarac.org)>  
**Subject:** NLC Sessions

Hello Millie:

Good Morning. Can you send me a list of sessions/classes you registered me for at the present NLC conference?

I do not see them on the calendar.

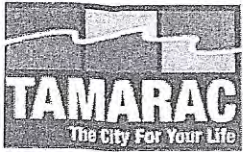
Yours In Service,  
Commissioner Marlon Bolton  
Your District 1 Representative  
Mobile: 954-275-3850  
<http://www.tamarac.org/marlonbolton>  
Find me on Facebook at <http://www.facebook.com/CommissionerMarlonBolton>

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Sent from my iPhone



**EXHIBIT  
5**

**CITY OF TAMARAC  
TRAVEL EXPENSE VOUCHER**

F-54743  
CITY OF TAMARAC  
ACCOUNTING DIVISION  
2017 OCT 24 AM 7:47

EMPLOYEE MARLON BOLTON DEPARTMENT LEGISLATIVE  
 DESTINATION SAN DIEGO, CA  
 PURPOSE NLC 2017 LEADERSHIP SUMMIT AND BIG IDEAS FOR CITIES  
 DEPARTURE DATE 10/1/2017 RETURN DATE 10/5/2017

DATE(S)	10/1/17	10/2/17	10/3/17	10/4/17	10/5/17			TOTAL
Registration Fee	595.00 - 2017							\$595.00
Hotel Costs	246.97	246.97	246.97	246.97				987.88 ✓
Breakfast		15.00						15.00
Lunch	16.00	16.00			16.00			48.00
Dinner	28.00	28.00	28.00	28.00	28.00			140.00
Gratuities	6.60	8.85	4.20	4.20	6.60	0.00	0.00	30.45
Air Fare	309.41							309.41
Baggage								0.00
Private Vehicle								0.00
City Vehicle								0.00
Vehicle Rental								0.00
Communications								0.00
Parking	75.00							75.00
Taxi	13.00				16.04			29.04
Tolls								0.00
Other								0.00
<b>TOTAL</b>	<b>\$1,289.98</b>	<b>\$314.82</b>	<b>\$279.17</b>	<b>\$279.17</b>	<b>\$66.64</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,229.78</b>

Total Expenses 2,229.78  
 Total Amount Prepaid 2,125.74  
 I certify that this travel expense is true and correct in every material respect and that these expenses were actually incurred in the performance of my official duties.  
 Check No./Pro Card Reg Amount 595.00 ✓  
 Check No./Pro Card hotel Amount 987.88 ✓  
 Check No. airfare Amount 309.41  
 Check No. per diem Amount 233.45  
 Refunded to City of Tamarac 0.00  
 Reimbursement to employee 104.04 ✓  
 Account number for reimbursement 001-0100-511-40-91

Employee Print Name/Signature Marlon Bolton Date 10/23/17  
 Title Commissioner  
 Dept. Director Approval [Signature] Date 10/24/17  
 City Manager Approval (Req. for Dept Dir only) [Signature] Date 10/23/17

**FINANCE DEPARTMENT USE ONLY**  
 Audited by [Signature] 10/23/17  
 Check Request Approval [Signature] 10/23/17  
 Finance Director Approval [Signature] 10/23/17  
 \* Prior approval of City Manager required for Vehicle Rental

**Note to File:** This took place on Monday, 7/10/17, immediately following the Commission Workshop meeting. Prior to the confrontation in the CMO, Millie was in the Commission office with Commissioner Bolton who wanted to see the travel expenses that were being provided to the Sun Sentinel. The following is what took place afterwards:

Commissioner Bolton charged up the stairway in pursuit for Millie who was standing at the front desk. In a very angry, intimidating and aggressive tone, he confronted Millie and said "I am here, don't talk behind my back about me"; "say what you want to say in front of me; I'm here now". Millie explained to Comm. Bolton that she came up to speak to her supervisor (me).

Elise was standing next to me and Commissioner Bolton told Elise that he would send out an e-mail to his constituents and copy her accusing her of providing inaccurate figures to the Sun Sentinel. Elise explained that if we did in fact make any errors that we would correct them. Commissioner Bolton also said that he would bring up the travel issue at Wednesday's Commission meeting. His voice escalated in a loud tone demanding we change the dollar amounts and that the figures were not right.

Mike Cernech entered the City Manager's office, saw the commotion and asked Comm. Bolton to come into his office. There was a lot of shouting behind the closed doors.

When Comm. Bolton finally came out of Mike's office, I explained to him that those charges that were projected in the amount of \$3,000 would be coming out of the FY 17 budget. He argued that we should only show what we paid for thus far, which is the amount of \$595. The trip he was referring to was for the 2017 Leadership Summit to San Diego from 10/2-10/5/17.

I ca explained that we have to pay for airfare and hotel within the next month. Comm. Bolton said that he was uncertain whether he would be going to the Conference; I asked him if he wanted me to cancel the conference and he said no – that he was waiting for his schedule for college which would be provided on August 10<sup>th</sup>. At that time, he would decide whether or not he would going.

**EXHIBIT**

**6**

Mr Calhoun,

I am writing you to inform, complain and supply evidence of the completely disrespectful and unethical behaviors of Commissioner Marlon Bolton. As you know, the elections were very stressful and the abundance of campaign violations and unethical activities had to exceed any other city in Broward County.

As you can see, a so-called Broward Voters Guide had been termed illegal and unlawfully interfering with an election. With that cease and desist granted, the 'voters' guide' was altered only in name at the bottom at least twice in an attempt to circumvent the order. There are numerous photos and at least one video on social media that shows people continuing to distribute this guide. Notably Marlon Bolton. So one of our Tamarac Commissioner's is knowingly violating the law and shows an extreme unethical behavior.

In addition, as people continued to complain about this behavior, there was a 'Tamarac Residents Voter Guide' printed and passed around promoting certain Tamarac candidates. Upon asking two people handing them out where they got them from, they responded to me that Marlon made them. This also violates election and campaign laws and a copy is enclosed for you to see that our city was even spelled wrong.

Marlon also used an email list, presumably from the utilities department list of accounts with email addresses. As you can see from these emails, he is using his position as the commissioner to promote certain people. Even stating in August, prior to the elections, to come meet the new mayor and commissioner of Tamarac.

Further email blasts stated info about a certain candidate that Marlon is aware of to be inaccurate or false. He states Elvin is a member of the Land Code Regulations Committee and HE (Elvin) rewrote policies. This is completely misleading and false. Very unethical for a Commissioner. This letter mailed out to voters also states Elvin was appointed to the Parks and Rec Board in Tamarac and Broward County. However, Elvin served two months on the Tamarac Board and resigned in November 2017. So this is very misleading to give the perception Elvin is involved in the City. Also, Elvin resigned from the County Board the day after he was appointed and never served on the Board or attended a meeting. Another unethical manipulation by Marlon to give the perception Elvin is involved. Also, the same letter shows the Mayor box of candidates with Elvin's name bubbled in. Another campaign violation as you cannot coerce a voter into voting for a certain individual.

Also, Marlon still has not appointed a replacement for Elvin and it has been 11 months, in violation of the City to have an appointee from each district.

Most shocking is the letterhead of his letter he mails out, misspells his own name. He is Marlon D. Bolton not B.

Another mail out from him comes as a letter from 'Democrats of Tamarac'. There it is stated that two candidates are Republicans and only Elvin is a Democrat. This info is false, as none of the

**EXHIBIT**

**7**

three candidates are registered Republicans and Heller IS a registered Democrat. You will notice the address was changed to a fictitious address that does not exist but is one digit of City Hall's address. The 8 was changed from a 7 that is City Hall's address.

This intent to deceive voters by his email blasts, mail outs and propaganda did not stop there. He used his position as a Commissioner to continue the unethical and misleading info at the polls during early voting. He continued to hand out propaganda he knew was illegal and a manipulation of an election. He chose to continue this unethical behavior and state, 'this has a different name on the bottom so it is legal'.

Still the verbal abuse that was given to people and poll volunteers was relentless by him. I can bring forward at least ten volunteers who stated to me he was using ethnic slurs about candidates and continually stating false information and showing people made up flyers and cards that showed candidates were something they were not.

This election period was very eye opening to say the least. However, to see one of our elected officials being so unethical and blatantly committing campaign violations is unacceptable. At any time I would be willing to further express how unethical Marlon is/was and bring forth witnesses and pictures if needed.

Thanks for your time,

Larry Goehrig



NOVA SOUTHEASTERN UNIVERSITY  
H. Wayne Huizenga School of  
Business and Entrepreneurship  
Finance and Operations

LARRY GOEHRIG, M.B.A.  
Operations Administrator

Carl DeSantis Building  
3301 College Avenue • Fort Lauderdale, Florida 33314-7796  
(954) 262-5057 • 800-672-7223, ext. 25057 • Fax: (954) 262-8962  
Email: lg772@nova.edu • Web site: www.nova.edu



Larry Goehrig

DBA Student, Cohort V  
Mitchell College of Business

UNIVERSITY OF SOUTH ALABAMA

MCOB 103 | 5811 USA Drive South  
Mobile, Alabama 36688-0002

TEL: (954) 295-1965 | FAX: (251) 460-8529  
lg7822@jagmail.southalabama.edu

IN THE CIRCUIT COURT OF THE 17<sup>th</sup> JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

COREY AMANDA CAWTHON, an individual,

CASE NO.: CACE18-025690

*Plaintiff,*

vs.

A BETTER FLORIDA FOR ALL, an unregistered  
political action committee, OMAR SMITH, an individual,  
JACQUELINE RAMSEY, an individual, and  
SOPHIA NELSON, an individual,

Filed In Open Court,  
CLERK OF THE CIRCUIT COURT

ON 11-2-18

BY [Signature]

*Defendants,*

**ORDER GRANTING PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF:**

THIS CAUSE having come before this Court on November 2, 2018 on the Plaintiff's Motion for Injunctive Relief, and the Court having reviewed the Plaintiff's Pleadings, having reviewed the subject Motion, and having conducted a hearing on said Motion after the provision of Notice of the Defendants, <sup>who failed to appear</sup> it is hereby **ORDERED AND ADJUDGED** as follows:

**THE PLAINTIFF'S MOTION FOR ISSUANCE OF PRELIMINARY INJUNCTION IS HEREBY GRANTED.**

1. Based upon this Court's review of the Plaintiff's Pleadings, the Plaintiff's Motions, and the evidence and testimony presented to the Court on November 2, 2018, the Court makes the following findings of fact in support of the issuance of this ex-parte preliminary injunction:
  - a. A BETTER FLORIDA FOR ALL was organized by OMAR SMITH, JACQUELINE RAMSEY, and SOPHIA NELSON on March 20, 2017, when a statement of Organization of Political Committee was filed with the Florida Department of State Division of Elections.

- b. Thereafter, the Defendants received contributions and expended those contributions in furtherance of their political agenda. In particular, the Defendants created and paid for the hosting of a website (<https://abetterfloridaforall.com>) which explains the Defendants' platform, and advances the Defendants' interest of seeing certain individuals elected to public office in the State of Florida.
- c. In particular, the Defendants promulgated a "Broward Voters Guide" with names of individuals which the Defendants supported for public office.
- d. On October 25, 2018, the Department of State Division of Elections cancelled and revoked A BETTER FLORIDA FOR ALL's registration. At that time, A BETTER FLORIDA FOR ALL ceased being a registered political committee.
- e. Subsequent thereto, the Defendants continued to advance and disseminate their political advertisements found on <https://abetterfloridaforall.com>, specifically including hard-copy versions of their "Broward Voters Guide", in direct violation of the political advertisement requirements of F.S. § 106.011 *et seq.* More specifically:
  - i. The "Broward Voters Guide" indicates that the candidates listed thereupon are approved by A BETTER FLORIDA FOR ALL, an unregistered political committee, which is a violation of F.S. § 106.143(1)(c);
  - ii. The "Broward Voters Guide" fails to indicate whether or not the candidates listed thereupon have approved the endorsement and advertising found in said Guide, which is a violation of F.S. § 106.143(4) and F.S. § 106.143(5)(a); and
  - iii. The "Broward Voters Guide" is being disseminated by the Defendants as a political advertisement in direct violation of F.S. § 106.03's requirement that

such a political advertisement be approved and promulgated by a registered political committee.

- f. The Court finds that the Defendants' actions as alleged are intended by the Defendants to unlawfully interfere with the upcoming November 6, 2018 election by way of illegal electioneering.
  - g. The Court finds that the Defendants possess no right to disseminate, or to continue disseminating, political advertisements to the voting public in violation of the requirements of § 106.011 *et seq.*
  - h. The Court finds that the Plaintiff, as a candidate for public office in the upcoming November 6, 2018 election, possesses no other recourse or remedy but for the immediate injunctive relief she has sought, and that she possesses no adequate remedy at law.
  - i. The Court finds that the public interest would be served by the issuance of injunctive relief to require the Defendants to immediately cease their unlawful conduct.
  - j. The Court finds that the Plaintiff possesses a substantial likelihood of ultimate success on the merits of the claim she has asserted, and that the Plaintiff has established a clear legal right to the relief which is granted herein.
2. Of note, the Court is particularly concerned about the misleading nature of the "Broward Voters Guide" which the Defendants are disseminating throughout the county. The Guide contains language indicating that "The voters guide was compiled in a collective manner by several elected officials and community leaders to present the best candidates included is guidance for whether you should choose Yes or no votes on the amendments that Community Leaders believe will best benefit our community." However, no "community leaders" or



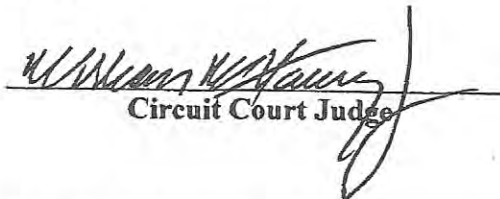
“elected officials” who support the information contained in the Guide are actually identified anywhere therein, and none of the named Defendants are elected officials holding public office in Broward County, Florida. The Defendants are also still actively seeking contributions to be used in further dissemination of the Broward Voters Guide through the <https://abetterfloridaforall.com>, even though A BETTER FLORIDA FOR ALL’s registration as a political committee has been revoked.

3. For the foregoing reasons, the Court enters this injunction requiring the Defendants to, until such time as any further Order(s) of this Court is/are issued:
  - a. Immediately remove all information accessible through <https://abetterfloridaforall.com>, as well as all of its sub-links and related sites;
  - b. Immediately cease and desist any and all further efforts to disseminate any hard-copy form or version of the “Broward Voters Guide” which was attached to the Plaintiff’s Complaint and Motion for Injunctive Relief.
4. This injunction is binding upon the Defendants, as well as any and all persons or parties claiming to act as agents of the Defendants for purposes of disseminating the A BETTER FLORIDA FOR ALL “Broward Voters Guide”.
5. Failure to comply with the requirements of this Order may result in issuance of an Order finding the Defendants in Contempt of Court.
6. Per Rule 1.610 of the Florida Rules of Civil Procedure, the Court finds that a bond in the amount of ~~\$500.00~~ <sup>1,000.00</sup> is reasonable to protect the interests of the Defendants in such an event as this Order is determined to be wrongfully issued and/or the Defendants’ conduct is or has been wrongfully enjoined.

7. Per Rule 1.610 of the Florida Rules of Civil Procedure, the Defendants may petition this Court to modify or dissolve this injunction, and upon receipt of any such petition a hearing will be set on same within five (5) days.

8. The Court further Orders: that this order shall not be  
effective until the posting of the bond required.  
herein. The Clerk of court shall receive the bond

IT IS SO DONE AND ORDERED ~~in Chambers~~ at Broward County, Florida this 2<sup>nd</sup> day of November, 2018. at 9:47 AM.

  
Circuit Court Judge

Copies furnished to:

- Andrew M. Schwartz, Esquire, 4755 Technology Way, Suite 103, Boca Raton, Florida 33341 (Counsel of record for the Plaintiff) [ams@amslegalteam.com; paralegal@amslegalteam.com]; and
- A Better Florida for All, Omar Smith, Jacqueline Ramsey and Sophia Nelson, 2930 Okeechobee Blvd, Suite 200, West Palm Beach, FL 33409 [info@abetterfloridaforall.com].

October 9, 2018

Witness statement of Barbara Tarnove regarding Hispanic Vote

Upon arrival at the Hispanic Vote event, the lady at Hispanic voice screamed at a man, "this is not what you're supposed to be doing." The lady chased him out. A man was apparently filming Vice Mayor Gomez. Leisa, from Hispanic Vote chased the man out.

Later, Elvin Villalobos arrived with an entourage of people with his campaign t-shirts on. Larry Goehrig and Mike Gellin (arrived with his family), both wearing campaign t-shirts. Elvin walked up to Leisa from Hispanic Vote and shared a picture on his phone of the man who filmed VM Gomez and also had accosted Elvin. Leisa yelled at him regarding his actions and said she wasn't going to do this.

Commissioner Bolton was sitting on a bench, Linda approached Bolton and he began to film her. She said to him I don't consent to you filming me. Linda said, "Commissioner..." CM Bolton yelled, "Don't call me Commissioner, I'm not your Commissioner." Linda was visibly shaken. I approached her and recommended for her to go home. Linda was shaking so bad that she made me shake. Bolton was yelling, "You people didn't get the memo." The said, the actions were allowed by the City Attorney and you people aren't in the loop. CM Bolton got on the phone and began making calls. Linda's goal was to squash what was going on.

At this event, no one was handing out campaign literature. One candidate had literature in his pocket but didn't pass it out. The chaos seemed to come from the Hispanic Vote representative fueling the fire.

A handwritten signature in blue ink that reads "Lerezo Calhoun". The signature is written in a cursive style.

**EXHIBIT**

**9**

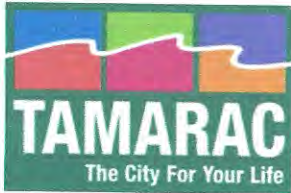
## Levi Williams

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**From:** Marlon Bolton <Marlon.Bolton@tamarac.org>  
**Sent:** Thursday, February 7, 2019 10:39 AM  
**To:** Levi Williams  
**Subject:** FW: Complaint

**EXHIBIT  
10**

ZACH



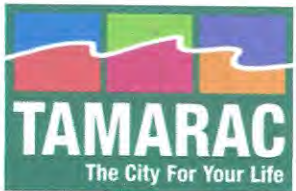
**Marlon D. Bolton**  
**Commissioner, District 1**  
Mayor & Commission  
7525 NW 88<sup>th</sup> Ave, Tamarac, FL 33321  
Tel: 954-597-3463 Fax: 954-597-3470  
[www.tamarac.org](http://www.tamarac.org) | IG/FB: @commissionerMarlonBolton | IN: @MarlonBolton

**From:** Michael Cernech  
**Sent:** Monday, August 6, 2018 12:46 PM  
**To:** Marlon Bolton <Marlon.Bolton@tamarac.org>  
**Cc:** Kathleen Gunn <Kathleen.Gunn@tamarac.org>  
**Subject:** RE: Complaint

Comm. Bolton,

Thank you for sharing your experience. The situation you described has been dealt with thru Zach's supervisor.

Mike



**Michael C. Cernech**  
**City Manager**  
**City Manager's Office**  
**7525 NW 88<sup>th</sup> Ave, Tamarac, FL 33321**  
**Tel: 954-597-3510**

[www.tamarac.org](http://www.tamarac.org) @michaelcernech

**From:** Marlon Bolton  
**Sent:** Wednesday, August 1, 2018 3:19 PM  
**To:** Michael Cernech <[Michael.Cernech@tamarac.org](mailto:Michael.Cernech@tamarac.org)>  
**Cc:** Kathleen Gunn <[Kathleen.Gunn@tamarac.org](mailto:Kathleen.Gunn@tamarac.org)>  
**Subject:** Complaint

Mr. Cernech:

I am very disappointed in one of our employees; Zach:

Apparently my neighbor's water is disconnected. As I am leaving my house, a City vehicle was blocking my driveway. As he got out of the car, I politely asked him to move. He ignored me, I said "Sir," he said "WHAT!?" (He moves his vehicle with an attitude to another spot,) unfortunately the spot he moved to was where I was going to move my car to (I was switching cars). I explained I needed to switch cars. He reversed the City vehicle in rage, almost hitting community signs and parked in the middle of the road, blocking residents from passing by. He came back and started banging on my

neighbors door. Thinking something is wrong, I stood at my door and snapped a photo of him. the older gentleman (neighbor) came to the door and the employee on the top of his lungs say: I'm reconnecting your water and walks away.

As he realized who I was, he I apologized and told me the City has him under a lot of stress. Really and truly, he seems as if he is under the influence of something.

If he didn't realize who I was, he would not have apologized.

I am suggesting this employee be pulled today for evaluation as he may harm himself or someone. He said he was under stress and he is visibly stressed out.

I want to know the outcome of this

I would also like to know if this employee has every been disciplined for similar issues.

Thanks,  
Marlon









Yours In Service,

Commissioner Marlon Bolton

Your District 1 Representative

Mobile: 954-275-3850

<http://www.tamarac.org/marlonbolton>

Find me on Facebook at <http://www.facebook.com/CommissionerMarlonBolton>

Need to schedule a meeting with your representative? Email my assistant: [Mildred.Velasquez@tamarac.org](mailto:Mildred.Velasquez@tamarac.org)

Need to attend a commission meeting?

The City Commission holds a workshop meeting on the Monday prior to each regular commission meeting at 9:30 am in City Hall, Conference Room 105, where agenda items are discussed at length. Regular commission meetings are held on the second and fourth Wednesday of the month at 9:00 am or 7:00 pm, respectively, in the City Hall Commission Chambers. Special topic workshops are scheduled as needed.

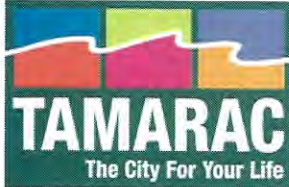
Sent from my iPhone

The City of Tamarac is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. Email messages are covered under Chapter 119 and are thus subject to public records disclosure. All email messages sent and received are captured by our server and retained as public records.

## Levi Williams

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**From:** Marlon Bolton <Marlon.Bolton@tamarac.org>  
**Sent:** Thursday, February 7, 2019 10:59 AM  
**To:** Levi Williams  
**Subject:** FW: Political Activity in Public Places  
**Attachments:** 2018-083 (Political Activity in Public Places) (00247903xC4B6A).pdf; ATT00001.htm



**Marlon D. Bolton**  
**Commissioner, District 1**  
Mayor & Commission  
7525 NW 88<sup>th</sup> Ave, Tamarac, FL 33321  
Tel: 954-597-3463 Fax: 954-597-3470  
[www.tamarac.org](http://www.tamarac.org) | IG/FB: @commissionerMarlonBolton | IN: @MarlonBolton

**From:** Marlon Bolton  
**Sent:** Saturday, September 29, 2018 12:30 PM  
**To:** Greg Warner <Greg.Warner@tamarac.org>  
**Cc:** Michael Cernech <Michael.Cernech@tamarac.org>; neal\_glassman@sheriff.org; Attorney - Jacob Horowitz <jhorowitz@cityatty.com>; Samuel Goren <Samuel.Goren@tamarac.org>  
**Subject:** Political Activity in Public Places

Mr. Warner:

Through the City Manager, I just thought I'd share this with you and your staff. Please call the City Manager if you have questions.

Thanks,

The City of Tamarac is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. Email messages are covered under Chapter 119 and are thus subject to public records disclosure. All email messages sent and received are captured by our server and retained as public records.

**EXHIBIT**  
**11**

CITY OF TAMARAC

MEMORANDUM NO. 2018-083

TO: Pat Teufel, City Clerk

CC: Michael Cernech, City Manager  
Kathleen Gunn, Assistant City Manager  
Neal Glassman, Police Chief  
Elise Boston, Public Information Officer

FROM: Samuel S. Goren, City Attorney *SSG*  
Jacob G. Horowitz, Assistant City Attorney *JGH*

DATE: August 23, 2018

RE: City of Tamarac ("City") / Political Activity in Public Places

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The City Attorney's Office has received a number of inquiries related to campaign activity on public property and at City events. The intent of this memorandum is to provide legal guidance to the City regarding such activity. Note that this analysis applies to all candidates for office, including incumbent members of the City Commission.

The right to engage in political activity in public places has long been settled by the Supreme Court of the United States.

Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order: but it must not, in the guise of regulation, be abridged or denied.

*Hague v. Committee for Indus. Organization*, 307 U.S. 496, 515-516 (1939).

The right to engage in political activity is a "fundamental right" protected by both the U.S. Constitution and the Florida Constitution. Any laws or policies which seek to limit political activity are subject to the "strict scrutiny" analysis. In order to withstand a "strict scrutiny" examination, the law or policy restricting a fundamental right must:

- 1) Be justified by a compelling governmental interest;
- 2) Be narrowly tailored to achieve that interest; and
- 3) Be the least restrictive means for achieving that interest.

Memorandum No. 2018-083

August 23, 2018

2 | Page

*Citizens United v. Federal Election Commission*, 558 U.S. 310, 340 (2010) citing *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007).

It is our understanding that the City does not currently have any policies seeking to restrict political activity, including campaigning, on public property.

As referenced in the *Hague* decision, cited above, the right to engage in political activity on public property “is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order.” *Hague* at 516. For instance, while political activity may be legally permissible outside of City Hall, the right of individuals to engage in such political activity is balanced with the right of City Hall customers to not be accosted or harassed while going about their business. In our opinion, individuals who choose to engage in political activity outside of City Hall must do so in a respectful manner and with consideration for the people who may not be interested in the person or opinion the individual may be otherwise promoting.

A similar analysis applies to political activity in public parks and at City events. Absent a policy to the contrary which passes the “strict scrutiny” test, political activity at City events is legally permissible. Recall several years ago this issue arose in the context of the citizen initiative effort that sought to recall former Commissioner Patte Atkins-Grad. At that time our office examined this issue, and opined that the recall effort was legally permitted to collect petition signatures at City events.

While the City may, generally, not limit political activity at public events, it is our legal opinion that the City may adopt a policy, subject to strict scrutiny, which prohibits the rental of City facilities or the purchase of booths at City events for political purposes. Should the City seek to consider such a policy, the policy must apply to all political activity. Once the City opts to allow certain types of political activities, it must allow all types. In other words, if the City allows candidates to rent City facilities, it must also allow the American Nazi Party to do so.

Notwithstanding the foregoing, Section 106.15, F.S., expressly prohibits a person from soliciting or accepting any political contribution in a building owned by a governmental entity.

The City Attorney’s Office has also received a number of inquiries related to certain campaign activity associated with the upcoming November election. Please note that the City Attorney’s Office cannot and does not provide legal advice to candidates for office, including incumbent commissioners, on election-related matters. To the extent necessary, our office has, and will continue to, refer inquiries from candidates to the Florida Elections Commission or the Florida Commission on Ethics, as appropriate.

Please contact our office if there is any additional information that we can provide.

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL DISTRICT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

CLINT JOHNSON,

CASE NO.

Petitioner,

vs.

**EXHIBIT  
12**

CITY OF DEBARY, FLORIDA, a municipality  
organized under the laws of the State  
of Florida,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 9.030(3) and 9.100, *Fla. R. App. P.*, Clint Johnson (“Johnson”) seeks a *Writ of Certiorari* quashing an unlawful decision of Respondent, the City of DeBary (“DeBary”), Volusia County, Florida, holding that Johnson had violated the DeBary city charter, and forfeited his office as mayor. A copy of the order is attached as Exhibit A.

STATEMENT OF FACTS

The DeBary City Council decided after a quasi-judicial hearing that eight written messages from then Mayor Johnson, four to city staff members and four to the public, violated prohibitions in the DeBary city charter, *Ch. 93-351, Laws of Fla.*, and that Johnson had thereby forfeited his office. In so holding, DeBary

interpreted its charter prohibitions so broadly as to include speech routinely required of elected officials, speech necessary to make policy and hold the city staff accountable. It violated Johnson's right to free speech under the First Amendment to the United States Constitution and his rights to due process and equal protection under the Fourteenth Amendment. Perhaps worse, it made it yet more difficult for DeBary citizens to hold its troubled city government accountable.

In granting Johnson's petition for a *Writ of Certiorari*, this court should consider (1) whether DeBary accorded him procedural due process; (2) whether DeBary observed the essential requirements of law; and (3) whether DeBary's findings and judgments are supported by competent, substantial evidence. *Haines City Community Dev. v. Heggs*, 658 So. 2d 523 (Fla. 1995). Although the failure to meet one is sufficient, DeBary fell short on all three.

The charter prohibitions in question are in section 4.04(a), which provides as follows:

Neither the Council, nor any individual member of the Council, shall in any manner dictate the employment or removal of any employee other than the City Manager and City Attorney, but the Council may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment or removal of such officers or employees. No individual member of the Council shall give orders to any officer or employee of the City. Recommendations for improvements in the City government operations shall come through the City Manager, but each member of the Council shall be free to

discuss or recommend improvements to the City Manager, and the Council is free to direct the City Manager to implement specific recommendations for improvement in the City government operations. (emphasis added).<sup>1</sup>

Section 4.04 authorizes elected officials to discuss matters freely with the city manager. It does not prohibit them from talking to the city staff, asking questions, requesting documents, or voicing opinions, even strong opinions.

The staff claims Johnson's messages violated the charter by giving the staff orders and by dictating who is to be hired or fired. As mayor, Johnson had no power to do either. Black's Law Dictionary defines order as a "mandate, precept; a command or direction authoritatively given...." Since he had no power to order, the city staff was free to ignore Johnson's requests, and it did so.<sup>2</sup> The term, dictate, means "truly compel (not just suggest or allow or raise a question about)." *City of Hialeah v. Fernandez*, 661 So. 2d 335, 339 (Fla. 3d DCA 1995). Similarly, since Johnson had no authority to dictate staff hiring or firing, the staff ignored his criticisms and fired no one.<sup>3</sup>

Charge One  
Reply to Email January 11, 2016

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<sup>1</sup> Page 229

<sup>2</sup> Past Councils have used better judgment. Charter violation and forfeiture proceedings were brought against then Mayor Bob Garcia in December of 2009. The council held Mr. Garcia not guilty of violating the charter, since the staff member did not substantially comply with Mr. Garcia's requests. If the same rule is applied here, Johnson would be found not guilty on that basis alone. Page 219.

<sup>3</sup> Id.

Johnson's January 11 email to DeBary records manager, Eric Frankton, and copied to City Manager, Dan Parrott, answered Frankton's question regarding the Mayor's Mailbox documents,<sup>4</sup> and made several requests.<sup>5</sup> The exchange, one DeBary claims violates the charter justifying removal, is as follows:

Email from Eric Frankton to Johnson:

Clint,

For Patricia Stevenson's request, I need everything put into the physical Johnsons mail box from 1-1-2015 to 1-8-2016. This includes "every letter, idea, note, or submission". When can you drop them off or when can I come get them.

Also Austin Fuller requested a copy of the Patricia Stevenson Requests and any responses back and forth. I took care of that request today.

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Johnson's Reply:

To: Eric Frankton      Cc: Dan Parrott

Re: Requests

Everything has been maintained in a box on a chair in my office at city hall. Please continue advising of whoever requests copies or

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<sup>4</sup> Mayor's Mailbox documents are surveys completed by DeBary residents and deposited in a DeBary shopping center receptacle. Johnson paid for the project and the documents are his property.

<sup>5</sup> The city attorney told Johnson that the Mayor's Mailbox documents were not public records, issuing a written opinion to that effect, Page 79, but asked Johnson to deliver the documents for public inspection, resolving a public records controversy. Johnson cooperated, delivering the documents to city hall to be viewed, copied, and returned.



review. Also, please do not allow anyone unsupervised access to the documents. You can schedule a time for me to sit in if necessary. (emphases added).

Could you please forward all invoices/receipts of what the city charged to fulfill Patricia Stevenson's many requests. (emphases added).

Thanks  
Clint

Johnson asked Frankton to please continue his current practice, to please supervise access, a legal requirement under the public records statutes, and to please extend him the courtesy of forwarding invoices and receipts. This common, courteous exchange between DeBary officials contains no orders and constitutes neither a charter violation nor grounds for forfeiture of office.

As evidence that the January 11 email was an order, the staff pointed to text messages between Johnson and Frankton<sup>6</sup> two weeks later and Johnson's public twitter message three months later,<sup>7</sup> but neither sheds much light. They show only that Johnson expected to maintain ownership and control over his Mayor's Mailbox documents and that his expectations were not met. While the twitter message says that Frankton took the documents against Johnson's express instructions, the January 11 email - the violation charged - cannot bear that

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<sup>6</sup> Page 13.

<sup>6</sup> Page 14.

construction. Johnson testified he actually never gave Frankton any such instruction,<sup>8</sup> and Frankton does not claim otherwise.<sup>9</sup>

Moreover, Frankton admitted Johnson had no power to give him an order – only City Manager Dan Parrott could do that.<sup>10</sup> While Johnson says Frankton did not comply with any of his January 11 requests,<sup>11</sup> Frankton says he did give Johnson the Patricia Stevenson invoices but later says there were none.<sup>12</sup>

Charge Two  
Reply to Email February 11, 2016

Johnson's February 11 email to Frankton, copied to Parrott, answers Frankton's public records question and then asks who made the request and for information regarding that person's past requests.

Email from Johnson to Eric Frankton:

To: Eric Frankton

CC: Dan Parrott

I posted nothing on Facebook. I posted several tweets that are on my public timeline. I engaged in 1text message conversation that was transitory in nature providing an update on the vote of the Orange City card room and has since been deleted.

I request to see the original request for this content. If none, I'd like a copy of where this is delivered. (emphasis added).

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<sup>8</sup> Transcript pages 118-119.

<sup>9</sup> Transcript pages 41-42.

<sup>10</sup> Transcript page 61.

<sup>11</sup> Transcript pages 111-113.

<sup>12</sup> Transcript pages 64-65.

I also request to see all the the bills, receipts, invoices, charged to the "requestor" of every request made of me in the last 6 months. If there was no fee charged, I'd like that noted in the complete listing of requests. (emphasis added).

Please provide an update on my other requests from last week. (emphasis added).

Thanks,

Clint

Again, Johnson politely requests information regarding matters of public concern, an elected official doing his job. Again, Mr Frankton did not consider Johnson's requests to be an order; he largely ignored them, saying his job was just to fulfill public records requests, not to answer questions.<sup>13</sup>

Charge Three  
Text Message April 20, 2016

This text message expresses Johnson's frustration with Parrott for calling the special meeting to be held April 20, 2016, a date Parrott knew Johnson would be out of town, to discuss suing Johnson for public records.<sup>14</sup> Both Johnson and the city manager share the right to call special meetings under charter section 4.11.<sup>15</sup>

The text message reads as follows:

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<sup>13</sup> Transcript 45.

<sup>14</sup> Transcript 121-123

<sup>15</sup> Since Johnson and the city manager share the power to call special meetings, you would expect some coordination or communication between the two before calling one. Page 232.

Cancel this crazy meeting and quit trying to burn the city before you leave.

In calling the special meeting, Parrott violated the charter and probably the Sunshine Law. He wanted immediate council approval to sue Johnson, but the council had voted to postpone the matter until May 11, 2016, giving Johnson an opportunity to obtain legal advice and gather the documents.<sup>16</sup> The charter's section 6.03 requires the city manager to implement such council decisions, not countermand them.<sup>17</sup> Since the council had already set the May 11 date, Parrott was charter bound to respect the council's decision.

But Parrott could not wait - a private citizen might sue first. Sued by the city, Johnson would have no insurance coverage requiring him to pay for his defense out of his own pocket.<sup>18</sup> Parrott wanted to inflict pain.

To change the council's decision without a meeting, Parrott almost certainly would have violated the Sunshine Law. He sent council members, excluding Johnson, a deceitful email, one designed to cause them to believe falsely that Johnson would not cooperate with the city on the public records matter.<sup>19</sup>

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<sup>16</sup> Page 35. Transcript 122.

<sup>17</sup> Page 236.

<sup>18</sup> Page 85.

<sup>19</sup> The email was sent two days after the council had voted to postpone the issue until May 11. Parrott entitled the message "Change of plans" and said Johnson "has apparently changed his mind and is not going to comply or negotiate." He attached one of Johnson's twitter messages. The twitter message attached was not

Other emails may shed light on the Sunshine Law issue, but the staff released only a handful of the emails Johnson requested since these proceedings began, using multiple excuses and trying to charge him for what should be free to any elected official.<sup>20</sup>

The charter provides council members are “free to discuss or recommend improvements to the city manager.” Telling Parrott to cancel that illegal meeting and stop his destructive behavior is in accordance with any council member’s rights under the charter. Johnson’s tersely worded text message perfectly encapsulates what Parrott was doing: burning the city. Parrott violated the charter, instigated this forfeiture proceeding, instigated the public records lawsuit, and left the city with a State Attorney Sunshine Law investigation,<sup>21</sup> perhaps a bribery investigation, and a bill for the Gemini Springs deal.

Parrott did not interpret Johnson’s text as an order. He went forward with his illegally called special meeting. Any council member could have admonished

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directed at the city, something Parrott knew from other messages. Pages 105 through 109.

<sup>20</sup> Pages 133-177.

<sup>21</sup> The State Attorney subpoenaed thousands of city records in its Sunshine Law investigation. Pages 92 through 100. Parrott had sent an email to all council members – again excluding Johnson – seeking council approval of his policy to acquire Gemini Springs conservation land for development as described in a proposed letter to the St Johns River Water Management District. The subpoena

Parrott and for his behavior, but only Johnson did. The text is neither a charter violation nor grounds for removal.

Charge Four  
Email May 16, 2016

Johnson's May 16 email asks Parrott to answer the questions repeatedly asked by newspaper reporter, Dinah Pulver, about DeBary's involvement with the Gemini Springs land deal.<sup>22</sup> The city staff planned to acquire publicly owned conservation land and turn it over to a private, undisclosed developer for the construction of a high density subdivision, the plans paid for by the city. The Gemini Springs land deal raises serious legal and ethical issues and may result in criminal charges.<sup>23</sup> At Parrott's direction, the staff was unresponsive to Ms Pulver, referring to her questions as "nonsense" to be stopped.<sup>24</sup>

The May 16 email is as follows:

Dan,

In light of this email, I would like a clear response to all of Ms. Pulver's questions & the records mentioned prior to the public meeting on the 18<sup>th</sup>, (preferably by today) as part of my preparation and research on behalf of the residents as their elected Johnson.

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will likely find evidence of other council decisions made while excluding the public and Johnson. Pages 87 through 90.

<sup>22</sup> Transcript page 130. Pages 110 through 112.

<sup>23</sup> Pages 87 through 100.

<sup>24</sup> Transcript 89.

To be clear, this is an inquiry to fulfill my duties, not direction to staff or a public records request. (emphasis added).

-Clint

Johnson, like the other council members, needed the information requested to do his job, but Parrott, the man so anxious to sue Johnson for public records was stonewalling. Johnson's email, one sent after the city council had already voted to pursue him for charter violations, is almost groveling in tone, yet DeBary found it to be a charter violation worthy of forfeiture. Parrott did not treat it as an order. He ignored Johnson's request, and told the staff not to respond.<sup>25</sup>

Charges Five through Eight  
Public Twitter Messages  
May 23, 2016, May 24, 2016, May31, 2016, June 6, 2016

DeBary claims that Johnson's public twitter messages stating his opinions regarding the staff's performance (mostly concerning the questionable Gemini Springs land deal) (Transcript132-135) violate charter section 4.04(a) denying the council or its members the right to "in any manner dictate the employment or removal of any employee other than the City Manager and City Attorney...." As mayor, Johnson had no power to dictate – "truly compel" - hiring or firing, *City of Hialeah v. Fernandez*, 661 So. 2d 335, 339 (Fla. 3d DCA 1955), and the city offered no evidence otherwise. Johnson's messages criticize staff performance and

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<sup>25</sup> Transcript page 84.

say who he thinks should go. He does not dictate hiring or firing, and except for Parrott, who retired on his own accord, all those Johnson criticized remain employed.<sup>26</sup>

### ESSENTIAL REQUIREMENTS OF LAW

DeBary twisted the words of its charter and the rules of fair play beyond the bounds to achieve a desired result, requiring this court to issue the *Writ of Certiorari*. DeBary departed from the essential requirements of law by violating clearly established principals of law resulting in a miscarriage of justice. *Allstate Insurance Company v. Kaklamanos*, 843 So. 2d 885 (Fla. 2003). Clearly established law can be derived “from a variety of legal sources, including recent controlling case law, rules of court, statutes, and constitutional law.” *Id.* at 889. DeBary twisted the charter’s words, ignored the rules of statutory construction, and violated Johnson’s constitutional rights to free speech, due process, and equal protection. The result was an illegal coup, a miscarriage of justice.

#### Statutory Construction

DeBary interpreted the prohibition against giving the staff orders as a prohibition against making requests or voicing disagreement, and the prohibition against dictating hiring and firing as a prohibition against making public statements

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<sup>26</sup> Transcript 131-136



critical of the staff or suggesting certain staff members should go. DeBary's charter interpretation is a matter of statutory construction, a legal question entitled to no judicial deference. *Seneca v. Florida Unemployment Appeals Commission*, 39 So. 3d 385 (Fla. 1st DCA 2010). The key to statutory construction is legislative intent determined from the ordinary and plain meaning of the language used. *Rinker Materials Corporation v. City of North Miami*, 286 So. 2d 552, 553 (Fla. 1973) (applying rules of statutory construction in holding the city's interpretation of its zoning ordinance was wrong). The plain meaning of the language is paramount. *Donato v. American Telephone and Telegraph Co.*, 767 So. 2d 1146 (Fla. 2000) (in rejecting the Florida Commission of Human Relations' broad interpretation of the term "marital status," the court approved a narrow interpretation based on plain meaning, despite the argument such a construction rendered a later legislative amendment meaningless).

The terms order and dictate are unambiguous, easily understood, and defined in case law and in the dictionary, the first places to consult. *Town of Longboat Key v. The Islandside Property Owners Coalition, LLC*, 95 So. 3d 1037 (Fla. 2d DCA 2012). Again, Black's Law Dictionary defines order as a "mandate, precept; a command or direction authoritatively given...." Authority, mandate, precept, or command - all require some ability to enforce, some consequence for noncompliance. Johnson had not the power. The staff knew it and acted

accordingly. He had no power to dictate – to “truly compel” hiring or firing, *City of Hialeah v. Fernandez*, 661 So. 2d 335, 339 (Fla. 3d DCA 1995), and his twitter posts resulted in neither. Given the plain meaning of the words, the court must ignore DeBary’s “self serving interpretation.” *Town of Longboat Key*, 95 So. 3d at 1042.

Since DeBary’s interpretation of its charter resulted in the forfeiture of Johnson’s office as mayor, the charter must be strictly construed against the city. *Mulligan v. City of Hollywood*, 871 So. 2d 249 (Fla. 4th DCA 2003); *Cabrera v. Department of Natural Resources*, 478 So. 2d 454 (Fla. 3d DCA 1985). *Dyer v. Department of Insurance and Treasurer*, 585 So. 2d 1009, 1017 (Fla. 1st DCA 1991). (statutes imposing a penalty must be construed strictly in favor of the party to be penalized). Forfeiture is a special breed of penalty statute that is not favored by the legal system and must be more strictly construed in favor of the party to be penalized. *Mulligan*, 871 So. 2d at 253. (ambiguous statutes and even clear statutes resting on uncertain authority must be construed against the entity imposing the penalty).

DeBary had no basis for imposing the harsh remedy of forfeiture against Johnson. *See Mulligan*, 871 So. 2d at 253. There may be extraordinary cases where the actions of a DeBary elected official amounts to giving orders or dictating employment despite the lack of formal power, but this is not it. The city

introduced no evidence that Johnson wielded such power. To the contrary, his requests and staff comments were largely, if not entirely, ignored, and Johnson never even suggested any repercussion for noncompliance. Finally, all four of Johnson's twitter messages and one of his emails were sent after the council had voted to pursue these forfeiture proceedings, showing publicly how little regard it had for Johnson or his questioning of city policy. Parrot was railroading Johnson out of office, and the staff knew it.

This court can conclude only that Johnson never ordered or dictated anything. The court must construe the charter strictly against DeBary, but that is hardly necessary. Johnson did not violate the charter; he did not forfeit his office. When a city imposes such a penalty for activities not prohibited by the penal statute, certiorari is the proper remedy. *Dressner v. City of Tallahassee*, 164 So. 2d 208, 212 (Fla. 1964).

### First Amendment

DeBary departed from the essential requirements of law by violating Johnson's constitutional right to free speech under the First Amendment. DeBary seeks to deter its elected officials from asking questions, voicing opinions, or speaking publicly on issues of importance. Fortunately, elected officials enjoy the same freedom of speech as any other citizen. *Bond v. Floyd*, 385 U.S. 116 (1966).

In *Bond*, the Georgia legislature tried to exclude Julian Bond, because he had spoken against the war in Vietnam. The court stated as follows:

The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policies. The central commitment of the First Amendment, as summarized in the opinion of the court in *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964), is “debate on public issues should be uninhibited, robust, and wide-open.”\*\*\* The interest of the public in hearing all sides of a public issue is hardly advanced by extending more protection to citizen-critics than to legislators. Legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they elected to represent them. (emphasis added). *Id.* at 136-137.

DeBary’s interpretation of its charter’s free speech prohibitions are not content neutral and directly threaten democratic government by inhibiting its elected officials access to information and their ability to freely express their opinions. Such a burden on First Amendment rights is subject to strict scrutiny, requiring that the restrictions be (1) narrowly tailored, to serve, (2) a compelling state interest. *Republican Party of Minnesota v. White*, 536 U.S. 765, 775 (2002). In *White*, the U.S. Supreme Court held that election laws prohibiting judges from announcing their views on disputed legal or political issues during an election were unconstitutional. The court found that such restrictions served no useful purpose and were not tailored at all. It reiterated its position that elected officials must be

free to express their opinions on matters of current public importance. *Id.* at 781-82. See also *Wood v. Georgia*, 730 U.S. 375, 394 (1962) (“the role that elected officials play in our society makes it all the more imperative that they be allowed to freely express themselves on matters of current public importance”).

The DeBary charter, as applied to Johnson, violates his rights under the First Amendment. As such, DeBary’s decisions fail to comply with the essential requirements of law.

#### Fourteenth Amendment – Equal Protection

DeBary treated Johnson’s requests and other staff messages substantially different from the way it treated requests or messages of other DeBary council members. Although their emails (Pages 113-128) are indistinguishable from Johnson’s, the DeBary staff charged none of them with violating the charter. A disparity in treatment violates equal protection if it arises out of impermissible considerations, such as the intent is to punish the exercise of constitutional rights or the malicious or bad faith intent to injure a person. *Lozman v. City of Rivera Beach*, 39 F.Supp. 3d 1392, 1411(S.D. Fla. 2014). Alternatively, a city violates the equal protection clause if there is no rational basis for the difference in treatment. *Id.*

Despite DeBary’s stonewalling of Johnson’s requests, Johnson obtained documents necessary to show the disparity in treatment. The test of disparity in

treatment is “whether a prudent person, looking objectively at the incidents, would think them roughly equivalent.” *Id.* Council Member Rick Dwyer emailed Frankton requesting that he keep all Johnson’s social media posts (public record or not). Although Frankton was offended by Johnson’s January 11 email request that Frankton supervise access to Johnson’s records (Transcript 38), oddly, he was not offended by Dwyer’s request (Transcript 55-56). Similarly, Dyer wanted Johnson’s daily email count. Frankton did not refuse Dyer, but refused to answer Johnson’s questions about records, saying that was not his job (Transcript 45-46). Council Member Lita Handy-Peters sent Parrott an email requesting information on behalf of a constituent concerning another DeBary land deal gone bad (Page 115), an email much like Johnson’s request for answers to the newspaper’s Gemini Springs questions, but no charges were filed against her. Rick Dwyer sent Parrott an email, telling Parrott the provisions he wanted in a resolution (Pages 119- 120), but he suffered no consequences like Johnson did for telling Parrott to cancel an illegal meeting.

While the lack of a rational basis appears on its face, DeBary’s actions drip with malicious intent and bad faith. See *Lozman*, 39 F.Supp. 3d 1392 at 1412. Recall Parrott’s illegally called the April 20 special meeting on a date he knew Johnson would be gone, seeking council approval to sue Johnson, thereby ensuring Johnson need to pay for his defense out of his own pocket. Parrott likely violated

the Sunshine Law in calling the special meeting, and he likely did so again when he initially placed forfeiture on the May 4 agenda without previous council discussion. Those acts, coupled with the DeBary's trampling on Johnson's due process rights discussed below, show an extreme level of maliciousness and bad faith.

DeBary's unequal treatment of Johnson violated Johnson's constitutional rights. See *Rinker Materials Corporation v. City of North Miami*, 286 So. 2d 552, 556 (Fla. 1973) (those occupying similar positions must be given equal treatment under the constitution). DeBary's violations of Johnson's rights under the equal protection clause of the Fourteenth Amendment constitute a failure to comply with the essential requirements of law.

#### COMPETENT AND SUBSTANTIAL EVIDENCE

DeBary produced no competent, substantial evidence supporting its findings of charter violations or forfeiture. Substantial evidence establishes facts from which a conclusion can reasonably be inferred. *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). The evidence must be both sufficiently material and relevant that a reasonable mind would accept it as establishing the matter to be proved. *Id.*

The City of DeBary produced nothing – nothing to show Johnson gave the staff orders, nothing to show he dictated employment – nothing to show that in the context of the situation, Johnson had such power. Parrott had the January 11 and

the February 11 emails, but never complained about either until he instigated these proceedings. (Transcript 121). He had the text message regarding the April 20 special meeting, but never responded. The staff entirely, or almost entirely, failed to fulfill Johnson's request and completely failed to follow his opinions regarding their employment. The self serving whining of two staff members that Johnson thought ought to be fired is not evidence. Both knew Parrott, not Johnson, gave the orders, and they both did as Parrott said (Transcript 54, 60, 84, 89-90). DeBary produced no evidence that anyone suffered any repercussion for ignoring Johnson, that Johnson threatened repercussions, or that Johnson had some way of sanctioning noncompliance. Indeed, five of the eight messages complained of (including all his public twitter messages concerning the staff competence and employment) occurred after May 4, the date Parrott put Johnson on the train out the door.

#### PROCEDURAL DUE PROCESS

Elected officials have a property right in their office, one that cannot be terminated in absent due process of law. *Gordon v. Leathermann*, 325 F.Supp. 494, 497 (S.D. Fla. 1971); *Joyner v. Shuman*, 116 So. 2d 472, 479-80 (Fla. 2nd DCA 1959). In the context of a removal proceeding, Florida courts have always required that the elected official be given notice of the conduct justifying removal and a fair hearing, one in which one side does not have a special advantage in



influencing the decision. *Cherry Communications, Inc., v. Deason*, 652 So. 2d 803, 805 (Fla. 1995); *Joyner*, 116 So. 2d at 479. DeBary complied with neither aspect of due process in these proceedings, subjecting Johnson to a kangaroo court hearing on charges the newspaper described, charitably, as “borderline ridiculous.”

Florida courts are unanimous in holding that due process requires that elected officers be given written charges of which describe actual misconduct warranting removal. *Ballantyne*, 368 So. 2d 351, 353 (Fla. 1979); *Gordon v. Leatherman*, 325 F. Supp. at 498 (charter recall charges must border on misfeasance, malfeasance, or nonfeasance in office, each term noting or implying some form of unlawful or criminal activity); *Piver v. Stallman*, 198 So. 2d 859, 862 (Fla. 3rd DCA 1967) (in rejecting mandamus ordering city charter recall, the court found the charges that councilman violated charter were insufficient where they alleged no factual basis). As in *Joyner*, DeBary’s failure to charge Johnson with anything other than legitimate, authorized acts violated due process. *Joyner*, 116 So. 2d 473. Moreover, all charges must meet the due process test or the process is tainted, and the results are invalid. *Garvin v. Jerome*, 767 So. 2d 1190, 1193 Fla. 2000).

DeBary not only failed the due process requirement of proper notice, it failed the requirement that the hearing be fair – that not one side have a particular advantage. *Cherry Communications, Inc.*, at 652 So. 2d 805. Parrott put the

question of Johnson's alleged charter violations and forfeiture of office on the May 4, 2016, agenda without there ever having been any previous council discussion of the issue.<sup>27</sup>

Parrott almost certainly obtained prior council approval for such a drastic action, acting as a conduit for the council members excluding Johnson, probably obtaining their approval in violation of the Sunshine Law. He is under a State Attorney investigation for performing a similar stunt regarding the questionable Gemini Springs land deal and may have committed another Sunshine Law violation in calling the April 20 special meeting.

Clearly, Parrott wanted to get rid of Johnson by any means necessary. He enlisted the city attorney's help (Page 101), having him draft the May 4 agenda language (Page 102) and provide a made-to-order legal opinion, saying two of Johnson's messages violated the charter (Page 103). The city attorney, the charter says, takes direction from the council, not the city manager (Pages 237-238). Without council direction, the city attorney had no authority join Parrott in initiating these forfeiture proceedings.<sup>28</sup>

Parrott and the city attorney, having begun the forfeiture proceedings, perhaps with a crime, had a vested interest in the verdict. Parrott needed to

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<sup>27</sup> Pages 40 through 46.

<sup>28</sup> Pages 101 through 104.

vindicate his actions and smooth the Gemini Springs deal; the city attorney needed to vindicate his actions and his highly questionable charter opinion. Both were able to whisper in the council members' ears from May 4 until the final hearing on August 30, while Johnson and his attorney were forbidden to do so. To call such a hearing fair is a betrayal of the constitution.

Finally, DeBary denied Johnson access to public records over the four months of these proceedings, producing little more than a handful. The city and the city attorney stonewalled, using multiple excuses and outright refusals.<sup>29</sup> The staff demanded as much as \$17,456.00 for one record request.<sup>30</sup> While DeBary justified its actions as following Volusia County procedures (Transcript 77-78), the undersigned made a similar request to the county and received the documents the next day free of charge (Transcript 78-79). Although the county does not charge council members for documents, it said the request took so little time no citizen would have been charged.

DeBary, having failed to provide either proper notice or a fair hearing, violated Johnson's right to due process. Johnson is entitled to have this court issue the *Writ of Certiorari*, quashing DeBary's decisions.

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<sup>29</sup> Pages 133 through 177.

<sup>30</sup> Page 144.

## CONCLUSION

DeBary wrongly convicted Johnson of violating the charter and wrongly declared his office forfeited. After almost four months of scouring its records and collective memory, it could only come up with eight absurd charges. Someone assuming the authority to give orders, to dictate employment, would, as any thinking person knows, have left a trail far longer and far more successful.

The court should grant the *Writ of Certiorari*, quashing DeBary's unlawful decision that Johnson violated the charter and that he forfeited his office as mayor, thereby restoring Johnson to the office to which he was elected by the people.

/s/ Douglas A. Daniels  
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(386) 255-8118  
(386) 255-8220  
Attorney for Petitioner  
doug@danielslegal.com



# City of DeBary, Florida

City Hall  
16 Colomba Road  
Tel. 386/668-2040  
Fax 386/668-4122

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August 29, 2016

VIA CERTIFIED MAIL & U.S MAIL

Clint Johnson  
389 Detroit Terrace  
DeBary, FL 32713

**DEBARY CITY COUNCIL DECISIONS REGARDING MAYOR CLINT JOHNSON'S  
CITY CHARTER VIOLATIONS AND FORFEITURE OF OFFICE  
AT CITY COUNCIL HEARINGS ON AUGUST 24, 2016**

Dear Mr. Johnson:

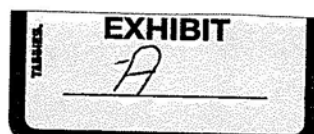
This letter memorializes the decisions of the DeBary City Council made at the public hearing held August 24, 2016 on alleged violations of Section 4.04(a) of the City Charter (the "Charter Violation Hearing"). This letter also memorializes the decision of the DeBary City Council with respect to the public hearing held August 24, 2016 to determine whether you forfeited your office as Mayor of DeBary (the "Forfeiture Hearing").

**Charter Violation Hearing**

On August 24, 2016, at the conclusion of a properly noticed and advertised public hearing lasting more than five (5) hours, and after considering and weighing all of the testimony and evidence presented by the parties and the public, the City Council found that you violated express prohibitions under Section 4.04(a) of the City Charter, as described below.

Section 4.04(a) of the City Charter provides that "[n]o individual member of the Council shall give orders to any officer or employee of the City." The following were determined by the City Council to constitute violations of this provision:

- January 11, 2016: Directing Records Manager Eric Frankton to advise you of the identity of anyone requesting public records turned over by you to the City;
- January 11, 2016: Directing Records Manager Eric Frankton not to allow unsupervised access to public records turned over by you to the City;
- January 11, 2016: Directing Records Manager Eric Frankton to transmit to you all invoices and receipts of what the City had charged to fulfill public records requests by a specific requestor;



- February 11, 2016: Directing Records Manager Eric Frankton to compile certain bills, receipts, and invoices charged to a public records requestor and to compile a complete listing of the requests and to notate all instances where there was no fee charged;
- April 20, 2016: Ordering City Manager Dan Parrott to cancel a special meeting which had been called by Mr. Parrott in accordance with Section 4.11 of the City Charter; and
- May 16, 2016: Directing City Manager Dan Parrott to provide “a clear response to all of Ms. Pulver’s questions & the records mentioned prior to the public meeting on the 18<sup>th</sup> . . .”

Section 4.04(a) of the City Charter provides that “[n]either the Council, nor any individual member of the Council, shall in any manner dictate the employment or removal of any employee other than the City Manager and City Attorney.” The following were determined by the City Council to constitute violations of this provision:

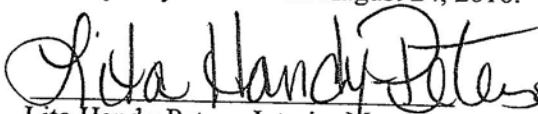
- May 23, 2016: Criticizing IT Director Eric Frankton and calling for Mr. Frankton to “leave now.”
- May 24, 2016: Criticizing Transit-Oriented Development Marketing Director Roger Van Auker and calling for Mr. Van Auker to be fired.
- May 31, 2016: Criticizing City Staff and stating that Transit-Oriented Development Marketing Director Roger Van Auker and Records Manager Eric Frankton “must go.”; and
- June 6, 2016: Criticizing Transit-Oriented Development Marketing Director Roger Van Auker and stating that he “needs to go.”

### Forfeiture Hearing

The City Council found and declared unanimously by a vote of 4-0 that you forfeited your office, effective as of the City Council’s decision at approximately 11:00 PM, August 24, 2016, in accordance with Section 4.07 of the City Charter, based on the Council’s findings that you violated express prohibitions of Section 4.04(a) and other findings on the record.

The foregoing decisions were made by the DeBary City Council on August 24, 2016.

Attested and Filed in the City’s Records on the date below.

  
Lita Handy-Peters, Interim Mayor, 8-29-2016  
On behalf of the DeBary City Council Date

  
Warren Graham, City Clerk 8-29-2016  
Date

cc: Council member Rick Dwyer  
Council member Mike Brady  
Council member Chris Carson  
A. Kurt Ardaman, City Attorney  
City Manager Ron McLemore  
✓ Douglas A. Daniels, Esq.  
D. Andrew Smith, III, Esq.

**Filing #:46988827**

**Filer:Douglas A Daniels**

**Payment:\$410.00**

**1 Defendants greater than 5: \$0.00**

**2 Summons Issuance: \$0.00**

**3 Request for Certified Copies: \$0.00**

**4 Certification Fee (per document): \$0.00**

**5 Request for Non-Certified Copies (per page): \$0.00**

**6 Request for Certified Copies: \$0.00**

**7 Per severance: \$0.00**

**8 Summons Issuance: \$10.00**

**9 Complaints/Petitions Other - Matters not falling within the Other  
Civil Subcategories - \$400: \$400.00**

**10 Complaints/Petitions Request that Summons be Issued: \$0.00**

**11 Complaints/Petitions Civil Cover Sheet: \$0.00**

**12 Miscellaneous Transcript of Proceeding: \$0.00**

**13 Miscellaneous Offer: \$0.00**

**14 Miscellaneous Offer: \$0.00**

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
IN AND FOR VOLUSIA COUNTY, FLORIDA

CLINT JOHNSON,

Petitioner,

v.

CITY OF DEBARY, FLORIDA, etc.,

Respondent.

DIVISION 01

CASE NO. 2016-11483-CIDL

CLERK OF THE CIRCUIT  
& CTY. COURT  
VOLUSIA CTY., FL  
CC 65

MAY 15 2017

FILED

**FINAL ORDER ON PETITION FOR WRIT OF CERTIORARI**

This matter came before the Court for oral argument upon the Petitioner's Petition for Writ of Certiorari. The Court, having studied the Petition, Response and Reply briefs, having thoroughly reviewed the record, and having considered the argument of counsel, hereby finds as follows:

Petitioner Clint Johnson, former mayor of the City of DeBary, seeks certiorari review of the August 24, 2016, decision of the city council of Respondent City of DeBary finding that Johnson violated express prohibitions of Section 4.04(a) of the Charter of the City of DeBary and that, therefore, he forfeited his office as mayor in accordance with Section 4.07 of the Charter. The city council's decision was memorialized in an August 29, 2016, letter to Johnson entitled "DeBary City Council Decisions Regarding Mayor Clint Johnson's City Charter Violations and Forfeiture of Office at City Council Hearings on August 24, 2016."

This Court's certiorari review of a local government's quasi-judicial decision is limited to a review of the record to determine whether procedural due process was accorded, whether the essential requirements of the law were observed, and whether the administrative findings and



judgment are supported by competent substantial evidence in the record. Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1092 (Fla. 2000); and City of Deerfield Beach v. Vaillant, 419 So.2d 624, 626 (Fla. 1982). On certiorari review this Court cannot reweigh the evidence, but rather must search the record for evidence that supports the government's decision. Broward County v. G.B.V. International, Ltd., 787 So. 2d 838, 846 n. 25 (Fla. 2001). Based on the record and on the Respondent's argument, the Court finds that procedural due process was afforded the Petitioner, and the essential requirements of the law were observed. The Court now turns to the issue of whether there is any competent substantial evidence in the record to support the city council's decision. Concerning the term "competent substantial evidence," the Supreme Court of Florida has ruled that "the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

The city council's charter violation hearing concerned eight separate charges that Johnson violated the charter by certain comments that he wrote on different dates. Four of the charges were based on comments that Johnson posted on Twitter which were found to have violated the charter prohibition against a member of the city council dictating the removal of any city employee. The other four charges were based on three emails and a text message written by Johnson which were determined to have violated the charter prohibition against a member of the council giving orders to any employee of the city. Much of the argument before this Court focuses on the particular words Johnson used in each of his comments and whether those words rose to the level of dictating the removal of an employee or ordering an employee to do something so as to constitute a charter violation.

Johnson's Twitter Comments Posted  
May 23, 2016, May 24, 2016, May 31, 2016, and June 6, 2016.

The pertinent portion of Charter Section 4.04(a) states as follows: "Neither the Council, nor any individual member of the Council, shall in any manner dictate the employment or removal of any employee other than the City Manager and City Attorney, but the Council may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment or removal of such officers or employees."

Johnson posted the following four offending comments on Twitter:

\*On May 23, 2016, he commented, "DeBary records manager Eric Frankton should be standing up to Dan Parrott, not taking bad unethical direction. They both need to leave now."

\*On May 24, 2016, he posted, "The refusal to stop SaveGemini land deal is from TOD Director Roger Van Auker's arrogance. He was wrong, wasted tax \$, and should be fired!"

\*On May 31, 2016, he wrote, "The embarrassingly stupid culmination of an entire year of exposing city hall corruption. Dan, Roger & Eric must go!"

\*On June 6, 2016, he stated, "Again, huckster Roger Van Auker needs to go! Time to close this ugly chapter on DeBary history & work forward."

In these four Twitter posts the Respondent apparently interpreted the words "leave now," "should be fired," "must go," and "needs to go" as Johnson's attempt to "dictate" the removal of an employee in violation of Charter Section 4.04(a). In his remarks to the city council at the hearing, the city's attorney referred to *Merriam-Webster's Dictionary* to define the word "dictate" as meaning "to issue an order" or "to impose, pronounce, or specify authoritatively." He expressly conceded that the subject Twitter posts did not constitute the issuance of any order, stating, "I'm not going to stand here and tell you those Twitter posts were issuances of an order. They were broadly disseminated, they were not to any direct person, so I will not stand here and try to convince you that definition should apply." (T., p. 23) However, the city's attorney

suggested that the council could find that Johnson's Twitter posts constituted an authoritative pronouncement for an employee to be fired.

Other than the Twitter posts themselves, the only evidence offered to support the alleged violations was the self-serving testimony of the employees who were the targets of Johnson's comments. In response to very leading questions from the city's attorney, the employees testified generally that the Twitter comments made them feel insecure about their jobs and that they interpreted Johnson's comments as calling for them to be fired. Clearly, there is no evidence in the record that Johnson's Twitter posts dictated the firing of any employee by way of issuance of an order to any person, and this point was conceded by the city's attorney at the hearing.

Concerning the suggestion that Johnson's comments constituted authoritative pronouncements that employees be fired, the Court notes that *Merriam-Webster's Dictionary* defines "authoritative" as "having or proceeding from authority: Official." There is no evidence demonstrating that there was anything "official" about Johnson's personal, social media Twitter posts. Nothing in the record suggests that Johnson utilized Twitter to conduct official city business, dictate policy statements, issue official directives, or to convey any official communications at all beyond simply expressing his own personal opinion about things on his personal social media account. Indeed, Section 4.04(a) appears to allow city council members to express their personal views about firing employees and to "fully and freely discuss" those views with the city manager.

In their deliberations before their rush to vote unanimously to find violations of the charter, there was almost no discussion at all among the city council members about any evidence supporting these violations alleged. There was no discussion held or finding made that any of the Twitter comments constituted an authoritative pronouncement dictating that any

employee be removed. In fact, to the contrary, council member Dwyer stated that relative to the May 23, 2016 Twitter post, “the statement that ‘they both need to leave now’ is an indication of **an opinion or a view** that they both should be fired.” (Emphasis added.) (T., p. 231) Further, concerning the May 31, 2016 Twitter post, Dwyer moved to find that Johnson violated the charter “by **suggesting** [as opposed to dictating] that they be fired.” (Emphasis added.) (T., pgs. 233-34). The unanimous vote finding a violation there was based on a motion that Johnson merely **suggested** that three employees “must go.”

The Court finds that there is no competent substantial evidence in the record to support the city council’s findings that Johnson’s Twitter comments constituted a charter violation, in that his offending words used, along with the other evidence relied upon, were not “sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.” De Groot, 95 So. 2d at 916. Therefore, the city council’s decision that Johnson’s four subject Twitter posts violated the charter must be quashed.

Johnson’s January 11, 2016, Email Reply to Eric Frankton

The pertinent portion of Charter Section 4.04(a) states as follows: “No individual member of the Council shall give orders to any officer or employee of the City.” On January 11, 2016, Eric Frankton, records manager, sent an email to Johnson inquiring about obtaining some documents that had been requested. Johnson sent him a reply email stating as follows:

“Everything has been maintained in a box on a chair in my office at city hall. Please continue advising of whoever requests copies or review. Also, please do not allow anyone unsupervised access to the documents. You can schedule a time for me to sit in if necessary. Could you please forward all invoices/receipts of what the city charged to fulfill Patricia Stevenson’s many requests. Thanks, Clint.”

The Respondent charged that this email from Johnson violated the charter prohibition against a member of the council giving orders to an employee of the city. Emphasizing the word “please”

used three times in the text, Johnson characterized his email as nothing more than a common, courteous exchange between officials that contained no orders and did not constitute a violation of the charter.

Both attorneys rely on dictionary definitions of the word “order.” The city’s attorney refers to the *Merriam-Webster’s Dictionary* definition of “order” as a “command.” Johnson’s attorney cites to *Black’s Law Dictionary*, which defines an “order” as “a mandate; precept; command or direction authoritatively given.” The words used in a city’s ordinance must be given their plain, ordinary and obvious meaning. Rinker Materials Corporation v. City of North Miami, 286 So. 2d 552 (Fla. 1973). “When the legislative intent is clear from words used in the enactment, courts are bound thereby and may not seek a meaning different from ordinary or common usage connotation of such words....” *Id.*, at 554. “[A]n ordinance should be given its plain meaning and any doubts should be construed in favor of the [petitioner].” Shamrock-Shamrock, Inc. v. City of Daytona Beach, 169 So. 3d 1253, 1256 (Fla. 5th DCA 2015). A city council’s interpretation of the words in its own ordinance is improper if it violates the clear and ordinary meaning of the ordinance. Town of Longboat Key v. Islandside Property Owners Coalition, LLC, 95 So. 3d 1037, 1041 (Fla. 2d DCA 2012).

It appears that the plain and ordinary meaning of the words used in Charter Section 4.04(a) prohibiting the giving of “orders” to employees is that a council member may not command or authoritatively direct an employee to do something. According to *Merriam-Webster’s Dictionary* definition of the word “please,” it is “used as a function word to express politeness or emphasis in a **request**.” (Emphasis added.) According to *Black’s Law Dictionary*, the word “request” means “to ask for something or for permission or authority to do, see, hear, etc., something; ... precatory and not mandatory.” Based on the clear and ordinary meaning of

the charter's words prohibiting giving "orders" to employees, it appears that the city council improperly interpreted their charter's language to apply to Johnson's requests to "please" do or not do something.

As to the testimony at the hearing, Eric Frankton stated that he did not consider to be an order or "a direction" Johnson's request to "please continue advising of whoever requests copies for review." Further, the Court found no evidence in the record that Johnson's request to "please forward all invoices/receipts of what the city charged...." was anything more than a public records request from him. When asked what portion of Johnson's email Frankton took to be a direction to him to do or not do something, Frankton referred to the request to "please do not allow anyone unsupervised access to the documents." Frankton testified that this request made him angry because he wouldn't do that anyway, and he felt like Johnson was telling him how to do his job. Then Frankton talked about one of Johnson's Twitter posts made over three months after the January 11th email in which Johnson commented that Frankton had taken records from Johnson's office against his "express instructions." Frankton further testified that this Twitter post confirmed his earlier interpretation that Johnson was attempting to instruct him to do something. (T., pgs. 37-42). Johnson's initial testimony was that he believed he gave instructions to Frankton not to take the documents out of his office, but he then clarified his testimony to say that he didn't tell Frankton to take them out of the office. He characterized his subsequent use of the words "express instructions" as "hyperbole." (T., pgs. 118-19). Frankton's testimony about the "express instructions" Twitter post clearly is not competent substantial evidence because the Twitter comment was more than three months after the subject January 11, 2016 email, it clearly is irrelevant to the three subject requests in the email, and the email on its face contradicts the Twitter post because the email exchange indicates that Johnson was

complying with Frankton's request to come pick up the documents, and there is nothing in the email implying that Johnson was instructing him not to take them out of his office.

During the city council's deliberations, council member Dwyer stated that he did not find a violation based on the January 11, 2016, email alone. However, when coupled with the irrelevant, incompetent and unsubstantial evidence concerning the "express instructions" Twitter post, Dwyer indicated he believed there was a violation. (T., pgs. 221-22). This was the basis for his motion to find a violation and the unanimous vote finding such. Based on the foregoing, the Court finds that there was no competent substantial evidence to support the city council's decision that Johnson violated the charter by his January 11, 2016 email.

Johnson's February 11, 2016, Email Reply to Eric Frankton

The pertinent portion of Johnson's February 11, 2016, email reply to Eric Frankton on which the charter violation charge was based reads as follows: "I also request to see all the the (sic) bills, receipts, invoices, charged to the 'requestor' of every request made of me in the last 6 months. If there was no fee charged, I'd like that noted in the complete listing of requests." The Respondent charged that this portion of Johnson's email violated the charter prohibition against a member of the council giving orders to an employee of the city.

Eric Frankton's testimony did not support the charge. Frankton testified that the part of Johnson's email statement, "I also request to see all the the (sic) bills, receipts, invoices, charged to the 'requestor' of every request made of me in the last 6 months," was merely a public records request from Johnson, as opposed to an order from him. Frankton did indicate that he believed the email sentence, "If there was no fee charged, I'd like that noted in the complete listing of requests," went beyond a public records request. He indicated he felt that way about another of the email sentences, but the charter violation charge was not based on that other sentence.

In the city council's deliberations before finding a violation, there was absolutely no discussion about any evidence supporting this charge. As noted above, *Black's Law Dictionary* defines the word "request" as meaning "to ask for something or for permission or authority to do, see, hear, etc., something; ... precatory and not mandatory." According to the *Reader's Digest Family Word Finder*, the word "request" is an antonym of the word "order." Johnson's email request stating, "I also request to see all the the (sic) bills, receipts, invoices, charged to the 'requestor' of every request made of me in the last 6 months," clearly shows on its face that it was simply a public records request and not an order. There is absolutely no evidence in the record suggesting otherwise. Further, the plain, ordinary meaning of the words in Johnson's statement, "If there was no fee charged, I'd like that noted in the complete listing of requests," reflects that he would like something to be noted in a list, but the words do not order anything to be noted and do not order a list to be compiled.

The Court finds that there is no competent substantial evidence in the record to support the city council's decision that Johnson violated the charter by his February 11, 2016 email.

Johnson's April 20, 2016, Text Message to City Manager Dan Parrott

On April 20, 2016, Johnson sent a text message to Dan Parrott, city manager at the time, telling him to cancel a special meeting of the city council which had been called by Parrott. The text message stated, "Cancel this ridiculous meeting and quit trying to burn the city before you leave." The Respondent's charge was that this text message was an order to Parrott to cancel the meeting, in violation of the charter prohibition against a member of the council giving orders to an employee of the city.

According to Johnson, this text message expressed his frustration with Parrott for calling the special meeting to be held on April 20, 2016, a date on which Parrott knew Johnson would be



out of town, to discuss suing Johnson for public records. Johnson's attorney characterized the message as more of "a rant – not an order." In his testimony Johnson admitted that he "told" Parrott to cancel the meeting. (T., p. 124) Unlike the subject statements in the January 11th and February 11th emails, the instant text message is not prefaced by words such as "please" or "request." The message "cancel this ... meeting" is more of a directive or command to Parrott. As previously stated herein, the plain and ordinary meaning of the words used in Charter Section 4.04(a) prohibiting the giving of "orders" to employees is that a council member may not command or authoritatively direct an employee to do something. Here, a plain reading of Johnson's message in evidence is that the mayor is giving a direction or instruction to the city manager to cancel a meeting. The Court finds this to be sufficiently relevant and material that a reasonable mind would accept it as adequate to support a conclusion that this message constituted a charter violation. While this Court does not disagree with Johnson's attorney that the text message appears to be more of "a rant" made out of frustration, this Court is not permitted on certiorari review to substitute its judgment for that of the city council when competent substantial evidence exists to support the city council's decision.

The Court finds that there is competent substantial evidence in the record to support the city council's decision that Johnson violated the charter by his April 20, 2016 text message

Johnson's May 16, 2016, Email to Dan Parrott

Johnson's email to Dan Parrott dated May 16, 2016, states as follows:

"In light of this email, I would like a clear response to all of Ms. Pulver's questions & the records mentioned prior to the public meeting on the 18th, (preferably by today) as part of my preparation and research on behalf of the residents as their elected Mayor. To be clear, this is an inquiry to fulfill my duties, not direction to staff or a public records request."

The Respondent charged a violation of the charter prohibition against a member of the council giving orders to an employee of the city. Testimony was provided by Roger Van Auken, who indicated that he took the email to be a direction to perform certain tasks, “even though it was a **request** for us to do something...” (Emphasis added.) (T., pgs. 83-84) He then went on to state that “this mayor’s **request** was **asking** us to provide it.” (Emphasis added.) (T., p. 84)

The plain and ordinary meaning of the words “I would like a clear response” reflects that Johnson would like to get a response from Parrott to Ms. Pulver’s questions, but the words do not expressly order Parrott to provide a response. Coupled with the email’s wording, “To be clear, this is an inquiry ... **not direction to staff**...” (Emphasis added), the email demonstrates on its face that Johnson was going out of his way to let the recipients know that this was just an inquiry and not an order or direction to them to provide the response he stated he would like. Based on the clear and ordinary meaning of the charter’s words prohibiting giving “orders” to employees, it appears that the city council improperly interpreted the charter’s language to apply to Johnson’s email request to provide a clear response, which shows on its face that it was not intended as direction to staff.

The Court finds that there is no competent substantial evidence in the record to support the city council’s decision that Johnson violated the charter by his May 16, 2016 email.

Based on the foregoing, it is hereby

**ORDERED AND ADJUDGED as follows:**

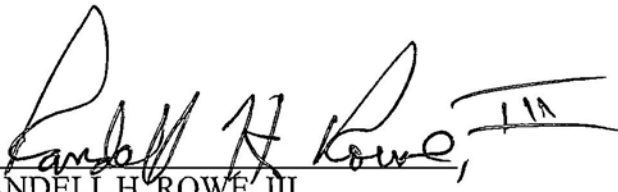
1. The city council’s decisions that Johnson’s four subject Twitter posts violated Section 4.04(a) of the Charter of the City of DeBary are quashed.
2. The city council’s decision that Johnson’s January 11, 2016, email violated Section 4.04(a) of the Charter of the City of DeBary is quashed.

3. The city council's decision that Johnson's February 11, 2016, email violated Section 4.04(a) of the Charter of the City of DeBary is quashed.

4. The city council's decision that Johnson's May 16, 2016, email violated Section 4.04(a) of the Charter of the City of DeBary is quashed.

5. Because there is competent substantial evidence in the record to support the city council's decision that Johnson violated Section 4.04(a) of the Charter of the City of DeBary by his April 20, 2016 text message, his Petition for Writ of Certiorari must be and is DENIED.

**DONE AND ORDERED** in DeLand, Volusia County, Florida, this 15<sup>th</sup> day of May, 2017.

  
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RANDELL H. ROWE, III  
CIRCUIT JUDGE

Copy provided to:

Douglas A. Daniels, Esq.  
Anthony Garganese, Esq.  
D. Andrew Smith, III, Esq.