

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

JAY R. CHERNOFF, an individual and in
his capacity as City Commissioner,

CASE NO.: 2023-2633-CA-01

Plaintiff,

v.

CITY OF NORTH MIAMI BEACH;
COMMISSIONER MICHAEL JOSEPH;
and COMMISSIONER MCKENZIE
FLEURIMOND

Defendants.

**COMMISSIONER MICHAEL JOSEPH'S RENEWED VERIFIED
EMERGENCY MOTION FOR TEMPORARY INJUNCTIVE RELIEF**

Pursuant to Fla. R. Civ. P. 1.610, Defendant and Counter-Plaintiff Commissioner Michael Joseph ("Commissioner Joseph"), hereby files this Renewed Verified Emergency Motion for Injunctive Relief.

As expected, at the commission meeting held on May 16, 2023, the City Commission of the City of North Miami Beach voted to unlawfully remove Commissioner Joseph from office for violating Section 2.5 of the City Charter and began the process of setting a special election to replace him. In doing so, the City Commission acted without authority under the City Charter, disregarded the interpretation of Section 2.5 by a succession of City Attorney (including the current City Attorney, John Herin), and contravened past precedent of the City in applying the Charter provision. Perhaps most pertinently, the City Commission blew past the plain meaning of the Charter provision to reach a result that met their vindictive political goals.

Commissioner Joseph seeks an emergency preliminary injunction reinstating him to office as a duly elected City Commissioner. Commissioner Joseph further seeks to enjoin the City and the Commission from holding an illegal special election to replace him pending disposition of this case. Commissioner Joseph, as well as the citizens of the City of North Miami Beach, have been and will be irreparably harmed without issuance of this emergency relief. Commissioner Joseph is without adequate remedy at law and the public interest profoundly favors granting the relief requested.

I. The Underlying Lawsuit Relating to Commissioner Joseph Is Spurred in Retaliation for His Support of Removing Mayor DiFillipo

Commissioner Joseph is a duly elected city commissioner for the City of North Miami Beach (the “City”). Commissioner Joseph was elected to the City Commission in 2018. Following his election, Commissioner Joseph regularly attended City Commission meetings, including a meeting held on October 18, 2022. No City Commission meeting was held in November 2022 due to the election that month.

Plaintiff/Counter-Defendant Jay R. Chernoff (“Chernoff”), who also serves as a commissioner, filed the underlying lawsuit seeking the summary removal of Counter-Plaintiffs Commissioner Joseph and Commissioner Fleurimond (collectively “Counter-Plaintiffs”) from office on the meritless contention that they violated § 2.5 of the City Charter which provides, in pertinent part, “[i]f any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant.” The demonstrable facts show neither Counter-Plaintiff failed to attend a commission meeting for a period of 120 days, yet Chernoff seeks to impose his own cavalier interpretation of the Charter and the City Ordinance Code to target his political adversaries.

The backdrop of Chernoff’s action is a dispute between the City and Anthony F. DeFillipo, whose qualification to serve as mayor of the City was challenged due to his lack of residency. Commissioner Joseph and Commissioner Fleurimond had not been attending commission meetings until the issue of DeFillipo’s residency status—and therefore his right to serve as mayor and preside over commission meetings—was resolved. The issue of DeFillipo’s failure to reside in the City—and consequent disqualification from public office in the City—was publicly raised for the first time at a City Commission meeting held on December 20, 2022. Commissioner Joseph did not attend this meeting because he was sick with strep throat that he had contracted through his young son.

While that dispute was being litigated, in retaliation against Counter-Plaintiffs for supporting the City’s position against DeFillipo, Chernoff filed the underlying action. He alleges that from October 18, 2022 to February 15, 2023, a period of 120 days, Commissioner Joseph did not attend a meeting of the City Commission. The complaint cites to Section 2.5 of the Charter of the City of North Miami Beach (“Charter”), which provides, in pertinent part, that “[i]f any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant.”

Commissioner Joseph, however, did not fail to attend *any* meeting of the City Commission until December 20, 2022. Since there was no meeting of the City Commission from October 19, 2022 (the first day after a meeting he attended) to December 19, 2022 (the day before the first meeting he failed to attend), up to that point, Commissioner Joseph had not “failed to attend” any meetings of the Commission in any sense. It is plainly illogical to contend that one can fail to attend an event that has not occurred. Chernoff’s politically motivated misinterpretation and

misapplication of the Charter has no basis in reason, nor law, nor precedent of the Commission itself.

Commissioner Joseph attended a City Commission workshop meeting on February 15, 2023, 119 days after their attendance at the October 18, 2022 meeting. Commissioner Joseph also attended the regular City Commission meetings on March 21, 2023 and April 18, 2023. *See* March 21 Meeting Minutes, attached as **Exhibit A**, at 1 (the April 18 meeting minutes were not made available at the time of filing this Motion). The Charter provision does not specify the *type* of meeting the Commissioner must fail to attend as it uses the language “meeting of the City Commission” instead of “regular meeting” or “regular or special meeting” as used elsewhere in the Charter. *See* City of North Miami Beach Charter §§ 2.4, 2.5, 3.5.3, and 5.1.

In the meantime, having gotten control over the City Commission, Mayor DeFillipo, Commissioner Chernoff, and the other commissioners with whom they were aligned swept the residency dispute under the rug, ordering the City Attorney to dismiss the suit against him. Having illegitimately resolved the legitimate problem before it, the City Commission turned its sights on Commissioner Joseph.

II. Every City Attorney Has Advised the Commission that It Is to Start Counting the 120 Days Under Section 2.5 from the First Missed Meeting.

The City Commission has discussed the issue of Commissioner Joseph’s attendance at numerous meetings since January 17, 2023. Express requests were made to the City Attorney to issue an opinion as to whether Commissioner Joseph violated § 2.5 of the Charter. The City Attorney has issued an opinion to the City Commission that, consistent with the “Pierre Precedent,” in calculating the 120 days, the Commission is to start counting from the first missed meeting.

The Pierre Precedent refers to a similar situation arising among the City Commission in 2018 involving former Commissioner Frantz Pierre (“Pierre”). In January 2018, then City Attorney Jose Smith procured a memorandum from outside counsel, Jean Olin, to inquire as to whether Pierre’s failure to attend Commission meetings violated Charter § 2.5. A copy of the Jean Olin Memorandum and the City Attorney’s Adoption of the Memorandum is attached as **Exhibit B**. The City Commission then adopted the conclusions of the memo. Special Commission Meeting Minutes, Feb. 5, 2018, attached as **Exhibit C**. In the memo, the City Attorney recommended, and the City Commission determined that, in calculating the 120 days for purposes of the Charter’s absenteeism provision, **the proper place to start is on the day after the first meeting missed**. The memo concluded that Pierre violated the 120-day rule based on his failure to attend Commission meetings starting on September 18, 2017, the date of the first meeting Pierre missed within the period, and ending on January 17, 2018. The Pierre Precedent that the City Commission has adopted unequivocally starts the 120-day period on the first day the Commissioner “failed to attend” a meeting.

The City Attorney has taken the position that the Pierre Precedent applies to Commissioner Joseph’s case and this position was confirmed in an email to the undersigned counsel on May 16, 2023 prior to the regular Commission Meeting that day, stating:

I verbally informed the City Commission of the applicability of the Jean Olin opinion to the current situation on at least one occasion during a public meeting, and that is part of the record of that particular meeting. To the extent necessary this email shall confirm my prior oral statements to the City Commission.

*See Email Correspondence from City Attorney John Herin, May 16, 2023, attached as **Exhibit D**.*

On May 16, 2023, the City Commission held an illegal vote to determine whether Commissioner Joseph’s seat was vacated. This action amounted to an indirect expulsion of Commissioner Joseph, a power the City does not possess, based on a politically-motivated

misapplication of the Charter. During the meeting, the Commission was advised again by the City Attorney that the Pierre Precedent applies. The Commission was *further* advised that the Pierre Precedent started the 120-day count on the date of the first meeting missed. Despite this advice, despite the City’s only 5-year-old precedent, despite the clear language of the Charter itself, despite not having a 5-Commissioner quorum, and without *any* power under its Charter to do so, the City Commission voted Commissioner Joseph’s had been vacated and ordered a special election to occur to fill his seat. Moreover, the Commission ordered the City Manager to immediately terminate Commissioner Joseph’s employment benefits and access to City Hall.

III. Legal Standard for Injunctive Relief

Entry of an injunction is proper where the party seeking relief establishes: (i) a substantial likelihood of success on the merits; (ii) the likelihood of irreparable harm; (iii) the unavailability of an adequate remedy at law; and (iv) that the issuance of the temporary injunction will not disserve the public interest. *City of Miami Beach v. Cleveland Ocean, L.P.*, 338 So. 3d 16 (Fla. 3d DCA 2022). “The purpose of a temporary or preliminary injunction is not to resolve disputes, but rather to **prevent irreparable harm by maintaining status quo** until a final hearing can occur when full relief may be given.” *Michele Pommier Models, Inc. v. Diel*, 886 So. 2d 993, 995–96 (Fla. 3d DCA 2004) (emphasis added).

“[T]he allowance of a temporary injunction rests in the sound judicial discretion of the trial court, guided by the established rules and principles of equity jurisprudence arising from the facts of the particular case. *McMullen v. Pinellas Cnty.*, 106 So. 73, 74 (Fla. 1925). Where it appears from the circumstances that such a remedy is reasonably necessary to protect the rights of the movants pending the litigation, the injunction should be granted. *Id.* The trial court “must use a balancing-type approach, balancing the possible beneficial results on the one hand with the

possible detrimental results on the other, and the threatened hardships associated with the issuance or denial of the injunction with the degree of likelihood of success on the merits. *Cordis Corp. v. Prooslin*, 482 So. 2d 486, 491 (Fla. 3d DCA 1986).

IV. Commissioner Joseph is Entitled to an Injunction Reinstating His Position as Commissioner and Enjoining a Special Election

Commissioner Joseph is entitled to an injunction under these circumstances as (i) he is likely to succeed on the merits of the underlying action; (ii) Chernoff and the City Commission’s action caused irreparable harm and threatens to cause further irreparable harm to both Commissioner Joseph and the electors of the City of North Miami Beach; (iii) there is no available alternative remedy at law; and (iv) issuance of the injunction serves the public’s interests in preventing government abuse of power, protecting fundamental democratic principles, and ensuring transparent due process in adjudicating the rights of elected officials. This Court must grant this Temporary Motion for Emergency Injunction, reinstate Commissioner Joseph, and preserve the status quo pending a final disposition in this matter.

a. Counter-Plaintiffs are Likely to Succeed on the Merits of the Underlying Action.

For a number of independent reasons, Commissioner Joseph is likely to succeed on the merits of both his underlying counterclaim for declaratory relief and Chernoff’s claims for declaratory and injunctive relief.

FIRST, the Commissioner had no authority to remove Commissioner Joseph. This Court has the authority and the obligation to enjoin this illegal abuse of municipal power. Exercise of the Court’s power in equity to enjoin action by a government body is warranted where such action does not “accord with controlling provisions and principles of law.” *City of Bradentown v. State*, 102 So. 556, 557 (Fla. 1924); *see also Nelson v. Lindsey*, 10 So. 2d 131, 134 (Fla. 1942) (“[C]ourts regardless of specially provided method of appeal, will grant relief by means of

available common law processes against quasi judicial decision of administrative agency, where decision is improvident, erroneous, or unjustified and shown to divest or impair some vested legal right.”)

Here, the City Commission plainly violated its own Charter, exercising powers it does not possess in order to indirectly expel an elected official in bad faith for political purposes. The Commission now seeks to further violate its Charter by replacing Commissioner Joseph’s seat. “[T]he paramount law of a municipality is its charter, (just as the State Constitution is the charter of the State of Florida,) and gives the municipality all the powers it possesses, unless other statutes are applicable thereto, has not been altered or changed.” *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801, 803 (Fla. 1972). The City’s power is not unlimited and **“if reasonable doubt should arise as to whether the municipality possesses a specific power, such doubt will be resolved against the City.”** *Id.* Stated differently, “[a] **municipality has no power in the absence of a specific delegation of power in its city charter.** *Vazzo v. City of Tampa*, 8:17-CV-2896-T-02AAS, 2019 WL 12529065, at *7 (M.D. Fla. Jan. 30, 2019) (applying Florida law); *see also Nash v. Vaughn*, 182 So. 827, 829 (Fla. 1938) (“And courts will not enforce a doubtful municipal power.”).

§ 2.6 of the Charter, titled “Powers of the City Commission”, provides as follows:

The City Commission shall have the power to adopt ordinances, resolutions, rules for the conduct of meetings and to take such other action as may be necessary to the full and complete exercise of powers herein vested in the City Manager and other officers provided for herein...Except as otherwise provided herein, any other power may be exercised by ordinance or resolution in the discretion of the Commission. **The Commission shall exercise such other powers as are herein authorized.**

Nowhere in the City Charter does not grant the City the power it invalidly attempts to exercise in ejecting and replacing Commissioner Joseph. It is a maxim of statutory interpretation

“that the express mention of one thing is the exclusion of another (expression unius est exclusion alterius)”. *Orr v. Trask*, 464 So. 2d 131, 135 (Fla. 1985). This maxim leads to the conclusion that the City is without the power to vote to remove a sitting Commissioner, because the City Charter expressly mentions the City’s power to remove “[a]ny Commission-appointed officer” (Charter § 2.2); the City Manager (Charter § 3.1); the City Clerk (Charter § 3.2); the City Attorney (Charter § 3.3). The power to remove a City Commissioner, or to vote to find a Commissioner has vacated his seat, is glaringly absent from the Charter despite the explicitly granted powers to remove these other municipal officers.

The only section of the ordinance code that provides for removal of City Commissioners is § 7-11, which describes the procedure by which qualified electors may initiate a recall of an elected official. The power to remove elected officials is expressly given only to the electors of the City, not the City Commission. The City Commission is not unlimited in its powers. The Charter does not allow the Commission to exercise all powers authorized by the Charter and also any powers not authorized or mentioned by the Charter. The City Commission does not have the authority to vote to vacate and replace a duly-elected seat, and its planned action to do so represents a violation of the City Charter and a gross abuse of discretion.

SECOND, Commissioner Joseph’s position—that he did not fail to attend meetings of the commission for a period of 120 days and, thus, did not violate § 2.5 of the Charter—is supported by principles of statutory interpretation, the adopted precedent of the City Commission, and any reasonable reading of the Charter provision and City ordinance at issue.

As discussed above in § III, Commissioner Joseph’s interpretation of the Charter is directly in line with the prior precedent adopted by the City Commission, the Pierre Precedent. After the Pierre Precedent was adopted by the City Attorney, the Commission held a Special Meeting on

February 5, 2018 in which it adopted the conclusions of the City Attorney that Pierre had vacated his seat and voted to start the process to fill the vacancy. Ex. C, at 4-5. Subsequently, Pierre filed an action for declaratory and injunctive relief seeking to prohibit his removal and/or replacement and to reinstate him as Commissioner, attached as **Exhibit E**. Pierre then filed an emergency motion for temporary injunction seeking to enjoin this appointment, which was granted. *See Pierre First Emergency Motion for Temporary Injunctive Relief*, attached as **Exhibit F**, and the court's Order Granting Temporary Injunctive Relief, attached as **Exhibit G**. Then, after learning of the Commission's plan to ignore the prior order of the court, Pierre filed an amended temporary motion and received an order of the court "enjoin[ing] the City from preventing Commissioner Frantz Pierre from functioning as a duly elected City of North Miami Beach Commissioner" and holding Pierre "shall be obligated and entitled to all the duties and obligations of the office until further order." **Exhibit H**, at 1-2. The City's actions that were enjoined by the court in Pierre are identical to its actions here and warrant the same result – enjoining the City from preventing Commissioner Joseph from functioning as a duly elected official until final proceedings in this case.

While the court in *Pierre* found Pierre was substantially likely to succeed on the merits, it is important to note that the portion of the Pierre Precedent determining the 120-day period begins at the first meeting missed was not challenged or otherwise questioned by either the court or Pierre. That part of the Pierre Precedent remains as the City's precedent.

THIRD, the City's prior interpretation and application of Charter § 2.5 is not only precedential, but also eminently reasonable. The Charter states that the seat becomes vacant once any Commissioner "has failed to attend a meeting...for a period of [120] days". Charter of City of North Miami Beach § 2.5. Commissioner Joseph attended the Commission meeting on October 18, 2022. He did not "fail to attend" *any* meetings until he missed the Commission meeting on

December 20, 2022. A reasonable reading of the Charter provision warrants the conclusion that the 120-day period begins once a commissioner actually “fails to attend” a meeting. The verb “fail” requires a corresponding obligation that the subject does not satisfy. The United States Supreme Court has embraced this understanding of the word “fail” in the context of statutory interpretation: “In its customary and preferred sense, ‘fail’ connotes some omission, fault, or negligence on the part of the person who has failed to do something. *Williams v. Taylor*, 529 U.S. 420, 431–32 (2000) (*citing* Webster's New International Dictionary 910 (2d ed.1939) (defining “fail” as “to be wanting; to fall short; to be or become deficient in any measure or degree,” and “failure” as “a falling short,” “a deficiency or lack,” and an “[o]mission to perform”); Webster's New International Dictionary 814 (3d ed.1993) (“to leave some possible or expected action unperformed or some condition unachieved”)).

Black’s Law Dictionary defines “fail” as “**to fall short of achieving something expected.**” FAIL, Black's Law Dictionary (11th ed. 2019). In the context of a meeting, the “something expected” is attendance at the meeting. Of course, there needs to be a meeting for one to “fall short of achieving” the expectation of attendance. Without a meeting, there can be no expectation for one to achieve or not to achieve. One cannot “fail to attend a meeting” unless and until there is a meeting. The first day there *is* a meeting is the first day a person can possibly “fail to attend”, and, if the person fails to attend, there has been one day that person has “failed to attend” a meeting. A “period” in which a person can “fail to attend a meeting” must have a starting point and an ending point. The starting point for the “period” could only start on the first day the person “failed to attend a meeting”, which, for Commissioner Joseph, was December 20, 2022. It would be absurd to start the period in which a person “fails to attend a meeting” at a point when the person did not fail to attend a meeting.

This is simple logic. If there is no obligation to attend, there can be no failure. This is no doubt why Chernoff intentionally omits the word “fail” from the Charter throughout his pleadings. *See Amended Compl.*, at ¶ 20 (“The City Charter states that any Commissioner who **does not attend** a meeting of the City Commission”).

The interpretation championed by Counter-Plaintiffs and City precedent is also favored by Florida standards of statutory interpretation regarding forfeiture provisions. *See Williams v. Christian*, 335 So. 2d 358, 361 (Fla. 1st DCA 1976) (“Statutes imposing forfeiture will be strictly construed in a manner such as to avoid the forfeiture and will be liberally construed so as to avoid and relieve from forfeiture.”) Chernoff is asking the Court to do the opposite: to construe the language in the only manner that could conceivably lead to forfeiture. This is improper.

Correct calculation of the 120 days would mean, here, that the Court begin counting for Commissioner Joseph on December 21, 2022, the day after the first meeting missed. So the 120 day period would run on April 20, 2023. It is undisputed, however, that Commissioner Joseph attended the regular commission meetings in March and April of 2023. They therefore did not violate the Charter.

b. The Action Commissioner Joseph Seeks to Enjoin Threatens Imminent and Irreparable Harm.

As Chernoff and the City Commission moved forward with the vote to remove Commissioner Joseph from office and now intend to hold an election to replace him, irreparable harm has occurred and is further irreparable harm is likely to occur. Without court intervention, Commissioner Joseph will be unjustly stripped of his interests in completing his elected term, his property interest in his elected office, and his liberty interest in avoiding the attendant reputational harm. The City’s action was not authorized by the City Charter, the ordinance code, state statute, or the Florida Constitution and threatens to thwart the will of the North Miami Beach electors for

purely political purposes. Further, permitting this action would usurp this Court’s authority to adjudicate the issue fairly and impartially after both sides of the dispute have submitted themselves to the Court’s jurisdiction to do so.

Commissioner Joseph has both a property interest and a liberty interest in their right to serve out their elected terms. Commissioner Joseph discussed these interests in detail in his Response to Plaintiff’s Emergency Motion for Injunctive Relief, which is attached here as **Exhibit I** and incorporated by reference herein. *See* Ex. I, at 11-15. The Florida Supreme Court “has pointed out on several occasions that an officeholder has a property right in his office and that this right may not be unlawfully taken away or illegally infringed upon.” *Piver v. Stallman*, 198 So. 2d 859, 862 (Fla. 3d DCA 1967) (citing *State v. Tedder*, 143 So. 148 (Fla. 1932)). The threatened action, if permitted, would undoubtedly deprive Counter-Plaintiffs of these protected rights.

c. There is No Adequate Legal Remedy Available.

Commissioner Joseph is left without adequate alternative legal recourse to prevent the impending action of Chernoff and the City Commission. There exists no other legal mechanism by which Commissioner Joseph can seek Court intervention to stop the vote from going forward.

d. Granting the Injunction Serves the Public Interest.

Finally, the public interest would be served by the granting the injunction pending the Court’s determination as to Commissioner Joseph’s right and status as a City Commissioner. The electors of North Miami Beach are better served by a transparent and impartial determination of these politically charged issues by the Court than by unauthorized action by the City Commission on their behalf. Further, failing to prevent this action would essentially grant the City Commission powers that it does not have. In the future, this would allow the Commission to usurp the voting rights of the electorate and remove an elected Commissioner when the Commission majority feels

it to be politically expedient. Such a precedent would severely damage public trust in democracy.

WHEREFORE Commissioner Joseph respectfully request that this Court grant Counter-Plaintiffs' Emergency Motion for Injunctive Relief, and grant such other relief this Court deems just.

Respectfully submitted,

By: /s/ Benjamin H. Brodsky
Benjamin Brodsky, Esq.
Florida Bar No.: 73748
Max A. Eichenblatt, Esq.
Florida Bar No.: 1025141
BRODSKY FOTIU-WOJTOWICZ, PLLC
*Counsel for Defendant Commissioners
Michael Joseph McKenzie Fleurimond*
200 SE 1st Street, Suite 400
Miami, Florida 33131
Tel: 305-503-5054
Fax: 786-749-7644
bbrodsky@bfwlegal.com
max@bfwlegal.com
docketing@bfwlegal.com

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing motion and that the facts stated in it are true.


Michael Joseph (May 18, 2023 11:03 EDT)
COMMISSIONER MICHAEL JOSEPH

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished by the Florida Courts e-filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this **18th day of May, 2023**, on all counsel of record.

By: /s/ Benjamin H. Brodsky
Benjamin H. Brodsky, Esq.

EXHIBIT A



CITY OF NORTH MIAMI BEACH
City Hall, Commissioner Chambers, 2nd Floor
17011 N.E. 19th Avenue
North Miami Beach, FL. 33162
Tuesday, March 21, 2023
6:00pm

Mayor Anthony F. DeFillipo
Vice Mayor Michael Joseph
Commissioner Jay Chernoff
Commissioner McKenzie Fleurimond
Commissioner Daniela Jean
Commissioner Phyllis S. Smith
Commissioner Fortuna Smukler

City Manager Arthur H. Sorey III

City Clerk Andrise Bernard, MMC

City Commission Meeting Minutes

ROLL CALL OF THE CITY OFFICIALS

The Regular Commission Meeting was called to order at 6:12pm.

Present at the meeting were Mayor Anthony F. DeFillipo, Vice Mayor Michael Joseph, Commissioner Jay Chernoff, Commissioner McKenzie Fleurimond, Commissioner Daniela Jean, Commissioner Phyllis S. Smith, and Commissioner Fortuna Smukler. City Manager Arthur H. Sorey III and City Clerk Andrise Bernard were also present.

INVOCATION by Pastor Greg Williams of Holy Faith Missionary Baptist Church.

PLEDGE OF ALLEGIANCE was led by the Mayor and Commission.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND ADDITIONS TO THE AGENDA

City Clerk Andrise Bernard announced the following changes to the agenda:

Per Mayor DeFillipo, a discussion regarding the City Attorney position will be added to the Mayor's Discussion.

Per Mayor DeFillipo, the appointment of Commissioner Jay Chernoff as Vice Mayor effective immediately will be pulled from the Appointments moved to the Mayor's Discussion.

Per Mayor DeFillipo, a discussion regarding the City Manager position will be added to the Mayor's Discussion.

Per Commissioner Smukler, Resolution 2022-166 will be deferred.

Per Commissioner Chernoff, Resolution 2023-14 will be pulled from the Consent Agenda and moved to Legislation.

Per Commissioner Smukler, Resolution 2023-15 and Resolution 2023-24 will be pulled from the Consent Agenda and moved to Legislation.

Motion to approve the amended agenda made by Commissioner Smith, seconded by Commissioner Smukler.
Voice Vote: MOTION PASSED 4-3 with Vice Mayor Joseph, Commissioner Fleurimond, and Commissioner Jean opposed.

Motion to approve Resolution 2023-30 regarding a CRA budget amendment made by Vice Mayor Chernoff, seconded by Commissioner Smith.

Voice Vote: MOTION PASSED 6-1 with Commissioner Smukler opposed.

MAYOR'S DISCUSSION

Mayor DeFillipo announced that City Attorney Hans Ottinot (and his firm) submitted a letter of resignation.

City Clerk Bernard read the rules of public comment into the record and the following person(s) made comments on the record:

Mayor DeFillipo opened the meeting for **PUBLIC COMMENT**.

1. Karen Harrold
2. Mubarak Kazan
3. Sir Diego Brazil
4. Maria (no last name given)
5. Eric Isicoff

The meeting was closed for **PUBLIC COMMENT**.

The Mayor and Commission began a discussion regarding the City Attorney position.

Motion to approve the appointment of John Herin as Interim City Attorney effective immediately and direct City staff to place the position out to bid and make the permanent selection within 90 days made by Commissioner Chernoff, seconded by Commissioner Smith.

Commissioner Smith stated that she spoke to several individuals regarding the position of Interim City Attorney and expressed that John Herin would be a good choice.

Commissioner Jean proposed Joe Geller as Interim City Attorney.

Commissioner Fleurimond proposed Steven Zerkowitz or Joe Geller as Interim City Attorney.

Commissioner Smukler stated that she spoke to several individuals regarding the position of Interim City Attorney and proposed John Herin.

Vice Mayor Joseph proposed Joe Gellar or Steven Zerkowitz as Interim City Attorney.

Mayor DeFillipo stated that he spoke with Norman Powell, the firm of Weiss Serota, and John Herin regarding the position of Interim City Attorney.

John Herin appeared before the Mayor and Commission and provided his professional background, experience, and qualifications.

Roll Call Vote: Chernoff - Yes, Fleurimond - Yes, Jean - Yes, Smith - Yes, Smukler - Yes, Joseph - Yes, DeFillipo - Yes

MOTION PASSED 7-0.

John Herin took his seat to serve as the Interim City Attorney.

Motion to approve the appointment of Commissioner Chernoff as Vice Mayor effective immediately made by Commissioner Smith, seconded by Mayor DeFillipo.

Voice Vote: MOTION PASSED 7-0.

Mayor DeFillipo announced that a discussion regarding City Manager Sorey will begin.

City Clerk Bernard read the rules of public comment into the record and the following person(s) made comments on the record:

Mayor DeFillipo opened the meeting for **PUBLIC COMMENT**.

1. Karen Harrold
2. Donard St. Jean
3. Leslie Sardinia
4. Mubarak Kazan
5. Leslie Kaplan
6. Daniel Pierre
7. Ketley Joachim
8. Bolivar (no first name given)
9. Hubert Dube
10. Bernice Morris
11. Tricia Harris
12. Barbara Kramer (former City Commissioner)

The meeting was closed for **PUBLIC COMMENT**.

The Mayor and Commission began a discussion regarding City Manager Sorey.

Interim City Attorney Herin provided guidance and advisement regarding the termination of the City Manager with and without cause.

Motion to approve the termination of City Manager Sorey with cause made by Commissioner Smith, seconded by Mayor DeFillipo.

Roll Call Vote: Jean - **No**, Joseph - **No**, Smith - **Yes**, Smukler - **Yes**, Fleurimond - **No**, Chernoff - **No**, DeFillipo - **Yes**

MOTION FAILED 3-4 with Commissioner Fleurimond, Commission Jean, Commission Joseph, and Vice Mayor Chernoff opposed.

Motion to approve the termination of City Manager Sorey without cause and allow 20 weeks of severance pay and hold off payment of accrued leave (vacation and sick) time until a reconciliation is done made by Vice Mayor Chernoff, seconded by Commissioner Fleurimond.

Roll Call Vote: Joseph - **Yes**, Smith - **Yes**, Smukler - **Yes**, Fleurimond - **Yes**, Jean - **Yes**, Chernoff - **Yes**, DeFillipo - **No**

MOTION PASSED 6-1 with Mayor DeFillipo opposed.

Motion to approve the appointment of Mark Antonio as Interim City Manager made by Commissioner Smukler, seconded by Commissioner Smith.

Commissioner Smith stated that she spoke to several individuals regarding the position of Interim City Manager and proposed Mark Antonio.

Vice Mayor Chernoff proposed Roz Weisblum as Interim City Manager.

Commissioner Fleurimond proposed Roz Weisblum as Interim City Manager.

Commissioner Joseph proposed Roz Weisblum as Interim City Manager.

Commissioner Jean proposed that a current Assistant City Manager serve as Interim City Manager.

Mayor DeFillipo stated that he spoke to several individuals regarding the position of Interim City Manager and proposed Mark Antonio.

Commissioner Smukler stated that she spoke to several individuals regarding the position of Interim City Manager.

Mark Antonio appeared before the Mayor and Commission and provided his professional background, experience, and qualifications.

Roll Call Vote: Smith - Yes, Smukler - Yes, Fleurimond - Yes, Jean - Yes, Joseph - Yes, Chernoff - Yes, DeFillipo - Yes

MOTION PASSED 7-0.

Marck Antonio took his seat to serve as the Interim City Manager.

The Commission Meeting was recessed at 9:18pm and resumed at 9:41pm.

Interim City Manager Antonio discussed his involvement with the CRA of Hallandale Beach during his time as City Manager.

Commissioner Smukler stated that all the employees hired without a background check should receive one.

The Mayor and Commission began a discussion about the pending litigation regarding Commissioner Joseph and his attendance at Commission Meetings.

Interim City Attorney Herin asked for direction and time to evaluate the pending litigation cases regarding attendance at Commission Meetings and the residency of Mayor DeFillipo.

Interim City Attorney Herin advised the City Commission that Mayor DeFillipo, Vice Mayor Chernoff, Commissioner Fleurimond, and Commissioner Joseph have a conflict of interest and should leave the Commission Chambers and refrain from discussing their respective litigation cases on the dais.

Vice Mayor Chernoff left the dais for the City Commission to discuss the pending litigation regarding attendance at Commission Meetings.

Mayor DeFillipo opened the meeting for **PUBLIC COMMENT.**

1. Keith Myers
2. Jeb Handwerker
3. Eric Isicoff
4. Leslie Kaplan

5. Karen Harrold
6. Mark St. Vil
7. Barbara Kramer (former City Commissioner)
8. Bruce Lamberto
9. Leslie Sardinia
10. Sir Diego Brazil
11. Wrendly Mesidor
12. Robert Kaplan
13. Mubarak Kazan
14. Hubert Dube
15. Esther McCant

The meeting was closed for **PUBLIC COMMENT**.

Mayor DeFillipo, Commissioner Smith, and Commissioner Smukler expressed their consensus that Commissioner Joseph violated the City Charter (Article II, Section 2.5) regarding quorum and attendance and directed Interim City Attorney Herin to express that to the judge assigned to the case.

Vice Mayor Chernoff returned to the dais.

Motion to approve to continue the Commission Meeting past midnight made by Commissioner Smukler.
Motion failed due to the lack of a second.

Mayor DeFillipo left the dais for the City Commission to discuss the pending litigation regarding his residency and the City Commission began a discussion.

Motion to approve to continue the Commission Meeting until 12:05am made by Commissioner Smukler, seconded by Commissioner Smith.
MOTION PASSED 6-0 with Mayor DeFillipo off the dais.

Motion to approve to authorize Interim Attorney John Herin to inform the court that the City has no objection to the withdrawal of the Heise Suarez Law Firm as the counsel of record regarding the residency of Mayor DeFillipo by Commissioner Jean, seconded by Commissioner Fleurimond.
Roll Call Vote: Smukler - **Yes**, Fleurimond - **Yes**, Jean - **Yes**, Joseph - **Yes**, Smith - **Yes**, Chernoff - **Yes**
MOTION PASSED 6-0 with Mayor DeFillipo off the dais.

Motion to approve to authorize Interim City Attorney John Herin and the Fox Rothschild Law Firm to file a notice of appearance on behalf of the City as substitute counsel for purposes of receiving the pleadings regarding the residency of Mayor DeFillipo by Commissioner Jean, seconded by Commissioner Fleurimond.
Roll Call Vote: Fleurimond - **Yes**, Jean - **Yes**, Joseph - **Yes**, Smith - **Yes**, Smukler - **Yes**, Chernoff - **No**
MOTION PASSED 5-1 with Vice Mayor Chernoff opposed and Mayor DeFillipo off the dais.

Mayor DeFillipo returned to the dais.

Resolution 2023-14 was added back to the Consent Agenda.

Motion to approve the Consent Agenda made by Commissioner Fleurimond, seconded by Commissioner Jean.
Voice Vote: MOTION PASSED 7-0.

ADJOURNMENT

There being no further business to come before the City Commission, the meeting was adjourned at 12:05am.

CONSENT AGENDA

Regular Commission Meeting Minutes of December 20, 2022

Regular Commission Meeting Minutes of January 17, 2023

Regular Commission Meeting Minutes of February 21, 2023

Resolution No. R2022-171 Ratification of Washington Park Design Change Order (David Scott, Public Works Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND RATIFYING A CHANGE ORDER TO THE WASHINGTON PARK DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF NORTH MIAMI BEACH AND KCI TECHNOLOGIES INC., FORMERLY KEITH AND SCHNARS, P.A. BY INCREASING THE AMOUNT OF THE AGREEMENT BY THREE HUNDRED SIXTY-NINE THOUSAND, SIX HUNDRED NINETY-SIX DOLLARS (\$369,696.00) TO CONTINUE ENHANCEMENTS TO THE DESIGN CRITERIA; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2022-172 Purchase Authorization of Staff Augmentation & Project Management Support Services for Public Works from Black & Veatch (David Scott, Public Works Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING WORK ORDER #4 BETWEEN THE CITY OF NORTH MIAMI BEACH AND BLACK & VEATCH CORPORATION TO PROVIDE PROGRAM MANAGEMENT AND STAFF AUGMENTATION IN THE AMOUNT NOT TO EXCEED \$524,617.00 ATTACHED HERETO AS EXHIBIT "A"; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE WORK ORDER #4 AND TO ISSUE A NOTICE TO PROCEED RELATING TO WORK ORDER #4; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-01 Lease Agreement with Industrial Communications for Quantar Repeaters (Andrea Suarez Abastida, NMB Water Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE AN AGREEMENT WITH INDUSTRIAL TOWER AND WIRELESS, LLC FOR A FIVE YEAR TOWER LEASE AGREEMENT WITH OPTIONS TO RENEW FOR TEN ADDITIONAL ONE YEAR TERMS AND AUTHORIZING THE CITY MANAGER TO EXPEND THE ESTIMATED EXPENDITURE OF \$384,958.80; PROVIDING THE CITY MANAGER AND CITY ATTORNEY WITH THE AUTHORITY TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; FURTHER AUTHORIZING CONTRACT RENEWALS IN AN AMOUNT THAT DOES NOT EXCEED THE BUDGETED ALLOCATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-02 Change Order to the Interlocal Agreement between the City of North Miami Beach and Florida International University Board of Trustees (Phillip Ford, Chief Procurement Officer)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING A CHANGE ORDER TO THE INTERLOCAL AGREEMENT WITH THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND THE ANNUAL BUDGET ALLOCATION; PROVIDING THE CITY MANAGER AND THE CITY ATTORNEY WITH THE AUTHORITY TO DO ALL THINGS NECESSARY EFFECTUATE THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-03 Office of the Attorney General VOCA Grant Funds (Harvette Smith, Chief of Police)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL, AS THE PASSTHROUGH AGENCY FOR THE VICTIMS OF CRIME ACT PROGRAM; ACCEPTING ADDITIONAL GRANT FUNDS IN THE AMOUNT OF \$91,455.00 FOR USE TOWARDS THE SALARY AND BENEFITS OF THE CITY'S VICTIMS ADVOCATE; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE THE AMENDMENT AND IMPLEMENT THE TERMS; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-04 Change Order for Construction Services from Teams Contracting Inc. (Andrew Plotkin, Parks & Recreation Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING AN INCREASE IN EXPENDITURE WITH TEAM CONTRACTING, INC., TO FURNISH GENERAL CONTRACTING AND CONSTRUCTION MANAGEMENT SERVICES; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND AN ADDITIONAL EXPENDITURE OF \$500,000; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-07 Authorizing Piggybacking the City of St. Petersburg, Florida's Contract with LMK PIPE, LLC (Andrea Suárez Abastida, Director NMB Water)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO PIGGYBACK THE CITY OF ST. PETERSBURG, FLORIDA'S CONTRACT WITH LMK PIPE RENEWAL LLC, FOR AS NEEDED WASTEWATER SEWER LINE EMERGENCY REPAIRS IN AN ESTIMATED ANNUAL AMOUNT OF \$65,000 AND IF APPLICABLE, TO RENEW THE PIGGYBACK SUBJECT TO APPROVED BUDGET APPROPRIATION AND AVAILABILITY OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-08 Ratification of Change Order for Agreement with Harris Computer for Maintenance, Printing and Mailing Services (Andrea Suárez Abastida, Director NMB Water)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND RATIFYING A CHANGE ORDER, THEREBY AMENDING THE AGREEMENT BETWEEN THE CITY OF NORTH MIAMI BEACH AND N. HARRIS COMPUTER CORPORATION INCREASING THE CONTRACT AMOUNT OF THE AGREEMENT BY ONE HUNDRED AND SIXTY-EIGHT THOUSAND EIGHT HUNDRED AND THIRTY DOLLARS (\$168,830) FOR UTILITY BILLS PRINTING, MAILING AND POSTAGE; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE THE CHANGE ORDER, AND TO DO ALL THINGS NECESSARY IN FURTHERANCE OF THE CHANGE ORDER; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-09 Change Order for Purchase of Hoses, Connectors, Clamps, Fittings, and Related Items (Andrea Suárez Abastida, Director NMB Water)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING AN INCREASE IN ANNUAL EXPENDITURE FOR THE UTILIZATION OF MIAMI DADE COUNTY CONTRACT RTQ-01299 HOSES, CONNECTORS, FITTINGS, CLAMPS & RELATED ITEMS FOR THE PURCHASE OF PARTS AND SUPPLIES; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND AN ANNUAL EXPENDITURE OF \$52,000; PROVIDING THE CITY MANAGER OR DESIGNEE WITH THE AUTHORITY TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-10 Award of RFP-22-075-MC Insurance Brokerage Services Agent of Record (Francisco Rios, Human Resources Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER WHO CONCURS WITH THE EVALUATION COMMITTEE AND APPROVING THE RANKING OF THE MOST HIGHLY QUALIFIED FIRMS THAT RESPONDED TO REQUEST FOR PROPOSALS RFP-22-075-MC INSURANCE BROKERAGE SERVICES PROPERTY INSURANCE AGENT OF RECORD; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE TOP-RANKED, MOST-QUALIFIED FIRM AND, IF NEGOTIATIONS ARE UNSUCCESSFUL, WITH THE NEXT HIGHEST RANKED FIRM SUCCESSIVELY AND AUTHORIZING THE CITY MANAGER TO EXPEND AN ANNUAL BUDGETED AMOUNT NOT TO EXCEED \$60,000; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-11 Purchase and Delivery of Three Well Pumps and Motors from Afton Pumps, Inc. (Andrea Suárez Abastida, Director NMB Water)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO ISSUE A SOLE SOURCE PURCHASE ORDER TO AFTON PUMPS, INC. FOR THE PURCHASE OF WELL PUMPS AND MOTORS IN AN ESTIMATED BUDGETED AMOUNT OF \$295,000; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND SAID AMOUNT; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-12 Purchase of Additional Technology Solutions, Products and Services from IT Partners, LLC (Ricardo Castillo, IT Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING AN INCREASE IN ANNUAL EXPENDITURE WITH IT PARTNERS LLC, FOR TECHNOLOGY SOLUTIONS, PRODUCTS AND SERVICES; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND AN ADDITIONAL ANNUAL EXPENDITURE OF \$35,000; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-13 Purchase of Additional Landscape Material Services from Gardening Angel Nursery, Inc. (David Scott, Public Works Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING AN INCREASE IN ANNUAL EXPENDITURE WITH GARDENING ANGEL NURSERY, INC., TO PURCHASE LANDSCAPE MATERIAL SERVICES; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND AN ADDITIONAL ANNUAL AMOUNT OF \$31,000; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-14 Approval of Agreement Extension with BEEFREE, LLC D/B/A FREEBEE for On-Demand Transportation Services (David Scott, Public Works Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE AGREEMENT EXTENSION WITH BEEFREE, LLC D/B/A FREEBEE, FOR ON-DEMAND TRANSPORTATION SERVICES; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE THE AGREEMENT ATTACHED AS EXHIBIT “A”; AUTHORIZING THE CITY MANAGER TO TAKE NECESSARY AND EXPEDIENT ACTION TO CARRY OUT THE AIMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-15 Change Order for Contract No. 21-54-SG Citywide Grounds Maintenance from Country Bills Lawn Maintenance (David Scott, Public Works Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING AN INCREASE IN ANNUAL EXPENDITURE WITH COUNTRY BILL’S LAWN MAINTENANCE, INC., FOR THE PURCHASE OF CITYWIDE GROUNDS MAINTENANCE SERVICES; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND AN ADDITIONAL ANNUAL EXPENDITURE OF \$250,000; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-16 Approving the Agreement With Sustainable Design & Construction Services, Inc. (Marline Monestime, Economic Development Manager)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXTEND AN AGREEMENT WITH SUSTAINABLE DESIGN & CONSTRUCTION SERVICES, INC. TO PROVIDE HOUSING CONSULTING AND TECHNICAL SERVICES FOR THE OWNER-OCCUPIED HOME REHABILITATION PROGRAM IN AN AMOUNT NOT TO EXCEED \$49,500; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-21 Purchase of Paving and Asphalt Services from H&J Asphalt, Inc. (Andrea Suárez Abastida, NMB Water Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO PIGGYBACK THE CITY OF MIAMI GARDENS, FLORIDA’S CONTRACT WITH H&J ASPHALT, INC., FOR ASPHALT ROADWAY RESURFACING IN AN NOT TO EXCEED AMOUNT OF \$144,000; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-22 Award of RFP No. 23-001-PF Insurance Brokerage Services for the City of North Miami Beach (Andrew Bejel, Interim Human Resources Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA ACCEPTING THE EVALUATION SELECTION COMMITTEE'S RECOMMENDATION FOR RFP NO. 23-001-PF INSURANCE BROKERAGE SERVICES FOR THE CITY OF NORTH MIAMI BEACH; FURTHER AUTHORIZING THE CITY MANAGER TO ENTER INTO NEGOTIATIONS WITH THE HIGHEST RANKED FIRM AND, IF NEGOTIATIONS SHALL COME TO AN IMPASSE, TO NEGOTIATE WITH THE NEXT HIGHEST RANKED FIRM; FURTHER AUTHORIZING THE CITY MANAGER TO EXPEND AN AMOUNT NOT TO EXCEED \$130,000; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-23 Purchase of Additional Laboratory Analytical Products from HACH Company (Andrea Suarez Abastida, NMB Water Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING AN INCREASE IN ANNUAL EXPENDITURE WITH HACH COMPANY, TO PURCHASE LABORATORY ANALYTICAL PRODUCTS; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND AN ADDITIONAL ANNUAL AMOUNT OF \$51,000; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-24 Change Order for Contract No. 21-032-MC City Hall 2nd Floor Renovation with Bespoke Construction Management, LLC. (David Scott, Public Works Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING A CHANGE ORDER, THEREBY AMENDING THE AGREEMENT BETWEEN THE CITY OF NORTH MIAMI BEACH AND BESPOKE CONSTRUCTION MANAGEMENT INCREASING THE CONTRACT AMOUNT BY FIFTY THREE THOUSAND DOLLARS (\$53,000) FOR ADDITIONAL COMPLIANCE RENOVATIONS; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE A CHANGE ORDER, AND TO DO ALL THINGS NECESSARY IN FURTHERANCE OF THE CHANGE ORDER; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-25 Ratify Purchase of Additional Operating & Maintenance Supplies Citywide from Home Depot USA (Andrew Plotkin, Parks & Recreation Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND RATIFYING A CHANGE ORDER FOR HOME DEPOT, USA, THEREBY INCREASING THE ANNUAL EXPENDITURE BY AN ADDITIONAL \$36,300 FOR THE PURCHASE OF SUPPLIES; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE THE CHANGE ORDER, AND TO DO ALL THINGS NECESSARY IN FURTHERANCE OF THE CHANGE ORDER; AND PROVIDING AN EFFECTIVE DATE.

The following items were not heard at the Commission Meeting.

PRESENTATIONS/DISCUSSIONS

Freebee Pilot Presentation (David Scott, Public Works Director)

Bus Shelter Presentation (David Scott, Public Works Director)

Keep NMB Beautiful Presentation (David Scott, Public Works Director)

QUASI-JUDICIAL

Resolution No. R2022-68 Awning Variance Request (Kent Walia, Community Development Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, GRANTING A NON-USE VARIANCE FROM ARTICLE VIII, SECTION 24-81(A)(2) OF THE NORTH MIAMI BEACH ZONING AND LAND DEVELOPMENT CODE, TO PERMIT AN EXISTING AWNING LOCATED AT 2811 NE 164TH STREET FOR PROPERTY OWNERS ANA AND MARK ANTONIO TO ENCROACH 17 FEET INTO THE SIDE INTERIOR SETBACK, WHEREAS THE CODE ALLOWS A MAXIMUM OF 5 FEET; CONFIRMING EXPIRATION AND LIMITATION OF APPROVAL; PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. 2022-168 BH 164 Site Plan and Ten (10) Variance Requests (Kent Walia, Community Development Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE SITE PLAN APPLICATION WITH CONDITIONS AND TEN NON-USE VARIANCES FOR THE CONSTRUCTION OF A 400,576 GROSS SQUARE FEET, 32-STORY, MIXED-USE DEVELOPMENT WITH 400 RESIDENTIAL UNITS, AND 1,825 SQUARE FEET OF GROUND FLOOR COMMERCIAL SPACE 587 PARKING SPACES ON A 1.95-ACRE PARCEL LOCATED AT 2261 NE 164TH STREET; GRANTING A VARIANCE FROM SECTION 24-58(K)(2)b.i. TO ALLOW DECORATIVE SCREENING OF THE PARKING GARAGE FRONTING NE 164 STREET (PRIMARY FRONTAGE), IN LIEU OF THE REQUIRED LINER BUILDING; GRANTING A VARIANCE FROM SECTION 24-58 FIGURE MU-8 TO REDUCE THE REQUIRED 15-FOOT TOWER SETBACK ON THE SOUTHEAST CORNER TO 7'-2"; GRANTING A VARIANCE FROM SECTION 24-58(J)(3)c.,iv.,1., TO REVERSE THE CONFIGURATION OF THE LANDSCAPE STRIP AND SIDEWALK AND PERMIT A SECONDARY STREET WITH THE SIDEWALK ADJACENT TO THE DRIVE LANES ON BOTH SIDES; GRANTING A VARIANCE FROM SECTION 24-93(C)(2)(a) TO ALLOW FOR HANDICAPPED PARKING SPACES TO BE EIGHTEEN (18) FEET IN LENGTH; GRANTING A VARIANCE FROM SECTION 24-58(R)(2)c. TO ALLOW FOR A MAXIMUM FLOOR TO FLOOR HEIGHT OF 18'-8" ON THE 7TH LEVEL; GRANTING A VARIANCE FROM SECTION 24-58.1(K)(2) TABLE MU/TC-4 TO REDUCE THE REQUIRED TEN (10) FEET SETBACK OF THE SECONDARY STREET TO A SETBACK OF ZERO (0'); GRANTING A VARIANCE FROM SECTION 24-58.1(K)(2) TABLE MU/TC-4 TO ALLOW FOR A SETBACK OF 125'-7" FROM THE PRIMARY STREET; GRANTING A VARIANCE FROM SECTION 24-58.1(K)(2) TABLE MU/TC-4 TO REDUCE THE REQUIRED NINETY PERCENT (90%) FRONTAGE AND ALLOW SEVENTY-SEVEN (77%) PERCENT OF FRONTAGE ALONG THE PRIMARY STREET; GRANTING A VARIANCE FROM SECTION 24-58.1(K)(2) TABLE MU/TC-4 TO REDUCE THERE QUIRED NINETY PERCENT (90%) FRONTAGE AND ALLOW SEVENTY-ONE (71%) PERCENT OF FRONTAGE ALONG THE CANAL GREENWAY; GRANTING A VARIANCE FROM SECTION 24-58.1(K)(2) TABLE MU/TC-4 TO INCREASE THE REQUIRED SETBACK OF FIFTEEN (15) FEET TO 80'-7" OF THE CANAL GREENWAY TYPE CG-2; PROVIDING FOR FINDINGS OF FACT; CONFIRMING EXPIRATION AND LIMITATION OF APPROVAL; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. 2022-169 Biscayne Office Complex Site Plan and Conditional Use Requests (Kent Walia, Community Development Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE SITE PLAN MODIFICATION FOR THE CONSTRUCTION OF A 18,000 GROSS SQUARE FEET, THREE-STORY COMMERCIAL BUILDING AND APPROVING A CONDITIONAL USE APPLICATION FOR A SIX-STORY 68,200 GROSS SQUARE FEET PARKING GARAGE STRUCTURE WITH 248 SPACES ON A 3.49 ACRE PARCEL LOCATED AT 15801, 15805, 15807 BISCAYNE BOULEVARD; PROVIDING FOR FINDINGS OF FACT; CONFIRMING EXPIRATION AND LIMITATION OF APPROVAL; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

LEGISLATION

Ordinance No. 2022-09 (Second and Final Reading) Property Rights Element (Kent Walia, Community Development Director)

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA AMENDING THE CITY OF NORTH MIAMI BEACH COMPREHENSIVE PLAN TO ADD A PROPERTY RIGHTS ELEMENT AS REQUIRED BY AND IN CONFORMITY WITH SECTION 163.3177(6)(i), FLORIDA STATUTES (2021); PROVIDING FOR INCLUSION IN THE CITY OF NORTH MIAMI BEACH COMPREHENSIVE PLAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Ordinance No. 2022-11 (Second and Final Reading) Shopping Cart Regulations (Commissioner Fortuna Smukler)

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH AMENDING CHAPTER IX OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, TO CREATE A NEW SECTION ENTITLED “SHOPPING CART REGULATIONS” TO ESTABLISH GUIDELINES FOR THE RECOVERY OF STOLEN OR ABANDONED SHOPPING CARTS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Ordinance No. 2023-01 (First Reading) Moving Quorum and Ethical Duty to Remain at a Commission to Article X Code of Ethics (Mayor Anthony F. DeFillipo)

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING CHAPTER II “STRUCTURE OF CITY GOVERNMENT,” ARTICLE I, “THE CITY COMMISSION,” SECTION 2-1.1 “MEETINGS OF THE CITY COMMISSION,” SUBSECTION (a), “QUORUM REQUIRED/ETHICAL DUTY TO REMAIN AT CITY COMMISSION MEETINGS,” BY DELETING THE REQUIREMENTS CONCERNING THE DUTY TO REMAIN AT CITY COMMISSION MEETINGS AND MOVING THE REQUIREMENTS TO ARTICLE X “CODE OF ETHICS” IN A NEWLY CREATED SECTION 2-79.14 ENTITLED “ETHICAL DUTY OF REMAIN AT CITY COMMISSION MEETINGS”; AUTHORIZING THE CITY CLERK TO TRANSMIT THE ORDINANCE TO THE MIAMI-DADE COUNTY COMMISSION ON ETHICS AND PUBLIC TRUST FOR ENFORCEMENT PURPOSES; PROVIDING FOR CONFLICTS, SEVERABILITY AND CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Ordinance No. 2023-02 (Final Reading) Administrative Site Plan Process (Kent Walia, Community Development Director)

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING THE CITY OF NORTH MIAMI BEACH CODE BY AMENDING CHAPTER XXIV, ENTITLED “ZONING AND LAND DEVELOPMENT,” ARTICLE XV “OTHER DEVELOPMENT REVIEW PROCEDURES,” SECTION 24-172 “SITE PLAN REVIEW,” TO DELETE SUBSECTION (K) ENTITLED “LIMITED ADMINISTRATIVE AUTHORITY FOR SITE PLAN AMENDMENTS” AND CREATE A NEW

SUBSECTION 24-172.1 ENTITLED “ADMINISTRATIVE SITE PLAN PROCESSES”; PROVIDING FOR CONFLICTS, SEVERABILITY, AND CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2022-170 Lien Amnesty Program (Arthur H. Sorey, City Manager)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING A CITY-WIDE CODE VIOLATIONS ENFORCEMENT LIEN AMNESTY PROGRAM; PROVIDING FOR THE REDUCTION OF CODE COMPLIANCE LIEN AMOUNTS; AUTHORIZING THE CITY MANAGER TO APPROVE SETTLEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-05 Budget Amendment Property Insurance (Marcia Fennell, Chief Financial Officer & Francisco Rios, Human Resources & Risk Management Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA APPROVING A BUDGET AMENDMENT TO THE ANNUAL BUDGET FOR FISCAL YEAR OCTOBER 1, 2022 TO SEPTEMBER 30, 2023, FOR THE LIABILITY SELF INSURANCE FUND; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-06 Renaming N.E. 151 Street Irv David Boulevard (Mayor Anthony F. DeFillipo)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, RENAMING A PORTION OF NORTHEAST 151 STREET BETWEEN BISCAYNE BOULEVARD AND WEST DIXIE HIGHWAY “IRV DAVID BOULEVARD”; AUTHORIZING THE CITY MANAGER TO ERECT PROPER SIGNAGE AND TO DO ALL THINGS NECESSARY TO IMPLEMENT THE RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. R2023-17 Award of RFP-22-029-MC Design Build for SCADA and Radio Telemetry System Improvements (WATR2009) (Andrea Suárez Abastida, Director NMB Water)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER WHO CONCURS WITH THE EVALUATION COMMITTEE AND APPROVING THE RANKING OF THE MOST HIGHLY QUALIFIED FIRMS THAT RESPONDED TO REQUEST FOR PROPOSALS RFP-22-029-MC DESIGN BUILD FOR SCADA AND RADIO TELEMTRY SYSTEM IMPROVEMENTS (WATR2009); AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE TOP-RANKED, MOST-QUALIFIED FIRM AND, IF NEGOTIATIONS ARE UNSUCCESSFUL, WITH THE NEXT HIGHEST RANKED FIRM SUCCESSIVELY AND AUTHORIZING THE CITY MANAGER TO EXPEND A BUDGETED AMOUNT NOT TO EXCEED \$3,000,000; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. 2023-18 Active Design Guidelines (Kent Walia, Community Development Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, SUPPORTING THE IMPLEMENTATION OF ACTIVE DESIGN MIAMI: DESIGN AND POLICY STRATEGIES FOR HEALTHIER COMMUNITIES AS DEVELOPED BY THE MIAMI CENTER FOR ARCHITECTURE AND DESIGN; SUPPORTING STAFF’S EFFORTS TO INCORPORATE STRATEGIES INTO PLANNING FUNCTIONS WHERE FEASIBLE; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. 2023-19 Award of ITB-22-051-MC Corona del Mar Phase II Lateral Connections (SEWR2006) (Andrea Suárez Abastida, Director NMB Water)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE AWARD OF INVITATION TO BID ITB-22-051-MC CORONA DEL MAR PHASE II - LATERAL CONNECTIONS (SEWR2006); AUTHORIZING THE CITY MANAGER OR DESIGNEE TO NEGOTIATE AND EXECUTE AN AGREEMENT PLUMBER MIKES, INC. AND EXPEND AN BUDGETED AMOUNT UP TO BUT NOT TO EXCEED \$927,731; PROVIDING THE CITY MANAGER

AND CITY ATTORNEY WITH THE AUTHORITY TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-20 Sergeant At Arms Repeal (Arthur H. Sorey, III, City Manager)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, DIRECTING THE CITY MANAGER OR DESIGNEE TO REPEAL THE POLICE DEPARTMENT'S SERGEANT-AT-ARMS DETAIL POLICY AND TERMINATE THE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-26 Award of RFP-22-059-MC Oleta River Crossing Water Main Replacement (WATR2007a) (Andrea Suárez Abastida, NMB Water Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER WHO CONCURS WITH THE EVALUATION COMMITTEE AND APPROVING THE RANKING OF THE MOST HIGHLY QUALIFIED FIRMS THAT RESPONDED TO REQUEST FOR PROPOSALS RFP-22-059-MC - OLETA RIVER CROSSING WATER MAIN REPLACEMENT (WATR2007A); AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE TOP-RANKED, MOST-QUALIFIED FIRM AND, IF NEGOTIATIONS ARE UNSUCCESSFUL, WITH THE NEXT HIGHEST RANKED FIRM SUCCESSIVELY AND AUTHORIZING THE CITY MANAGER TO EXPEND A BUDGETED AMOUNT NOT TO EXCEED \$1,000,000; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-27 Zoning in Progress - Multi-Family Parking Regulations (Kent Walia, Community Development Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, RECOGNIZING THAT THE CITY OF NORTH MIAMI BEACH IS CONSIDERING AMENDMENTS TO THE CITY'S ZONING AND LAND DEVELOPMENT CODE (ZLDC) WITH RESPECT TO INCREASING THE MINIMUM NUMBER OF REQUIRED PARKING SPACES FOR MULTI-FAMILY RESIDENTIAL AND MIXED-USE ZONING DISTRICTS; INVOKING THIS ZONING IN PROGRESS (ZIP) WITH RESPECT TO THE CITY'S ZLDC; PROVIDING THAT DURING THE PENDENCY OF THE CITY'S CONSIDERATION OF THESE AMENDMENTS, ALL SITE PLAN APPLICATIONS SUBMITTED AFTER THE EFFECTIVE DATE OF THIS RESOLUTION THAT REQUIRE MULTI-FAMILY PARKING WILL NOT BE PROCESSED UNTIL AFTER THE CITY ADOPTS NEW REGULATIONS; PROVIDING FOR A 180 DAY EXPIRATION OF THE ZIP UNLESS FURTHER EXTENDED; PROVIDING FOR CONFLICTS, SEVERABILITY, AND CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-28 An Interlocal Agreement with Miami-Dade County to Extend Trolley Services (David Scott, Public Works Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING CITY STAFF TO NEGOTIATE AN INTERLOCAL AGREEMENT WITH MIAMI-DADE COUNTY TO EXTEND TROLLEY SERVICES TO THE GOLDEN GLADES MULTI-MODAL TRANSPORTATION FACILITY AND AVENTURA MALL; PROVIDING THE CITY MANAGER AND THE CITY ATTORNEY WITH THE AUTHORITY TO DO ALL THINGS NECESSARY EFFECTUATE THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

Resolution No. R2023-29 Covenant for Maintenance with Miami-Dade County for Special Improvements Along Harriet Tubman Highway (David Scott, Public Works Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING CITY STAFF TO ENTER INTO A COVENANT FOR MAINTENANCE WITH MIAMI-DADE COUNTY FOR SPECIAL IMPROVEMENTS ALONG HARRIET TUBMAN HIGHWAY

FROM N.E. 164 STREET TO N.E. 173 STREET; PROVIDING THE CITY MANAGER AND THE CITY ATTORNEY WITH THE AUTHORITY TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

APPOINTMENTS

Reappointing Eric Isicoff to the Eastern Shores Security Guard Special Taxing District
Reappointing Fabio Nick to the Eastern Shores Security Guard Special Taxing District
Reappointing James Stamatis to the Eastern Shores Security Guard Special Taxing District
Reappointing Marc Einbinder to the Eastern Shores Security Guard Special Taxing District
Reappointing William Avila to the Eastern Shores Security Guard Special Taxing District
Reappointing Daniel Bakalarz to the Eastern Shores First Addition Security Guard Special Taxing District
Reappointing David Templer to the Eastern Shores First Addition Security Guard Special Taxing District
Reappointing Lior Sharabani to the Eastern Shores First Addition Security Guard Special Taxing District
Reappointing Allison Robie to the Public Utilities Commission
Appointing Jane Paglino to the Beautification Committee
Appointing Hubert Dube to the Code Enforcement Board
Appointing Dayanara Torres to the Code Enforcement Board
Appointing Rose Coriolan to the Multi-Cultural Committee
Appointing Wrendly Mesidor to the Multi-Cultural Committee
Appointing Julian Kreisberg to the Planning and Zoning Board
Appointing Gregory Thomas to the Planning and Zoning Board
Appointing Anthony Mazzone to the Public Utilities Commission
Appointing Wena Sutjapojnukul to the Public Utilities Commission
Appointing Wrendly Mesidor to the Redevelopment Advisory Board
Appointing Wena Sutjapojnukul to the Public Utilities Commission

DISCUSSION ITEMS

Frequency of Commission Meetings (Commissioner Chernoff)
Commission Members' Aides (Commissioner Chernoff)
Procedure/Policy for City Events, Commissioner Names and Pictures on Social Media, Handouts/Flyers, Favors, etc. (Commissioner Smukler)
North Miami Beach Finances (Commissioner Smith)
Support to not-for-profit 501(C)(3) in the City (Commissioner Smith)

ATTEST:

(SEAL)

Andrise Bernard, MMC, City Clerk

EXHIBIT B

MEMO

To: Jose Smith, City Attorney, City of North Miami Beach
From: Jean Olin, Esq.
Re: Commissioner Frantz Pierre--Automatic Vacancy on City Commission per Charter Section 2.5
Date: January 25, 2018

Pursuant to your request, I have analyzed the issue of North Miami Beach City Commissioner Frantz Pierre's past and continuing nonattendance at City Commission meetings, and the implications of applicable law, including related City Charter and Code provisions. As explained fully below, pursuant to the following language in City Charter section 2.5, Commissioner Pierre's seat on the City Commission became vacant on January 17, 2018 due to the Commissioner's failure to attend any Commission meetings for 120 days:

...If any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant.¹

I. FACTUAL BACKGROUND.

Since January of 2017 City Commissioner Pierre has, primarily due to medical reasons, been absent from 12 of the 17 City Commission meetings.² Of the 12 Commission meetings that Commissioner

¹ City Charter section 2.5 reads in its entirety as follows: "A quorum of the City Commission at any regular or special meeting shall consist of five members. Except as otherwise provided herein, the affirmative vote of a majority of the quorum present shall be required upon any matter submitted for consideration of the Commission. If any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant."

(Note: In the recent case of *Sanchez v. Lopez*, 219 So.3d 156 (Fla. 3DCA 2017), the Florida Third District Court of Appeal confirmed in dicta that city charter provisions providing for removal of elected officials due to excessive absenteeism are lawful.)

² Pursuant to City Clerk examination of City Commission Meeting attendance records for the past 12 months, the following schedule reflects Commissioner Pierre's attendance record:

- 01/17/17 Regular Commission Meeting--attended.
- 02/21/17 Regular Commission Meeting--attended.
- 03/21/17 Regular Commission Meeting--attended.
- 04/03/17 Special Commission Meeting-- attended.
- 04/18/17 Regular Commission Meeting--absent.
- 05/16/17 Regular Commission Meeting--absent.
- 06/08/17 Special Commission Meeting-- absent/participated by telephone.
- 06/20/17 Regular Commission Meeting--absent/participated by telephone.
- 07/18/17 Regular Commission Meeting--absent/participated by telephone.
- 08/15/17 Regular Commission Meeting--absent/participated by telephone.
- 08/24/17 Regular Commission Meeting after CRA Board Meeting--attended.
- 09/18/17 First Public Budget Hearing/Regular Commission Meeting--absent.

Pierre did not attend, he instead participated in 7 of them via telephone conference (as authorized by Florida's Government in the Sunshine Law, Florida Statute section 286.011, explained more fully below). Notably, Commissioner Pierre's attendance record further reveals that as of January 17, 2018 he has not attended Commission meetings for 120 days, thus invoking City Charter section 2.5 which expressly provides that in such instance "...the seat of such Commissioner shall automatically become vacant". *Id.*

II. MEMORANDUM OF LAW.

By way of introduction, cities in the State of Florida have been granted broad home rule powers by section 2(b), Article VIII, State Constitution, as implemented by s. 166.021, Fla. Stat. Thus, a City may exercise its power to carry on City government, unless the Legislature has preempted a particular subject or otherwise regulates the area. See *Speer v. Olson*, 367 So.2d 207, 211 (Fla. 1978). There is no provision of general or special law which would preempt to the State the subject of regulating the attendance of meetings by City commissioners, or the automatic removal of such Commission members due to their nonattendance. Thus, in the exercise of its home rule powers and in light of the provisions of s. 166.021 authorizing the legislative and governing body of the City to establish rules of procedure, the City lawfully established rules for the attendance of City Commission meetings by its members, including the procedure for automatic removal of a Commission member for failure to attend Commission meetings over a specified period of time. The following analysis sets forth these City laws and their implications.

A. City Charter Section 2.5 Controls.

A municipal charter is the paramount law of the municipality, just as the state constitution is the charter for the State. See, e.g., *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801, 803 (Fla. 1972); *Clark v. North Bay Village*, 54 So. 2d 240, 242 (Fla. 1951); and see, Op. Att'y Gen. Fla. 82-101 (1982). Cf. *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 609 (Fla. 4th DCA 1983), review denied, 440 So. 2d 352 (Fla. 1983). City of North Miami Beach Charter section 2.5, governing the attendance/removal of Commission members, is thus the applicable Charter provision in the subject issue.

1) Section 2.5's plain/ordinary meaning requires physical presence.

As a general rule, where the language of a particular law is clear and amenable to a reasonable and logical interpretation, that interpretation will control, as courts and other governmental bodies are without

-
- 09/25/17 Second Public Budget Hearing--absent/participated by telephone
 - 10/17/17 Regular Commission Meeting-- absent.
 - 11/14/17 Regular Commission Meeting-- absent.
 - 12/19/17 Regular Commission Meeting-- absent/participated by telephone.
 - 01/16/18 Regular Commission Meeting-- absent/participated by telephone

power to diverge from the intent of the Legislature as expressed in the law's plain language.³ See *Starr Tyme, Inc. v. Cohen*, 659 So.2d 1064 (Fla.1995); *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So.2d 297, 303 (Fla.2002).

The language in City Charter section 2.5 clearly and expressly provides for an automatic vacancy in office upon a City Commissioner's failure to "attend" Commission meetings for 120 days. Further, as written, a City Commissioner's failure to "attend" Commission meetings for the stated 120 days imposes upon the City a mandatory, non-discretionary vacancy in the subject Commission seat. Inasmuch as the plain and ordinary meaning of a word may be ascertained by reference to a dictionary (See, *L.B. v. State*, 700 So.2d 370 (Fla.1997); *Green v. State*, 604 So.2d 471, 473 (Fla.1992)), the word "attend" in Charter section 2.5 sets forth the requirement that a Commission member "be present" at a Commission meeting. See <https://www.merriam-webster.com/dictionary/attend>, and <http://www.dictionary.com/browse/attend>. And see, <http://www.dictionary.com/browse/present> defining "present" as "being with one or others in the specified or understood place", and <https://www.merriam-webster.com/dictionary/present> "present" defined as "being in one place and not elsewhere".

Since the Charter language is not ambiguous, it must be interpreted per its plain meaning, requiring that Commission members not be physically absent from Commission meetings for the stated 120-day period. See, *Spence-Jones v. Dunn*, 118 So.3d 261, 262 (Fla. 3DCA 2013): "The sole issue is a question of statutory interpretation. We find no ambiguity in the charter provision. As such, we are required to interpret it according to its plain meaning. *St. Petersburg Bank & Trust Co. v. Hamm*, 414 So.2d 1071, 1073 (Fla.1982)".

2) Statutory construction supports plain meaning of Charter section 2.5.

In light of the above, there is no need for a statutory construction analysis of Charter section 2.5. "When a statute is clear, we do not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So.2d 297, 303 (Fla.2002). Nonetheless, even were we to assume that the Charter language is ambiguous, applicable theories of statutory construction affirm that the term "attend" in Charter section 2.5 refers to the physical presence of all Commission members.⁴

³ As a fundamental principle of statutory construction, "legislative intent is the polestar that guides a Court's inquiry." *State v. Rife*, 789 So.2d 288, 292 (Fla.2001) (quoting *McLaughlin v. State*, 721 So.2d 1170, 1172 (Fla.1998)).

⁴ Note: The attendance requirement in Charter section 2.5 applies to "any Commissioner", and is not otherwise limited to "the quorum present". If the City intended that only the quorum be present it would have said so, but instead Charter 2.5's attendance requirement was drafted to apply to all members of the City's governing body. See *Johnson v. Feder*, 485 So.2d 409, 411 (Fla. 1986) ("We are compelled by well-established norms of statutory construction to choose that interpretation of statutes and rules which renders their provisions meaningful. Statutory interpretations that render statutory provisions superfluous 'are, and should be, disfavored.'" (quoting *Patagonia Corp. v. Bd. Of Governors of the Fed. Reserve Sys.*, 519 F. 2d 803, 813 (9th Cir. 1975))).

a) Related City laws. The Florida Supreme Court has noted that: “Where possible, courts must give full effect to *all* statutory provisions and construe related statutory provisions in harmony with one another.” *Knowles v. Beverly Enterprises—Florida, Inc.*, 898 So. 2d 1 (Fla. 2004). Reading Charter section 2.5 together with the following related City Charter and Code provisions governing attendance requirements of certain City officers, confirm that the term “attend” is designed to impose a requirement for an officer’s physical presence at a public meeting:

- Charter Section 3.3.1 “Powers and Duties of the City Attorney”: “The City Attorney shall. . .attend all meetings of the City Commission. . .”.
- Charter Section 3.1.1 “Powers and Duties of the City Manager”: “The City Manager shall. . .attend all meetings of the City Commission and of its committees...”.
- Code Section 2-4.1 “City Clerk’s Duties and Responsibilities; Exclusions”: “The City Clerk of the City of North Miami Beach or the Clerk’s authorized designee shall attend all regular and special meetings of the City Commission and any other meetings as requested by the City Commission. . .”.
- Code Section 2-67.6 “Planning and Zoning Board: Failure to Attend Meetings”: “If any member fails to attend two (2) of three (3) consecutive regular or special meetings...”.⁵

A basic tenet of statutory construction requires that laws be interpreted so as to avoid unreasonable or absurd consequences. *See Thompson v. State*, 695 So.2d 691, 693 (Fla.1997); *State v. Hamilton*, 660 So.2d 1038, 1045 (Fla.1995). Clearly, it would be absurd to infer an intent on behalf of the City that the above attendance requirements meant anything other than physical presence.

b) City Code section 2-1.1. Finally, and perhaps as significant to the issue of a Commission member’s attendance at Commission meetings, is City Code Section 2-1.1, reflecting the most recent pronouncement by the City Commission concerning Commission members’ attendance at Commission meetings.⁶ Although the premise for Code section 2-1.1(a) is different than that addressed in Charter section 2.5 (in that the Code section concerns Commission members who are in attendance at a Commission meeting, requiring that they remain there throughout the meeting’s entirety, absent an emergency/matter beyond their control), the legislative intent expressed for the Code section is relevant

⁵ Florida courts generally will defer to an agency’s interpretation of statutes and rules the agency is charged with implementing and enforcing. *See Donato v. American Tel. & Tel. Co.*, 767 So.2d 1146, 1153 (Fla.2000); *Smith v. Crawford*, 645 So.2d 513, 521 (Fla. 1st DCA 1994). Significantly, the City has in the past interpreted its above Charter as requiring one’s physical presence (see, Exhibit “A” attached hereto, email from City Clerk Pam Latimore, regarding removal of Planning and Zoning Board Member due to nonattendance), further supporting that Charter section 2.5 requires Commission members not be physically absent from Commission meetings for the stated 120 days.

⁶ See, City Ordinance 2016-9, adopted by the Commission on October 4, 2016.

to the absenteeism provisions of Charter section 2.5:

WHEREAS, Florida Statute section 286.012 (Florida's "Government in the Sunshine" law) specifically provides that members of governmental bodies are required to perform their responsibilities by participating in decisions to be made by such bodies. *Clearly, a member of a governmental body, such as the North Miami Beach City Council, is expected to attend and remain at meetings of the City Council, barring a situation in which that member's presence is unexpectedly required elsewhere;*

WHEREAS, allowing without restriction a City Councilmember to leave Council meetings prior to its completion of business *effectively grants to such Councilmember the means of frustrating official action by merely refusing to remain at a Council meeting, which actions the City Council deems to be inconsistent with a Councilmember's official duties and contrary to the Oath of Office as stated in Section 8 of the City Charter (" ... to well and faithfully perform ... their duties ... ");*

WHEREAS, within the past several months, certain Councilmembers have left Council meetings before the Council's completion of agenda items, necessitating either the postponement and rescheduling of time-sensitive items for future Council meetings or the need for meeting adjournment pending the Council's ability to obtain a quorum, *both situations serving to obstruct and impede good, responsive government in the City of North Miami Beach.*

* * *

City Ordinance 2016-9. (Emphasis added.) Regardless of whether a Commission member has attended a Commission meeting and left prior to its completion, or simply not attended at all, the above concerns regarding "frustrating official action" due to a Commission member's absence as "inconsistent with a Councilmember's official duties and contrary to the Oath of Office..." serve to reveal the City Commission's ongoing intent that its members are to be present at Commission meetings.

B. Commissioner Pierre's Telephonic Participation not "Attendance" per Charter Section 2.5.

As discussed above, the City Charter provides that failure of a Commission member to attend (i.e., be physically present) a Commission meeting for a period of 120 days will result in the automatic vacancy of such Commission member. During the subject 120-day period in which he did not physically attend the meetings, Commissioner Pierre participated via telephone in 3 of those meetings.⁷ The Commissioner's telephonic participation, although lawful under the State's Sunshine Law, did not satisfy his duty to comply with Charter section 2.5's attendance requirement.

The State's Government-in-the-Sunshine Law⁸ requires any meeting of two or more members of the City Commission to meet in public when discussing matters that will foreseeably require official action of the Commission. Although a quorum of the City Commission must be present at any meeting in order

⁷ See footnote #2 above.

⁸ Fla. Stat. sec. 286.011.

for official action to be taken⁹, numerous opinions of the State’s Attorney General have held that a member of the Commission who is unable to attend a public meeting due to medical issues may participate via telephone so long as a quorum of the Commission is otherwise present at the meeting.¹⁰ Due to Commissioner Pierre’s medical condition and his stated inability to attend Commission meetings, he was permitted to participate in Commission meetings by telephone.

Telephonic participation however does not equate to “attendance”, and none of the Attorney General Opinions condoning such participation have conferred “present” status to absent, nonattending members of a governmental Commission, board or committee. Rather, the Attorney General’s opinions have clearly distinguished “attendance” from “participation”. See, Op. Att’y Gen. Fla. 2002-82:

“...physically disabled members of the City of Miami Beach Barrier-free Environment Committee *may participate and vote on board matters by electronic means if they are unable to attend a public meeting* so long as a quorum of the members of the board is physically present at the meeting site.”

III. CONCLUSION.

Based upon the above analysis, it is my opinion that pursuant to City Charter section 2.5, Commissioner Frantz Pierre’s seat on the City Commission has been vacant as of January 17, 2018 due to the Commissioner’s failure to attend a Commission meeting for 120 days. In view of the Charter’s language providing for such “automatic” vacancy, this issue of vacancy is mandatory and not subject to the discretion of the City Commission. As such, the provisions of City Charter section 4.5 governing vacancies on the City Commission must forthwith be complied with by the City Commission for purposes of filling the vacancy in the subject City Commission Group 5.

⁹ See, City Charter sec. 2.5 “...Except as otherwise provided herein, the affirmative vote of a majority of the quorum present shall be required upon any matter submitted for consideration of the Commission....”; and see, Fla. Stat. sec.166.041(4): “An affirmative vote of a majority of a quorum present is necessary to enact any ordinance or adopt any resolution”; and see, Op. Att’y Gen. Fla. 09-56 (2009): “[W]here a quorum is necessary for action to be taken, physical presence of the members making up the quorum is required in the absence of a statute requiring otherwise.”

¹⁰ See, Inf. Op. Att’y Gen. Fla. July 20, 2016: “...if a quorum of a local board is physically present, ‘the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[.]’”; “... if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public and to hear discussions taking place during the meeting.” Op. Att’y Gen. Fla 03-41; Op. Att’y Gen. Fla 92-44 (participation and voting by ill county commissioner), and Op. Att’y Gen. Fla 02-82 (physically-disabled city committee members participating and voting by electronic means).

EXHIBIT C



CITY OF NORTH MIAMI BEACH
City Commission Special Meeting
City Hall, Commission Chambers, 2nd Floor
17011 N.E. 19th Avenue
North Miami Beach, FL. 33162
Monday, February 5, 2018
5:00pm

Mayor George Vallejo
Vice Mayor Beth E. Spiegel
Commissioner Anthony F. DeFillipo
Commissioner Barbara Kramer
Commissioner Marlen Martell
Commissioner Phyllis S. Smith

City Manager Ana M. Garcia, ICMA-CM
City Attorney Jose Smith
City Clerk Pamela L. Latimore, CMC

Special Commission Meeting Minutes

ROLL CALL OF THE CITY OFFICIALS

The meeting was called to order at 5:05pm. Present at the meeting were Mayor George Vallejo, Vice Mayor Beth E. Spiegel, Commissioner Anthony F. DeFillipo, Commissioner Barbara Kramer, Commissioner Marlen Martell, and Commissioner Phyllis S. Smith. City Manager Ana M. Garcia, City Attorney Jose Smith, and City Clerk Pamela L. Latimore were also present.

PLEDGE OF ALLEGIANCE was led by the Mayor and Commission.

Mayor Vallejo announced that a legal opinion regarding the vacancy of Frantz Pierre's Commission Seat #5 will be presented.

City Attorney Jose Smith expressed that Section 2.5 of the City Charter states that if any Commissioner has failed to attend a meeting of the City Commission for a period of hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant and provided a chronology of events that led to the vacancy issue and legal opinion. City Attorney Smith stated that the one hundred and twenty (120) day period expired at midnight on January 17, 2018 and the Commission seat of Frantz Pierre became automatically vacant and the City Commission will discuss the process of filling the vacancy under the City Charter.

Outside Counsel Jean Olin discussed her legal opinion and stated that Section 2.5 of the City Charter was analyzed and the language is worded to impose a mandatory non-discretionary duty upon members of the City Commission to recognize that if a member of the Commission fails to attend a Commission meeting for one hundred and twenty (120) days there is an automatic vacancy. Outside Counsel Jean Olin stated that the basis for the opinion is primarily the interpretation of the language in the City Charter and explained that the municipal home rule powers enable the City of North Miami Beach to legislate on any matter as long as the subject has not been preempted. Outside Counsel Jean Olin confirmed that the City of North Miami Beach has never been preempted on the matters of declaring required attendance and the removal of a member of the City

Commission and discussed Section 4.5 of the City Charter which establishes the process of filling a vacant Commission seat.

City Attorney Smith stated that during the charter review process in 2016, the Charter Review Committee proposed and recommended to include a good cause provision with procedures to remove an elected official similar to other cities and the Mayor and Commission chose not to adopt it and has no discretion at this time to find a due process or good cause requirement.

Mayor Vallejo opened the meeting for **PUBLIC COMMENT**.

City Clerk Latimore read the rules of public comment into the record and the following person(s) made comments on the record:

1. Norman Edwards - 1640 N.E. 175th St., North Miami Beach, FL.
2. Marilyn Baumoehl - 18635 N.E. 20th Ct., North Miami Beach, FL.
3. Muriel Kemp - 1479 N.E. 178th St., North Miami Beach, FL.
4. Mubarak Kazan
5. Michele Decayette - 1000 N.E. 151st Ter., North Miami Beach, FL.

The meeting was closed for **PUBLIC COMMENT**.

Outside Counsel Jean Olin provided an explanation regarding the plain and ordinary meaning definition of the word 'attend' in Section 2.5 of the City Charter and stated that there is no special election required in order to fill this vacancy per Section 4.5 of the City Charter because there will be a general election in November of 2018 and the Mayor and Commission has a duty to appoint an individual to fill the vacant Commission seat pending the general election.

The Mayor and Commission discussed a letter that was received from Benedict Kuehne, legal representative of Frantz Pierre, and City Attorney Smith stated that Mr. Kuehne asked the City to note his objection to this meeting and requested that it be made part of the record.

Commissioner Kramer asked if Commissioner Pierre contacted City staff about his inability to attend Commission meetings for an extended period of time and asked if a City staff member contacted Mr. Pierre regarding a possible automatic vacancy of office and asked if a decision of the City Commission regarding this matter could overrule the City Charter. City Attorney Smith stated that Mr. Pierre was never advised that participating by telephone was tantamount to attending Commission meetings and he was aware of the one hundred and twenty (120) day requirement.

The following is a transcript from the meeting that occurred between the timeframe of 50:36 and 53:37.

City Attorney Jose Smith: Now the question may come up, did anyone call him to let him know that the time was about to expire? I don't think it would have made any difference because I have a letter from his physician that was filed in the context of a federal lawsuit where his physician told the federal judge that he could not participate in the federal proceedings starting in January for at least three months, so it would not have mattered. The time would have run out and he would not have been here anyway and we only found out about

this after your (Commissioner Kramer) email, so we could not possibly have given him a heads up because we didn't even know ourselves that the time had run out.

Mayor George Vallejo: Can I just do something real quick because let me just get straight just very quick answers because the questions were: Did Commissioner Pierre ever ask? Did anyone ever call him? Does the Charter overrule or, I'm sorry, can the City Commission overrule what the Charter says? So let's take the easy one first, the first legal question. Can the Commission overrule what the Charter says in this matter?

City Attorney Jose Smith: No.

Mayor Vallejo: Now the question obviously is did Commissioner Pierre ever ask anyone? I'm assuming there is only three people that a Commissioner should be talking to which is the three of you here (the Charter officers), so we can very quickly get that on the record. Did Commissioner Pierre ever call any of you to ask that question?

City Clerk Pamela L. Latimore: Commissioner Pierre did not contact me directly. His wife contacted my office via my assistant, I want to say a week or two weeks ago asking about sending some form of letter about his absence and wanting me to make an interpretation of the Charter. I, via through my assistant, on the phone, on the speakerphone, told his wife that they needed to contact the City Attorney's Office to get an interpretation of the Charter. I was not going to do that and that has been my contact with the Commissioner on this matter.

City Attorney Jose Smith: And he did not call me or anybody in my staff.

City Manager Ana M. Garcia: To put it on the record clearly, the Chief Administrative Officer of the City has a multitude of responsibilities and one of which is not the interpretation of the Charter in regards to attendance. I do deal with each and every one of you, including Commissioner Pierre, in good faith at all times and I had no clue that his participating by phone did not constitute.

Mayor Vallejo: Did he call you to ask you any questions?

City Manager Ana M. Garcia: No.

Mayor Vallejo: So obviously I can take it then no one obviously by the answers I'm hearing called Commissioner Pierre to say anything about this.

The above transcript from the meeting occurred between the timeframe of 50:36 and 53:37.

Mayor Vallejo asked whether or not the three Charter Officers or the members of the Commission had a legal responsibility to contact Mr. Pierre and City Attorney Smith replied no and stated that each individual Commissioner is primarily responsible for monitoring their own attendance and compliance.

Vice Mayor Spiegel asked if the Mayor and Commission were sitting at this meeting in a quasi-judicial or legislative capacity and City Attorney Smith stated that it was an obligation to advise the Mayor and Commission of the legal conclusion and thought providing due process was good practice even though it's not

required regarding this matter. City Attorney Smith discussed the role of the Mayor and Commission in the formal selection process of filling the vacant seat and said the meeting was for informational purposes and not quasi-judicial. Vice Mayor Spiegel asked about a due process requirement and City Attorney Smith stated that having this meeting is in an abundance of caution to allow Mr. Pierre and his representative the opportunity to participate. Vice Mayor Spiegel asked if the word 'attend' is defined in the City Charter and City Attorney Smith replied that it is not in the Charter or the City Code.

Commissioner Smith raised a point of order for the letter that was received from Benedict Kuehne, legal representative of Frantz Pierre, to be read into the record and she proceeded to read the letter. Commissioner Smith asked whether or not Mr. Pierre could sue the Mayor and Commissioners individually and City Attorney Smith replied that they would have no liability and the City would defend them. Mayor Vallejo stated that the only legal opinion that matters to the City is from the City Attorney.

Commissioner DeFillipo expressed that this is an unfortunate situation, but stated that it is the responsibility of the Mayor and Commission to uphold the City Charter.

Commissioner Martell inquired about Mr. Pierre being notified of this meeting and City Attorney Smith stated that the notice was emailed and hand-delivered to him.

Mayor Vallejo confirmed that this matter is a violation of the City Charter and asked if any of his colleagues wanted to challenge and override the decision of the City Attorney and nobody on the dais questioned the legal position. Mayor Vallejo stated that the City Charter must be followed to fill the vacant Commission seat and expressed that he feels for Mr. Pierre and wished him well.

Commissioner Smith asked about the issues of sickness and disability regarding this matter and Outside Counsel David Miller stated that he researched statutes dealing with illnesses and concluded that there is no application of those laws under these circumstances.

City Attorney Smith read a portion of Section 4.5 of the City Charter that states vacancies in elective offices of the City of North Miami Beach shall be filled by the City Commission pending the next general election, at which time an election to fill the vacancy shall be held for any remainder of the unexpired term. Outside Counsel Jean Olin stated that Section 4.5 of the City Charter does not define the time period by which the Mayor and Commission must appoint someone to fill the vacancy and recommended that it should be within a reasonable period of time. Outside Counsel Jean Olin stated that the other relevant section(s) of the Charter and City Code that need to be considered for appointment are the qualifications for elected office.

Vice Mayor Spiegel stated that a recent similar situation occurred in North Bay Village and suggested that the City of North Miami Beach should advertise and ask all who have an interest in serving to submit a letter of interest and then schedule a meeting to discuss and consider the individuals. Vice Mayor Spiegel discussed the process that took place the last time a Commission seat was vacated in the City of North Miami Beach.

Commissioner DeFillipo stated that this special meeting was advertised in the newspaper and City Clerk Latimore confirmed that the notice was published in the Daily Business Review and the Miami Herald.

Commissioner DeFillipo expressed that due process was put into effect and the proper procedures were followed and discussed the merits of Ketley Joachim.

Motion to nominate Ketley Joachim for appointment to the City Commission made by Commissioner DeFillipo, seconded by Mayor Vallejo.

Commissioner DeFillipo expressed his support for Ketley Joachim and mentioned events and causes that she has participated and been involved in over the years in the City of North Miami Beach. Commissioner Smith, Commissioner Kramer, Commissioner Martell, and Vice Mayor Spiegel discussed filling the vacant Commission seat and expressed that they were not in support of the motion at this time. Mayor Vallejo stated that he was in favor of the motion, but due to a lack of support from the majority of the Commission, he gave Commissioner DeFillipo the opportunity to withdraw his motion and the motion and the second were withdrawn.

The Mayor and Commission discussed the process and procedure of filling the vacant Commission seat and the required qualifications, the selection process and time frame, conducting criminal background checks, and scheduling and advertising the meeting at which the appointment will be considered.

Motion to create a process to fill the vacant Commission seat that would involve all interested individuals submitting a letter of interest and qualifying information to the Office of the City Clerk by February 16, 2018 at 12:00pm, having each Commissioner meet with the interested individuals at their discretion, and scheduling and advertising a Commission Meeting for February 22, 2018 to make a decision made by Commissioner Smith, seconded by Vice Mayor Spiegel.

MOTION PASSED 5-1 with Commissioner DeFillipo opposed.

Commissioner Smith stated that she was prepared to recommend and nominate William Dean for appointment to the City Commission, but she wanted to discuss the process of filling the vacant Commission seat.

Vice Mayor Spiegel invited everyone to attend the Valentine's Day Love-In event on February 14, 2018.

ADJOURNMENT

There being no further business to come before the City Commission, the meeting was adjourned at 7:39pm.

ATTEST:

(SEAL)



Pamela L. Latimore, CMC, City Clerk

EXHIBIT D

Max Eichenblatt

From: Herin, John R. <JHerin@foxrothschild.com>
Sent: Tuesday, May 16, 2023 10:13 AM
To: Benjamin Brodsky
Cc: Max Eichenblatt; Poli, Jacqueline; Sanabria, Victor G.
Subject: RE: Tomorrow's Meeting

I verbally informed the City Commission of the applicability of the Jean Olin opinion to the current situation on at least one occasion during a public meeting, and that is part of the record of that particular meeting. To the extent necessary this email shall confirm my prior oral statements to the City Commission.

The City Clerk is the City official responsible for marking Commissioners absent or present as reflected by the draft minutes that are subsequently approved by the City Commission. Although the meeting in December took place prior to my tenure as the City Attorney, it is my understanding that Comm. Joseph was listed in the approved minutes as an unexcused absence. At tonight's hearing you are free to present any evidence and/or testimony as to whether the minutes incorrectly reflect Comm. Joseph's absence at the December Commission meeting (i.e., it should be marked as "excused").

John R. Herin, Jr.

Florida Bar Board Certified in City,
County, and Local Government Law
Partner

Fox Rothschild LLP

One Biscayne Tower
2 South Biscayne Blvd., Suite 2750
Miami, FL 33131
(305) 442-6544 - direct
(305) 442-6541 - fax
JHerin@foxrothschild.com
www.foxrothschild.com

EXHIBIT E

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT OF FLORIDA, IN AND FOR MIAMI-DADE COUNTY
CIVIL DIVISION
CASE NO. 2018-**

**FRANTZ PIERRE, individually and
in his official capacity as North Miami
Beach Commissioner,
Plaintiff,**

versus

**CITY OF NORTH MIAMI
BEACH, FLORIDA, a municipal
Corporation, and
PAMELA LATIMORE, solely in
her official capacity as North
Miami Beach City Clerk,
Defendants.**

**EMERGENCY VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF, AND TO PROHIBIT REMOVAL OF
AND/OR TO REINSTATE FRANTZ PIERRE AS A DULY
ELECTED NORTH MAIMI BEACH COMMISSIONER**

Plaintiff Commissioner Frantz Pierre seeks emergency declaratory and injunctive relief to prevent the City of North Miami Beach, Florida and its officials from naming a replacement for his Commission position at a City Commission Meeting scheduled February 22, 2018. The action by the City of North Miami Beach to remove him from office and appoint a replacement is illegal, ultra vires, and done without due process of law.

Commissioner Pierre was duly elected by a vote of the citizens of North Miami Beach to a four-year term expiring in November 2020. He complied in all respects with his obligations as a North Miami Beach Commissioner as set forth in Florida law and the North Miami Beach Charter. The City's actions to remove and replace him for an alleged failure to physically attend Commission meetings in person due to exceptional and extraordinary circumstances arising from his recovery from serious medical conditions – he attended meetings by telephone in compliance with the specific instructions of the City Attorney and the City Clerk – are contrary to the requirements of Charter and Florida law.

Commissioner Pierre's election to the City Commission to a term expiring in 2020 created a valuable and constitutionally protected property right that cannot be diminished, rescinded, or vacated without due process of law, as guaranteed by the United States and Florida Constitutions. He has not received that due process.

Because the City intends to name a replacement on February 22, 2018, emergency relief is required.

INTRODUCTION.

- 1) This action is initiated pursuant to §86.021, Florida Statutes

and pursuant to the general equity jurisdiction of the court as set forth in §26.012, Florida Statutes.

2) Commissioner Frantz Pierre asks for a declaration that he is a duly elected Commissioner of the City of North Miami Beach and is entitled to serve out his four-year term expiring in November 2020, and that he has not vacated his elected position.

3) Commissioner Pierre also asks for a declaration that the City of North Miami Beach is not authorized to name a replacement for his elected Commission position that he has not vacated.

4) Commissioner Frantz Pierre further asks this Court to enjoin and prohibit the City of North Miami Beach from appointing his replacement at a meeting on February 22, 2018, or any time thereafter as may be set by the City.

5) Because the City is scheduled to name a replacement on February 22, 2018, to a position Commissioner Pierre has not vacated, prompt emergency relief is required to prevent that illegal action from occurring. Not only is this requested relief consistent with the public interest, but Commissioner Pierre and the citizens of North Miami Beach will be irreparably harmed by not having the duly elected Commissioner

Pierre exercise the duties of office to which he was elected by the citizens of North Miami Beach.

6) It is sovereign right of the people to elect their own public officials. Therefore, the City's effort to declare the removal of a duly elected official from office and appoint a replacement is contrary to the fundamental right of citizens to determine their elected representatives. Florida law confirms that the right to hold office is a valuable one that cannot be abridged except for unusual reason or by plain provision of law. *Perez v. Marti*, 770 So. 2d 176 (Fla. 3d DCA 2000) (quoting *Ervin v. Collins*, 85 So. 2d 852, 858 (Fla. 1956)).

7) Commissioner Frantz Pierre has a property right in his elected office that cannot be diminished, removed, or rescinded without due process of law, as guaranteed by the United States and Florida Constitutions.

8) The City's actions irreparably risk disenfranchising the citizens of North Miami Beach by substituting an appointed official in place of the one elected by the people.

9) All conditions precedent to the bringing of this action have been met, waived, or would be futile.

JURISDICTION AND VENUE.

10) This court has jurisdiction over this action.

11) Venue is proper in Miami-Dade County as the place in which the causes of action accrued and where the defendants exist and reside. The City is headquartered, and transacts its business and governmental activity.

12) Plaintiff retained counsel and agreed to pay the lawyers a reasonable fee for professional services in connection with this action.

PARTIES.

13) Frantz Pierre is a duly elected North Miami Beach Commissioner whose four-year term expires in November 2020.

14) The City of North Miami Beach, Florida is a Florida municipal corporation in Miami-Dade County, organized and existing under Florida law.

15) Pamela Latimore is the Clerk of the City of North Miami Beach. She is named solely in her official capacity.

FACTUAL STATEMENT

A. Frantz Pierre is Reelected to a Four-Year Term Expiring in 2020.

16) Upon serving the people of North Miami Beach as an elected

Commissioner, Frantz Pierre was duly reelected in 2015 to another four-year term expiring in 2015.

B. Frantz Pierre Has Fulfilled his Duties and Obligations of Office.

17) Commissioner Pierre has complied with Florida law and the Charter of the City of North Miami Beach in fulfilling all the duties and obligations of his elected office.

18) Commissioner Pierre has not vacated his office of City Commissioner.

C. Frantz Pierre Attended City Commission Meetings Telephonically.

19) Commissioner Pierre has not failed to comply with the attendance requirements of the City Charter and Florida law. Even as he slowly recovers from extraordinary circumstances arising from a serious medical condition for which he has been under the care of a physician, he has attended to his duties and responsibilities as an elected public official. He serves the interests of the public and his constituents.

20) During his medical recovery, Commissioner Pierre attended Commission Meetings telephonically.

21) Commissioner Pierre's attendance and participation by

telephone was due to extraordinary circumstances resulting from illness.

22) Commissioner Pierre was present telephonically at Commission Meetings.

23) At all times relevant to this matter, a quorum was present at City Commission meetings as required by law.

D. The City of North Miami Beach Officially Recognized Frantz Pierre's Telephonic Attendance at Commission Meetings.

24) Commissioner Pierre's telephonic attendance was duly and officially recognized in the City Commission Minutes.

25) Commissioner Pierre cast votes during his telephonic attendance, and his votes have been deemed official votes and counted by the City of North Miami Beach.

26) At no time has either Commissioner Pierre's telephonic attendance or voting been questioned or made the subject of a formal or informal objection.

27) Commissioner Frantz attended and participated in the Commission Meeting on January 16, 2018, both online and by phone.

28) Commissioner Pierre's attendance and participation by telephone has been acceptable by the City of North Miami Beach for any

Commissioner unable to physically attend in person.

29) Commissioner Pierre's presence and attendance at all times was facilitated and approved by the City of North Miami Beach through the provision of telephonic access and by the City supplying the necessary equipment to participate telephonically.

30) The City never informed Commissioner Pierre that his attendance and participation by telephone did not satisfy the attendance requirement of the City Charter.

E. The City Attorney Provided Official Advice to Frantz Pierre Authorizing Telephonic Attendance at Commission Meetings.

31) Commissioner Pierre's telephonic attendance was based on the specific advice given to him by the North Miami Beach City Attorney, who informed Commissioner Pierre of the ability to attend Commission Meetings by telephone as he recuperated from his serious medical condition. Commissioner Pierre relied on the advice and counsel of the City Attorney, and scrupulously followed that advice.

32) The City Attorney's advice to Commissioner Pierre was done in the official capacity of the City Attorney, whose advice represents the official position of the City of North Miami Beach.

33) The City of North Miami Beach adopted, ratified, approved, and acted on the attendance advice provided by the City Attorney to Commissioner Pierre.

F. Frantz Pierre’s Telephonic Attendance Comports with Florida Law and the City Charter.

34) Commissioner Pierre believed the advice provided by the City Attorney was fully compliant with Florida law.

35) Commissioner Pierre relied on the advice of the City Attorney in connection with his fulfillment of Charter attendance requirements.

36) Commissioner Pierre’s attendance by telephone is legally authorized under Florida law.

37) Commissioner Pierre’s telephonic attendance and presence at the Commission Meetings satisfied his attendance obligation set forth in the North Miami Beach Charter.

38) Had the City Attorney or any City official informed Commissioner Pierre of an obligation to be “physically present” or “present in person” in order to comply with the Charter provision, Commissioner Pierre would have physically appeared at the Commission chambers for the meetings when he was physically able to do so. Instead,

his reliance on the City Attorney's advice and the specific Charter language that does not require "physical" presence comports with his Charter obligations and Florida law.

39) Commissioner Pierre has not "failed to attend a meeting of the City Commission for a period of one hundred twenty (120) days ..." as required by City Charter section 2.5.

40) Commissioner Pierre intends to complete the entire four-year term to which he was elected by the citizens of North Miami Beach, expiring in 2020.

41) As a result of Commissioner Pierre's attendance at City Commission meetings in compliance with the requirements of the City Charter, Commissioner Pierre has not automatically vacated his elected position.

42) Commissioner Pierre did not voluntarily vacate his position.

G. Frantz Pierre Objected to the City's Actions and Intended Actions.

43) Commissioner Pierre objected to the action of the City of North Miami Beach declaring a vacancy in his elected position.

44) Commissioner Pierre objected to the intended action of the

City of North Miami Beach to appoint a replacement to his elected Commission position, since no vacancy exists.

45) Commissioner Pierre, through this litigation, seeks enforcement of his status as an elected official in good standing, and disputes the ability of the Commission to declare a vacancy or act to fill the seat by appointment to which he was elected and still occupies by the affirmative vote of the citizens of North Miami Beach.

46) Commissioner Pierre was never notified in advance of the City's intention to declare a vacancy in his elected position.

47) Commissioner Pierre was not provided any advance notice that his authorized telephonic attendance did not comply with the requirements of the City Charter.

48) Commissioner Pierre was given no notice of an impending vacancy and an opportunity to cure any attendance deficiency deemed to exist by the City of North Miami Beach.

49) Had Commissioner Pierre been informed that his telephonic attendance did not comport with the requirements of the City Charter, he would have physically appeared at a sufficient number of Commission Meetings, despite his medical incapacity, to satisfy any other

interpretation of the Charter attendance requirements.

50) Throughout his medical incapacity, Commissioner Pierre continued to serve the interests of the people of North Miami Beach, and to satisfy and discharge all required duties of office in an effective and deliberate manner.

H. The City Is Preventing Frantz Pierre from Exercising and Fulfilling the Duties of Office to which He Was Elected for a Four-Year Term Expiring in 2020.

51) The City is preventing Commissioner Pierre from serving as Commissioner, exercising his duties as Commissioner, occupying his office, and fulfilling his obligations as a Commissioner.

I. City Intends to Appoint Replacement on February 22, 2018.

52) The City intends to appoint a replacement on February 22, 2018, despite Commissioner Pierre's objection.

J. City Charter Attendance Provision.

53) The North Miami Beach City Charter contains the following attendance requirement for Commissioners at Section 2.5:

... If any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant.

54) The City Charter does not define attendance as requiring physical presence.

K. City's Official Records Document Commissioner Pierre's Attendance and Voting.

55) The official records of the City of North Miami Beach, maintained by the City Clerk as public records document the following attendance by Commissioner Pierre at City Commission Meetings:

- 01/17/2017 Regular Commission Meeting – attended.
- 02/21/ 17 Regular Commission Meeting – attended.
- 03/21/17 Regular Commission Meeting – attended.
- 04/03/17 Special Commission Meeting – attended.
- 04/18/17 Regular Commission Meeting – absent.
- 05/16/17 Regular Commission Meeting – absent.
- 06/08/17 Special Commission Meeting – participated and voted by telephone.
- 06/20/17 Regular Commission Meeting – participated and voted by telephone.
- 07/18/17 Regular Commission Meeting – participated and voted by telephone.

- 08/15/17 Regular Commission Meeting – participated and voted by telephone.
- 08/24/17 Regular Commission Meeting after CRA Board Meeting – attended.
- 09/18/17 First Public Budget Hearing/Regular Commission Meeting – absent.
- 09/25/17 Second Public Budget Hearing – participated and voted by telephone.
- 10/17/17 Regular Commission Meeting – absent.
- 11/14/17 Regular Commission Meeting – absent.
- 12/19/17 Regular Commission Meeting – participated and voted by telephone.
- 01/16/18 Regular Commission Meeting – participated and voted by telephone.

L. Florida Law Permits and Authorizes Telephonic Attendance.

56) Florida law expressly authorizes and allows telephonic attendance at official government meetings. §286.011, Florida Statutes.

57) Opinions of the Florida Attorney General recognize and

authorize telephonic attendance and participation by government officials. Op. Att’y Gen. Fla. July 20, 2016: “... if a quorum of a local board is physically present, ‘the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;]’ ... if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public and to hear discussions taking place during the meeting.” Op. Att’y Gen. Fla 03-41; Op. Att’y Gen. Fla 92-44 (participation and voting by ill county commissioner); Op. Att’y Gen. Fla 02-82 (physically-disabled city committee members participating and voting by electronic means).

COUNT 1 – DECLARATORY RELIEF

58) Plaintiff reaffirms and realleges all prior paragraphs.

59) Plaintiff comported and complied with the attendance requirements of the City Charter and Florida law.

60) The City Charter does not require physical attendance at

Commission Meetings when extraordinary circumstances occasioned by a Commissioner's illness prevents actual physical attendance.

61) Commissioner Pierre's attendance by telephone constitutes compliance with the requirements of the City Charter and Florida law.

62) A real dispute exists between the attendance requirements of the City Charter and the actions taken by the City of North Miami Beach to declare a vacancy and appoint a replacement to Commissioner Pierre's duly elected Commission position that does not expire until 2020. Despite Commissioner Pierre's attendance at City Commission Meetings and his compliance with the attendance requirements of the City Charter and Florida law, the City intends to appoint a replacement on February 22, 2018.

63) Commissioner Pierre is without an adequate remedy at law. Although duly elected for a term expiring in 2020, the City's actions to deprive him of his property right to his Commission position in violation of the City Charter, Florida law, and the due process protections of the United States and Florida Constitutions.

64) A declaratory judgment that Commissioner Pierre has not vacated his Commission position is consistent with the law and the public

interest.

65) Declaratory relief requested by Commissioner Pierre will not harm the interests of the City or the citizens of North Miami Beach.

66) Commissioner Pierre seeks declaratory relief in the form of a judicial determination that he has not vacated his Commission position, and further declaring that no vacancy exists in his Commission position.

COUNT 2 – INJUNCTIVE RELIEF

67) Plaintiff reaffirms and realleges all prior paragraphs.

68) Plaintiff comported and complied with the attendance requirements of the City Charter and Florida law.

69) The City Charter does not require physical attendance at Commission Meetings when extraordinary circumstances occasioned by a Commissioner's illness prevents actual physical attendance.

70) The City is not lawfully entitled to declare a vacancy in Commissioner Pierre's elected Commission position, and has no legal authority to appoint a replacement to his elected Commission position.

71) Commissioner Pierre is without an adequate remedy at law. Although duly elected for a term expiring in 2020, the City's actions to deprive him of his property right to his Commission position in violation

of the City Charter, Florida law, and the due process protections of the United States and Florida Constitutions.

72) Commissioner Pierre meets the standard for emergency temporary and permanent injunctive relief. The relief requested is consistent with the public interest. Commissioner Pierre's position is consistent with prevailing law, and he is likely to succeed on the merits. The appointment of a replacement to his duly elected Commission position will irreparably harm Commissioner Pierre and the citizens of the City of North Miami Beach, who are entitled to determine and select their public officials by the election process.

73) "The issuance of a preliminary injunction is an extraordinary remedy which should be granted sparingly, which must be based upon a showing of the following criteria: (1) The likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) considerations of the public interest." *City of Jacksonville v. Naegele Outdoor Advertising Co.*, 634 So. 2d 750 (Fla. 1st DCA 1994).

74) Temporary injunctive relief is required in the form of an order prohibiting the City from appointing a replacement for Commissioner

Pierre on February 22, 2018, or any date otherwise determined by the City, and to prohibit any replacement from occupying the office to which Commissioner Pierre was duly elected for a term expiring in 2020.

75) Permanent injunctive relief is required in the form of an order prohibiting the City from replacing Commissioner Pierre during his term of office expiring in 2020.

COUNT 3 – EQUITABLE ESTOPPEL

76) Plaintiff reaffirms and realleges all prior paragraphs.

77) Plaintiff comported and complied with the attendance requirements of the City Charter and Florida law.

78) Plaintiff received and reasonably relied on the official advice of the City Attorney that his telephonic attendance at Commission Meetings due to his illness comported with the City Charter and Florida law.

79) Plaintiff received and reasonably relied on the actions of the City in affirmatively arranging and facilitating his telephonic attendance at Commission Meetings due to his illness in compliance with the requirements of the City Charter and Florida law.

80) The City represented that Commissioner Pierre's telephonic

attendance comported with the City Charter and Florida law, but has now asserted a position that is directly to the contrary. Commissioner Pierre reasonably relied on the position represented by the City. The City's change in position, without notice and an opportunity to cure, is detrimental to Commissioner Pierre and the citizens of North Miami Beach, and is the direct result of the City's representation and Commissioner Pierre's reliance thereon.

81) Plaintiff has no adequate remedy at law.

82) Commissioner Pierre's position is consistent with the public interest, and does not injure or harm the interests of the City.

83) Plaintiff is irreparably harmed by the material change in the City's position.

84) The City and its officials are estopped from taking a position to the contrary in order to advance a determination of a vacancy and taking official action to fill that vacancy.

85) Commissioner Pierre is entitled to temporary and permanent injunctive relief, and an order of declaratory relief that the City is estopped from declaring a vacancy in the office to which Commissioner was elected through the expiration of his term in 2020, and further

estopped from appointing a replacement.

CONCLUSION,

86) Plaintiff Pierre is entitled to emergency declaratory and injunctive relief, bit temporary and permanent, to prohibit the City from appointing a replacement for Commissioner Pierre and to further prohibit the City from refusing to allow Commissioner Pierre to exercise and fulfill the duties of office to which he was elected through the 2020 expiration of his term. He seeks attorney's fees and costs.

87) Dated on February 22, 2018.

Respectfully submitted,

S/ Michael T. Davis

BENEDICT P. KUEHNE

Florida Bar No. 233293

MICHAEL T. DAVIS

Florida Bar No. 63374

KUEHNE DAVIS LAW, P.A.

100 S.E. 2nd St., Suite 3550

Miami, FL 33131-2154

Tel: 305.789.5989

Fax: 305.789.5987

mdavis@kuehnelaw.com

efiling@kuehnelaw.com

VERIFICATION

I declare, under penalty of perjury, that the information contained in this Complaint is true and correct, and that emergency relief is needed, to the best of my knowledge and belief

Frantz Pierre
FRANTZ PIERRE

State of Florida
County of Miami-Dade

Before me personally appeared Frantz Pierre, ~~who is known to me,~~ who was first placed under oath, and who stated that the information contained in this document is true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me on February 22, 2018, by Frantz Pierre, who is ~~personally known.~~ *PRODUCED FLORIDA DRIVER LICENSE.*

Dale Michelson
NOTARY PUBLIC, State of Florida



CERTIFICATE OF SERVICE

This document was filed using the State of Florida's ePortal Filing System and was served via email through the State of Florida's ePortal Filing System to the following counsel of record on February 22, 2018:

George Vallejo, Mayor
Pamela Latimore, City Clerk
Ana M. Garcia, City Manager
City of North Miami Beach
NMB City Hall
17011 NE 19 Avenue
North Miami Beach, FL 33162-3100
CityClerk@citynmb.com
nicole.gomez@citynmb.com
Fax: 305-787-6026
Fax: 305-957-3602

Jose Smith, City Attorney
City of North Miami Beach
NMB City Hall
17011 NE 19 Avenue
North Miami Beach, FL 33162-3111
josesmith@citynmb.com

By: S/ Benedict P. Kuehne
BENEDICT P. KUEHNE

EXHIBIT F

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT OF FLORIDA, IN AND FOR MIAMI-DADE COUNTY
CIVIL DIVISION
CASE NO. 2018-**

**FRANTZ PIERRE, individually and
in his official capacity as North Miami
Beach Commissioner,
Plaintiff,**

versus

**CITY OF NORTH MIAMI
BEACH, FLORIDA, a municipal
Corporation, and
PAMELA LATIMORE, solely in
her official capacity as North
Miami Beach City Clerk,
Defendants.**

**EMERGENCY MOTION FOR TEMPORARY INJUNCTIVE
RELIEF**

Plaintiff Commissioner Frantz Pierre seeks emergency temporary injunctive relief for all the reasons supported by the Emergency Verified Complaint for Declaratory and Injunctive Relief. This motion expressly incorporates the verified facts contained in the Complaint. Absent temporary injunctive relief, the City will appoint a replacement Commissioner in place of the duly elected Commissioner Pierre, whose term does not expire until 2020. The appointment is scheduled for today,

February 22, 2018.

- 1) There is a distinct likelihood of success on the merits.
- 2) Plaintiff and the citizens of North Miami Beach will be irreparable harmed without the issuance of emergency relief.
- 3) Plaintiff has no adequate remedy at law.
- 4) The balance of harm favors the Plaintiff.
- 5) Temporary relief will not cause any meaningful harm to the City.
- 6) The public interest favors the granting of a temporary injunction prohibiting the City from appointing a replacement Commissioner.

Respectfully submitted,

S/ Michael T. Davis
BENEDICT P. KUEHNE
Florida Bar No. 233293
MICHAEL T. DAVIS
Florida Bar No. 63374
KUEHNE DAVIS LAW, P.A.
100 S.E. 2nd St., Suite 3550
Miami, FL 33131-2154
Tel: 305.789.5989
Fax: 305.789.5987
mdavis@kuehnelaw.com
efiling@kuehnelaw.com

CERTIFICATE OF SERVICE

This document was filed using the State of Florida's ePortal Filing System and was served via email through the State of Florida's ePortal Filing System to the following counsel of record on February 22, 2018:

George Vallejo, Mayor
Pamela Latimore, City Clerk
Ana M. Garcia, City Manager
City of North Miami Beach
NMB City Hall
17011 NE 19 Avenue
North Miami Beach, FL 33162-3100
CityClerk@citynmb.com
nicole.gomez@citynmb.com
Fax: 305-787-6026
Fax: 305-957-3602

Jose Smith, City Attorney
City of North Miami Beach
NMB City Hall
17011 NE 19 Avenue
North Miami Beach, FL 33162-3111
josesmith@citynmb.com

By: S/ Benedict P. Kuehne
BENEDICT P. KUEHNE

EXHIBIT G

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 2018-005155-CA-01(08)

Frantz Pierre

Plaintiff(s),

vs.

City of North Miami Beach
and Pamela Latimore, Clerk
Defendant(s).

FILED FOR RECORD
2018 FEB 23 AM 8:04
ORDER
GRANTING/DENYING
PLAINTIFF'S/DEFENDANT'S

THIS CAUSE having come on to be heard on Telephonic Hearing on February 22, 2018
on Plaintiff's/Defendant's Motion

Emergency Motion for Temporary Injunctive Relief

and the Court having heard argument of counsel, and being otherwise advised in the premises, it is
hereupon

ORDERED AND ADJUDGED that said Motion be, and the same is hereby

GRANTED. The City is enjoined from naming any
replacement Commissioner until further order of the Court.
The parties are to contact the Court within the next week
to schedule further proceedings.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 22 day of
February, 2018

CIRCUIT COURT CLERK
ORIGINAL
JUDGE DENNIS J. MURPHY

Copies furnished to: Counsel of Record

117.01-554 103 Benedict P. Kuehne
Gerald Greenberg
Joe Smith
Jean Olin + Jarred Reiling

EXHIBIT H

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT OF FLORIDA, IN AND FOR MIAMI-DADE COUNTY
CIVIL DIVISION
CASE NO. 2018-005155-CA-01 (08)**

**FRANTZ PIERRE, individually and
in his official capacity as North Miami
Beach Commissioner,
Plaintiff,**

versus

**CITY OF NORTH MIAMI
BEACH, FLORIDA, a municipal
Corporation, and
PAMELA LATIMORE, solely in
her official capacity as North
Miami Beach City Clerk,
Defendants.**

_____ /

**AMENDED EMERGENCY MOTION FOR TEMPORARY
INJUNCTIVE RELIEF**

Plaintiff Commissioner Frantz Pierre seeks emergency temporary injunctive relief for all the reasons supported by the Emergency Verified Complaint for Declaratory and Injunctive Relief. This motion expressly incorporates the verified facts contained in the Amended Complaint. Absent temporary injunctive relief, the City will appoint a replacement Commissioner in place of the duly elected Commissioner Pierre, whose term does not expire until 2020. The appointment, originally scheduled

for February 22, 2018, was stayed by order of this Court. But the City nonetheless is intending to appoint a replacement at some future time..

1) There is a distinct likelihood of success on the merits.

2) Plaintiff and the citizens of North Miami Beach will be irreparable harmed without the issuance of emergency relief.

3) Plaintiff has no adequate remedy at law.

4) The balance of harm favors the Plaintiff.

5) Temporary relief will not cause any meaningful harm to the City.

6) The public interest favors the granting of a temporary injunction prohibiting the City from appointing a replacement Commissioner, ousting Commissioner Pierre from office, and declaring a vacancy in his office prior to the expiration of his term in November 2020.

VERIFICATION

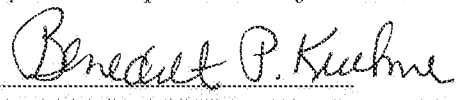
I declare, under penalty of perjury, that the information contained in this document is true and correct, and that emergency relief is needed, to the best of my knowledge and belief

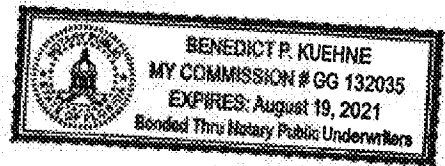

FRANTZ PIERRE

State of Florida
County of Miami-Dade

Before me personally appeared Frantz Pierre, who is known to me, who was first placed under oath, and who stated that the information contained in this document is true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me on March 17, 2018, by Frantz Pierre, who is personally known.


NOTARY PUBLIC, State of Florida
BENEDICT P. KUEHNE



Respectfully submitted,

S/ Benedict P. Kuehne

BENEDICT P. KUEHNE

Florida Bar No. 233293

MICHAEL T. DAVIS

Florida Bar No. 63374

KUEHNE DAVIS LAW, P.A.

100 S.E. 2nd St., Suite 3550

Miami, FL 33131-2154

Tel: 305.789.5989

Fax: 305.789.5987

mdavis@kuehnelaw.com

efiling@kuehnelaw.com

CERTIFICATE OF SERVICE

This document was filed using the State of Florida's ePortal Filing System and was served via email through the State of Florida's ePortal Filing System to the following counsel of record on March 19, 2018:

STEPHEN H. JOHNSON
STEPHANIE PIDERMANN
LYDECKER | DIAZ
Counsel for Defendants
1221 Brickell Avenue, 19th Floor
Miami, Florida 33131
Tel: (305) 416-3180
Fax: (305) 416-3190
shj@lydeckerdiaz.com
spidermann@lydeckerdiaz.com
Jfalcon@lydeckerdiaz.com
ev@lydeckerdiaz.com

By: S/ Benedict P. Kuehne
BENEDICT P. KUEHNE

EXHIBIT I

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

JAY R. CHERNOFF, an individual and in
his capacity as City Commissioner,

CASE NO.: 2023-2633-CA-01

Plaintiff,

v.

CITY OF NORTH MIAMI BEACH, and
COMMISSIONER MICHAEL JOSEPH,

Defendants.

**DEFENDANT COMMISSIONER MICHAEL JOSEPH'S VERIFIED RESPONSE IN
OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR INJUNCTIVE RELIEF**

Defendant Commissioner Michael Joseph ("Vice Mayor Joseph"), hereby responds in opposition to the Emergency Motion for Injunctive Relief for the Removal of Michael Joseph as Commissioner of North Miami Beach ("Motion") filed by Plaintiff Jay R. Chernoff ("Plaintiff"). Vice Mayor Joseph currently serves as Vice Mayor of the City of North Miami Beach (the "City") and has the authority to preside over commission meetings upon the unavailability of the Mayor.

Plaintiff asks this Court to enter a mandatory temporary injunction with the permanent effect of removing Vice Mayor Joseph from elected office before his answer is filed, before discovery is taken, and before he has an opportunity to defend the claims against him in front of a jury at trial. In other words, Plaintiff asks this Court to disregard every procedural safeguard and legal principle governing Vice Mayor Joseph's right to a defense in favor of an illegal, truncated procedure in Plaintiff's favor. The Motion should be denied on that basis alone.

Beyond its fatal procedural infirmity, denial of the Motion is required on factual and legal grounds. Plaintiff has no standing to bring this suit as he has suffered no special injury and

otherwise has no legal basis to seek to enforce the Charter of the City of North Miami Beach (the “City”). Even if he had standing, Vice Mayor Joseph is not in violation of the Charter’s attendance provision. Under recent City precedent and based on a reasonable reading of the Charter, in counting the number of days that a Commissioner has failed to attend a meeting, the Court is to start from the first meeting that Vice Mayor Joseph missed, not from the last meeting that he attended. Moreover, even if the Court used Plaintiff’s incorrect method of counting, Vice Mayor Joseph attended a City meeting within 120 days and therefore is not subject to removal. Finally, the City’s Charter violates the Due Process Clause of the Florida and United States Constitution.

The Motion should be denied.

I. Vice Mayor Joseph’s Good Faith Abstention from Meetings, Plaintiff’s Efforts to Remove Him, and the Defective City Charter.

The backdrop of Plaintiff’s underlying Complaint and the subsequent Motion is an ongoing dispute between the City and Anthony F. DeFillipo, whose qualification to serve as mayor of the City due to his lack of residency is being litigated in a separate matter.

Vice Mayor Joseph was elected to the City Commission in 2018. Following his election, Vice Mayor Joseph regularly attended City Commission meetings, including a meeting held on October 18, 2022. No City Commission meeting was held in November 2022 due to the election that month.

The issue of DeFillipo’s failure to reside in the City—and consequent disqualification from public office in the City—was publicly raised for the first time at a City Commission meeting held on December 20, 2022. Vice Mayor Joseph did not attend that meeting because he was sick with strep throat that he had contracted through his young son.

On the advice of the City Attorney consistent with past precedent of the City Commission,

Vice Mayor Joseph did not attend the January 17, 2023 and February 21, 2023 City Commission Meetings until the issue of DeFillipo’s qualification to serve as Mayor—and right and ability to preside over the meetings—was resolved. Vice Mayor Joseph otherwise continued to discharge his everyday duties as a City Commissioner, including attending a publicly noticed meeting held by the Commission on February 15, 2023 on issues relating to the improvements to a performing arts theater in the City. *See* Agenda from City Commission Workshop, attached as Exhibit A. Moreover, on January 19, 2023, Vice Mayor Joseph requested a special commission meeting to discuss the issues relating to DeFillipo’s qualifications to serve as Mayor. This request was rejected by DeFillipo and his supporters on the City Commission.

During the pendency of the dispute over DeFillipo’s residency, Plaintiff filed this action against the City and Vice Mayor Joseph, alleging that from October 18, 2022 to February 15, 2023, a period of 120 days, Vice Mayor Joseph failed to attend a meeting of the City Commission, thereby forfeiting his seat.¹ *Complaint*, at ¶¶ 9-10. The Complaint contains two Counts, one for declaratory judgment, and another for injunctive relief. Plaintiff seeks the same remedy in both: the summary removal of Vice Mayor Joseph from his duly elected office without notice or a hearing.

In support of this relief, Plaintiff relies on Section 2.5 of the Charter of the City of North Miami Beach (“Charter”), which provides, in pertinent part, that “[i]f any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant.” *Complaint*, at ¶ 8. Plaintiff, in arguing that Vice Mayor Joseph has forfeited his seat, argues that the method to calculate the 120 days starts with the last City Commission meeting Vice Mayor Joseph attended, which Plaintiff

¹ Confusingly, both the Complaint and the Motion concede that Vice Mayor Joseph attended a commission meeting on October 18, 2022, leaving Plaintiff a day short of 120 in his math.

contends was October 18, 2022.

In addition to being factually wrong, as Vice Mayor Joseph attended a meeting on February 15, 2023 as noted above, Plaintiff's proposed calculation method is contrary to City precedent on this issue. In January 2018, another City Commissioner, Frantz Pierre, was removed pursuant to the Charter for failing to attend meetings. There, the City Attorney recommended and the Commission accepted that the calculation of the 120 days begins on the day after the first meeting that the commissioner missed. (*See* Memo from Jean Olin, Esq. to Jose Smith, Esq., 1/25/18 and Special Commissioner Meeting Minutes, 2/5/18, true and correct copies of which are attached hereto as Exhibit B.) Under that precedential reading, the Court's calculation of the 120 days for purposes of Vice Mayor Joseph and the instant Motion starts at the earliest with December 20, 2022.

Notably, the Charter facially lacks procedural safeguards to ensure that a Commissioner is not removed—and the voters' will is not thwarted—if he or she has good cause for failing to attend meetings for 120 days. The Charter does not provide for any pre-vacancy notice nor for any hearing or good cause exception before a Commissioner's seat is vacated for failing to attend meetings during the designated time period. The Charter therefore differs materially from the public office forfeiture provisions of the codes of Miami-Dade County and other municipalities in the County. For example, the County Code provides at Section 1.05 that: "Any member of the Board of County Commissioners . . . who fails to attend meetings **without good cause** for a period of six months, shall immediately forfeit his office." Similarly, the Code of Ordinances for the City of Aventura provides that: "A Commissioner shall be subject to forfeiture of his/her office, **in the discretion** of the remaining Commissioners, if s/he is absent **without good cause** from any four regular meetings of the Commission during any calendar year, or if s/he is absent **without good cause** from any four consecutive regular meetings of the Commission, whether or not during the

same calendar year.” In other words, the other codes have procedural safeguards with respect to public office forfeiture that the City’s Charter does not.

II. The Motion Must Be Denied.

A. Plaintiff Seeks an Unlawful Final Judgment of Injunction Before an Answer Is Filed, Discovery Is Taken, and a Jury Renders Its Verdict.

Plaintiff’s intention in filing this Motion is abundantly clear: to have the Court decide the merits of his underlying claims and remove Vice Mayor Joseph from office without giving him the opportunity to lodge an answer and affirmative defenses, take discovery, or have a trial by jury on the declaratory judgment and injunction actions. The remedy sought in the Motion is same as that sought in the Complaint. In fact, with few exceptions, the allegations of both are identical.

It is improper to award a temporary injunction under these circumstances. *See Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070 (Fla. 1st DCA 2022), *writ denied*, 340 So. 3d 475 (Fla. 2022) (“A temporary injunction is not an adjudication; it does not decide the merits.”); *City of Miami Beach v. State ex rel. Taylor*, 49 So. 2d 538, 538 (Fla. 1950) (approving temporary restraining order because it did not purport to “decide any material points in controversy, but only to preserve the status quo pending the litigation”); *Lieberman v. Marshall*, 236 So. 2d 120, 125 (Fla. 1970) (noting that the “purpose of an injunction is not to take sides”); *Naegele Outdoor Advert. Co.*, 634 So. 2d at 754 (noting that a temporary injunction “does not decide the merits of the case”); *see also Michele Pommier Models, Inc. v. Diel*, 886 So. 2d 993, 995–96 (Fla. 3d DCA 2004) (“The purpose of a temporary or preliminary injunction is not to resolve disputes, but rather to prevent irreparable harm by maintaining status quo until a final hearing can occur when full relief may be given.”).

Florida courts have made clear that “a temporary injunction is not a vehicle by which to

procure a provisional remedy”. *Byrd*, 339 So. 3d at 1073. But Plaintiff has even gone further than that, requesting a permanent remedy indistinguishable from that requested in his Complaint. This would not only constitute a grossly improper application of the limited legal mechanism, but would exceed this Court’s constitutional authority. *Id.* at 1075-76 (“The constitutional writ of injunction...functions only to give interim *procedural* relief. That relief is not the same as a remedy. A remedy must follow an adjudication on a party’s right of action against another.”) Since this lawsuit was filed only nine days before the Motion and the Defendants have not even filed answers, there has been no adjudication of Plaintiff’s right of action. Therefore, there can be no remedy. *See Id.* at 1078 (discussing a temporary injunction filed in a declaratory judgment action: “[w]ithout a merits determination as part of a final adjudication, chapter 86 provides no authority for the circuit court to grant any affirmative, remedial relief”.)

Granting the remedy requested would contravene the purpose of a temporary injunction, which is “to preserve the status quo until a final hearing when full relief may be granted.” *Naegele Outdoor Advert. Co., Inc. v. City of Jacksonville*, 659 So. 2d 1046 (Fla. 1995). A temporary mandatory injunction, like the one requested here, “can be used, but only to *restore* the status quo.” *Byrd*, 339 So. 2d at 1079. Presently, Vice Mayor Joseph sits on the City’s Board of Commissioners, as he has since he was first elected in November of 2018. That is the status quo and has been for over four years. Removing Vice Mayor Joseph would clearly destroy the status quo, not preserve it nor restore it.

Notably, even on Plaintiff’s declaratory judgment count, for which a speedy trial remedy exists, Fla. Stat. § 86.111, the Court may not hold the trial until the case is joined by an answer, which has not happened here. *Drinan v. Nixon*, 364 F. Supp. 853, 854 (D. Mass.), *aff’d*, 502 F. 2d 1158 (1st Cir. 1973) (addressing the identical provision of the federal rules: “implicit in such

provision is the assumption that prior to such order for speedy hearing, the matter will have been joined by the filing of a responsive pleading”). The injunction should therefore be denied.

B. Plaintiff Has No Standing to Seek the Requested Injunctive Relief.

Plaintiff does not have standing, either as an individual or as a City Commissioner, to seek injunctive relief. Count II of the Complaint requests an injunction, but strictly on the basis of alleged rights of and irreparable harm to the City. *See Complaint* ¶¶ 19-22.

There are specific rules concerning the standing of public officials to challenge application of a particular law. *See Department of Revenue of State of Fla. v. Markham*, 396 So. 2d 1120 (Fla. 1981). A public official has standing in two circumstances, either: (i) the official is challenging the validity of laws applicable to him; or (ii) the official is willing to perform certain duties under certain laws but is prevented from doing so by others. *Reid v. Kirk*, 257 So. 2d 3, 4 (Fla. 1972). Neither of these circumstances apply here.

First, Plaintiff makes no claim regarding the validity of the Charter or any provision therein. Second, Plaintiff has not alleged that the Defendants, or anyone else for that matter, have prevented him from taking any action in his official capacity. The Complaint merely states that there is a present need for a declaration of rights attendant to the Charter and that the City, not the Plaintiff, “is entitled to have all doubts as to the rights and obligations under the Charter resolved in its favor.” *Complaint*, at ¶ 15. Even in the light most favorable to the Plaintiff, these allegations fail to state how Plaintiff would have standing to bring his declaratory action in light of the applicable law.

Second, Plaintiff does not have standing to bring the action in his individual capacity. In bringing any action, a litigant “must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.” *Alterra Healthcare Corp. v. Est.*

of *Shelley*, 827 So. 2d 936, 941 (Fla. 2002). Yet, despite bringing this claim in his individual capacity, Plaintiff has failed to assert anywhere in the Complaint that he has any legal right or interest as an individual. It is unclear what right or interest Plaintiff is claiming in the Complaint, how such a right is being threatened or harmed, or how a favorable judgment would alleviate any such harm. Without pleading an interest at stake in the alleged controversy, Plaintiff has failed to demonstrate standing and his Complaint should be dismissed on that basis. See *Warren Tech., Inc. v. Carrier Corp.*, 937 So. 2d 1141, 1142 (Fla. 3d DCA 2006).

C. In Addition to Lack of Irreparable Harm or Public Interest, Plaintiff Cannot Establish a Substantial Likelihood of Success on His Injunction Claim, Let Alone a Likelihood Beyond a Reasonable Doubt.

A party seeking a temporary injunction must establish that: (1) irreparable injury will result if the injunction is not granted, (2) there is no adequate remedy at law, (3) the party has a clear legal right to the requested relief and substantial likelihood of success on the merits; and (4) the public interest will be served by the temporary injunction.” *Liberty Counsel v. Florida Bar Bd. Of Governors*, 12 So. 3d 183, 186 n. 7 (Fla. 2009). Plaintiff’s requested injunctive relief is mandatory in nature, which is a type of injunctive relief looked upon with disfavor and “granted only in rare cases where the right is **clear and free from reasonable doubt.**” *Grant v. GHG014, LLC*, 65 So. 3d 1066, 1067 (Fla. 4th DCA 2010) (emphasis added). Plaintiff has failed to establish each of these required elements, much less shown them beyond reasonable doubt. He cannot show irreparable harm *to him*, rather than the City, which is fatal to his claim. See *State v. Planned Parenthood of Sw. & Cent. Fla.*, 342 So. 3d 863, 868 (Fla. 1st DCA 2022) (“Appellees cannot lawfully obtain a temporary injunction as they cannot assert that *they* will suffer irreparable harm

unless the trial court preserves the status quo.”) (emphasis in original).² Nor would the public interest be served by having this Court usurp the will of the electorate and permanently remove Vice Mayor Joseph from office, especially when the Commission can and could have still reached quorum despite Vice Mayor Joseph’s absence.

Perhaps most significantly, Plaintiff cannot show that he is substantially likely to succeed on his injunctive claim, let alone that his legal rights are “free from reasonable doubt.” *Grant*, 65 So. 3d at 1067.

First, Plaintiff’s interpretation of the Charter is contrary to the interpretation urged by the City Attorney and adopted by the City Commission only five years ago, in the context of Commissioner Frantz’ Pierre. *See Exhibit B*. There, the City Attorney recommended, and the City Commission determined that, in calculating the 120 days for purposes of the Charter’s absenteeism provision, **the proper place to start is with the day after the first meeting missed**. This interpretation is entitled to nearly dispositive weight. *See Brenner v. Department of Banking and Finance*, 892 So.2d 1129 (Fla. 3d DCA 2004) (the governmental entity charged with administering a statute is entitled to great weight and should not be overturned unless clearly erroneous). The City’s prior interpretation and application of the Charter provision is not only precedential, but also eminently reasonable. The Charter states that the seat becomes vacant once any Commissioner “has failed to attend a meeting...for a period of [120] days”. Charter of City of North Miami Beach § 2.5. Vice Mayor Joseph attended the Commission meeting on October 18,

² Even assuming arguendo that Plaintiff could make a showing of harm to himself, the Commission’s ability to make quorum is not irreparable in any sense. Quorum requires five of the six members of the Commission and could be met with or without Vice Mayor Joseph. *See Charter of City of North Miami Beach § 2.5*. In fact, removing him would immediately make it more difficult for the Commission to meet quorum.

2022. He did not “fail to attend” *any* meetings until he missed the Commission meeting on December 20, 2022. A reasonable reading of the Charter provision warrants the conclusion that the 120-day period begins once a Commissioner actually “fails to attend” a meeting. This interpretation is not only reasonable but favored by Florida standards of statutory interpretation regarding forfeiture provisions. *See Williams v. Christian*, 335 So. 2d 358, 361 (Fla. 1st DCA 1976) (“Statutes imposing forfeiture will be strictly construed in a manner such as to avoid the forfeiture and will be liberally construed so as to avoid and relieve from forfeiture.”) This ambiguity casts a large shadow over Plaintiff’s likelihood of success on the merits.

Correctly calculating the 120 days would mean, here, that the Court begins counting on December 21, 2022, the day after the first meeting that Vice Mayor Joseph missed. Thus, the 120 days does not begin to run until April 20, 2023. Under the reasonably controlling precedent of the City’s prior interpretation and application of the Charter, Vice Mayor Joseph therefore has not forfeited his seat. Plaintiff is not substantially likely to succeed on his injunctive claim.

Second, although the Motion argues that the City Charter is clear and unambiguous, in fact, it leaves several material questions unaddressed. The initial question is what constitutes a “meeting of the City Commission” under Section 2.5 of the Charter. The City Commission holds at least three types of meetings: regular meetings, special meetings, and workshops. All three types of meetings are publicly noticed by the City Clerk pursuant to the Clerk’s duty to “give notice of all City Commission meetings to its members and the public.” Charter of City of North Miami Beach § 3.2.1. They are also held open to the public pursuant to Fla. Stat. § 286.011, otherwise known as the Florida Sunshine Law. Florida Courts have previously held that workshops are considered public “meetings” as that term is understood under the Florida Sunshine Law. *Rhea v. Sch. Bd. of Alachua Cnty.*, 636 So. 2d 1383, 1384 (Fla. 1st DCA 1994) (“The Board properly concedes that

the school board workshop held in Orlando was a “public meeting” for purposes of the Sunshine Law.”) Vice Mayor Joseph attended a City Commission workshop on February 15, 2022. Accordingly, even using the dubious method Plaintiff suggests and counting from the day after the last attended meeting—which would be October 19, 2022—the total number of days that Vice Mayor Joseph did not attend a meeting is 118, not 120.

III. The Relief Sought Would Violate the Due Process Clause

Summarily removing Vice Mayor Joseph from elected office, as Plaintiff’s Motion requests of this Court, would violate his due process rights under the Florida and United States Constitutions. The Charter provision does not provide for any process for the forfeiture, but merely states that the Commissioner’s seat “shall automatically become vacant.” Such an action would deprive Vice Mayor Joseph of critical liberty and property interests without affording him notice and an opportunity to be heard.

Removal of an elected official with a set term without affording him notice and a hearing is a violation of the Due Process Clause. *Reams v. Scott*, No. 4:18CV154-RH/CAS, 2018 WL 5809967, at *1 (N.D. Fla. Nov. 6, 2018) (“This case presents a question under the Due Process Clause: whether an elected state official who has a property or liberty interest in his position may be suspended for more than a year without being afforded any opportunity to be heard. The answer is no.”). Property interests are created and defined, not by the Constitution, but “by existing rules or understandings that stem from an independent source, such as state law.” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). A public official has a property right in holding their office that the Due Process Clause will protect, to the extent state law recognizes one. *Id.* The Florida Supreme Court “has pointed out on several occasions that an officeholder has a property right in his office and that this right may not be unlawfully taken away or illegally infringed upon.”

Piver v. Stallman, 198 So. 2d 859, 862 (Fla. 3d DCA 1967) (citing *State v. Tedder*, 143 So. 148 (Fla. 1932)). This doctrine is firmly established common law of the state of Florida.

The Supreme Court has unequivocally stated its commitment to this principle when the issue is raised. *See Tedder*, 142 So. at 49 (“This court is committed to the doctrine that persons appointed or elected to public office have legal rights in the enjoyment of the tenure thereof which will enable them to invoke appropriate judicial proceedings for their protection when such rights are shown to have been illegally infringed upon or attempted to be unlawfully taken away.”); *Graham v. Bd. of Pub. Instruction of Dade Cnty.*, 76 So. 2d 874, 876 (Fla. 1955); *State v. Joughin*, 103 Fla. 877, 881, 138 So. 392, 395 (Fla. 1931) (“One’s right to office and the emoluments thereof is protected by the Fourteenth Amendment.”) All other Florida courts and federal courts applying Florida law have followed suit, recognizing an elected official’s property interest in their term and its protection under the law. *Burklin v. Willis*, 97 So. 2d 129, 131 (Fla. 1st DCA 1957) (“an officer can be removed only for cause and after notice and an opportunity to be heard.”); *City of Boca Raton v. Cassidy*, 167 So. 2d 886, 888 (Fla. 2d DCA 1964) (holding invalid an ordinance that permitted a city commission to remove appointed city board members without notice or a hearing, on the ground that it was in conflict with the “controlling principle that a municipal officer...can be removed “only for cause after notice and hearing.”); *Fair v. Kirk*, 317 F. Supp. 12, 14 (N.D. Fla. 1970), *aff’d*, 401 U.S. 928 (1971) (“a public officeholder has a property right in his office and that this right may not be unlawfully taken away or illegally infringed.”); *McIntosh v. City of Live Oak, Fla.*, 609 F. Supp. 590, 592 (M.D. Fla. 1985) (recognizing the plaintiff’s “vested property interest in the office of City Clerk” could not be deprived without due process of law).

Depriving Vice Mayor Joseph of his property interest by summarily removing him from office would stand in direct conflict with this large body of Florida common law and should be

prohibited. There is one unpublished opinion from the Northern District of Florida, *Israel v. Desantis*, No. 4:19CV576-MW/MAF, 2020 WL 2129450 (N.D. Fla. May 5, 2020), which held otherwise. The court in *Israel*, relied on dicta from the Florida Supreme Court’s opinion in *In re Senate Joint Resol. of Legislative Apportionment 1176*, which stated that “elected officials have no property rights to the office to which they have been elected.” 83 So. 3d 597, 662 (Fla. 2012). The court recognized the rule that when there is a conflict between an express holding of the Florida Supreme Court and a dicta statement, the express holding prevails. *Israel*, at *9-10 (quoting *Puryear v. State*, 810 So. 2d 901, 905 (Fla. 2002)). Despite this rule, however, the court determined that no such conflict existed because the express holdings preceded the enactment of Article II, § 8 of the Florida Constitution, which provided that “public office is a public trust”, so the more recent dicta of *Legislative Apportionment 1176* must mean that this long-held judicial doctrine has been withdrawn. *Id.*

Notwithstanding the fact that *Israel* is not binding authority on this Court, its ruling should be ignored for several other reasons. First, the dicta from *Legislative Apportionment 1176* makes no mention of Article II § 8 of the Florida Constitution, despite the courts conclusion that the statement was grounded on that section. Second, the dicta statement was made in response to claims by the *collective* Florida Senate regarding changes to incumbent Senate terms and the property rights protected by the Due Process Clause are individual rights, not collective. *Joshua v. City of Gainesville*, 768 So. 2d 432, 439 (Fla. 2000) (“The hallmark of property ... is an *individual* entitlement grounded in state law.”) (emphasis added). Third, the portion of Article II § 8 cited in *Israel* did not alter the common law rule that an officer can only be removed pursuant to due process, because laws “designed to alter the common law must speak in clear and unequivocal terms” otherwise “the common law will not be changed by doubtful implications.” *Burkin*, 97 So.

2d at 131. Finally, and most importantly, the Constitution’s statement that “public office is a public trust” is not only not in conflict with the prior Florida Supreme Court precedent, but it is a direct quote from the same case that first established a public official’s property interest in their continued term:

A public office is a public trust, but the incumbent has to some extent a recognizable property right in it which he holds, not subject to barter and sale, but for the benefit of that political society of which he is a member. Such right is plainly subject to judicial protection, as we have heretofore held. The right to hold an office and take its emoluments until deprived thereof, upon conditions subsequent, by due process of law, is a property right in a broad sense, and subject to judicial protection.

Tedder, 106 Fla. at 146-147 (emphasis added).

Accordingly, the *Israel* opinion should not stand to deprive Vice Mayor Joseph of his Constitutionally protected property interest without due process of law. The well-settled protections set out by the courts of this State remain and must be enforced.

Vice Mayor Joseph also has a constitutionally protected liberty interest at stake, which cannot be forfeited without due process. Under the “stigma-plus” doctrine, when the termination of a public official is accompanied by sufficiently serious, public allegations of misconduct, the action implicates the official’s interest in liberty. *See Reams*, 2018 WL 5809967, at *2; *see also Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1302-03 (11th Cir. 2001). Undoubtedly, the attempted termination in this case is accompanied by these public allegations. Plaintiff’s Counsel himself has been the primary source of such allegations, stating to the media that Vice Mayor Joseph is “abandoning the citizens and abandoning his responsibilities and refusing to show up.” Phil Prazan, *North Miami Beach Commissioner Sues to Remove his Colleague*, NBC Miami (Feb. 19, 2023), <https://www.nbcmiami.com/news/local/north-miami-beach-commissioner-sues-to-remove-his-colleague/2977556/>. The “stigma plus” liberty interest would be implicated by Vice

Mayor Joseph's removal and, consequently, he is entitled to notice and a hearing. Since awarding the relief Plaintiff requests would violate these rights with no process whatsoever, his request must be denied.

In light of these issues, Miami-Dade County and other municipalities in the State of Florida have imposed a "good cause" requirement for removal from public office for absenteeism. This is plainly because there government bodies have recognized the significant due process problems implicit in a statutory provision such as Section 2.5 of the Charter.

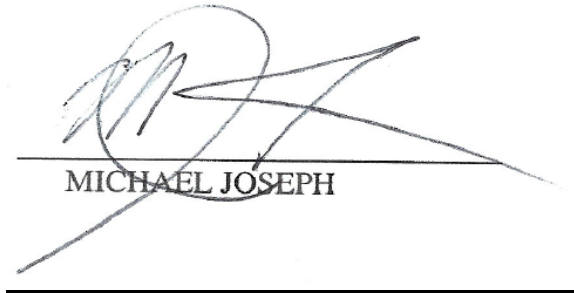
WHEREFORE Vice Mayor Michael Joseph respectfully requests that this Court deny Plaintiff's Emergency Motion for Injunctive Relief for the Removal of Michael Joseph as Commissioner of North Miami Beach, and grant such other relief this Court deems just.

Respectfully submitted,

By: /s/ Benjamin H. Brodsky
Benjamin Brodsky, Esq.
Florida Bar No.: 73748
Max A. Eichenblatt, Esq.
Florida Bar No.: 1025141
BRODSKY FOTIU-WOJTOWICZ, PLLC
*Counsel for Defendant Commissioner
Michael Joseph*
200 SE 1st Street, Suite 400
Miami, Florida 33131
Tel: 305-503-5054
Fax: 786-749-7644
bbrodsky@bfwlegal.com
max@bfwlegal.com
docketing@bfwlegal.com

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing motion and that the facts stated in it are true.



MICHAEL JOSEPH

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished by the Florida Courts e-filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this **6th day of March, 2023**, on all counsel of record.

By: /s/ Benjamin H. Brodsky
Benjamin H. Brodsky, Esq.

EXHIBIT A



CITY OF NORTH MIAMI BEACH

Workshop

Julius Littman Performing Arts Theater

17011 NE 19th Avenue

North Miami Beach, FL 33162

Wednesday, February 15, 2023

11:00 AM

Because of COVID-19, and the need to ensure the public health, safety and welfare, this meeting will be conducted with social distancing.

Mayor Anthony F. DeFillipo

Vice Mayor Michael Joseph

Commissioner Jay Chernoff

Commissioner McKenzie Fleurimond

Commissioner Daniela Jean

Commissioner Phyllis S. Smith

Commissioner Fortuna Smukler

City Manager Arthur H. Sorey III

City Attorney Hans Ottinot,

Ottinot Law, P.A.

City Clerk Andrise Bernard, MMC

Notice to All Lobbyists

Any person who receives compensation, remuneration or expenses for conducting lobbying activities is required to register as a Lobbyist with the City Clerk prior to engaging in lobbying activities before City Boards, Committees, or the City Commission.

Workshop Agenda

-
- 1. ROLL CALL OF CITY OFFICIALS**
 - 2. DISCUSSIONS**
 - 2.1. Updates on Theater Improvements (Vice Mayor Michael Joseph)**
 - 3. ADJOURNMENT**

EXHIBIT B



City of North Miami Beach Memorandum

CITY ATTORNEY'S OFFICE
Phone: (305) 948-2939
Fax: (305) 787-6004

TO: Honorable Mayor George Vallejo
Members of the City Commission

CC: Ana M. Garcia, City Manager
Pamela Latimore, City Clerk
Mr. Frantz Pierre

FROM: Jose Smith, City Attorney

DATE: January 25, 2018

RE: Charter Section 2.5/Frantz Pierre

I enclose a Memorandum of Law prepared by Jean Olin, Esq., with which I concur, concerning Frantz Pierre's failure to attend City Commission meetings during the 120 day period beginning on September 18, 2017 through January 16, 2018.

Ms. Olin is a board certified attorney in City, County and Local Government Law and a recognized expert in charter review and revision. Ms. Olin was the City's outside counsel during the City's Charter review process, culminating in the November 8, 2016 election when the residents voted overwhelmingly to approve the existing charter.

It is my recommendation that a Special City Commission meeting be held to discuss how the vacancy will be filled.

JS/mmd

Enclosures

MEMO

To: Jose Smith, City Attorney, City of North Miami Beach
From: Jean Olin, Esq.
Re: Commissioner Frantz Pierre--Automatic Vacancy on City Commission per Charter Section 2.5
Date: January 25, 2018

Pursuant to your request, I have analyzed the issue of North Miami Beach City Commissioner Frantz Pierre's past and continuing nonattendance at City Commission meetings, and the implications of applicable law, including related City Charter and Code provisions. As explained fully below, pursuant to the following language in City Charter section 2.5, Commissioner Pierre's seat on the City Commission became vacant on January 17, 2018 due to the Commissioner's failure to attend any Commission meetings for 120 days:

...If any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant.¹

I. FACTUAL BACKGROUND.

Since January of 2017 City Commissioner Pierre has, primarily due to medical reasons, been absent from 12 of the 17 City Commission meetings.² Of the 12 Commission meetings that Commissioner

¹ City Charter section 2.5 reads in its entirety as follows: "A quorum of the City Commission at any regular or special meeting shall consist of five members. Except as otherwise provided herein, the affirmative vote of a majority of the quorum present shall be required upon any matter submitted for consideration of the Commission. If any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant."

(Note: In the recent case of *Sanchez v. Lopez*, 219 So.3d 156 (Fla. 3DCA 2017), the Florida Third District Court of Appeal confirmed in dicta that city charter provisions providing for removal of elected officials due to excessive absenteeism are lawful.)

² Pursuant to City Clerk examination of City Commission Meeting attendance records for the past 12 months, the following schedule reflects Commissioner Pierre's attendance record:

- 01/17/17 Regular Commission Meeting--attended.
- 02/21/17 Regular Commission Meeting--attended.
- 03/21/17 Regular Commission Meeting--attended.
- 04/03/17 Special Commission Meeting-- attended.
- 04/18/17 Regular Commission Meeting--absent.
- 05/16/17 Regular Commission Meeting--absent.
- 06/08/17 Special Commission Meeting-- absent/participated by telephone.
- 06/20/17 Regular Commission Meeting--absent/participated by telephone.
- 07/18/17 Regular Commission Meeting--absent/participated by telephone.
- 08/15/17 Regular Commission Meeting--absent/participated by telephone.
- 08/24/17 Regular Commission Meeting after CRA Board Meeting--attended.
- 09/18/17 First Public Budget Hearing/Regular Commission Meeting--absent.

Pierre did not attend, he instead participated in 7 of them via telephone conference (as authorized by Florida's Government in the Sunshine Law, Florida Statute section 286.011, explained more fully below). Notably, Commissioner Pierre's attendance record further reveals that as of January 17, 2018 he has not attended Commission meetings for 120 days, thus invoking City Charter section 2.5 which expressly provides that in such instance "...the seat of such Commissioner shall automatically become vacant". *Id.*

II. MEMORANDUM OF LAW.

By way of introduction, cities in the State of Florida have been granted broad home rule powers by section 2(b), Article VIII, State Constitution, as implemented by s. 166.021, Fla. Stat. Thus, a City may exercise its power to carry on City government, unless the Legislature has preempted a particular subject or otherwise regulates the area. See *Speer v. Olson*, 367 So.2d 207, 211 (Fla. 1978). There is no provision of general or special law which would preempt to the State the subject of regulating the attendance of meetings by City commissioners, or the automatic removal of such Commission members due to their nonattendance. Thus, in the exercise of its home rule powers and in light of the provisions of s. 166.021 authorizing the legislative and governing body of the City to establish rules of procedure, the City lawfully established rules for the attendance of City Commission meetings by its members, including the procedure for automatic removal of a Commission member for failure to attend Commission meetings over a specified period of time. The following analysis sets forth these City laws and their implications.

A. City Charter Section 2.5 Controls.

A municipal charter is the paramount law of the municipality, just as the state constitution is the charter for the State. See, e.g., *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801, 803 (Fla. 1972); *Clark v. North Bay Village*, 54 So. 2d 240, 242 (Fla. 1951); and see, Op. Att'y Gen. Fla. 82-101 (1982). Cf. *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 609 (Fla. 4th DCA 1983), *review denied*, 440 So. 2d 352 (Fla. 1983). City of North Miami Beach Charter section 2.5, governing the attendance/removal of Commission members, is thus the applicable Charter provision in the subject issue.

1) Section 2.5's plain/ordinary meaning requires physical presence.

As a general rule, where the language of a particular law is clear and amenable to a reasonable and logical interpretation, that interpretation will control, as courts and other governmental bodies are without

-
- 09/25/17 Second Public Budget Hearing--absent/participated by telephone
 - 10/17/17 Regular Commission Meeting-- absent.
 - 11/14/17 Regular Commission Meeting-- absent.
 - 12/19/17 Regular Commission Meeting-- absent/participated by telephone.
 - 01/16/18 Regular Commission Meeting-- absent/participated by telephone

power to diverge from the intent of the Legislature as expressed in the law's plain language.³ See *Starr Tyme, Inc. v. Cohen*, 659 So.2d 1064 (Fla.1995); *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So.2d 297, 303 (Fla.2002).

The language in City Charter section 2.5 clearly and expressly provides for an automatic vacancy in office upon a City Commissioner's failure to "attend" Commission meetings for 120 days. Further, as written, a City Commissioner's failure to "attend" Commission meetings for the stated 120 days imposes upon the City a mandatory, non-discretionary vacancy in the subject Commission seat. Inasmuch as the plain and ordinary meaning of a word may be ascertained by reference to a dictionary (See, *L.B. v. State*, 700 So.2d 370 (Fla.1997); *Green v. State*, 604 So.2d 471, 473 (Fla.1992)), the word "attend" in Charter section 2.5 sets forth the requirement that a Commission member "be present" at a Commission meeting. See <https://www.merriam-webster.com/dictionary/attend>, and <http://www.dictionary.com/browse/attend>. And see, <http://www.dictionary.com/browse/present> defining "present" as "being with one or others in the specified or understood place", and <https://www.merriam-webster.com/dictionary/present> "present" defined as "being in one place and not elsewhere".

Since the Charter language is not ambiguous, it must be interpreted per its plain meaning, requiring that Commission members not be physically absent from Commission meetings for the stated 120-day period. See, *Spence-Jones v. Dunn*, 118 So.3d 261, 262 (Fla. 3DCA 2013): "The sole issue is a question of statutory interpretation. We find no ambiguity in the charter provision. As such, we are required to interpret it according to its plain meaning. *St. Petersburg Bank & Trust Co. v. Hamm*, 414 So.2d 1071, 1073 (Fla.1982)".

2) Statutory construction supports plain meaning of Charter section 2.5.

In light of the above, there is no need for a statutory construction analysis of Charter section 2.5. "When a statute is clear, we do not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So.2d 297, 303 (Fla.2002). Nonetheless, even were we to assume that the Charter language is ambiguous, applicable theories of statutory construction affirm that the term "attend" in Charter section 2.5 refers to the physical presence of all Commission members.⁴

³ As a fundamental principle of statutory construction, "legislative intent is the polestar that guides a Court's inquiry." *State v. Rife*, 789 So.2d 288, 292 (Fla.2001) (quoting *McLaughlin v. State*, 721 So.2d 1170, 1172 (Fla.1998)).

⁴ Note: The attendance requirement in Charter section 2.5 applies to "any Commissioner", and is not otherwise limited to "the quorum present". If the City intended that only the quorum be present it would have said so, but instead Charter 2.5's attendance requirement was drafted to apply to all members of the City's governing body. See *Johnson v. Feder*, 485 So.2d 409, 411 (Fla. 1986) ("We are compelled by well-established norms of statutory construction to choose that interpretation of statutes and rules which renders their provisions meaningful. Statutory interpretations that render statutory provisions superfluous 'are, and should be, disfavored.'" (quoting *Patagonia Corp. v. Bd. Of Governors of the Fed. Reserve Sys.*, 519 F. 2d 803, 813 (9th Cir. 1975))).

a) Related City laws. The Florida Supreme Court has noted that: “Where possible, courts must give full effect to *all* statutory provisions and construe related statutory provisions in harmony with one another.” *Knowles v. Beverly Enterprises—Florida, Inc.*, 898 So. 2d 1 (Fla. 2004). Reading Charter section 2.5 together with the following related City Charter and Code provisions governing attendance requirements of certain City officers, confirm that the term “attend” is designed to impose a requirement for an officer’s physical presence at a public meeting:

- Charter Section 3.3.1 “Powers and Duties of the City Attorney”: “The City Attorney shall. . .attend all meetings of the City Commission. . .”.
- Charter Section 3.1.1 “Powers and Duties of the City Manager”: “The City Manager shall. . .attend all meetings of the City Commission and of its committees...”.
- Code Section 2-4.1 “City Clerk’s Duties and Responsibilities; Exclusions”: “The City Clerk of the City of North Miami Beach or the Clerk’s authorized designee shall attend all regular and special meetings of the City Commission and any other meetings as requested by the City Commission. . .”.
- Code Section 2-67.6 “Planning and Zoning Board: Failure to Attend Meetings”: “If any member fails to attend two (2) of three (3) consecutive regular or special meetings...”.⁵

A basic tenet of statutory construction requires that laws be interpreted so as to avoid unreasonable or absurd consequences. *See Thompson v. State*, 695 So.2d 691, 693 (Fla.1997); *State v. Hamilton*, 660 So.2d 1038, 1045 (Fla.1995). Clearly, it would be absurd to infer an intent on behalf of the City that the above attendance requirements meant anything other than physical presence.

b) City Code section 2-1.1. Finally, and perhaps as significant to the issue of a Commission member’s attendance at Commission meetings, is City Code Section 2-1.1, reflecting the most recent pronouncement by the City Commission concerning Commission members’ attendance at Commission meetings.⁶ Although the premise for Code section 2-1.1(a) is different than that addressed in Charter section 2.5 (in that the Code section concerns Commission members who are in attendance at a Commission meeting, requiring that they remain there throughout the meeting’s entirety, absent an emergency/matter beyond their control), the legislative intent expressed for the Code section is relevant

⁵ Florida courts generally will defer to an agency’s interpretation of statutes and rules the agency is charged with implementing and enforcing. *See Donato v. American Tel. & Tel. Co.*, 767 So.2d 1146, 1153 (Fla.2000); *Smith v. Crawford*, 645 So.2d 513, 521 (Fla. 1st DCA 1994). Significantly, the City has in the past interpreted its above Charter as requiring one’s physical presence (see, Exhibit “A” attached hereto, email from City Clerk Pam Latimore, regarding removal of Planning and Zoning Board Member due to nonattendance), further supporting that Charter section 2.5 requires Commission members not be physically absent from Commission meetings for the stated 120 days.

⁶ See, City Ordinance 2016-9, adopted by the Commission on October 4, 2016.

to the absenteeism provisions of Charter section 2.5:

WHEREAS, Florida Statute section 286.012 (Florida's "Government in the Sunshine" law) specifically provides that members of governmental bodies are required to perform their responsibilities by participating in decisions to be made by such bodies. *Clearly, a member of a governmental body, such as the North Miami Beach City Council, is expected to attend and remain at meetings of the City Council, barring a situation in which that member's presence is unexpectedly required elsewhere;*

WHEREAS, allowing without restriction a City Councilmember to leave Council meetings prior to its completion of business *effectively grants to such Councilmember the means of frustrating official action by merely refusing to remain at a Council meeting, which actions the City Council deems to be inconsistent with a Councilmember's official duties and contrary to the Oath of Office as stated in Section 8 of the City Charter (" ... to well and faithfully perform ... their duties ... ");*

WHEREAS, within the past several months, certain Councilmembers have left Council meetings before the Council's completion of agenda items, necessitating either the postponement and rescheduling of time-sensitive items for future Council meetings or the need for meeting adjournment pending the Council's ability to obtain a quorum, *both situations serving to obstruct and impede good, responsive government in the City of North Miami Beach.*

* * *

City Ordinance 2016-9. (Emphasis added.) Regardless of whether a Commission member has attended a Commission meeting and left prior to its completion, or simply not attended at all, the above concerns regarding "frustrating official action" due to a Commission member's absence as "inconsistent with a Councilmember's official duties and contrary to the Oath of Office..." serve to reveal the City Commission's ongoing intent that its members are to be present at Commission meetings.

B. Commissioner Pierre's Telephonic Participation not "Attendance" per Charter Section 2.5.

As discussed above, the City Charter provides that failure of a Commission member to attend (i.e., be physically present) a Commission meeting for a period of 120 days will result in the automatic vacancy of such Commission member. During the subject 120-day period in which he did not physically attend the meetings, Commissioner Pierre participated via telephone in 3 of those meetings.⁷ The Commissioner's telephonic participation, although lawful under the State's Sunshine Law, did not satisfy his duty to comply with Charter section 2.5's attendance requirement.

The State's Government-in-the-Sunshine Law⁸ requires any meeting of two or more members of the City Commission to meet in public when discussing matters that will foreseeably require official action of the Commission. Although a quorum of the City Commission must be present at any meeting in order

⁷ See footnote #2 above.

⁸ Fla. Stat. sec. 286.011.

for official action to be taken⁹, numerous opinions of the State’s Attorney General have held that a member of the Commission who is unable to attend a public meeting due to medical issues may participate via telephone so long as a quorum of the Commission is otherwise present at the meeting.¹⁰ Due to Commissioner Pierre’s medical condition and his stated inability to attend Commission meetings, he was permitted to participate in Commission meetings by telephone.

Telephonic participation however does not equate to “attendance”, and none of the Attorney General Opinions condoning such participation have conferred “present” status to absent, nonattending members of a governmental Commission, board or committee. Rather, the Attorney General’s opinions have clearly distinguished “attendance” from “participation”. See, Op. Att’y Gen. Fla. 2002-82:

“...physically disabled members of the City of Miami Beach Barrier-free Environment Committee *may participate and vote on board matters by electronic means if they are unable to attend a public meeting* so long as a quorum of the members of the board is physically present at the meeting site.”

III. CONCLUSION.

Based upon the above analysis, it is my opinion that pursuant to City Charter section 2.5, Commissioner Frantz Pierre’s seat on the City Commission has been vacant as of January 17, 2018 due to the Commissioner’s failure to attend a Commission meeting for 120 days. In view of the Charter’s language providing for such “automatic” vacancy, this issue of vacancy is mandatory and not subject to the discretion of the City Commission. As such, the provisions of City Charter section 4.5 governing vacancies on the City Commission must forthwith be complied with by the City Commission for purposes of filling the vacancy in the subject City Commission Group 5.

⁹ See, City Charter sec. 2.5 “...Except as otherwise provided herein, the affirmative vote of a majority of the quorum present shall be required upon any matter submitted for consideration of the Commission....”; and see, Fla. Stat. sec.166.041(4): “An affirmative vote of a majority of a quorum present is necessary to enact any ordinance or adopt any resolution”; and see, Op. Att’y Gen. Fla. 09-56 (2009): “[W]here a quorum is necessary for action to be taken, physical presence of the members making up the quorum is required in the absence of a statute requiring otherwise.”

¹⁰ See, Inf. Op. Att’y Gen. Fla. July 20, 2016: “...if a quorum of a local board is physically present, ‘the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[.]’”; “... if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public and to hear discussions taking place during the meeting.” Op. Att’y Gen. Fla 03-41; Op. Att’y Gen. Fla 92-44 (participation and voting by ill county commissioner), and Op. Att’y Gen. Fla 02-82 (physically-disabled city committee members participating and voting by electronic means).

From: **Latimore, Pamela** Pamela.Latimore@citynmb.com
 Subject: FW: P&Z applicants
 Date: January 23, 2018 at 5:34 PM
 To: jean olin jeanolin.munilaw@gmail.com
 Cc: Smith, Jose Jose.Smith@citynmb.com

Attached is an email that was sent to the appointing Commissioner concerning Mr. Marrero's removal from P&Z due to absences.

From: Latimore, Pamela
Sent: Tuesday, October 17, 2017 7:47 PM
To: Bernard, Andrise <Andrise.Bernard@citynmb.com>
Subject: FW: P&Z applicants

Pamela L. Latimore, CMC
 City Clerk
 Office of the City Clerk
 17011 N.E. 19th Ave.
 North Miami Beach, Fl. 33162
 (305) 787-6001 (305) 787-6026 (fax)
pamela.latimore@citynmb.com

Florida Association of City Clerks/ President Elect
www.Floridaclerks.org



" Promoting and Developing the Educational and Professional Status of Florida City Clerks"

From: Latimore, Pamela
Sent: Tuesday, February 14, 2017 11:33 AM
To: Spiegel, Beth <beth.spiegel@citynmb.com>
Cc: Bernard, Andrise <Andrise.Bernard@citynmb.com>
Subject: P&Z applicants

**Attached are applications for possible appointment to the P&Z Board.
 There are 2 openings for appointment.**

**Mayor Vallejo – Appointee Jerrat Gross- resignation
 Commissioner Spiegel – Appointee Hector Marrero- removal due to absences.**

Pamela L. Latimore, CMC
 Florida Association of City Clerks/ Vice President
www.Floridaclerks.org

City Clerk
Office of the City Clerk
17011 N.E. 19th Ave.
North Miami Beach, Fl. 33162
(305) 787-6001 (305) 787-6026 (fax)
pamela.latimore@citynmb.com



" Promoting and Developing the Educational and Professional Status of Florida City Clerks"



PLEASE NOTE: The City of North Miami Beach is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure. All e-mail sent and received is captured by our servers and kept as public record.



Richard Weiner
021417.pdf



Russell Lazega
020117.pdf



Jose Ramos
081216.pdf



Kristina Wilson
110315.pdf



Vladimir A
Bugera...15.pdf

From: **Latimore, Pamela** Pamela.Latimore@citynmb.com
Subject: FW: 20180122141350.pdf
Date: January 22, 2018 at 4:34 PM
To: jean olin jeanolin.munilaw@gmail.com

PL

This member was removed from P and Z due to attendance issue.

From: Bernard, Andrise
Sent: Monday, January 22, 2018 4:27 PM
To: Latimore, Pamela <Pamela.Latimore@citynmb.com>
Subject: 20180122141350.pdf



PLEASE NOTE: The City of North Miami Beach is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure. All e-mail sent and received is captured by our servers and kept as public record.



Office of the City Clerk

January 09, 2017

Mr. Hector Marrero
3440 NE 164th Street
North Miami Beach, Florida 33179

Dear Mr. Marrero:

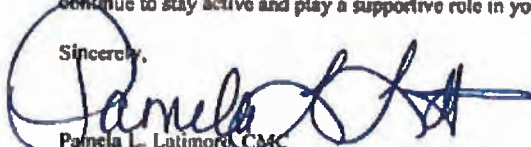
On December 12, 2016, the Mayor and City Council passed Ordinance No. 2012-28 and as a result your term as a member of the Planning and Zoning Board will conclude as of December 12, 2016. On behalf of the Mayor and City Council of the City of North Miami Beach, I would like to thank you for the time and effort you have devoted to serving on the Planning and Zoning Board throughout the years. If you would like to re-apply to be considered for future board or committee vacancies, please complete the attached application and return it to the City Clerk's Office.

Please be advised that as your term has ended, and if you are not reappointed, you are required by Florida Statutes to file a Form IF (Final Statement of Financial Interests Form) within 60 days of receiving this

letter. Enclosed is a blank form with instructions which must be mailed to the Miami-Dade County Elections Department, Financial Disclosure Division, 2700 N.W. 87 Avenue, Doral, Florida 33172.

We sincerely appreciate you having served on the Planning and Zoning Board we hope that you will continue to stay active and play a supportive role in your community.

Sincerely,



Pamela L. Latimord, CMC
City Clerk

C: Anthony DeFillipo, Commission Liaison
Richard Lorber, Staff Liaison

Enclosures

Exhibit “C”



CITY OF NORTH MIAMI BEACH
City Commission Special Meeting
City Hall, Commission Chambers, 2nd Floor
17011 N.E. 19th Avenue
North Miami Beach, FL. 33162
Monday, February 5, 2018
5:00pm

Mayor George Vallejo
Vice Mayor Beth E. Spiegel
Commissioner Anthony F. DeFillipo
Commissioner Barbara Kramer
Commissioner Marlen Martell
Commissioner Phyllis S. Smith

City Manager Ana M. Garcia, ICMA-CM
City Attorney Jose Smith
City Clerk Pamela L. Latimore, CMC

Special Commission Meeting Minutes

ROLL CALL OF THE CITY OFFICIALS

The meeting was called to order at 5:05pm. Present at the meeting were Mayor George Vallejo, Vice Mayor Beth E. Spiegel, Commissioner Anthony F. DeFillipo, Commissioner Barbara Kramer, Commissioner Marlen Martell, and Commissioner Phyllis S. Smith. City Manager Ana M. Garcia, City Attorney Jose Smith, and City Clerk Pamela L. Latimore were also present.

PLEDGE OF ALLEGIANCE was led by the Mayor and Commission.

Mayor Vallejo announced that a legal opinion regarding the vacancy of Frantz Pierre's Commission Seat #5 will be presented.

City Attorney Jose Smith expressed that Section 2.5 of the City Charter states that if any Commissioner has failed to attend a meeting of the City Commission for a period of hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant and provided a chronology of events that led to the vacancy issue and legal opinion. City Attorney Smith stated that the one hundred and twenty (120) day period expired at midnight on January 17, 2018 and the Commission seat of Frantz Pierre became automatically vacant and the City Commission will discuss the process of filling the vacancy under the City Charter.

Outside Counsel Jean Olin discussed her legal opinion and stated that Section 2.5 of the City Charter was analyzed and the language is worded to impose a mandatory non-discretionary duty upon members of the City Commission to recognize that if a member of the Commission fails to attend a Commission meeting for one hundred and twenty (120) days there is an automatic vacancy. Outside Counsel Jean Olin stated that the basis for the opinion is primarily the interpretation of the language in the City Charter and explained that the municipal home rule powers enable the City of North Miami Beach to legislate on any matter as long as the subject has not been preempted. Outside Counsel Jean Olin confirmed that the City of North Miami Beach has never been preempted on the matters of declaring required attendance and the removal of a member of the City

Commission and discussed Section 4.5 of the City Charter which establishes the process of filling a vacant Commission seat.

City Attorney Smith stated that during the charter review process in 2016, the Charter Review Committee proposed and recommended to include a good cause provision with procedures to remove an elected official similar to other cities and the Mayor and Commission chose not to adopt it and has no discretion at this time to find a due process or good cause requirement.

Mayor Vallejo opened the meeting for **PUBLIC COMMENT**.

City Clerk Latimore read the rules of public comment into the record and the following person(s) made comments on the record:

1. Norman Edwards - 1640 N.E. 175th St., North Miami Beach, FL.
2. Marilyn Baumoehl - 18635 N.E. 20th Ct., North Miami Beach, FL.
3. Muriel Kemp - 1479 N.E. 178th St., North Miami Beach, FL.
4. Mubarak Kazan
5. Michele Decayette - 1000 N.E. 151st Ter., North Miami Beach, FL.

The meeting was closed for **PUBLIC COMMENT**.

Outside Counsel Jean Olin provided an explanation regarding the plain and ordinary meaning definition of the word 'attend' in Section 2.5 of the City Charter and stated that there is no special election required in order to fill this vacancy per Section 4.5 of the City Charter because there will be a general election in November of 2018 and the Mayor and Commission has a duty to appoint an individual to fill the vacant Commission seat pending the general election.

The Mayor and Commission discussed a letter that was received from Benedict Kuehne, legal representative of Frantz Pierre, and City Attorney Smith stated that Mr. Kuehne asked the City to note his objection to this meeting and requested that it be made part of the record.

Commissioner Kramer asked if Commissioner Pierre contacted City staff about his inability to attend Commission meetings for an extended period of time and asked if a City staff member contacted Mr. Pierre regarding a possible automatic vacancy of office and asked if a decision of the City Commission regarding this matter could overrule the City Charter. City Attorney Smith stated that Mr. Pierre was never advised that participating by telephone was tantamount to attending Commission meetings and he was aware of the one hundred and twenty (120) day requirement.

The following is a transcript from the meeting that occurred between the timeframe of 50:36 and 53:37.

City Attorney Jose Smith: Now the question may come up, did anyone call him to let him know that the time was about to expire? I don't think it would have made any difference because I have a letter from his physician that was filed in the context of a federal lawsuit where his physician told the federal judge that he could not participate in the federal proceedings starting in January for at least three months, so it would not have mattered. The time would have run out and he would not have been here anyway and we only found out about

this after your (Commissioner Kramer) email, so we could not possibly have given him a heads up because we didn't even know ourselves that the time had run out.

Mayor George Vallejo: Can I just do something real quick because let me just get straight just very quick answers because the questions were: Did Commissioner Pierre ever ask? Did anyone ever call him? Does the Charter overrule or, I'm sorry, can the City Commission overrule what the Charter says? So let's take the easy one first, the first legal question. Can the Commission overrule what the Charter says in this matter?

City Attorney Jose Smith: No.

Mayor Vallejo: Now the question obviously is did Commissioner Pierre ever ask anyone? I'm assuming there is only three people that a Commissioner should be talking to which is the three of you here (the Charter officers), so we can very quickly get that on the record. Did Commissioner Pierre ever call any of you to ask that question?

City Clerk Pamela L. Latimore: Commissioner Pierre did not contact me directly. His wife contacted my office via my assistant, I want to say a week or two weeks ago asking about sending some form of letter about his absence and wanting me to make an interpretation of the Charter. I, via through my assistant, on the phone, on the speakerphone, told his wife that they needed to contact the City Attorney's Office to get an interpretation of the Charter. I was not going to do that and that has been my contact with the Commissioner on this matter.

City Attorney Jose Smith: And he did not call me or anybody in my staff.

City Manager Ana M. Garcia: To put it on the record clearly, the Chief Administrative Officer of the City has a multitude of responsibilities and one of which is not the interpretation of the Charter in regards to attendance. I do deal with each and every one of you, including Commissioner Pierre, in good faith at all times and I had no clue that his participating by phone did not constitute.

Mayor Vallejo: Did he call you to ask you any questions?

City Manager Ana M. Garcia: No.

Mayor Vallejo: So obviously I can take it then no one obviously by the answers I'm hearing called Commissioner Pierre to say anything about this.

The above transcript from the meeting occurred between the timeframe of 50:36 and 53:37.

Mayor Vallejo asked whether or not the three Charter Officers or the members of the Commission had a legal responsibility to contact Mr. Pierre and City Attorney Smith replied no and stated that each individual Commissioner is primarily responsible for monitoring their own attendance and compliance.

Vice Mayor Spiegel asked if the Mayor and Commission were sitting at this meeting in a quasi-judicial or legislative capacity and City Attorney Smith stated that it was an obligation to advise the Mayor and Commission of the legal conclusion and thought providing due process was good practice even though it's not

required regarding this matter. City Attorney Smith discussed the role of the Mayor and Commission in the formal selection process of filling the vacant seat and said the meeting was for informational purposes and not quasi-judicial. Vice Mayor Spiegel asked about a due process requirement and City Attorney Smith stated that having this meeting is in an abundance of caution to allow Mr. Pierre and his representative the opportunity to participate. Vice Mayor Spiegel asked if the word 'attend' is defined in the City Charter and City Attorney Smith replied that it is not in the Charter or the City Code.

Commissioner Smith raised a point of order for the letter that was received from Benedict Kuehne, legal representative of Frantz Pierre, to be read into the record and she proceeded to read the letter. Commissioner Smith asked whether or not Mr. Pierre could sue the Mayor and Commissioners individually and City Attorney Smith replied that they would have no liability and the City would defend them. Mayor Vallejo stated that the only legal opinion that matters to the City is from the City Attorney.

Commissioner DeFillipo expressed that this is an unfortunate situation, but stated that it is the responsibility of the Mayor and Commission to uphold the City Charter.

Commissioner Martell inquired about Mr. Pierre being notified of this meeting and City Attorney Smith stated that the notice was emailed and hand-delivered to him.

Mayor Vallejo confirmed that this matter is a violation of the City Charter and asked if any of his colleagues wanted to challenge and override the decision of the City Attorney and nobody on the dais questioned the legal position. Mayor Vallejo stated that the City Charter must be followed to fill the vacant Commission seat and expressed that he feels for Mr. Pierre and wished him well.

Commissioner Smith asked about the issues of sickness and disability regarding this matter and Outside Counsel David Miller stated that he researched statutes dealing with illnesses and concluded that there is no application of those laws under these circumstances.

City Attorney Smith read a portion of Section 4.5 of the City Charter that states vacancies in elective offices of the City of North Miami Beach shall be filled by the City Commission pending the next general election, at which time an election to fill the vacancy shall be held for any remainder of the unexpired term. Outside Counsel Jean Olin stated that Section 4.5 of the City Charter does not define the time period by which the Mayor and Commission must appoint someone to fill the vacancy and recommended that it should be within a reasonable period of time. Outside Counsel Jean Olin stated that the other relevant section(s) of the Charter and City Code that need to be considered for appointment are the qualifications for elected office.

Vice Mayor Spiegel stated that a recent similar situation occurred in North Bay Village and suggested that the City of North Miami Beach should advertise and ask all who have an interest in serving to submit a letter of interest and then schedule a meeting to discuss and consider the individuals. Vice Mayor Spiegel discussed the process that took place the last time a Commission seat was vacated in the City of North Miami Beach.

Commissioner DeFillipo stated that this special meeting was advertised in the newspaper and City Clerk Latimore confirmed that the notice was published in the Daily Business Review and the Miami Herald.

Commissioner DeFillipo expressed that due process was put into effect and the proper procedures were followed and discussed the merits of Ketley Joachim.

Motion to nominate Ketley Joachim for appointment to the City Commission made by Commissioner DeFillipo, seconded by Mayor Vallejo.

Commissioner DeFillipo expressed his support for Ketley Joachim and mentioned events and causes that she has participated and been involved in over the years in the City of North Miami Beach. Commissioner Smith, Commissioner Kramer, Commissioner Martell, and Vice Mayor Spiegel discussed filling the vacant Commission seat and expressed that they were not in support of the motion at this time. Mayor Vallejo stated that he was in favor of the motion, but due to a lack of support from the majority of the Commission, he gave Commissioner DeFillipo the opportunity to withdraw his motion and the motion and the second were withdrawn.

The Mayor and Commission discussed the process and procedure of filling the vacant Commission seat and the required qualifications, the selection process and time frame, conducting criminal background checks, and scheduling and advertising the meeting at which the appointment will be considered.

Motion to create a process to fill the vacant Commission seat that would involve all interested individuals submitting a letter of interest and qualifying information to the Office of the City Clerk by February 16, 2018 at 12:00pm, having each Commissioner meet with the interested individuals at their discretion, and scheduling and advertising a Commission Meeting for February 22, 2018 to make a decision made by Commissioner Smith, seconded by Vice Mayor Spiegel.

MOTION PASSED 5-1 with Commissioner DeFillipo opposed.

Commissioner Smith stated that she was prepared to recommend and nominate William Dean for appointment to the City Commission, but she wanted to discuss the process of filling the vacant Commission seat.

Vice Mayor Spiegel invited everyone to attend the Valentine's Day Love-In event on February 14, 2018.

ADJOURNMENT

There being no further business to come before the City Commission, the meeting was adjourned at 7:39pm.

ATTEST:

(SEAL)



Pamela L. Latimore, CMC, City Clerk