

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.

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**VERIFIED EMERGENCY MOTION FOR INJUNCTIVE RELIEF**

Pursuant to Fla. R. Civ. P. 1.610, Defendants and Counter-Plaintiffs Commissioner Michael Joseph (“Commissioner Joseph”) and Commissioner McKenzie Fleurimond (“Commissioner Fleurimond”) (together, “Counter-Plaintiffs”), hereby file this Emergency Motion for Injunctive Relief requesting an immediate Order of this Court enjoining the City Commission of the City of North Miami Beach from holding an illegal vote to remove one or both Counter-Plaintiffs from duly elected office, and in support, state as follows:

**I. Summary of Grounds for Emergency Injunctive Relief**

Counter-Plaintiffs are both duly elected city commissioners for Counter-Defendant City of North Miami Beach (the “City”). Plaintiff/Counter-Defendant Jay R. Chernoff (“Chernoff”), who also serves as a commissioner, filed the underlying lawsuit seeking the summary removal of Counter-Plaintiffs from office by this Court 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.

After learning of the Court’s skepticism of this interpretation, Chernoff and others on the City Commission have scheduled a vote **for the May 2023** meeting to remove Counter-Plaintiffs on this basis, an act which would not only preempt Court action, but drastically exceed the power and authority of the Commission. Left without adequate legal recourse to prevent this threatened irreparable harm, Counter-Plaintiffs are entitled to an emergency injunction preventing the City’s vote on their removal pending disposition of the underlying claims.

## **II. Factual and Procedural Background**

In the underlying action, Chernoff has sued Commissioner Joseph, Commissioner McKenzie Fleurimond, and the City of North Miami (the “City”) seeking declaratory and injunctive relief from the Court. Through this action, Chernoff seeks to invoke the Court’s authority to remove Counter-Plaintiffs from their duly elected office based on a flawed interpretation of the City Charter. Now, Counter-Plaintiffs have asserted their own Counterclaim against Chernoff seeking declaratory relief in their favor on these issues.

The backdrop of Chernoff’s action is a recently-resolved 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.

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.

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. Commissioner Fleurimond attended the meeting and was marked present in the minutes. *See* Dec. 20, 2022 Meeting Minutes, attached as **Exhibit A**, at 1 (counting Commissioner Fleurimond as “present”).

A complaint with the Miami-Dade Commission on Ethics & Public Trust had been filed against DeFillipo and, consistent with City precedent, the City Attorney then procured a legal memorandum on the residency issue. The memorandum concluded that DeFillipo's failure to continuously remain a resident of the City created an automatic vacancy pursuant to the City Charter. After DeFillipo's non-residency was exposed at the December meeting, in an act of self-preservation, he moved the commission to terminate the City Attorney. Commissioner Fleurimond, concerned both about DeFillipo's qualifications to preside over Commission meetings and his conflict of interest in the termination of the City Attorney, left the dais before the vote was held.

On January 17, 2023, DeFillipo filed suit against the City for declaratory judgment and injunctive relief seeking the court's permission to call an emergency meeting without quorum so that he could fire the City Attorney and avoid disqualification. *See DeFillipo Compl.*, attached as **Exhibit B**. On January 20, 2023, the City filed a counterclaim against DeFillipo seeking a

declaration that DeFillipo forfeited the office of mayor and enjoining him from exercising any mayoral authority. *See City Counterclaim*, attached as **Exhibit C**.

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 in law, nor in precedent of the Commission itself.

In an amended complaint filed on March 13, 2023, Chernoff added Commissioner Fleurimond to the action and sought his removal based on the same section. Chernoff claims that, despite Commissioner Fleurimond's attendance at the Commission meeting on December 20, 2022, this attendance should not count because he left the meeting before a final vote on the City Attorney's termination. *See Ex. C*, at 1 (counting Commissioner Fleurimond as "present"). Therefore, using the same flawed application of the Charter provision, he seeks summary removal

of Commissioner Fleurimond for failure to attend a meeting from October 18, 2022 to the March 13, 2023.

Both Counter-Plaintiffs attended a City Commission workshop meeting on February 15, 2023, 119 days after their attendance at the October 18, 2022 meeting. Both Counter-Plaintiffs also attended the regular City Commission meetings on March 21, 2023 and April 18, 2023. *See* March 21 Meeting Minutes, attached as **Exhibit D**, at 1 (the April 18 meeting minutes were not made available at the time of filing this Motion).

Now, Counter-Plaintiffs learned of Chernoff and DeFillipo’s intent to hold a vote at an upcoming City Commission meeting to vacate Counter-Plaintiffs’ respective seats on the Commission before this Court can adjudicate the issue. Presumably, Chernoff recognizes that the flawed argument underlying his declaratory action is unlikely to prevail before the Court, so he seeks to preempt the Court’s action and undermine its authority through the City Commission.

Counter-Plaintiffs are therefore left with no alternative adequate remedy at law to prevent the improper, illegal, and *ultra vires* act of the City Commission to remove them by vote without cause, notice, or a hearing and without the authority to do so under the Charter or Florida law.

### **III. Legal Standard for Injunctive Relief**

Entry of an injunction is proper where the parties seeking relief establish: (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. Counter-Plaintiffs are Entitled to an Injunction Preventing Their Unjust and Illegal Removal from Elected Office.**

Counter-Plaintiffs are entitled to an injunction under these circumstances as (i) they are likely to succeed on the merits of the underlying action; (ii) Chernoff and the City Commission’s imminent action threatens irreparable harm to both Counter-Plaintiffs; (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. As it currently stands, Counter-Plaintiffs remain as City Commissioners, have been attending meetings, participating in discussions, and voting. Their positions and votes have been recognized by the City Commission even after the date on which Chernoff claims they vacated their seats. This is the status quo, which must be preserved pending the Court’s ultimate determination as to the rights and statuses of the parties.

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

First, Counter-Plaintiffs are likely to succeed on the merits of their underlying counterclaim for declaratory relief. Counter-Plaintiffs’ position—that they 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.

Counter-Plaintiffs’ interpretation of § 2.5 is consistent with that adopted by the City Attorney and City Commission just five years ago when the question was raised with respect to the removal of former Commissioner Frantz Pierre. 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 on the day after the first meeting missed.** See Memorandum from Jean Olin, Esq. to Jose Smith, Esq., Jan. 25, 2018 and Special Commissioner Meeting Minutes, Feb. 5, 2018, attached as **Exhibit E**. 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. 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. Commissioner Fleurimond, in fact, attended the commission meeting on December 20 and did not “fail to attend” a meeting until January 17, 2023. 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. If there is no obligation, 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 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.”) 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 and for Commissioner Fleurimond on January 18, 2023. So the 120 day period would run on April 20, 2023 for Joseph and May 18, 2023 for Fleurimond. It is undisputed, however, that both Commissioners attended the regular commission meetings in March and April of 2023. They therefore did not violate the Charter.

As to Commissioner Fleurimond, Chernoff attempts to use City Ordinance § 2-1.1(a) to argue that his attendance at the December 20, 2022 meeting should not count since he left early before the mayor could hold a vote to fire the City Attorney. Regardless of Commissioner Fleurimond’s good cause for leaving the meeting, nothing in the language of ordinance § 2-1.1(a)



provides that leaving a meeting before a vote negates a commissioner's attendance or otherwise supports Chernoff's interpretation. The Ordinance requires that commissioners remain in a meeting through its entirety barring an emergency, but explicitly provides that "[t]he Miami-Dade County Commission on Ethics and Public Trust shall enforce the provisions of this subsection" and that the "validity of any action or determination of the City Commission shall not be affected by the failure of any Commissioner to comply with the provisions herein."

The ordinance leaves the question of violation and power of enforcement squarely with the Ethics Commission and explicitly states that City action is valid notwithstanding any violations of the ordinance by a commissioner. The reasonable inference drawn from the latter provision is that a commissioner's exit before the conclusion of the meeting will not destroy quorum and will not invalidate actions taken by the Commission. Effectively, this means the exiting commissioner's attendance at such meeting counts irrespective of an early departure. Commissioner Fleurimond was also counted as "present" in the meeting minutes, which were approved by the City Commission. Putting aside the fact that the Ordinance does not say that a violation negates attendance as Chernoff claims, the language actually supports the opposite conclusion. Nonetheless, Commissioner Fleurimond attended the December 20, 2022 meeting and did not violate the Charter.

**b. The Action Counter-Plaintiffs Seek to Enjoin Threatens Imminent and Irreparable Harm.**

If Chernoff and the City Commission are not prevented from moving forward with a vote to remove Counter-Plaintiffs from office, which is likely to be held as soon as May 16, 2023 (the date of the next regular Commission meeting), Counter-Plaintiffs are likely to be unjustly, illegally, and improperly expelled from duly elected office. Such harm is irreparable as both Commissioners would be unjustly stripped of their interests in completing their elected terms and

their liberty interest in avoiding attendant reputational harm. The action is not authorized by the City Charter, the ordinance code, state statute, or the Florida Constitution, but threatens to thwart the will of the North Miami Beach electors for purely political purposes. Further, doing so would preempt Court action on this matter and 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.

Counter-Plaintiffs have 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 F** and incorporated by reference herein. *See* Ex. F, 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.

Further, exercise of the Court’s power in equity to enjoin planned action by a government body is warranted where such action “would constitute a patent violation of law, or such a palpable abuse of authority as to be commensurate with illegality.” *Lee Cnty. v. S. Florida Water Mgmt. Dist.*, 805 So. 2d 893, 896 (Fla. 2d DCA 2001). Here, the City Commission plainly intends to violate its own Charter and exercise powers it does not possess in order to expel elected officials in bad faith and for political purposes.

§ 2.2 of the Charter provides for the existence of the City Commission and states:

The City Commission shall be the legislative body of the City of North Miami Beach and shall have power to investigate any phase, function or operation of the City Government in such manner and at such time as to it shall be deemed necessary to the determination by the Commission of the public policy of the City. It shall

have such other powers as are hereinafter expressly or impliedly set forth, or inherent in the legislative department of government. Any Commission-appointed officer of the City of North Miami Beach may be removed by a majority vote of the City Commission.

While granting the power to remove appointed officers by majority vote, the Charter **does not** give the Commission the power to similarly remove elected officers by vote or similar process. § 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 Charter does it grant the Commission power to remove City Commissioners. 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 remove Counter-Plaintiffs and its planned action to do so represents a violation of the City Charter and a gross abuse of discretion.

**c. There is No Adequate Legal Remedy Available.**

Counter-Plaintiffs are 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 Counter-Plaintiffs 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 Counter-Plaintiffs' rights and statuses as City Commissioners. 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 elected commissioners when the majority feels it to be politically expedient. Such a precedent would severely damage public trust in democracy.

WHEREFORE Commissioner Joseph and Commissioner Fleurimond 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  
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**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 (Apr 24, 2023 17:14 EDT)  
COMMISSIONER MICHAEL JOSEPH

**VERIFICATION**

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

  
McKenzie Fleurimond (Apr 24, 2023 15:34 EDT)  
COMMISSIONER MCKENZIE FLEURIMOND

**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 **24th day of April, 2023**, on all counsel of record.

By: /s/ Benjamin H. Brodsky

Benjamin H. Brodsky, Esq.

# **EXHIBIT A**





**CITY OF NORTH MIAMI BEACH**  
City Commission Meeting  
Julius Littman Performing Arts Theater  
17011 N.E. 19th Avenue  
North Miami Beach, FL. 33162  
**Tuesday, December 20, 2022**  
**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 Attorney Hans Ottinot  
Ottinot Law, P.A.

City Clerk Andrise Bernard, MMC

**City Commission Meeting Minutes**

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**1. ROLL CALL OF THE CITY OFFICIALS**

The Regular Commission Meeting was called to order at 6:08 p.m.

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

**2. INVOCATION** by Reverend Evorn Burke (Oak Grove Missionary Baptist Church)

**3. PLEDGE OF ALLEGIANCE** was led by Skyler Bah from Fulford Elementary School

**4. REQUESTS FOR WITHDRAWALS, DEFERMENTS AND ADDITIONS TO THE AGENDA**

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

- a. Per Commissioner Smukler, item 9.14 titled Resolution No. R2022-166 Authorizing the City Manager or Designee to Create a Marketing Campaign for Tourism, International Trade, and Transportation will be pulled for discussion and heard before legislation.
- b. Consent Agenda Item 9.15. (Resolution No. R2022-167) will be deferred to the next City Commission Meeting.

- c. Per Commissioner Smith, a discussion regarding Conflicting City Event Scheduling will be added to Discussions as Item 15.6.
- d. Per Mayor DeFillipo, item 18 titled Mayor's Discussion will be heard after the Consent Agenda.
- e. Per Commissioner Smith, Discussion item 15.5 titled Discussion Regarding North Miami Beach Finance will be heard after the Mayor's Discussion item.

**Motion to approve** the amended agenda made by Commissioner Smith, seconded by Mayor DeFillipo.

**Voice Vote: MOTION PASSED 5–1** with Commissioner Fleurimond oppose and Vice Mayor Joseph absent.

## 5. PRESENTATIONS/DISCUSSIONS

### 5.1. Proclamation Recognizing Enid Weisman, Former Mayor of the City of Aventura (Commissioner McKenzie Fleurimond and Commissioner Fortuna Smukler)

Proclamation Recognizing Enid Weisman, Former Mayor of the City of Aventura was presented by Commissioner McKenzie Fleurimond and Commissioner Fortuna Smukler.

### 5.2. Proclamation Recognizing Kiwanis Day (Commissioner Daniela Jean)

Proclamation Recognizing Kiwanis Day was presented by Commissioner Daniela Jean.

### 5.3. Florida Power and Light Storm Secure Underground Program Overview (David Scott, Director of Public Works)

Public Works Director David Scott Department introduced Florida Power and Light representatives to present the Florida, Power and Light storm secure underground program.

Representatives from Florida Power and Light (FPL) gave a presentation on the Storm Secure Underground Program.

Mayor and Commission began discussion on the storm secure underground program.

## 6. PUBLIC COMMENT

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

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

1. Emily Ponce – 1870 NE 157<sup>th</sup> Terr North Miami Beach, FL 33162

Police Chief Harvette Smith reported on the uptick in violent crimes reported. She advised a task force has been established with other local neighboring agencies. She encouraged the community to provide tips by calling Crime Stoppers at 305-471-TIPS or calling her directly at 305-948-2995. Police Chief Harvette Smith requested to set up a Police and Community Together (PACT) meeting in the area which is considered zone 5.

Commissioner Smukler requested the return of the PACT meeting for the entire city.

Police Chief Harvette Smith spoke regarding future PACT Meetings. She reported there are two meetings per zone each year and it usually goes according to the crime trends.

2. Norman Axelman – 1710 NE 170<sup>th</sup> St

Mayor DeFillipo recognized Former State Representative Joseph S. Geller and State Representative Christopher Benjamin

3. Irene Pilinger
4. Ludrika Komik
5. Saundra Douglas -1523 NE 152<sup>nd</sup> St
6. Former Commissioner Barbara Kramer
7. Keith Myers - 1440 NE 177<sup>th</sup> St
8. Leslie Sardinia
9. Ana Bonet
10. Claudia Gallegos - 16558 NE 26<sup>th</sup> Ave
11. Dayanara Torres Sosa
12. James Babcock - 2499 NE 136<sup>th</sup> St
13. Jeb Handwerger - 1091 NE 166<sup>th</sup> St
14. Mubarak Kazan
15. Eileen Damaso
16. Karen Harrold

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

## **7. ANNOUNCEMENTS**

Public Affairs Manager Phillip Tavernier presented a video announcing upcoming events in the city.

## **8. CITY COMMISSION REPORTS**

Commissioner Chernoff thanked everyone for attending this evening City Commission Meeting; thanked the citizens for their public comments; he reported during his campaign residents requested the city to have somebody answering the phones and communicating with the residents instead of them trying to find a number. He reported that was a big priority; he requested the City Manager and Public Works to do a study on what it would take for the city to bring sanitation back in house; thanked all the departments who put together the Snow Fest event and Hanukkah lighting ceremony. He stated

they are doing a wonderful job; he requested the Parks and Recreation Department to look into making 3 to 4 tennis courts into pickleball courts; he wished his wife of 32 years a Happy Anniversary and announced his anniversary is December 30; he wished everyone a Merry Christmas, Feliz Navidad, Happy Kwanzaa, and Happy New Year.

Commissioner Fleurimond announced his birthday is on December 30<sup>th</sup> and congratulated Commissioner Chernoff on his wedding anniversary; congratulated his new colleagues and stated he is looking forward to working with them; he reported he received an email regarding the mayor's residency which stated the mayor does not reside in the City of North Miami Beach. He stated for tonight until he gets the responses he can't vote on things when he feels that there's a question about the mayor's residency; wished everyone a Happy Holiday and left the dais.

Commissioner Jean welcomed the new commissioners and returning commissioners; thanked Principal Dr. Rodriguez from Fulford Elementary school and her student for being present at this meeting; gave kudos to North Miami Beach Barracudas for placing 5<sup>th</sup> out of 24 in the South Florida Recreational Swim League Championships. She recognized the Coaches and all the swimmers who participated; thanked everyone who participated in the Holiday Literacy Concert, the sponsors and for the toy donations; she reported she attended the Bright Line grand opening in the City of Aventura and stated she is looking forward to speaking a little bit more to one of the items that was placed on the regular agenda.

Commissioner Smith announced she was going to share a message tonight from her three grandchildren and how happy they were of their grandmother. She stated her grandchildren said the city is lucky to have her; she reported there are a lot of problems with the Code Compliance department; she reported the communication is so poor and she could not reach out to anyone in the city. She stated communication and efficiency are really something that the city has to try its best to live by; she announced she is on a hunt and if anybody can help her in looking for the money. She said it took her two years to get the water plant back and she understands the city saved \$7 million a year by having the water plant back. She continued to state her focus is to bring sanitation back in house.

Commissioner Smukler agreed with the pickleball idea at the tennis courts; announced there will be a food distribution at Victory Pool on Wednesday, December 21 from 9 am to 12 pm. She is looking for volunteers and fellow commissioners to be present at the food distribution; thanked Parks and Recreation Department for always helping and setting up the Diaper Drive throughout the different city locations. She reported one in three US families struggled to afford diapers for their babies; thanked the Police Department for keeping residents, businesses, visitors, employees, families, and her family safe. She thanked the Police Department for always being there to help; she apologized for getting out of line a few minutes ago and speaking over someone when she shouldn't have; she thanked Commissioner Jean, Commissioner Smith, and Commissioner Chernoff for staying here and not paying attention to what could be a rumor. She stated she ironically she had seen Mayor DeFillipo driving into eastern shores on a weeknight at 11:00 p.m.; she wished everyone a Happy Hanukkah Merry Christmas, Happy Kwanzaa and Happy New Year; she quoted local voices make local choices.

Mayor DeFillipo congratulated Commissioner Daniela Jean for the Holiday Literacy Concert and stated it was fabulous; wished everyone a Happy Holiday; thanked everyone for coming to this evening City Commission Meeting; he stated his family have been pillars of this community since the 1950s

going back to his grandfather and stated your mayor is your mayor. He stated he notified the City Clerk of his new address and has documented everything correctly with the Human Resources department. He continued to state his address has always been in North Miami Beach and that he is a real estate investor who invest in properties everywhere in North Miami Beach and Davie. He reported he will be purchasing another house in Boca Raton and that he is in the middle of negotiations.

Commissioner Fleurimond returned to the dais during Mayor's Commission Report.

## 9. CONSENT AGENDA

### 9.1. Regular Commission Meeting Minutes of October 18, 2022 (Andrise Bernard, City Clerk)

### 9.2. Resolution No. R2022-154 Sole Source Purchase of Equipment from MKI Services, Inc. (Andrea Suárez-Abastida, 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 ISSUE A SOLE SOURCE PURCHASE ORDER TO MKI SERVICES, INC., FOR THE PURCHASE OF HAYWOOD GORDON EQUIPMENT THAT SUPPORTS THE NORTH MIAMI BEACH WATER DEPARTMENT'S NORWOOD WATER TREATMENT PLANT IN AN AMOUNT NOT TO EXCEED \$71,000; AND PROVIDING AN EFFECTIVE DATE.

### 9.3. Resolution No. R2022-155 ATS/Verra Mobility (Harvette Smith, Chief of Police)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE CONTRACT AMENDMENT WITH AMERICAN TRAFFIC SOLUTIONS, INC., D/B/A/ AS VERRA MOBILITY, FOR THE TRAFFIC SAFETY RED LIGHT CAMERA PROGRAM; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE THE AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.

### 9.4. Resolution No. R2022-156 Renaming State Road 826/Sunny Isles Blvd. to Anthony Reznik Blvd. (David Scott, Public Works Director)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, SUPPORTING THE EFFORTS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) TO RENAME A PORTION OF STATE ROAD 826 TO ANTHONY REZNIK BOULEVARD; PROVIDING FOR TRANSMITTAL AND PROVIDING FOR AN EFFECTIVE DATE.

### 9.5. Resolution No. R2022-157 Memorandum of Understanding with the City of Sunny Isles Beach, Florida for a Joint Procurement Process (Phillip Ford, Chief Procurement Officer)

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF SUNNY ISLES BEACH, FLORIDA FOR

A JOINT PROCUREMENT PROCESS; AUTHORIZING THE CITY MANAGER TO CONDUCT AN INVITATION TO BID AND DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

**9.6. Resolution No. R2022-158 Purchase of Electric Motor and Pump Repair Services from Condo Electric Corp. (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 CONDO ELECTRIC CORP., FOR ELECTRIC MOTOR AND PUMP REPAIR SERVICES IN AN ESTIMATED BUDGETED AMOUNT OF \$120,000 AND TO RENEW THE AGREEMENT SUBJECT TO APPROVED BUDGET APPROPRIATION AND AVAILABILITY OF FUNDS; AND PROVIDING AN EFFECTIVE DATE.

**9.7. Resolution No. R2022-159 Sole Source Purchase of Equipment from TriNova, Inc. (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 ISSUE A SOLE SOURCE PURCHASE ORDER TO TRINOVA, INC., FOR THE PURCHASE OF PUMPS AND FLOWMETER EQUIPMENT THAT SUPPORTS THE NORTH MIAMI BEACH WATER DEPARTMENT'S NORWOOD WATER TREATMENT PLANT IN AN AMOUNT NOT TO EXCEED \$70,000; AND PROVIDING FOR AN EFFECTIVE DATE.

**9.8. Resolution No. R2022-160 Sole Source Purchase of Equipment from RDP Technologies, 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 ISSUE A SOLE SOURCE PURCHASE ORDER TO RDP TECHNOLOGIES, INC. FOR LIME SLAKER EQUIPMENT IN AN AMOUNT NOT TO EXCEED \$95,000; AND PROVIDING FOR AN EFFECTIVE DATE.

**9.9. Resolution No. R2022-161 Purchase Tires, Tubes, and Services Via State of Florida Contract No. 25172500-19-ACS (David Scott, Public Works Director)**

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE PIGGYBACKING OF THE FLORIDA DEPARTMENT OF MANAGEMENT SERVICES CONTRACT NO. 25172500-19-ACS TIRES, TUBES AND SERVICES; FURTHER AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND THE ESTIMATED ANNUAL EXPENDITURE OF \$370,000 AS APPROVED IN THE BUDGET APPROPRIATION PROCESS; AND PROVIDING AN EFFECTIVE DATE.

**9.10. Resolution No. R2022-162 Purchase of Tank Cleaning Services from Razorback, LLC (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 EXECUTE AN AGREEMENT WITH RAZORBACK, LLC TO PERFORM WATER STORAGE TANK CLEANING; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND THE ESTIMATED EXPENDITURE OF \$130,000 AS APPROVED IN THE BUDGET APPROPRIATION PROCESS; PROVIDING THE CITY MANAGER OR DESIGNEE WITH THE AUTHORITY TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

**9.11. Resolution No. R2022-163 Purchase of Additional Liquid Corrosion Inhibitor Chemicals (Orthophosphate) for NMB Water from Carus Corporation (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 CARUS CORPORATION LLC, TO FURNISH LIQUID CORROSION INHIBITOR CHEMICALS (ORTHOPHOSPHATE) TO NMB WATER; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND AN ADDITIONAL ANNUAL EXPENDITURE OF \$50,000; AND PROVIDING AN EFFECTIVE DATE.

**9.12. Resolution No. R2022-164 Certification of General and Run-Off Election Results (Andrise Bernard, City Clerk)**

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ACCEPTING AND ADOPTING THE CERTIFICATE OF THE RESULTS OF THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION FOR THE ELECTION OF COMMISSION SEAT 2, COMMISSION SEAT 4, AND COMMISSION SEAT 6, AND THE RUN-OFF ELECTION HELD ON NOVEMBER 22, 2022 FOR COMMISSION SEAT 2; PROVIDING FOR AUTHORIZATION AND PROVIDING FOR AN EFFECTIVE DATE.

**9.13. Resolution No. R2022-165 Purchase of OEM Parts and Services for Public Works Fleet Management Division (David Scott, Public Works Director)**

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE UTILIZATION OF MULTIPLE CONTRACTS FROM COOPERATIVES AND LOCAL MUNICIPALITIES FOR THE PURCHASE OF OEM PARTS AND SERVICES; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND THE ESTIMATED ANNUAL EXPENDITURE OF \$214,000 AS APPROVED IN THE BUDGET APPROPRIATION PROCESS; PROVIDING THE CITY MANAGER OR DESIGNEE WITH THE AUTHORITY TO DO ALL THINGS

NECESSARY TO EFFECTUATE THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

**9.14. (MOVED TO LEGISLATION) Resolution No. R2022-166 Authorizing the City Manager or Designee to Create a Marketing Campaign for Tourism, International Trade, and Transportation (Commissioner Daniela Jean)**

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER OR DESIGNEE TO DEVELOP A MARKETING CAMPAIGN TO PROMOTE TOURISM, INTERNATIONAL TRADE, AND TRANSPORTATION INITIATIVES IN THE CITY OF NORTH MIAMI BEACH; AUTHORIZING THE CITY MANAGER OR CITY ATTORNEY TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; PROVIDING FOR AN EFFECTIVE DATE.

**9.15. (DEFERRED) Resolution No. R2022-167 Approving the Interlocal Agreement for Administrative Support Services with the Community Redevelopment Agency (CRA) (Joann Milord, CRA Director)**

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT FOR ADMINISTRATIVE SUPPORT SERVICES WITH THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF NORTH MIAMI BEACH, FLORIDA (“CRA”); AUTHORIZING THE CITY MANAGER TO EXECUTE THE INTERLOCAL AGREEMENT AND TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; AUTHORIZING THE CITY CLERK TO FILE THE INTERLOCAL AGREEMENT WITH THE CLERK OF THE CIRCUIT COURT; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

**Motion to approve** the consent agenda made by Commissioner Chernoff, seconded by Mayor DeFillipo.

**Voice Vote: MOTION PASSED 6–0** with Vice Mayor Joseph absent.

### **Mayor’s Discussion**

Mayor DeFillipo requested the Commission to discuss management and legal. He advised he has some reservations he would like to discuss and requested his colleagues to provide their opinions on this matter.

Mayor and Commission began discussion on the Charter Officers.

Commissioner Jean stated she was not feeling well and left the dais.

Mayor DeFillipo requested the resignation of the City Attorney.

Motion made to request the termination of the City Attorney made by Mayor DeFillipo, seconded by Commissioner Chernoff.



Mayor and Commission continued discussion on the resignation of the City Attorney.

Commissioner Fleurimond expressed his displeasure with the process and left the dais.

Due to lack of quorum, the City Commission meeting was adjourned.

## **ADJOURNMENT**

There being no further business to come before the City Commission, the meeting was adjourned at 8:48 pm.

*The following items were not heard:*

### **10. QUASI-JUDICIAL**

#### **10.1. 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.

#### **10.2. 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.

**10.3. 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.

**11. LEGISLATION**

**11.1. 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.

**11.2. 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.

**11.3. 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.

**11.4. 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.

**11.5. Resolution No. R2022-172 Purchase Authorization of Staff Augmentation and 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.

**12. BUSINESS TAX RECEIPTS - None**

**13. APPOINTMENTS**

**13.1.** Reappointing Marc Einbinder to the Eastern Shores Security Guard Special Taxing District (Andrise Bernard, City Clerk)

**13.2.** Reappointing Eric Isicoff to the Eastern Shores Security Guard Special Taxing District (Andrise Bernard, City Clerk)

**13.3.** Reappointing Fabio Nick to the Eastern Shores Security Guard Special Taxing District (Andrise Bernard, City Clerk)

**13.4.** Reappointing James Stamatis to the Eastern Shores Security Guard Special Taxing District (Andrise Bernard, City Clerk)

**13.5.** Reappointing William Avila to the Eastern Shores Security Guard Special Taxing District (Andrise Bernard, City Clerk)

**13.6.** Reappointing Daniel Bakalarz to the Eastern Shores First Addition Security Guard Special Taxing District (Andrise Bernard, City Clerk)

**13.7.** Reappointing David Templer to the Eastern Shores First Addition Security Guard Special Taxing District (Andrise Bernard, City Clerk)

**13.8.** Reappointing Lior Sharabani to the Eastern Shores First Addition Security Guard Special Taxing District as an Alternate (Andrise Bernard, City Clerk)

**13.9.** Appointing Jane Paglino to the Beautification Committee (Andrise Bernard, City Clerk)

**14. MISCELLANEOUS ITEMS**

**15. DISCUSSION ITEMS**

**15.1.** Discussion Regarding Purchase Cards (P-Cards) for Commissioners (Commissioner Jay Chernoff)

**15.2.** Discussion Regarding the Frequency of Commission Meetings (Commissioner Jay Chernoff)

**15.3.** Discussion Regarding Commission Members' Aides (Commissioner Jay Chernoff)

- 15.4. Discussion Regarding Procedure/Policy for City Events, Commissioner Names and Pictures on Social Media, Handouts/Flyers, Favors, etc. (Commissioner Fortuna Smukler)
- 15.5. Discussion Regarding North Miami Beach Finance (Commissioner Phyllis Smith)
- 16. **CITY MANAGER’S REPORT**
- 17. **CITY ATTORNEY’S REPORT**
- 18. **MAYOR’S DISCUSSION** – Heard after the Consent Agenda.
- 19. **CITY COMMISSION REPORTS**
- 20. **NEXT REGULAR COMMISSION MEETING** - Tuesday, January 17, 2023

**ATTEST:**

**(SEAL)**

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Andrise Bernard, MMC, City Clerk

# **EXHIBIT B**

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

**ANTHONY F. DEFILLIPO,  
In his Official Capacity as Mayor,  
North Miami Beach, Florida,  
Plaintiff,**

**vs.**

**CITY OF NORTH MIAMI BEACH,  
Defendants.**

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**VERIFIED EMERGENCY COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF REQUIRING  
ATTENDANCE FOR QUORUM AT DULY CALLED COMMISSION  
MEETING**

Plaintiff ANTHONY F. DEFILLIPO (“Mayor DeFillipo”), in his official capacity as Mayor, North Miami Beach, Florida, files this Verified Emergency Complaint for Declaratory Judgment and Injunctive Relief against defendant CITY OF NORTH MIAMI BEACH (“City”) seeking to compel the attendance of a quorum at the duly called Commission meeting on January 17, 2023, and thereafter for the transaction of official City business.

**JURISDICTION AND VENUE**

1. This is an action for declaratory judgment filed pursuant

to Section 86.011, Florida Statutes, and for injunctive relief in accordance with Florida law authorizing the issuance of injunctive writs.

2. This action is brought by Mayor DeFillipo in his capacity as North Miami Mayor to require the attendance of a quorum at the duly called Commission meeting on January 17, 2023, and thereafter as needed for the transaction of official City business.

3. This action is brought to declare the rights of the Mayor and the citizens and electors of North Miami Beach pursuant to the North Miami Beach Charter (“Charter”) for the conduct of official City business..

4. Plaintiff is the Mayor of the City of North Miami Beach, in which capacity he is entrusted to preside over City Commission meetings and call and preside over Special Call Meetings.

5. All at all times material to this action, the City is and has been a municipal corporation authorized pursuant to the laws of the State of Florida, located in Miami-Dade County, Florida.

### **FACTS COMMON TO ALL COUNTS**

#### **A. The Charter.**

6. The City is required by law to operate in accordance with



its Charter.

7. Section 2.5 of the Charter, titled “Quorum and Attendance of the City Commission” states:

Sec. 2.5 - Quorum and Attendance of the City Commission.

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.

Charter of the City of North Miami Beach §2.5. The Charter is attached hereto as Exhibit “A.”

8. Section 3.3 of the City Charter states, “The City Commission shall appoint the City Attorney or law firm to serve at the pleasure of the City Commission. The City Attorney or law firm shall be removed by a majority vote of the City Commission.”

**B. Commission Meeting Scheduled December 20, 2022.**

9. A Commission Meeting was scheduled for December 20, 2022, during which six of the seven elected officials were present. Commissioner Michael Joseph was absent.

10. Mayor DeFillipo asked for a motion to terminate the contract of the law firm serving as the City Attorney. The motion was duly made and seconded, and discussion began (“Termination Motion”).

11. At that point, Commissioner Daniela Jean excused herself and left the meeting, leaving five members of the Commission present.

12. As discussion on the termination motion continued, Commissioner McKenzie Fleurimond announced her vehement opposition to terminating the City Attorney, noting he was the Commissioner who initially suggested the hiring of that law firm, Ottinott, P.A, be hired.

13. After discussion, Commissioner Fortuna Smukler called the question, and the matter was ready for voting.

14. At that point, Commissioner McKenzie Fleurimond announced he was leaving the meeting, thus breaking quorum, for the sole purpose of preventing the Mayor and Commission from voting to terminate the City Attorney’s contract.

15. No further City business was transacted, and the Meeting paused for lack of a quorum.

**C. Special Call Meetings Failed for Absence of Quorum.**

16. Thereafter, Mayor DeFillipo attempted to call a Special Meeting on two separate occasions for the purpose of resuming the December 20, 2022 meeting. But three Commissioners, Michael Joseph, McKenzie Fleurimond, and Daniela Jean, refused to respond for the sole purpose of preventing a Commission Meeting from taking place due to lack of a quorum.

**D. Regular Meeting Scheduled January 17, 2023.**

17. A regularly scheduled Commission Meeting is noticed and scheduled for to be held Tuesday, January 17, 2023.

18. Based on information and belief, the three Commissioners who refused to respond to the Special Meeting calls intend not absent themselves from the January 17, 2023 meeting to prevent a quorum and the transaction of business, including the Termination Motion.

19. In his capacity as City Mayor, Mayor DeFillipo has great concern that the same three Commissioners will refuse to attend the meeting, and once again cause a lack of quorum, for the sole purpose of preventing the transaction of City business, including voting on the Termination Motion.

20. The City, by failing to have a quorum, cannot call a meeting, vote on resolutions, or conduct any other official City business requiring Commission approval.

21. The City presently has urgent business it must conduct for the benefit of its citizens, including resolutions regarding its budget, water utility, and outstanding legal matters that it has a duty to undertake.

22. In effect, the City of North Miami Beach is shut down and no City business has been transacted as a result of Commissioners intentionally refusing to attend in order to avoid the quorum needed to transact City business, which has not been done for more than 90 days;

23. Florida Statutes 1!66.041 provides that a majority of Commissioners present for a meeting in any City, in this case four, constitutes quorum for purposes of conducting City business.

### **COUNT I – DECLARATORY JUDGMENT**

24. Plaintiff incorporates and re-alleges paragraphs 1 to 23.

25. This is an action to declare the rights of the parties under the Charter.

26. The City and the plaintiff is in doubt of the rights and

obligations under the Charter, and by this Complaint seek a declaration of the rights and obligations with respect to calling a meeting attended by the Commissioners for the purpose of conducting the City's business.

27. There exists a *bona fide* actual, present, and practical need for the declaration of the Mayor and Commission's rights and duties attendant to the Charter. The City is entitled to have all doubts as to the rights and obligations under the Charter resolved in its favor, requiring Commissioner attendance at a duly called Commission Meeting for the transaction of official City business.

28. The rights and obligations of the City under the Charter are dependent upon the facts and the law applicable to the City pursuant to the Charter in these circumstances.

29. Plaintiff and the City have an actual, present controversy in the subject matter described herein.

For these reasons, Plaintiff Mayor DeFillipo requests that the Court adjudicate the rights, responsibilities, and liabilities of the parties under the Charter, and that the Court enter an Order declaring that the City may call a Meeting attended by four (4) members of the Commission for the limited and express purpose of

conducting the City business until such time as the remaining three (3) members of the Commission see fit to fulfill their duties as elected officials as prescribed in the Charter of the City of North Miami Beach.

## **COUNT II – INJUNCTIVE RELIEF**

30. Petitioner incorporates and re-alleges paragraphs 1 through 23.

31. Pursuant to the Charter, the plaintiff as Mayor and the City cannot conduct any business absent a quorum.

32. As a result, the City is facing irreparable harm, as the City cannot conduct official business for the benefit of the citizens, residents, and businesses within the City, thereby disenfranchising and depriving its citizens of their government. No business can be conducted by the City absent a quorum.

33. The City has a right and an obligation to conduct official business as granted by its Charter, the Miami-Dade County Home Rule Charter, and the Constitution and laws of the State of Florida.

34. If relief is denied, the City will be without any adequate remedy at law.

35. Consideration of the public interest favors the relief sought herein as the citizens of North Miami Beach are entitled to a functioning government, including its provision of services, including police, water, and sanitation services.

For these reasons, Mayor DeFillipo requests that the Court adjudicate the rights, responsibilities, and liabilities of the parties under the Charter, and that the Court enter an Order declaring that the City may call an Emergency Meeting with four (4) members of the Commission for the purpose of conducting City Business as provided in the Charter, as well as any other relief the Court deems proper.

**VERIFICATION**

I make this declaration according to 28 U.S.C § 1746. I make this declaration in Miami-Dade County, State of Florida, United States of America. I declare under penalty of perjury that the foregoing, including all facts, are true and correct. Executed at Miami-Dade County, Florida, January 17, 2023.

Signature:   
Anthony DeFillipo (Jan 17, 2023 01:03 EST)

Email: defillipoanthony@gmail.com

**ANTHONY F. DeFILLIPO**

Respectfully submitted,

**MICHAEL A. PIZZI, JR.**  
**Attorney for Plaintiff**  
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316  
Miami Lakes, FL 33014  
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mpizzi@pizzilaw.com

By: /s/ Michael A. Pizzi, Jr.  
**MICHAEL A. PIZZI, JR.**

S/ David P. Reiner  
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S/ Benedict P. Kuehne  
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mdavis@kuehnelaw.com  
efiling@kuehnelaw.com

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the above and foregoing was e-filed via the State's eFiling Portal and copies furnished electronically to all parties of record, including Andrise



Bernard, Clerk, City of North Miami Beach,  
andrise.bernard@citynmb.com, on January 17, 2023.

By: /s/ Michael A. Pizzi, Jr.  
**MICHAEL A. PIZZI, JR.**

# **EXHIBIT C**

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

CIVIL DIVISION

ANTHONY F. DEFILLIPO, in his Official  
Capacity as Mayor, North Miami Beach,  
Florida,

CASE NO.: 2023-618 CA (25)

Plaintiff/Counter-Defendant,

v.

CITY OF NORTH MIAMI BEACH,

Defendant/Counter-Plaintiff.

\_\_\_\_\_ /

**COUNTERCLAIM**

Counter-Plaintiff, CITY OF NORTH MIAMI BEACH (“**City**”) counterclaims against Counter-Defendant, ANTHONY F. DEFILLIPO (“**DeFillipo**”), and says:

1. This is an action seeking a declaratory judgment and injunctive relief.
2. The City is a municipal corporation authorized pursuant to the laws of the State of Florida, located in Miami-Dade County, Florida.
3. DeFillipo is an individual over 18 years of age and is otherwise *sui juris*.
4. DeFillipo personally submitted to the jurisdiction of this Court by commencing the above-styled action and seeking affirmative relief.
5. This Court possesses subject-matter jurisdiction pursuant to *Fla. Stat.* § 26.012(2)(a), (3), and § 86.011.
6. Venue is proper in Miami-Dade County Circuit Court pursuant to *Fla. Stat.* § 47.011 because the causes of action asserted herein accrued in Miami-Dade County, Florida.

7. The City has retained Heise Suarez Melville, P.A. (“**HSM**”) to represent the City in this action. The City has agreed to pay HSM’s reasonable attorneys’ fees for HSM’s services herein.

**GENERAL ALLEGATIONS**

**A. The relevant sections of the City’s Charter.**

8. The City is governed by its *Charter* (“Charter”). A true and correct copy of the Charter is attached hereto as **Exhibit “A.”**

9. The Charter states that “this Charter and the powers of the [City] shall be construed liberally in favor of the [City].” *Id.* at Art. I, § 1.5.

10. The Charter states that each candidate for the office of mayor, “at the time of qualifying,” must have, among other things, “continuously resided in the [City] for at least one (1) full year.” *Id.* at Art. IV, § 4.3.

11. The Charter states that the person filling the office of mayor of the City shall, among other things, “preside over meetings of the Commission.” *Id.* at Art. II, § 2.1.

12. The Charter states that the person filling the office of vice mayor of the City “shall act in the absence or disability of the Mayor and who shall exercise the powers of the Mayor when so acting.” *Id.*

13. The Charter states that the City’s Commission “shall be composed of seven members, elected as herein provided, one of whom shall be the Mayor.” *Id.* at Art. II, § 2.2.

14. The Charter states that “The Commission shall be the legislative body of the City of North Miami Beach and shall have power to investigate any phase, function or operation of the City Government in such manner and at such time as to it shall be deemed necessary to the

determination by the Commission of the public policy of the City. It shall have such other powers as are hereinafter expressly or impliedly set forth, or inherent in the legislative department of government.” *Id.*

15. The Charter states that the City’s Commission may pass ordinances. *Id.* at Art. II, § 2.7.

**B. The relevant City ordinances.**

16. City Ordinance Section 7-5(a) states that prospective candidates for the Office of mayor shall, among other things, “be a bona fide residence of the [City] and express an intent to remain permanently a bona fide residence of the City during the entire term of office for which he or she is a candidate.” A true and correct copy of City ordinance section 7.5 is attached hereto as **Exhibit “B.”**

17. City Ordinance Section 7-5(b) states “All elected officials of the City of North Miami Beach, in order to remain in office during the term for which they were elected, must always be and remain bona fide residents of the City of North Miami Beach.” *Id.*

18. City Ordinance Section 7-5(c) defines “bona fide residence” as “a permanent, fixed place of domicile within the City of North Miami Beach, to the exclusion of all other places.” *Id.*

19. City Ordinance Section 7-5(d) states “Should any elected official of the City of North Miami Beach, during his term of office, change his bona fide residence from within to without the City of North Miami Beach, his seat on the Council shall be ***automatically vacated and forfeited.***” *Id.* (emphasis added).

20. City Ordinance Section 7-5(e) states “A vacancy shall be filled in accordance with Section 7-7 of the Code of Ordinances of the City of North Miami Beach.” *Id.*

21. A true and correct copy of City Ordinance Section 7-7 is attached hereto as **Exhibit “C.”**

**C. DeFillipo served as a City Commissioner.**

22. DeFillipo served as Commissioner on the City Commission from approximately May 2013 through November 2018.

23. During that time, DeFillipo’s fellow Commissioner, Frantz Pierre (“**Pierre**”), was not attending the City Council<sup>1</sup> meetings in person. A true and correct copy of contemporaneous emails in this regard are attached hereto as **Exhibit “D.”**

24. On January 25, 2018, outside counsel for the City, Jean Olin, Esq., prepared a memorandum (the “**Olin Memorandum**”) concluding that Pierre had automatically vacated his office, by operation of law, due to his failure to continually attend in-person meetings of the City Council. A true and correct copy of the Olin Memorandum is attached hereto as **Exhibit “E.”**

25. On February 5, 2018, the City of North Miami Beach held a Special Commission Meeting to discuss Pierre’s absences. A true and correct copy of the February 5, 2018 Commission meeting minutes are attached hereto as **Exhibit “F.”**

26. Pierre was given notice of and invited to attend that Commission meeting.

27. DeFillipo was present at that Commission meeting in his role as Commissioner.

28. At the February 5, 2018 meeting, the City Council accepted the Olin Memorandum’s conclusion that Pierre’s office had been automatically deemed vacant by operation of law. *Id.*

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<sup>1</sup> Article I, section 1.2 of the City’s Code of Ordinances uses the term “City Council” when describing the authority of the City Commission to fill a vacancy.

29. DeFillipo concurred in that conclusion, stating on the record that, although it was an unfortunate situation, “it is the responsibility of the Mayor and Commission to uphold the City Charter.” *Id.* DeFillipo further remarked that, because the City Council had provided notice of the Special Meeting in the local newspapers, “due process was put into effect and the proper procedures were followed.” *Id.*

30. At the end of the meeting, Pierre’s seat was deemed vacant, and the Council passed a motion to fill the vacant Commission seat by allowing all interested individuals to submit a letter of interest and qualifications to the Office of the City Clerk. *Id.*

**D. DeFillipo was elected, and re-elected, as Mayor of the City.**

31. DeFillipo was elected to the office of the City’s Mayor on or about November 6, 2018.

32. DeFillipo qualified for that office by listing a house located at 1458 NE 177th Street, North Miami Beach, Florida 33162 (the “**Qualifying Residence**”) as his primary residence.

33. When DeFillipo ran for re-election in 2020, he again listed the Qualifying Residence as his primary residence. *See Exhibit “G.”*

34. DeFillipo was re-elected to the office of the City’s Mayor on or about November 3, 2020.

**E. DeFillipo failed to continuously maintain a “bona fide” residence in the North Miami Beach throughout his term, thereby creating an “automatic vacancy” of the mayoral office.**

35. On February 22, 2021, DeFillipo purchased a home located at 7531 SW 26th Ct., Davie, Florida 33314 (the “**First Davie Property**”).

36. Davie is located in Broward County, Florida.

37. The First Davie Property is outside of the City's boundaries.

38. On December 21, 2021, at DeFillipo's request, the City Clerk sent an email to the City's human resources department to change DeFillipo's records to reflect his new address as Unit 406 at 3601 NE 170 Street, North Miami Beach, Florida 33160 (the "**Sham Residence**"). See **Exhibit "H."**

39. The Sham Residence is a one-bedroom, 830-square-foot condominium unit in the Eastern Shores neighborhood. See **Exhibit "I."**

40. DeFillipo has a wife and two children.

41. On or about December 27, 2021, DeFillipo sold the Qualifying Residence. See **Exhibit "J."**

42. On April 15, 2022, DeFillipo listed the First Davie Property for sale. The photos in the property listing appear to show that DeFillipo and his family were living in the residence, and that the home included many of DeFillipo's personal items, including a framed wedding photograph and a walk-in closet filled with clothes and storage. See **Exhibit "K."**

43. DeFillipo sold the First Davie Property on June 25, 2022. See **Exhibit "L."**

44. On June 30, 2022, DeFillipo filed his 2021 *Form 1 Financial Disclosure* with the City Clerk wherein he listed the Sham Residence as his permanent address. See **Exhibit "M."**

45. On July 11, 2022, DeFillipo purchased a home located at 1985 E. Sierra Ranch Drive, Davie, Florida 33324 (the "**Second Davie Property**") for \$1,226,500.00. See **Exhibits "N" and "O."**

46. The Second Davie Property is a 5-6 bedroom, 5,000-plus square-foot home in the gated Sierra Ranches community. A true and correct copy of a photograph of the Second Davie



Property taken from the Broward County Property Appraiser's website is attached hereto as **Exhibit "P."**

47. The Second Davie Property is outside of the City's boundaries and in the neighboring county: Broward.

48. A November 30, 2022 internet screenshot of DeFillipo's voter registration information listed his address as the Qualifying Residence even though he sold that property almost a year earlier. *See Exhibit "Q."*

**F. DeFillipo's move to Broward County invited an ethics complaint.**

49. Someone retained Countywide Investigations ("Countywide") to investigate allegations of whether DeFillipo was in violation of the residency requirements that he was bound by. At the conclusion of Countywide's surveillance and investigation, they prepared a report ("Countywide Report"). A true and correct copy of the Countywide Report is attached hereto as **Exhibit "R."**

50. Countywide's surveillance of the neighborhood entrance to the Second Davie Property revealed that DeFillipo routinely entered the gated community at night and left in the morning. *Id.* It also revealed that DeFillipo's name was registered in the access box associated with the Second Davie Property. *Id.*

51. On or about December 17, 2022, a sworn ethics complaint was filed against DeFillipo with the Miami-Dade Commission on Ethics & Public Trust ("Ethics Complaint"). A true and correct copy of the Ethics Complaint is attached hereto as **Exhibit "S."**

52. The Ethics Complaint accuses DeFillipo of living in the Second Davie Property in violation of the City's residency requirements. *Id.*

**G. After seeking outside legal advice, the City Attorney formally recognized the mayoral office was vacant.**

53. A Commission meeting was scheduled for December 20, 2022. Unsurprisingly, the Ethics Complaint was brought up, and was the source of substantial discussion, during that meeting.

54. Commissioner McKenzie Fleurimond (“**Fleurimond**”) walked out of the December 20, 2022 Commission meeting on the grounds that the allegations in the Ethics Complaint gave rise to a concern that DeFillipo forfeited the office of mayor and that DeFillipo therefore lacked the authority to continue to preside over that Commission meeting, call any votes, or handle any City business.<sup>2</sup>

55. Hans Ottinot, Esq. (“**City Attorney**”) is the City Attorney.

56. In light of the aforementioned developments, on or about January 13, 2023, the City Attorney followed the procedure that occurred in 2018 when dealing with the Pierre vacancy, by procuring a *Memorandum* from outside counsel: *i.e.*, HSM shareholder, Luis E. Suarez, Esq. (the “**Residency Memorandum**”). *See Exhibit “T.”*

57. The Residency Memorandum concluded, in pertinent part, that “because the publicly available facts would lead a reasonable person to objectively conclude that DeFillipo failed to comply with Section 7-5(b) of the North Miami Code of Ordinances’ requirement to

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<sup>2</sup> See Mark Sell, *NMB Ended 2022 With a Bang*, BISCAYNE TIMES (Dec. 2022), <https://www.biscaynetimes.com/news/nmb-ended-2022-with-a-bang/>; *Does North Miami Beach Mayor Live in Another City? Ethics Complaint Filed*, MIAMI HERALD (Dec. 2022), <https://www.miamiherald.com/news/local/community/miami-dade/north-miami/article270543772.html>.

continually maintain a ‘bona fide’ residence in North Miami Beach, an ‘automatic vacancy’ of the office of mayor has occurred by operation of law.” *Id.*

58. The Residency Memorandum also recounted, and gave weight to, the manner and method the City and the Commission handled the vacancy caused by Pierre in 2018:

In sum, the Commissioner Pierre scenario arguably created precedent that, although the term “automatic” did not mean the City Council could fill a vacancy without calling a special meeting, it also did not require the City Council to file a lawsuit and wait until the conclusion of the litigation and all pending appeals before filling the vacancy. It meant, in that scenario, before declaring a vacancy, due process should be provided in the form of notice of a special commission meeting and an opportunity for the allegedly offending elected official to speak and present rebuttal at that meeting.

(the “**Pierre Precedent**”).

59. Upon review and analysis, the City Attorney concurred with the Residency Memorandum. This included that the City’s mayoral office was vacant and no longer held by DeFillipo.

60. At or about 5:01 p.m. on January 13, 2023, the City Attorney sent an email (the “**Formal Recognition of Vacancy**”) to each of the six Commissioners and DeFillipo, which attached a copy of the Residency Memorandum, announced that he concurred with its conclusions, and recommended “that a Special City Commission meeting be held to discuss how the vacancy will be filled.” *See Exhibit “U”* (without attachments).

**H. DeFillipo refuses to recognize he no longer serves as the City’s mayor.**

61. Despite the Formal Recognition of Vacancy, DeFillipo refuses to recognize or concede that he no longer serves as the City’s mayor.

62. By way of just one example, over the objection of the City Attorney during a January 17, 2023 Commission meeting, DeFillipo sat in the seat designated for the City’s mayor and attempted to operate and conduct business as the City’s mayor.

**I. The current situation is untenable.**

63. DeFillipo does not currently hold the office of mayor, but is actively holding himself out as mayor and purporting to conduct City business in that capacity.

64. DeFillipo is actively attempting to schedule special Commission meetings, but not for the purpose that the City Attorney has requested on January 13, 2023 (*i.e.*, to discuss how the mayoral vacancy will be filled). *See Exhibit “U.”* Instead DeFillipo is attempting to schedule a meeting to procure the votes necessary to terminate the City Attorney as retaliation for issuing the Formal Resignation of Vacancy.

65. Per Article II, section 2.1 of the Charter, the vice mayor is the person authorized to preside over meetings of the Commission during the period leading up to an election to fill the mayoral vacancy.

66. The Vice Mayor has asked for a special meeting to discuss vacancy and has been unsuccessful in securing same. *See Exhibit “V.”*

67. The conflict and disruption that DeFillipo has caused and continues to cause is deleterious to the City and its ability to conduct business.

68. The current situation is untenable and is harmful to the City and its citizens.

**COUNT I**  
**DECLARATORY JUDGMENT**

69. City repeats and realleges paragraphs 1–68.

70. This count seeks a declaratory judgment pursuant to Chapter 86 of the Florida Statutes.

71. The City seeks the following declaratory judgments stating that:

- (i) the City Attorney’s written Formal Recognition of Vacancy concurring that DeFillipo “automatically vacated and forfeited” the office of mayor for the City by failing to consistently and continuously remain a bona fide resident of the City for the entire duration of his tenure as mayor of the City in violation of City’s Charter and Ordinance Section 7-5’s residency requirements, permits the City, consistent with the Pierre Precedent, to call a Commission meeting (the “**Due Process Special Commission Meeting**”) to give DeFillipo an opportunity to testify under oath and present evidence that he did not violate City Ordinance Section 7-5’s bona fide residence requirement and, thereafter, to have the Commissioners vote on whether to overrule by majority the City Attorney’s written Formal Recognition of Vacancy before filling the mayoral office vacancy pursuant to the manner and method detailed in City Ordinance Section 7-7.
- (ii) in the event DeFillipo does not appear at or choose to participate in the Due Process Special Commission Meeting, the Commissioners, can and will immediately proceed to filling the mayoral office vacancy pursuant to the manner and method detailed in City Ordinance Section 7-7.

(collectively, the “**Declaration**”).

72. There is a bona fide, actual, present practical need for the Declaration.

73. The Declaration deals with a present controversy as to an ascertained (or ascertainable) state of facts.

74. Some power, privilege or right of the City is dependent upon the facts or the law applicable to the facts.

75. DeFillipo has, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.

76. DeFillipo is before the court by proper process.

77. The relief sought is not merely giving of legal advice by the courts or the answer to questions propounded from curiosity.

**WHEREFORE**, the City respectfully requests this Court enter judgment in its favor and against DeFillipo **(i)** granting the requested Declaration; **(ii)** granting the City all supplemental relief naturally following from the Declaration pursuant to *Fla. Stat.* § 86.061; **(iii)** awarding the City its taxable costs to be paid for by DeFillipo pursuant to *Fla. Stat.* § 86.081; and **(iv)** granting the City such other and further relief as this Court deems just and proper.

**COUNT II**  
**INJUNCTIVE RELIEF**

78. The City repeats and realleges paragraphs 1–68.

79. DeFillipo is improperly attempting to act as if he is currently the City’s mayor despite (i) failing to consistently and continuously remain a bona fide resident of the City for the entire duration of his tenure as mayor of the City that resulted in his automatically vacating and forfeiting the office and (ii) the City Attorney having issued a Formal Recognition of Vacancy.

80. DeFillipo’s continued statements to the public, attempts to call Commission meetings, and attempt to conduct City business at Commission meetings despite no longer holding the office of mayor is confusing to the public and disruptive to City business.

81. The City seeks entry of an injunction prohibiting DeFillipo from (i) representing, saying, or implying that he is the City’s active, sitting mayor and (ii) attempting to, purporting to, or actually exercising any of the rights, obligations, or authority that is reserved for the holder of the office of City’s active, sitting mayor (collectively, the “**Requested Injunctive Relief**”).

82. The City has a substantial likelihood of success on the merits given, among other things, the size of his family, the size of the Sham Residence, his personal effects being present in

the listing photos for the First Davie Property, the size of the Second Davie Property, and related public records and investigative materials associated with the same.

83. The City does not have an adequate remedy at law when an individual who does not currently hold the office of mayor is actively holding himself out as mayor and purporting to conduct City business in that capacity.

84. Accordingly, the City will sustain irreparable harm absent entry of the requested injunction.

85. The injunction the City is seeking herein would serve the public interest by, among other things, avoiding confusion and preventing the public from collaterally attacking any decisions or business DeFillipo purports to make as mayor.

**WHEREFORE**, the City respectfully requests this Court enter judgment in its favor and against DeFillipo **(i)** granting the City the Requested Injunctive Relief and **(ii)** granting the City such other and further relief as this Court deems just and proper.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** on January 20, 2023, that a true and correct copy of the foregoing was filed with the Clerk of the Court and served by email on the following counsel using the Florida Courts E-Filing Portal:

- (i)** Michael A. Pizzi, Jr., Esq., 6625 Miami Lakes Drive, Suite 316, Miami Lakes, Florida 33014 at [mpizzi@pizzilaw.com](mailto:mpizzi@pizzilaw.com);
- (ii)** Benedict P. Kuehne, Esq. and Johan D. Dos Santos, Esq., of Kuehne Davis Law, P.A., 100 S.E. Second Street, Suite 3150, Miami, Florida 33131 at

[ben.kuehne@kuehnelaw.com](mailto:ben.kuehne@kuehnelaw.com), [johand@kuehnelaw.com](mailto:johand@kuehnelaw.com), [mdavis@kuehnelaw.com](mailto:mdavis@kuehnelaw.com),  
and [efiling@kuehnelaw.com](mailto:efiling@kuehnelaw.com); and

- (iii) David P. Reiner, Esq. of Reiner & Reiner, P.A., 9100 S. Dadeland Boulevard, Suite 901, Miami, Florida 33156 at [dpr@reinerslaw.com](mailto:dpr@reinerslaw.com) and [eservice@reinerslaw.com](mailto:eservice@reinerslaw.com).

Respectfully submitted,

**HEISE SUAREZ MELVILLE, P.A.**  
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By: /s/ Luis E. Suarez

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*Attorneys for Defendant,  
City of North Miami Beach*



# **EXHIBIT D**



**CITY OF NORTH MIAMI BEACH**  
City Hall, Commissioner Chambers, 2<sup>nd</sup> 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

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**City Commission Meeting Minutes**

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**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)**

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Andrise Bernard, MMC, City Clerk



# **EXHIBIT E**



## 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

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**RE:** Charter Section 2.5/Frantz Pierre

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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.<sup>1</sup>**

**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.<sup>2</sup> Of the 12 Commission meetings that Commissioner

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<sup>1</sup> 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.)

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>3</sup> 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)).

<sup>4</sup> 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 (9<sup>th</sup> 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...”.<sup>5</sup>

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.<sup>6</sup> 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

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<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup> 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 Law<sup>8</sup> 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

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<sup>7</sup> See footnote #2 above.

<sup>8</sup> Fla. Stat. sec. 286.011.

for official action to be taken<sup>9</sup>, 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.<sup>10</sup> 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.

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<sup>9</sup> 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.”

<sup>10</sup> 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

PL

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](mailto:pamela.latimore@citynmb.com)

Florida Association of City Clerks/ President Elect  
[www.Floridaclerks.org](http://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](mailto:beth.spiegel@citynmb.com)>  
**Cc:** Bernard, Andrise <[Andrise.Bernard@citynmb.com](mailto: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](http://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](mailto:pamela.latimore@citynmb.com)



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



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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 164<sup>th</sup> Street  
North Miami Beach, Florida 33179

Dear Mr. Marrero:

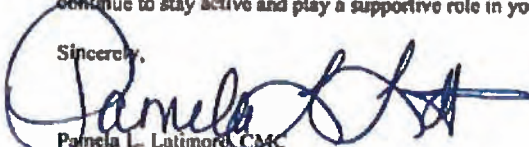
On December 12, 2016, the Mayor and City Council passed Ordinance No. 2012-28 and as a result your term as a member of the Planning and Zoning Board will conclude as of December 12, 2016. On behalf of the Mayor and City Council of the City of North Miami Beach, I would like to thank you for the time 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. 19<sup>th</sup> 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

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**Special Commission Meeting Minutes**

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**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. 175<sup>th</sup> St., North Miami Beach, FL.
2. Marilyn Baumoehl - 18635 N.E. 20<sup>th</sup> Ct., North Miami Beach, FL.
3. Muriel Kemp - 1479 N.E. 178<sup>th</sup> St., North Miami Beach, FL.
4. Mubarak Kazan
5. Michele Decayette - 1000 N.E. 151<sup>st</sup> 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 F**

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.

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**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.<sup>1</sup> *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

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<sup>1</sup> 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).<sup>2</sup> 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,

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<sup>2</sup> 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 these government bodies have recognized the significant due process problems implicit in a statutory provision such as Section 2.5 of the Charter.

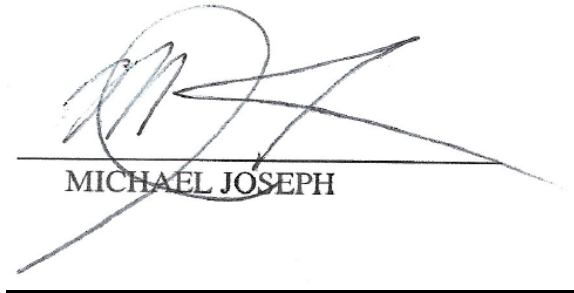
WHEREFORE Vice Mayor Michael Joseph respectfully requests that this Court deny Plaintiff's Emergency Motion for Injunctive Relief for the Removal of Michael Joseph as Commissioner of North Miami Beach, and grant such other relief this Court deems just.

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 1<sup>st</sup> Street, Suite 400  
Miami, Florida 33131  
Tel: 305-503-5054  
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[bbrodsky@bfwlegal.com](mailto:bbrodsky@bfwlegal.com)  
[max@bfwlegal.com](mailto:max@bfwlegal.com)  
[docketing@bfwlegal.com](mailto: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

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**RE:** Charter Section 2.5/Frantz Pierre

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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.<sup>1</sup>**

**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.<sup>2</sup> Of the 12 Commission meetings that Commissioner

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<sup>1</sup> 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.)

<sup>2</sup> 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

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- 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>3</sup> 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)).

<sup>4</sup> 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 (9<sup>th</sup> 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...”.<sup>5</sup>

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.<sup>6</sup> 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

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<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup> 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 Law<sup>8</sup> 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

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<sup>7</sup> See footnote #2 above.

<sup>8</sup> Fla. Stat. sec. 286.011.

for official action to be taken<sup>9</sup>, 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.<sup>10</sup> 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.

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<sup>9</sup> 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.”

<sup>10</sup> 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](mailto:pamela.latimore@citynmb.com)

Florida Association of City Clerks/ President Elect  
[www.Floridaclerks.org](http://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](mailto:beth.spiegel@citynmb.com)>  
**Cc:** Bernard, Andrise <[Andrise.Bernard@citynmb.com](mailto: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](http://www.Floridaclerks.org)

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



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Richard Weiner  
021417.pdf



Russell Lazega  
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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



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Office of the City Clerk

January 09, 2017

Mr. Hector Marrero  
3440 NE 164<sup>th</sup> 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. 19<sup>th</sup> 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

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**Special Commission Meeting Minutes**

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**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. 175<sup>th</sup> St., North Miami Beach, FL.
2. Marilyn Baumoehl - 18635 N.E. 20<sup>th</sup> Ct., North Miami Beach, FL.
3. Muriel Kemp - 1479 N.E. 178<sup>th</sup> St., North Miami Beach, FL.
4. Mubarak Kazan
5. Michele Decayette - 1000 N.E. 151<sup>st</sup> 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