

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

CASE NO: 2023-002633-CA-01

SECTION: CA10

JUDGE: Peter R. Lopez

**Jay R Chernoff**

Plaintiff(s)

vs.

**City of North Miami Beach et al**

Defendant(s)

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

THIS CAUSE came before this Court on “Commissioner Michael Joseph’s Renewed Verified Emergency Motion for Temporary Injunctive Relief,” and the Court being fully advised in the premises, and finding that the interests of justice favor the granting of relief, it is ORDERED as follows:

1. The renewed emergency motion for temporary injunctive relief is GRANTED.
2. The City of North Miami Beach and its City Commission are enjoined from preventing Commissioner Michael Joseph from functioning as a duly elected City of North Miami Beach Commissioner. The City and the Commission are further enjoined from holding a special election to replace Commissioner Joseph pending the disposition of this case. Commissioner Joseph shall be obligated and entitled to all the duties and obligations of the office until further order.
3. The Court finds that there is a substantial likelihood of success on the merits by Commissioner Joseph.

a. First, a quorum of the City of North Miami Beach Commission did not exist during the May 16, 2023 vote on whether Joseph had vacated his position. Only six of the seven members of the City Commission attended the May 16, 2023 Commission meeting. Two of the Commission members, Chernoff and Joseph, recused themselves from the vote because they were disqualified due to their involvement in this case. Thus, only four members voted on the issue of whether Joseph had vacated his Commission seat, with three voting that he did and one voting that he did

not. Section 2.5 of the City Charter provides, in relevant part, that “[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.” When a member of a body is recused or disqualified due to a conflict, such recusal or disqualification is treated as a vacancy. See, e.g., *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (S.C. 1998); *Aurentz v. Planning Bd. of Little Egg Harbor Tp.*, 171 N.J. Super. 135, 141, 408 A.2d 140, 143 (Law. Div. 1979); *Bd. of Cty. Comm'rs of St. Mary's Cty. v. Guyther*, 389 A.2d 1372, 1373 (Md. Ct. Spec. App. 1978); *City of Alamo Heights v. Gerety*, 264 S.W.2d 778, 780 (Tex. Civ. App. 1954). When there is such a vacancy, if the quorum requirement “speaks of the total number of positions that must remain constant,” then a vacancy does not reduce the total number required for a quorum, but, if the requirement is worded in a manner that permits a deduction from the required number for a vacancy in office, then the vacancy does reduce the total number required for a quorum. See *City of Alamo Heights*, 264 S.W.2d at 779. Here, the quorum requirement set forth in Section 2.5 of the Charter sets forth a total number of positions that must remain constant—five. Thus, the recusal/disqualification of two Commission members in this case did not reduce the number of Commission members needed to satisfy the quorum requirement. Due to the lack of a quorum, the May 16, 2023 vote on whether Joseph had vacated his position is VOID and of no effect.

b. Furthermore, even if the quorum requirement had been met, the City Commission does not have the power or authority to vote to expel members from the City Commission, nor does it have the authority to resolve a dispute about whether Commissioners have vacated their offices. The Commission’s power is regulated by the City’s Charter. As Chernoff and the City recognize, a municipal charter is the paramount law of the municipality. See, e.g., *City of Miami Beach v. Fleetwood Hotel, Inc.*, 262 So. 2d 801 (Fla. 1972) (explaining that “the paramount law of a municipality is its charter . . . and gives the municipality all the powers it possesses . . .”). Section 2.5 of the Charter provides, in relevant 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.” Thus, the Charter provides that vacancy is automatic, and there is no indication in Section 2.5 that an alleged vacancy requires, or allows, a vote or any action by the Commission. Likewise, nothing else in the Charter appears to grant the City Commission the power to vote out Commissioners or to resolve a dispute regarding “automatic vacancies” under Section 2.5. In fact, the City, recognizing the automatic nature of a vacancy under Section 2.5, asserts that “[t]he vote at the May 16, 2023 meeting is superfluous in this regard . . . [and] was not required to remove Commissioner Joseph from his seat.” In other words, according to the City, the Commission’s vote did not remove Joseph from office because his removal was automatic. The superfluous vote did not affect whether or not Joseph vacated his Commission seat. It was not within the Commission’s power to vote on the matter. The vote was a nullity.

c. Finally, even if the Commission was authorized to vote on whether Joseph had vacated his office, and even if a quorum were present, its calculation of the timeframe required for Joseph to have vacated his position was contrary to Section 2.5, which requires a failure to attend a meeting for 120 days. The Commission’s calculation took into account a time period during which Joseph did not fail to attend a meeting since no meeting was scheduled or took place during that

time period. As noted, Section 2.5 provides, in relevant 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.” It is undisputed that Joseph attended a Commission meeting on October 18, 2022. In November of 2022, no Commission meeting was held. On December 20, 2022, a meeting was held and Joseph did not attend. He attended the March 20, 2023 Commission meeting. If, as contended by Chernoff and the City, the 120-day period began to run the day after October 18, 2022, the last meeting that Joseph attended, then 120 days would have elapsed and Joseph’s position would have become vacant. However, if the 120-day period began to run on December 20, 2022, the day of the first meeting that Joseph failed to attend, then 120 days did not elapse and his position would not have become vacant. The City Commission, in voting that Joseph vacated his position, necessarily calculated the period using the day after the last meeting that Joseph attended. This contradicts the plain language of Section 2.5 which requires a failure to attend a meeting, as one cannot fail to attend a meeting that does not exist. Moreover, it contradicts the method of calculation previously used by the Commission. In 2018, the Commission that existed at that time determined that another Commissioner, Pierre, had vacated his position for failure to attend a meeting for a 120-day period, based on the recommendation of the City attorney who utilized the day that Commissioner Pierre first failed to attend a regular City Commission meeting to calculate the 120-day period. Thus, the Commission’s calculation of the 120-day period contradicts Section 2.5 and the City’s precedent.

4. Neither the City of North Miami Beach nor its citizens are irreparably harmed by the relief ordered.
  
5. The City of North Miami Beach, its citizens, and Commissioner Joseph will be irreparably harmed without the issuance of emergency relief.
  
6. Commissioner Joseph has no adequate remedy at law.
  
7. The balance of all factors favors Commissioner Joseph.
  
8. The public interest favors the relief ordered.
  
9. This order is without prejudice to any final decision to be entered in this matter.
  
10. Commissioner Joseph is to post a \$1,000.00 bond in due course.

**DONE** and **ORDERED** in Chambers at Miami-Dade County, Florida on this 13th day of June, 2023.

  
2023-002633-CA-01 06-13-2023 1:01 PM

2023-002633-CA-01 06-13-2023 1:01 PM

Hon. Peter R. Lopez

**CIRCUIT COURT JUDGE**

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

**Electronically Served:**

Ana Gitli, aig20@fsu.edu  
Andrise Bernard, andrise.bernard@citynmb.com  
Benedict P Kuehne, Ben.Kuehne@KuehneLaw.com  
Benedict P Kuehne, EFiling@KuehneLaw.com  
Benedict P Kuehne, IAedo@KuehneLaw.com  
Benedict P. Kuehne, ben.kuehne@kuehnelaw.com  
Benjamin Henry Brodsky, bbrodsky@bfwlegal.com  
Benjamin Henry Brodsky, docketing@bfwlegal.com  
David P Reiner II, eservice@reinerslaw.com  
David P Reiner II, efile@reinerslaw.com  
Eunice Sigler, esigler@jud11.flcourts.org  
John R. Herin, Jr., jherin@foxrothschild.com  
John R. Herin, Jr., jpoli@foxrothschild.com  
Leslie Ortiz-Hodges, laortiz-hodges@jud11.flcourts.org  
Max Aaron Eichenblatt, max@bfwlegal.com  
Max Aaron Eichenblatt, eichenblattma@gmail.com  
Max Aaron Eichenblatt, docketing@bfwlegal.com  
Michael A. Pizzi, Jr., mpizzi@pizzilaw.com  
Victor G Sanabria, vsanabria@foxrothschild.com  
Victor G Sanabria, jmiranda@foxrothschild.com  
Vittoria Cira, vittoria.cira@gmail.com

**Physically Served:**