



MEMORANDUM

TO: Hans Ottinot, Esq.
City Attorney, City of North Miami Beach

FROM: Luis E. Suárez, Esq.
Shareholder

RE: North Miami Beach Mayor Residency Requirements

DATE: January 13, 2023

Pursuant to your request, we have analyzed the public allegations and documents suggesting that Mayor Anthony Frances Kenneth DeFillipo II (the “Mayor” or “DeFillipo”) (1) has lived in Davie, Florida, which is outside of the boundaries of the City of North Miami Beach, and (2) voted in an election while maintaining his voter registration at the home where he originally qualified as a candidate for elected office, which he has since sold. His votes occurred after the sale of the home.

Executive Summary

We conclude, for the reasons detailed below, 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 continually maintain a “bona fide” residence in North Miami Beach, an “automatic vacancy” of the office of mayor has occurred by operation of law. It would indeed belie logic to conclude otherwise. “Bona fide” means more than filing a form with the clerk.

Nevertheless, in an abundance of caution, and as discussed further below, consistent with the City’s past precedent, DeFillipo should be invited to a meeting to explain his conduct and to provide information under oath addressing the allegations. Should DeFillipo fail to rebut the reasonable conclusion that he failed and fails to maintain a bona fide residence within North Miami Beach, the City Council should fill the vacant office pending the next election in accordance with Section 7-7(b) of the Code of Ordinances.¹

Additionally, the fact that DeFillipo voted multiple times in North Miami Beach elections (after the sale of the home in North Miami Beach), even though his legal residence at the time was apparently in Davie, may be deemed a violation of Florida’s election laws. If such allegations of improper voting are proven and shown to be willful, DeFillipo could face charges or a conviction, and ultimately be removed from office by the Governor.

¹ The Code of Ordinances uses the term “City Council” when describing the authority of the City Commission to fill such a vacancy. *See* N. Miami Beach., Fla., Code of Ordinances ch. 7-7(b); City Charter, Art. I, sec. 1.2 (“The form of government of the City of North Miami Beach shall be that of commission-manager, the powers of which City shall be exercised by a City Commission and a City Manager, and other officers, as hereinafter set forth.”).

I. FACTUAL BACKGROUND²

- A. DeFillipo was first elected to the office of Mayor of North Miami Beach on **November 6, 2018**, and qualified for that office by listing as his primary residence a house located at 1458 NE 177th Street, North Miami Beach, FL 33162 (the “Former North Miami Beach Home”).³
- B. DeFillipo was reelected to office on **November 3, 2020**.⁴
- C. On **February 22, 2021**, DeFillipo purchased a home located at 7531 SW 26th Ct., Davie, FL 33314 (the “First Davie Property”).⁵ This property is outside the boundaries of the City of North Miami Beach.
- D. Later that year, on **December 21, 2021**, DeFillipo filed a change of address form with the North Miami Beach City Clerk’s Office to reflect that his new address was located at 3601 NE 170 Street, North Miami Beach, FL 33160

² The following facts are drawn from publicly available sources. Heise Suarez Melville, P.A. (“HSM”) has not independently verified each reported fact.

³ See Anthony Frances Kenneth De Fillipo Voter Registration (2022), available at https://www.dropbox.com/s/gh3y7mc2n7q1cqq/DeFillipo_Voter_Registration_and_History.pdf.

⁴ See 2020 Election Results, Miami-Dade County General Election (2020), <https://enr.electionsfl.org/DAD/2779/Summary/>.

⁵ See 2021 Davie Warranty Deed (Feb. 22, 2021), available at https://www.dropbox.com/s/og8qedr6sbcjci1/7531_February_Deed.pdf.

(the “North Miami Beach Condominium Building”) at Unit 406 (“North Miami Beach Condominium”).⁶

E. Unit 406 is a one-bedroom, 830-square-foot condominium in the Eastern Shores neighborhood.⁷ DeFillipo has a wife and two children.

F. On **December 27, 2021**, DeFillipo sold the Former North Miami Beach Home.⁸ Recall, the Former North Miami Beach Home was used to register and qualify for public office.⁹

G. On **April 15, 2022**, DeFillipo listed the First Davie Property for sale. The photos included 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.¹⁰

⁶ See 2021 DeFillipo Email to City Clerk, available at <https://www.dropbox.com/s/yeld0gsm9z5hfrj/DeFillipo%20Email%20to%20Clerk.pdf>.

⁷ See Listing Report for Unit 406, Zillow (2023), available at https://www.zillow.com/homedetails/3601-NE-170th-St-APT-406-North-Miami-Beach-FL-33160/43990051_zpid/.

⁸ See North Miami Warranty Deed (Dec. 27, 2021), available at https://www.dropbox.com/s/5t9lgbk68cxm7r7/1458_Warranty_Deed.pdf.

⁹ See Anthony Frances Kenneth Sworn Affidavit (2020), available at <https://www.dropbox.com/s/uolho4bnurviona/DeFillipo%20Sworn%20Affidavit.pdf>.

¹⁰ See 2022 First Davie Home Listing Photos, available at <https://www.dropbox.com/scl/fo/du92jg44oflt8q3ha4mlq/h?dl=0&rlkey=wzcw54dws0mr451nz2upkbnr1>.

- H. DeFillipo ultimately sold the First Davie Property on **June 25, 2022**.¹¹
- I. DeFillipo thus owned the First Davie Property from **February 22, 2021** to **June 25, 2022**.
- J. On **June 30, 2022**, DeFillipo filed his 2021 Form 1 Financial Disclosure with the City Clerk.¹² In the Financial Disclosure, DeFillipo listed his permanent address as the North Miami Beach Condominium.
- K. Part “C” of DeFillipo’s 2021 Form 1 Financial Disclosure form requires a reporting person to disclose all real property owned. DeFillipo listed in this form that he owned Units 406 and 409 in the North Miami Beach Condominium Building.¹³
- L. On **July 11, 2022**, DeFillipo purchased a house located at 1985 E. Sierra Ranch Drive, Davie, FL 33324 (the “Second Davie Home”).¹⁴ The Second Davie Home is outside the City of North Miami Beach. Upon information

¹¹ See 2022 Davie Warranty Deed (Jun. 25, 2022), available at https://www.dropbox.com/s/gdulre3t89ctmbr/7531_June_2022_Deed.pdf.

¹² See Statement of Financial Interests, (Jun. 30, 2022), available at https://www.dropbox.com/s/rbxrl2obqqecl1k/DeFillipo_Statement_of_Financial_Interests.pdf.

¹³ *Id.*

¹⁴ See 2022 Davie Warranty Deed (Jul. 11, 2022), available at https://www.dropbox.com/s/godrtdsy9qguflv/1985_Warranty_Deed.pdf.

and belief, the gated community where DeFillipo is allegedly residing includes multi-million-dollar homes with 5-6 bedrooms.¹⁵

M. According to an investigation by Countywide Investigations, surveillance of the neighborhood entrance to the Second Davie Home shows that DeFillipo routinely entered the gated community at night and left in the morning.¹⁶ This investigation showed DeFillipo's name is registered in the access box to the Second Davie Home.¹⁷

N. Miami-Dade County's "Voting History Report" for DeFillipo indicates that on **August 23, 2022, November 8, 2022,** and **November 22, 2022,** DeFillipo voted in North Miami Beach elections.¹⁸

O. A **November 30, 2022,** internet screenshot of DeFillipo's voter registration information listed his address as that of his Former North Miami Beach

¹⁵ See Lennar Sierra Ranches, <https://www.lennar.com/new-homes/florida/ft-lauderdale/davie/sierra-ranches>

¹⁶ See Countywide Investigations Report (Dec. 14, 2022), [https://www.dropbox.com/s/h4n6xczou8o3k7k/Countywide%20Investigation s.pdf](https://www.dropbox.com/s/h4n6xczou8o3k7k/Countywide%20Investigation%20Report.pdf).

¹⁷ Joe Gorchow, *North Miami Beach Mayor Anthony DeFillipo Faces Allegations He Does Not Live in City He Represents*, CBS Miami (Jan. 5, 2023), <https://www.cbsnews.com/miami/news/north-miami-beach-mayor-anthony-defillipo-faces-allegations-he-does-not-live-in-city-he-represents/>.

¹⁸ See DeFillipo Voting History Report (2022), available at [https://www.dropbox.com/s/gh3y7mc2n7q1cqq/DeFillipo Voter Registration and History.pdf](https://www.dropbox.com/s/gh3y7mc2n7q1cqq/DeFillipo_Voter_Registration_and_History.pdf).

Home despite his sale of that property almost a year earlier, on December 27, 2021.¹⁹

¹⁹ *Id.*

II. DISCUSSION

A. To hold and maintain the elected position of Mayor in the City of North Miami Beach, a person must continuously reside within the boundaries of the City to the exclusion of all other places.

The City of North Miami Beach (the “City”) is a municipality. “[T]he paramount law of a municipality is its charter, (just as the State Constitution is the charter of the State of Florida,) and gives the municipality all the powers it possesses, unless other statutes are applicable thereto, has not been altered or changed.” *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801, 803 (Fla. 1972). As relevant here, Article IV, Section 4.3 of the City Charter sets forth the qualification requirements for an individual to hold elected office as mayor:

Each candidate, at the time of qualifying with the Clerk, **must have continuously resided in the City of North Miami Beach for at least one (1) full year**, shall at the time of qualifying and at the time of election be a qualified elector of the City of North Miami Beach, and shall not, within five years next preceding the date of his/her qualification, have been convicted in this or any other state of any offense involving moral turpitude.

N. Miami Beach Charter, Article IV §4.3 (emphasis added).

Section 7-5 of the City’s Code of Ordinances indeed expounds upon the residency requirement for elected officials, stating that, “in order to remain in office during the term for which they were elected, [elected officials] **must always be and remain bona fide residents of the City of North Miami Beach.**” N. Miami Beach., Fla., Code of Ordinances ch. 7-5(b)(emphasis added). The term “bona fide resident” is defined in the City Charter as “a permanent,

fixed place of domicile within the City of North Miami Beach, **to the exclusion of all other places.**” *Id.* 7-5(c) (emphasis added).

Although the City Charter and its ordinances do not set forth any test used to prove one’s bona fide residency within the boundaries of North Miami Beach, throughout Florida law, the term “bona fide resident” is likewise used to express a permanent location of domicile at the exclusion of other places. See Fla. Stat. § 222.17(1)–(3) (requiring that any person who wishes to manifest and evidence domicile in Florida sign a sworn statement that he or she is a “bona fide resident” of the state and that “he or she resides in and maintains a place of abode in that county which he or she recognizes and intends to maintain as his or her permanent home”); Fla. Stat. § 196.012(17) (“Permanent residence’ means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning.”).

Establishing a “permanent, fixed place of domicile” in Florida is a fact-intensive determination. See *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 369 (Fla. 1955) (“We also hold that establishment of one’s residence will usually depend on a variety of acts or declarations all of which must be weighed in the particular case as evidence would be weighed upon any other subject.”); *Perez v. Marti*, 770 So. 2d 284, 289 (Fla. 3d DCA 2000) (“A legal residence is the place where a person has a fixed abode with the present intention of making it their permanent home.”). Generally, factors to guide this

inquiry include a person’s sworn statement of intent to remain in a fixed place of domicile, proof of voter registration matching the address of the physical location, a Florida driver’s license, income tax returns, bank statements, and proof of payment for utilities at the property for which permanent residency is being claimed. See Fla. Stat. §§ 169.015(1)–(10), 222.17(1)–(3).

B. Failure to continually reside in the City of North Miami Beach results in an automatic vacancy of the office of Mayor.

Florida law “distinguishes between an elected official’s eligibility to hold office and the qualifications required for a candidate to run for office.” *Shamburger v. Washington*, 332 So. 3d 1071, 1073 (Fla. 1st DCA 2021); see also *Burns v. Tondreau*, 139 So. 3d 481, 485 (Fla. 3d DCA 2014) (explaining that “qualification issues cannot be raised after an election has been held”); *Leon v. Carollo*, 246 So. 3d 490, 496 (Fla. 3d DCA 2018) (“[C]ourts have no inherent power to determine election contests nor do courts have jurisdiction to inquire into a person’s qualification to run for office after that person has been duly elected.”).

In this case, the City Charter is clear that the requirement to be a “bona fide resident” is a legal requirement, not just to initially qualify to run for office, but to hold and maintain the position as mayor after the election has ended. See N. Miami Beach., Fla., Code of Ordinances ch. 7-5(b) (“[i]n order to remain in office during the term for which they were elected, [elected officials] must always be and remain bona fide residents of the City of North Miami Beach”).

Section 7-5(d) sets forth the procedure for when an elected official changes residency outside the boundaries of the City: “[s]hould 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.* 7-5(d)(emphasis added). As in other Florida authorities, the City’s residency requirement to hold office is continuous, and failure to maintain the required residency throughout the term results in vacancy in office. *See e.g.*, Fla. Const., Art. X, § 3 (“Vacancy in office shall occur upon . . . failure to maintain the residence required when elected or appointed”); Fla. Stat. § 114.01(l)(g) (“[A] vacancy in office shall occur . . . upon the officer’s failure to maintain the residence as required of him or her by law.”).

C. A reasonable person should conclude that DeFillipo’s failure to remain a bona fide resident of the City of North Miami Beach has resulted in an automatic vacancy of the office of mayor.

Based on publicly available information, on December 27, 2021, DeFillipo changed his bona fide residence from the address at which he originally qualified to hold office (the Former North Miami Beach home) to the First Davie Home, which he had purchased on February 22, 2021, and then later he changed his bona fide residence to the Second Davie Home on July 11, 2022. Both of these homes fall outside the boundaries of North Miami Beach. Accordingly, by operation of law, DeFillipo’s failure to abide by Section 7-5(b) of the Code of Ordinances to “always be and remain [a] bona fide resident[] of

the City of North Miami Beach” to the exclusion of other places results in an automatic vacancy of the office. See N. Miami Beach., Fla., Code of Ordinances ch. 7-5(d). The following facts are illustrative to show that a reasonable person should conclude that DeFillipo has failed to maintain a bona fide residence in North Miami Beach.

According to publicly available sources, on December 27, 2021, DeFillipo sold his Former North Miami Beach Home, a location where DeFillipo previously lived for 14 years, and the address used to qualify for public office. Upon the sale of that primary residence, DeFillipo was required to establish a new “permanent, fixed place of domicile within the City of North Miami Beach, to the exclusion of all other places” to avoid an automatic vacancy in his elected office. N. Miami Beach., Fla., Code of Ordinances ch. 7-5(c). It appears that one week before the sale of the Former North Miami Beach Home, on December 21, 2021, DeFillipo updated his address with the City Clerk to reflect his current, primary residence as the North Miami Beach Condominium building in Unit 406. Given the above, it is unreasonable, however, to accept that DeFillipo and his family have made this one-bedroom, 830-square-foot condo their permanent residence to the exclusion of other places.

In fact, publicly available data shows the opposite: (1) DeFillipo bought the First Davie Home in February 2021; (2) DeFillipo and his family lived in that home with their personal items, including DeFillipo’s wedding pictures, clothing, and storage; (3) DeFillipo sold the First Davie Home in June 2022; and (4)

DeFillipo then purchased the Second Davie Home in July 2022. The publicly available report from Countywide Investigations shows DeFillipo routinely entered the gated community for the Second Davie Home at night and left each morning. These facts should lead a reasonable person to conclude that DeFillipo has been living outside of the boundaries of North Miami Beach since at least December 27, 2021, when he sold his Former North Miami Beach Home.

D. The consequence of failing to remain a bona fide resident is the “automatic” vacancy of the office.

Accordingly, by operation of law, DeFillipo’s apparent failure to abide by Section 7-5(b) of the Code of Ordinances to “always be and remain [a] bona fide resident[] of the City of North Miami Beach” has resulted in an “automatic” vacancy of the office of Mayor. See N. Miami Beach., Fla., Code of Ordinances ch. 7-5(d). The term “automatic” is not defined in this context.

But in a recent controversy involving a vacancy on the City Council, Mayor DeFillipo, then serving as a Commissioner, indeed affirmed that the City Council may unilaterally declare a vacancy in office without the need for court intervention.

On January 25, 2018, outside counsel for the City, Jean Olin, Esq., prepared a memorandum concluding that Commissioner Frantz Pierre had automatically vacated his office, by operation of law, due to his failure to

continually attend in-person meetings of the City Council.²⁰ On February 5, 2018, the City of North Miami Beach held a Special Commission Meeting to discuss Pierre's absences.²¹

At the meeting, the City Council accepted the Olin Memorandum's conclusion that Pierre's office had been automatically deemed vacant by operation of law. 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."²² 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."²³ 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

²⁰ See Olin Memorandum (Jan. 25, 2018), available at <https://www.dropbox.com/s/lw8ipu8kwpyb19u/Olin%20Memorandum.pdf>.

²¹ See Special Commission Meeting Minutes (Feb. 5, 2018), available at <https://www.dropbox.com/s/1j40m8gdz13it6t/Special%20Meeting%20Minutes.pdf>.

²² *Id.* at 4.

²³ *Id.* at 4–5.

qualifications to the Office of the City Clerk. The facts of the present circumstances could lead to the same outcome.²⁴

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. This would appear to be an objectively reasonable interpretation of the word “automatic” in this context.

It is recommended that, to rebut the reasonable conclusion that DeFillipo’s bona fide residence changed and that an automatic vacancy has been created, the Council, based on the *Pierre* precedent should request, among other things, the following documents be produced by DeFillipo before a meeting is held²⁵:

1. A wet-ink original affidavit, signed under penalty of perjury, providing the City of North Miami Beach Council with the following information:

²⁴ Pierre sued the City and obtained a temporary injunction to prevent his removal, but his case was ultimately stayed after an arrest warrant was issued against him and Governor Rick Scott suspended Pierre from the City Council on July 25, 2018. *See Frantz Pierre v. Pamela Latimore et al.*, 2018-005155-CA-01, DE 70 (Fla. 11th Cir. Ct. Aug. 14, 2018).

²⁵ This is not an exhaustive list.

- a. An updated permanent address of legal residence in the City of North Miami Beach;
 - b. An explanation providing the change in permanent residence from the Former North Miami Beach Home to the North Miami Beach Condominium;
 - c. An explanation as to the nature of the two Davie homes and whether they were ever bona fide residences;
 - d. An explanation of the nature of the North Miami Beach Condominium that was filed with the clerk's office.
2. An updated voter registration card reflecting the same address provided in the affidavit.
 3. A deed or lease agreement for the updated permanent residence.
 4. Any tax documents that purport to show the updated bona fide residence as the North Miami Beach Condominium.
 5. Any utility bills and proof of payment for the North Miami Beach Condominium.
 6. Any Homestead exemption forms for the North Miami Beach Condominium and for the two Davie properties.
 7. A Florida driver's license showing address.
 8. Any other document to support a conclusion that the North Miami Beach Condominium was (and is) DeFillipo's bona fide residence.

E. Irrespective of the Council's action, the Council or any citizen of North Miami Beach could bring an action in court in light of DeFillipo's action.

The City Charter contains provisions that empower the citizenry of the City of North Miami Beach to potentially challenge in court DeFillipo's apparent failure to provide truthful information regarding his permanent residence. The Citizens' Bill of Rights states, in pertinent part:

Truth in government. No municipal official or employee shall knowingly furnish false information on any public matter, nor

knowingly omit significant facts when giving requested information to members of the public.

N. Miami Beach, Fla., Charter, Article I, Section 1(A)(2).

To enforce its provisions, the Citizens' Bill of Rights provides that, as a remedy for any violation, "[i]n any suit by a citizen alleging a violation of this Bill of Rights filed in the Miami-Dade County circuit court pursuant to its general equity jurisdiction, the plaintiff, if successful, shall be entitled to recover costs as fixed by the court." *Id.* Section 1(C). Further, the Citizens' Bill of Rights states that "[a]ny public official or employee who is found by the court to have willfully violated this article shall forthwith forfeit his office or employment." *Id.* Based on the public allegations against DeFillipo, a citizen of North Miami Beach (including a Commissioner in their individual capacity) could reasonably file an action in the Miami-Dade County circuit court and allege violations of the Citizens' Bill of Rights on the basis that DeFillipo has failed to furnish truthful information to the public about his bona fide residence. *See* N. Miami Beach, Fla. Citizens' Bill of Rights, Subsection B (providing that rights afforded to citizens are "large and pervasive powers"); *see also* *Cuesta v. City of Miami*, No. 2020-006298-CA-01, 2020 WL 5051464, at *9 (Fla. 11th Cir. Ct. Aug. 24, 2020) (finding that the City of Miami's similar Citizens' Bill of Rights empowers the citizenry with standing to enforce the City Charter).

F. Knowingly submitting false voter registration information can lead to removal from elected office, but factual issues preclude a finding of wrongful intent.

Florida law requires that to register to vote in a particular county, a voter must first be a “legal resident” of that county. See Fla. Stat. § 97.041(l)(a)(4). Although legal residency is not defined in Florida law, several courts have attempted to define the term. “The rule is well settled that the terms ‘residence,’ ‘residing,’ or equivalent terms, when used in statutes, or actions, or suits relating to taxation, right of suffrage, divorce, limitations of actions, and the like, are used in the sense of ‘legal residence’; that is to say, the place of domicile or permanent abode, as distinguished from temporary residence.” *Herron v. Passailaigue*, 92 Fla. 818, 827 (1926). “A person may have several temporary local residences but can have only one legal residence.” *Walker v. Harris*, 398 So. 2d 955, 958 (Fla. 4th DCA 1981). “A legal residence, or domicile, is the place where a person has fixed an abode with the present intention of making it their permanent home.” *Id.*; *Perez*, 770 So. 2d at 289 (“A legal residence is the place where a person has a fixed abode with the present intention of making it their permanent home.”).

Although Florida law generally allows individuals who are *temporarily* living outside the county boundaries,²⁶ but who intend to remain as residents to

²⁶ “While not an exhaustive list, the exception encompasses scenarios such as voters who are living outside the county because of school, employment, health care, or similar temporary situations. The essence of the exception is the

vote in that county’s elections, a person’s “mere interest in and a connection to a county are insufficient to allow those who reside outside a county to maintain a voice in its elections.” *Kinney v. Putnam Cnty. Canvassing Bd. by & through Harris*, 253 So. 3d 1254, 1257 (Fla. 5th DCA 2018) (citing Fla. Stat. § 101.45).

In this case, it is alleged that DeFillipo voted multiple times in North Miami Beach elections while maintaining a voter registration that listed a prior address, even though the home located at that address had been sold nearly a year prior to the election. Pursuant to Fla. Stat. § 104.011(2), “[a] person who willfully submits any false voter registration information commits a felony of the third degree.” Similarly, Fla. Stat. § 104.15 imposes a third-degree felony on anyone who, “knowing he or she is not a qualified elector, willfully votes at any election.” To be held liable under these statutes, the law requires that willful intent be proved. *See Jones v. Governor of Fla.*, 975 F.3d 1016, 1047 (11th Cir. 2020) (“This clear standard, which includes a scienter requirement, provides fair notice to prospective voters.”). Based on the limited evidence available, it is wholly premature to conclude whether DeFillipo’s failure to update his voter registration was done “willfully” to commit election fraud.

If, however, sufficient evidence existed that DeFillipo willfully committed a violation of the election laws—such that it led to a charge or a conviction—the consequences of that violation could ultimately lead to his removal by the

non-permanent nature of the situation that causes a voter’s absence from the county.” *Kinney*, 253 So. 3d at 1257.

Governor. Pursuant to Fla. Stat. § 112.51(2), “[w]henever any elected or appointed municipal official is arrested for a felony or for a misdemeanor related to the duties of office or is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor, the Governor has the power to suspend such municipal official from office.” According to the statute, such a suspension would create “a temporary vacancy in such office during the suspension.” Fla. Stat. § 112.51(3). Similarly, the North Miami Beach Code of Ordinances states that a vacancy in the elected offices of the City “shall be filled by the City Council pending the next election, at which an election to fill the vacancy shall be held for the unexpired term.” N. Miami Beach., Fla., Code of Ordinances ch. 7-7(b).

III. CONCLUSION

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 continually maintain a “bona fide” residence in North Miami Beach, an “automatic vacancy” of the office of mayor has occurred by operation of law. It would indeed belie logic to conclude otherwise.

Nevertheless, in an abundance of caution and as discussed above, consistent with the City’s past precedent in *Pierre*, DeFillipo should be permitted to explain his conduct and to provide sworn information addressing the allegations. Should DeFillipo fail to rebut the reasonable conclusion that he

failed and fails to maintain a bona fide residence within North Miami Beach, the City Council should fill the vacant office pending the next election in accordance with Section 7-7(b) of the Code of Ordinances.

Additionally, although knowingly submitting false voter registration information can lead to removal from elected office, factual issues regarding DeFillipo's voting history preclude a definitive finding of wrongful intent at this juncture. If, however, the allegations of improper voting are proven and shown to be willful, DeFillipo could face charges or a conviction, and ultimately be removed from office by the Governor. If such a removal occurred, the City Council would be authorized to fill the vacancy.

Exhibit “A”

From: [Bernard, Andrise](#)
To: [Rios, Francisco](#); [Bejel, Andrew D.](#)
Cc: [Defillipo, Anthony](#)
Subject: Change of Address
Date: Tuesday, December 21, 2021 2:38:10 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.jpg](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Good Afternoon,

Pursuant to the request of Mayor Anthony F. DeFillipo, I am sending this email to change his records to reflect his new address which is:

3601 NE 170 Street, Suite 406
North Miami Beach, FL 33160

Please advise if you require additional information.

Sincerely,



Andrise Bernard | CMC, City Clerk
City of North Miami Beach
Office of the City Clerk
T (305) 787-6001, ext. 2000
F (305) 787-6026

17011 NE 19th Avenue, North Miami Beach, FL 33162 | www.citynmb.com | City NMB on Social Media:

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.

AFFIDAVIT OF CANDIDATE
CITY OF NORTH MIAMI BEACH, FLORIDA

CITY CLERK'S OFFICE
20 AUG 17 AM 10:28

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)
CITY OF NORTH MIAMI BEACH)

ANTHONY F. DeFillipo (hereinafter "affiant"), being first duly sworn, deposes and says:

1. My name is Anthony F. DeFillipo.

2. For those candidates seeking the office of Mayor, please check the appropriate subsection (a) below. Those candidates seeking the office of Councilperson please check and fill in the blank in subsection (b) below:

(a) I am offering myself as a candidate for the office of Mayor of the City of North Miami Beach, Florida. If elected, I fully understand that I must maintain an actual and real residence within the City of North Miami Beach for the duration of my term of office.

(b) I am offering myself as a candidate of the office of Councilperson in Group Number ___ of the City of North Miami Beach, Florida. If elected, I fully understand that I must maintain an actual and real residence within the city for the duration of my term of office.

3. I have resided in the City of North Miami Beach, Florida for a minimum of one year before qualifying if applying for Mayor, and one year before qualifying for City Council, and I am a registered voter and a duly qualified elector of the City of North Miami Beach, Florida, presently registered to vote in precinct No. 115.

I presently reside at the following address (must include zip code):

1458 NE. 177 ST North Miami Beach, FL 33162
which is my legal address, and I have resided continually at said address from the MAY day of 2007 to the present.

4. Immediately prior to residing at the above-stated address, I have resided at the herein below listed addresses for the cited periods of time (list herein below all addresses at which you have resided for the past five years, as well as the length of time at each address):

Prior Addresses

For the Period of

N / A

5. In addition to the residence that I have listed as my present address, I also reside at the following listed addresses on a temporary basis as a secondary domicile or domiciles:

N/A

6. Affiant's spouse resides at the following address: (must include city, state and zip code)

1458 NE. 177 St. North Miami Beach, FL 33162

Exhibit “B”



City of North Miami Beach Memorandum

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

TO: Honorable Mayor George Vallejo
Members of the City Commission

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

FROM: Jose Smith, City Attorney

DATE: January 25, 2018

RE: Charter Section 2.5/Frantz Pierre

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

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

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

JS/mmd

Enclosures

MEMO

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

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

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

I. FACTUAL BACKGROUND.

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

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

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

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

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

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

II. MEMORANDUM OF LAW.

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

A. City Charter Section 2.5 Controls.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to the absenteeism provisions of Charter section 2.5:

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

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

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

* * *

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

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

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

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

⁷ See footnote #2 above.

⁸ Fla. Stat. sec. 286.011.

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

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

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

III. CONCLUSION.

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

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

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

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

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

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

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

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



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

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

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

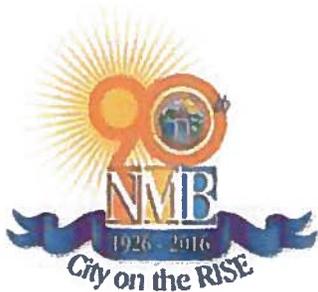
Mayor Vallejo – Appointee Jerrat Gross- resignation
Commissioner Spiegel – Appointee Hector Marrero- removal due to absences.

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

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



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



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



Richard Weiner
021417.pdf



Russell Lazega
020117.pdf



Jose Ramos
081216.pdf



Kristina Wilson
110315.pdf



Vladimir A
Bugera...15.pdf

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

PL

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

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



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



Office of the City Clerk

January 09, 2017

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

Dear Mr. Marrero:

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

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

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

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

Sincerely,



Pamela L. Latimord, CMC
City Clerk

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

Enclosures

Exhibit “C”



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

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

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

Special Commission Meeting Minutes

ROLL CALL OF THE CITY OFFICIALS

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

PLEDGE OF ALLEGIANCE was led by the Mayor and Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

City Attorney Jose Smith: No.

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

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

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

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

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

City Manager Ana M. Garcia: No.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MOTION PASSED 5-1 with Commissioner DeFillipo opposed.

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

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

ADJOURNMENT

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

ATTEST:

(SEAL)



Pamela L. Latimore, CMC, City Clerk

