

CITY OF FORT PIERCE, FLORIDA

**Semifinalist Candidates
for**

City Attorney

Progress Report

September 2021



**SLAVIN MANAGEMENT
CONSULTANTS**

SLAVIN MANAGEMENT CONSULTANTS

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SLAVIN MANAGEMENT
CONSULTANTS

September 7, 2021

Mayor Linda Hudson
and Members of the City Commission
City of Fort Pierce
100 North U.S. 1
Fort Pierce, Florida 34950

Re: Progress Report — City Attorney Search

Dear Mayor Hudson and Members of the City Commission:

Slavin Management Consultants has conducted an extensive search for the next City Attorney of Fort Pierce. Although our recruitment efforts were national, our efforts were focused on finding qualified Florida licensed governmental attorneys. We received fourteen (14) responses. We have now carefully reviewed these resumes and determined that six of the applicants closely meet the City Commission's established criteria. We then solicited additional information from these individuals. This report contains summary background information on six (6) semifinalists candidates. The group includes some excellent prospects for City Commission consideration. We are presenting them to you for your consideration, comments, ranking and further guidance.

Our objective for our upcoming meeting is for the Mayor and City Commission members to evaluate the candidates and rank them in individual preference order. This process should determine which candidates are of most interest to the City. It should also provide backups in case prospects either drop out or fail to meet background standards.

This report contains the recruitment profile which includes the recruitment criteria established by the City Commission. Also included is the supplemental questionnaire which candidates completed and a matrix that compares each candidate's background to important recruitment criteria. For each semifinalist candidate, we have included a summary resume, a cover letter, a full resume, his or her completed supplemental questionnaire and samples of legal opinions prepared by the candidate. Finally, we have included ranking and tabulation forms for your use.

We are looking forward to discussing these candidates with you.

Cordially,

SLAVIN MANAGEMENT CONSULTANTS

Robert E. Slavin and David Krings

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The City of Fort Pierce, Florida

Invites your interest in the position of

CITY ATTORNEY



The Position

The City Attorney is, pursuant to the City Charter, legal advisor to and counselor for the City and its officers in matters relating to their official duties. The mission of the Office of the City Attorney is to safeguard the legal, ethical, and financial integrity of the City of Fort Pierce. The City Attorney represents the City before all levels of state and federal courts. The Office of the City Attorney reviews all City contracts and agreements for approval as to legal form and correctness.

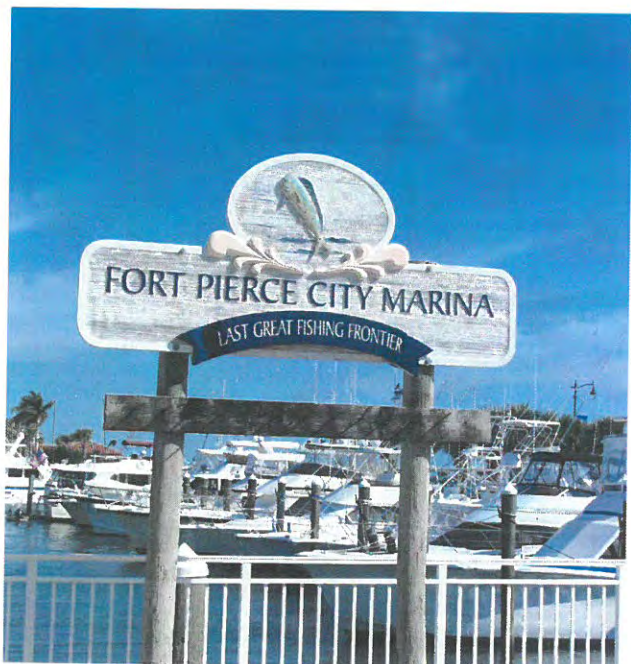
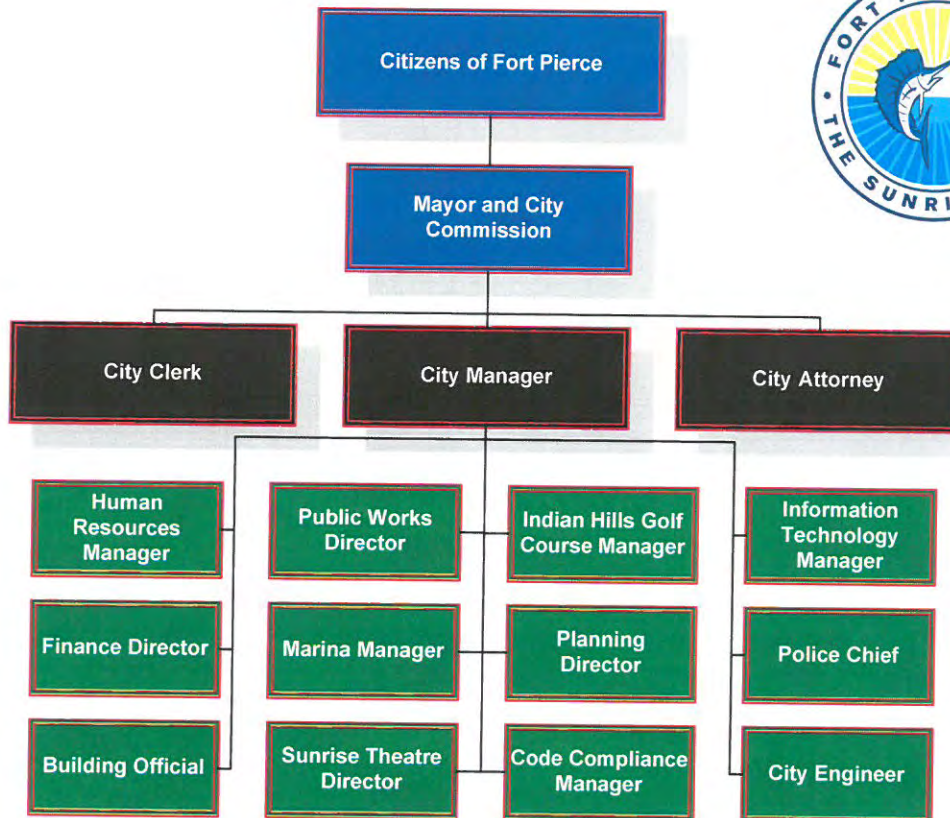
The position is one of three "Charter Officers" appointed by and directly reporting to the Mayor and the four City Commissioners - the City Manager, City Attorney, and City Clerk. The City operates under a Commission/Manager organizational structure with daily operations entrusted to the City Manager. Requests for legal advice from departments are routed through the City Manager's office.

The Mayor is elected at large to a four-year term with membership on the Commission. Four Commissioners are elected to overlapping terms from two two-member districts. The offices of City Commissioner and Mayor are elected on a nonpartisan basis.

Three positions are budgeted for the City Attorney's Office with a total budget of \$524,018 out of a total City General Fund budget of \$43,323,874. The City Attorney has the discretion to delegate legal matters to private attorneys as appropriate.

City of Fort Pierce, Florida

Organizational Chart



FORT PIERCE CITY COMMISSION	
Linda Hudson	Mayor
Rufus J. Alexander III	District I
Curtis Johnson, Jr	District I
Jeremiah Johnson	District II
Thomas K. Perona	District II

City Attorney Office Mission Statement

The mission of the Office of the City Attorney is to safeguard the legal, ethical, and financial integrity of the City of Fort Pierce. This is accomplished by offering legal services to the City Commission, Officials, and several Boards in a manner consistent with the City's Charter, Code of Ordinances, and the laws of the State of Florida and the United States, in a manner meeting the highest standards of professional diligence and ethics.



The City

Fort Pierce has retained much of the charm of the fishing village that it was when incorporated in 1901 as it evolved to the highly diverse community found in larger urban areas today. The City is the county seat of St. Lucie County, Florida. It is known as the "Sunrise City" and is located on Florida's Treasure Coast. The Treasure Coast commemorates the sinking of a recently discovered Spanish fleet in 1715 to distinguish the area from other parts of Florida. The natural beauty of the City is evident to even the casual visitor. The City is located on the Indian River Lagoon with easy access to the Atlantic. Fort Pierce is still known for its exceptional fishing, beautiful sand beaches, and outdoor activities.

The City encompasses approximately 31 square miles and is home for a diverse population of approximately 41,600 residents. The US Census estimates that 33.55% of the population is white alone, not Hispanic or Latino, 41.4% black or African American alone, and 22.8% Hispanic or Latino. The City population is also diverse economically with an estimated household median income of \$35,198 and 29.4% of the population is estimated to be "in poverty."

The Commission, community, and Police Department have combined efforts to keep the Fort Pierce a place where families and businesses can thrive. The National Council for Home Safety and Security ranked the City as one of the 100 safest cities in Florida.

The City population is growing. Efforts are being made to maintain the historic, family friendly ambiance of a beach community while encouraging economic growth.

The cost of living in Fort Pierce compares well to other areas of south Florida and the US generally. According to the "Best Cities" survey, the overall cost of living in Fort Pierce is rated

87.6 on a 100-point scale. The cost of housing is particularly noteworthy as it is listed at 66.7 on the same scale. It should also be understood that there is considerable variation in housing costs throughout the City.

A wide range of K-12 school options are available for Fort Pierce residents. Public high schools in the City include Fort Pierce Central High School, Fort Pierce Westwood Academy: The WEST Prep Magnet and Lincoln Park Academy. For the 2021 school year, there are 12 private schools serving 3,202 students in Fort Pierce. Private schools include John Carroll Catholic High School and Faith Baptist School (Treasure Coast Baptist Academy). Private middle schools inside City limits include Saint Andrew's Academy and Saint Anastasia Middle School.

Postsecondary schools include the Florida Atlantic Harbor Branch Oceanographic Institution, the Indian River State College, the Florida State University Regional Medical School, the University of Florida Indian River Research and Education Center, and the Bethune Cookman satellite campus.

Low Crime

The City's aggressive policing initiatives, strategies, and community engagement, have resulted in a significant and continuing pattern of crime reduction. In fact, over the last 5 years, there has been a 20.8% decrease in violent crime, a 39.2% decrease in property crime, and a 36% decrease in overall Part 1 UCR crime. Fort Pierce's steadily declining crime rate has made the City a safer place to live, work and play. According to the National Council for Home Safety and Security (Alarms.org) and Safewise.com, Fort Pierce is among the top 100 safest cities in Florida, ranking 61 and 99 respectively.



The Climate

Fort Pierce has a humid subtropical climate, with hot, humid summers and warm, drier winters. Summer temperatures average in the low 90s while winter brings temperatures in the 70s. Approximately 51 total inches of rain fall annually during 133 days with rain. Tropical storms and hurricanes are possible in the region but their occurrence in Fort Pierce have historically been infrequent and without substantial property damage.

The Economy

Much of the Fort Pierce employment is currently in the government and service industries.

The easy access to the Florida Turnpike, Interstate 95, the Treasure Coast International Airport, the Port of Fort Pierce, and developable properties with the City and within annexable areas offer continued opportunities for a growing economy.

More information about Fort Pierce is available on the web at: www.cityoffortpierce.com



Issues

The Commissioners do not see any one issue of overriding importance to the City. However, several issues are percolating that will likely require prompt attention:

- When the 2020 census data is available, redistricting will be required. In addition to assuring the redistricting process is done lawfully, consideration will likely be given to changing to a system which is composed of four single member commission districts along with the elected at large mayor.
- The Commissioners are currently considering an ordinance dealing with short-term rentals that may be adopted prior to the hiring of a City Attorney. However, there likely will be issues with the implementation of the ordinance.
- Water and wastewater operations are in an area of the City with prime development potential. The operations are nearing the end of their useful life and a relocation is anticipated. Property acquisition and development contracts will require significant legal attention. (Water, wastewater, electricity, natural gas, and internet services are provided through the Fort Pierce Utilities Authority (FPUA). The Authority is a separate governmental unit with a Board composed of the City Mayor and four Commission appointed members. 6% of its revenue is forwarded to the City. The Authority has its separate legal counsel.
- City expansion through annexation and the disposal of surplus City-owned property continues to be a probability with required legal guidance.
- Development agreements will continue to be negotiated and need to be enforced as businesses are attracted to the business climate and quality of life available in the Fort Pierce area.
- Effort is needed to continue the update the City Code of Ordinances.
- Other issues are common to any City Attorney's Office. The next City Attorney should expect to be involved with development/redevelopment, code enforcement, contracts, labor relations and negotiations, law enforcement, etc.

The Ideal Candidate

The Commissioners are looking for a person who, in addition to having the educational, experiential, and license qualifications listed for the position, has the personality and personal integrity necessary to guide the, at times, demanding commissioners and staff. The Attorney is expected to operate in a collaborative, diplomatic and respectful manner but not at the expense of offering quality legal advice.

The ideal candidate would exhibit a passion for the opportunities for making Fort Pierce a continually improving community to live and work in.

The ideal candidate would understand what it means to operate in an ethnically and economically diverse community and with a governing board which reflects that diversity.

The ideal candidate would appreciate that the City operates with a limited internal attorney staff and contracted outside counsel. It is expected that the City will continue to be flexible with the management and internal operations of the Office.

The ideal candidate would have a working understanding of the potential liabilities from public safety and other aspects of City operations.

As part of the City's leadership team, the City Attorney will work with the Commissioners, City Manager, City Clerk and staff to find ways to accomplish the City goals within the framework of the law.

The bottom line is that the next City Attorney will exhibit independent judgment as well as the highest level of professionalism, ethics, and dedication. The person will understand that the City Attorney reports collectively to all five members of the Commission, with no one person receiving better treatment or information.



Qualifications and Expectations

The position requires a Juris Doctor (J.D.) degree and licensure to practice law in Florida. Note that Florida does not have reciprocity with any other state. Requires at least ten years of increasingly responsible experience in the management and practice of law, preferably with municipal law practice. Membership in the Florida Bar Association is required.

Also highly desired is the City Attorney establishing Fort Pierce residency.

Compensation

The beginning salary will be negotiable depending on the experience and qualifications of the selected candidate. Fort Pierce provides excellent benefits.

To Apply

The position will remain open until filled. The first review of resumes will take place on August 13, 2021. If interested, please email your resume and cover letter with your compensation expectations to slavin@bellsouth.net.

For additional information about this opportunity, contact Robert E. Slavin, President at (770) 449-4656 slavin@bellsouth.net or David Krings, Midwest Regional Director at (513) 200-4222 david@kringsconsulting.com.



Robert E. Slavin or David Krings
SLAVIN MANAGEMENT CONSULTANTS

3040 Holcomb Bridge Road, A1

Norcross, Georgia 30071

Phone: (770) 449-4656

Fax: (770) 416-0848

E-mail slavin@bellsouth.net



Note: Under Florida Law, resumes are public documents and will be provided to the media upon request. Please call prior to submitting your resume if confidentiality is important to you.

Fort Pierce, Florida is an Equal Opportunity Employer and does not discriminate on the basis of race, color, religion, creed, sex, age, marital status, national origin, or disability in employment or in the provision of services.

**CITY OF FORT PIERCE, FLORIDA
CITY ATTORNEY
SEMI FINALIST CANDIDATE QUESTIONNAIRE**

Name:

Home Address:

Home/Work/Cell phone numbers:

E-mail address:

1. Why are you interested in becoming Fort Pierce's next City Attorney and how does this position fit into your overall career plans?
2. What is the largest number of employees that you have managed and where? What is the largest annual operating budget that you have managed?
3. How do you stay professionally current and on top of issues with the potential for significant impact on your jurisdiction? How do ensure that your employees stay current?
4. Describe your leadership and management style with your employees.
5. Have you ever worked directly for a policy making body?
6. Are you a member in good standing of the Florida Bar?
7. Describe your workload tolerance.... what type of office hours do you typically keep?
8. What would you hope to accomplish the first 30 days on the job; the first 6 months; and the first year?
9. What experience do you have with organizational and/or performance analysis directed at identifying issues in need of change?
10. Please describe your experience in dealing with intergovernmental entities. Specifically, how do you work with the City Manager and other sections/branches of the City government while maintaining your independence?
11. Tell us how you communicate with your governing body and its individual members.
12. How would you handle situations where the Commissioners wish to take actions that you do not consider lawful?
13. How would you handle questions of law, including issues relating to public safety, that may be viewed differently by an ethnically and economically diverse community and Commission?
14. Please provide a copy of a legal opinion that you have authored. (You may provide a redacted copy.

15. Have you ever been found to have committed any acts of discrimination, sexual harassment, or creation a hostile work environment? If so, please explain.
16. Do you have any unusual personal consideration(s) that would need to be resolved before you could accept this position? If so, please explain.
17. Should you become a finalist candidate, we will perform education, credit, civil, criminal and motor vehicle court records, internet search and reference checks on you. In doing so, will we find anything that you need to explain in advance?
18. Is the resume you submitted accurate and current? If not, please explain any discrepancies.
19. Are you currently employed?
20. Have you ever been fired or resigned under pressure from a job? If so, please explain.
21. Have you ever sued an employer or been sued by an employer or employee? If so, please explain.
22. What are your compensation expectations?

	Name	Employer	Pop	Position	Highest # Empls	Local Gov't General Counsel Exp	Legal Office Mgmt Exp	Outside Counsel Mgmt Exp	Amt. of Prof. Exp (Years)	Diverse Community Exp	Florida Bar	Ever Left a Job Involuntarily	Pay Expected (K)
14	Anon, Jr., Manny mannyanon@yahoo.com	U.S. Army Reserve City of Sebastian, FL	21.9	Team Leader (2001 - Present) City Attorney (2020- Present) Assistant City Attorney (Contract) 2019 - 2020	7	Yes	Yes	Yes	26+/-	Yes	Yes	No	164.8
		City of Port St. Lucie, FL	201.8	Sr. Asst. City Attorney (2016 - 2019) Active Duty (2015 - 2016) Educational Sabbatical (2014 - 2015) Asst. Town Attorney (2014)									
		U.S. Army Reserve FIU											
		Town of Surfside, FL	5.7										
		AFSCME		Deputy General Counsel (1999 - 2014)									
		City of Miami, FL	362.4	Asst. City Attorney (1997 - 1999)									
		Sandler & Sandler (Coral Gables, FL)		Associate (1996)									
		The Legal Group (Miami, FL)mi, FL)		Associate (1995)									
		Law Offices of Carlos E. Casuso (Miami, FL)		Law Clerk (1992 - 1993)									

	Name	Employer	Pop	Position	Highest # Empls	Local Gov't General Counsel Exp	Legal Office Mgmt Exp	Outside Counsel Mgmt Exp	Amt. of Prof. Exp (Years)	Diverse Community Exp	Florida Bar	Ever Left a Job Involuntarily	Pay Expected (K)
40	Earley, Tanya tyanya.earley@yahoo.com	City of Fort Pierce FL State Attorney (Kissimmee, FL) Donna M. Ballman, P.A. FL State Attorney U.S. Dist Judge Adalberto Jordan (Miami, FL) U.S. Dept of Justice (Wash, D.C.)	41.6	Interim City Attorney (2021 - Present) Assistant City Attorney (2019 - Present) Asst. State Attorney (2012 - 2014) Associate Attorney (2011 - 2012) Asst State Attorney (2007 - 2011) Intern (2005) Paralegal (2000 - 2004)	2	Yes	Yes	Yes	14+/-	Yes	Yes	No	\$155

	Name	Employer	Pop	Position	Highest # Empls	Local Gov't General Counsel Exp	Legal Office Mgmt Exp	Outside Counsel Mgmt Exp	Amt. of Prof. Exp (Years)	Diverse Community Exp	Florida Bar	Ever Left a Job Involuntarily	Pay Expected (K)
50	Garrett, Susan susangarrett@mindspring.com	Torcivia, Donlon, oddeau & Rubin, P. A. (West Palm Beach, FL) City of Atlanta, GA	488.8	Senior Associate (2020 - Present) Division Chief - Public Safety (2019 - 2021) Deputy City Attorney (2018 - 2019) Interim City Procurement Officer (2017 - 2018) Sr. Assistant City Attorney (2012 - 2017) Assistant City Attorney (2009 - 2012) Principal Attorney (1996 - 2008) Associate Associate	75	Yes	Yes	Yes	23+/-	Yes	Yes	No	Flexible See Q#22
		City of East Point, GA Self-employed Kirwan, Goger, Chesin, Parks & Remar, PC (Atlanta, GA) Remar & Graettinger, P.C. (Atlanta, GA)	33.7										

	Name	Employer	Pop	Position	Highest # Empls	Local Gov't General Counsel Exp	Legal Office Mgmt Exp	Outside Counsel Mgmt Exp	Amt. of Prof. Exp (Years)	Diverse Community Exp	Florida Bar	Ever Left a Job Involuntarily	Pay Expected (K)
66	LoConte, Elizabeth elizabethmurphyloconte@gmail.com	City of Hallandale Beach, FL Town of Davie, FL Volusia County, FL American Tower Corp. (Boca Raton, FL) Elizabeth S. Murphy, P.A. Palm Beach, FL City of West Palm Beach, FL Valentino Spa Rome & NYC	39.7 104.3 553.3	Assistant City Attorney (2020 - Present) Town Attorney (2019 - 2020) Assistant County Attorney (2016 - 2019) Senior Attorney (2015 - 2016) Principal (2000 - 2015) Asst City Attorney (2000 - 2002) In-house Counsel	2	Yes	Yes	Yes	21+/-	Yes	Yes	Never fired, see Q#20	\$155 - \$165
100	Mai, Andrew andrewwoodfordmai@gmail.com	Persson, Cohan & Mooney, P A Osceola County, FL City of Sioux City, IA Weiss, Serota Helfman Associate	350.0 80.0	Contract City Attorney (2021 - Present) County Attorney (2011 - 2021) City Attorney (2008 - 2011) Contract City Attorney (2006 - 2008)	6	Yes	Yes	Yes	15+/-	Yes	Yes	Yes, see Q# 20	See Q#22

	Name	Employer	Pop	Position	Highest # Empls	Local Gov't General Counsel Exp	Legal Office Mgmt Exp	Outside Counsel Mgmt Exp	Amt. of Prof. Exp (Years)	Diverse Community Exp	Florida Bar	Ever Left a Job Involuntarily	Pay Expected (K)
110	Suarez-Rivas, Rafael suarezrivassr@bellisouth.net	Miami Commission Member Manolo Reyes City of Miami, FL	454.3	Chief Policy & Legislative Advisor (2020 - Present) Chief Asst City Attorney (2018 - 2019) Senior Assistant City Attorney (2013 - 2018) Assistant City Attorney (2002 - 2012) Hearing Officer for Several South Florida Jurisdictions (2003 - Present)	8	Yes	Yes	Yes	38+/-	Yes	Yes	Yes, see O#20	\$165 - \$185
		Self Employed	985										
		City of Hollywood, FL	139.4	Sr. Asst City Attorney (1999 - 2002)									
		City of Boca, Raton, FL	75.0	Special Counsel (1999)									
		Florida International Univ		Adjunct Professor (1994 - 1997)									
		Broward County, FL	1.6 M	Assistant County Attorney (1992 - 1998)									
		City of Miramar, FL	41.0	City Attorney (1989 - 1991)									
		City of Miami, FL	359.0	Assistant City Attorney (1985 - 1989)									
		City of Miami Beach, FL	93.0	Asst City Attorney (1982 - 1985)									

MANNY ANON, JR.

PERSONAL

Address: 2649 S.E. Emmett Road
Port St. Lucie, Florida 34954

Contact: Cell: (305) 219-8083
Email mannyanon@yahoo.com

EDUCATION

J.D. - 1992
The American University Washington College of Law, Washington, DC

B.A., Politics and Public Affairs - 1989
University of Miami, Miami, Florida

SUMMARY OF RELATED EXPERIENCE

2001 - Present	<u>UNITED STATES ARMY RESERVE</u> 174 th Legal Operations detachment, Miami, Florida Team Leader
2020 - Present	<u>CITY OF SEBASTIAN, FLORIDA</u> Population 21,929 City Attorney
2019 - 2020	Assistant City Attorney (Contract)
2016 - 2019	<u>CITY OF PORT ST. LUCIE, FLORIDA</u> Population 201,846 Sr. Assistant City Attorney
2015 - 2016	<u>UNITED STATES ARMY RESERVE</u> Active Duty
2014 - 2015	<u>EDUCATIONAL SABBATICAL (FIU)</u>
2014	<u>TOWN OF SURFSIDE, FLORIDA</u> Population 5,744 Assistant Town Attorney
1999 - 2014	<u>AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES</u> North Miami, Florida Deputy General Counsel
1997 - 1999	<u>CITY OF MIAMI, FLORIDA</u> Population 362,470 Assistant City Attorney
1996	<u>SANDLER & SANDLER</u> Coral Gables, Florida Associate

1995 THE LEGAL GROUP, P.A.
Miami, Florida
Associate

1992 - 1993 LAW OFFICES OF CARLOS E. CASUSO
Miami, Florida
Law Clerk

1992 RASSNER RASSNER KRAMMER & GOLD
South Miami, Florida
Independent Research Assistant

1991 UNIVERSITY OF MIAMI SCHOOL OF LAW
Coral Gables, Florida
Visiting Law Student, Litigation Skills Program

1991 GAEBE MURPHY MULLEN & ANTONELLI
Miami, Florida
Law Clerk

1991 DADE COUNTY, FLORIDA
Population 1,937,000
Certified Legal Intern

August 3, 2021

Mayor, Vice Mayor and City Council Members
City of Ft. Pierce
100 N. US Hwy 1
Fort Pierce, FL 34950

My name is Manny Anon, Jr. and I am the City of Sebastian City Attorney. I am a law graduate from the American University Washington College of Law and licensed to practice in the State of Florida since 1993. Also, I have been practicing as a U.S. Army Reserve Judge Advocate since 2001. I am a native Floridian of Cuban descendant and currently live in Port St. Lucie with my wife. I read, speak, and write Spanish fluently.

My resume reflects that I have been clerking since my second year of law school and have been practicing law in the municipal public law sector since 1997. Throughout these past twenty-eight (28) years, I have worked with several different cities and governmental entities, including the U.S. Army Reserve Judge Advocate General Corp, City of Sebastian, City of Port St. Lucie, Town of Surfside, City of Miami, AFSCME Florida Council 79 and the State Attorney's Office. Thus, I have been exposed to various aspects of law including: Government Municipal Law, Labor and Employment Law, Procurement and Contract Law, Public Records and Sunshine Law and many areas of military law. Throughout these years, I have represented boards, drafted and argued many pleadings and briefs before arbitrators, special magistrates, hearing officers, and county, circuit, and administrative judges.

As a Major for the United States Army Reserve, I have served honorably since 2001 and deployed three times in support of Operation Enduring Freedom (2004) and Operation Iraqi Freedom (2008 & 2016). I was assigned to the 478th Civil Affairs Battalion (BN) out of Perrine, Florida as the International Law Officer/Brigade Judge Advocate. I was responsible for advising the BN Commander, Company Commanders, and staff on Administrative Law, and Contract Law, including legal opinion, Financial Liability Investigation of Property Loss, Article 15-6 and Military Justice. Currently, I am with the 174th Legal Operations Detachment in Miami Florida as a Team Leader supervising several officers and enlisted. Previously, I was the Team Chief in Orlando supervising four (4) Judge Advocates and two (2) enlisted service members. Also, I was the S3/S7 Operational Officer in charge of training and providing legal service and advice to service members and their dependents on family, civil and criminal law wills, notaries, Power of Attorney and other legal documents.

Currently I am the City of Sebastian City Attorney. I legally advise the City Council, City Manager, City Clerk and City Department Heads on all matter pertaining to the City including, labor and employment, personnel matters, litigation, Forfeiture, Risk Protective Orders, election matters, airport issues, draft and review ordinances, resolutions, contracts, legal opinions and other related legal documents. I attend Council, Code Enforcement, Construction and Planning & Zoning Board Meetings. I was involved with the 2040 Comp Plan, City Charter Review, Recall Election, and Canvassing Board. I provide Sunshine and Public Records law training to the elected and appointed officials. I track and advise Council of executive orders and pending legislation before the Florida Legislature and Congress. I provide legal advice to several departments, including Manager, Clerk, Human Resources, Airport, Golf Course, Procurement, Parks & Recreation, Building, Community Development, Police, and Code Enforcement.

Previously, I was employed as a Senior Deputy City Attorney for City of Port St. Lucie. I was the Labor & Employment Counsel, Negotiation Team Member (6 unions) and advised several departments, including Human Resources, on all Labor, employment and personnel matters, risk management, Neighborhood Services, Utilities, Parks & Recreation and Police. I drafted and reviewed ordinances, resolutions, contracts, legal opinions and other related legal documents for the City. Finally, I attended Council, Code Enforcement and other Board Meetings to assure compliance with F.S. Ch. 162, Code Enforcement, Florida Ethics, F.S. Ch. 286, Sunshine Law and F.S. Ch. 119, Public Records Law. Also, I was employed as Assistant Town Attorney for Town of Surfside. During my tenure, I prepared and reviewed ordinances, resolutions, contracts, legal opinions and other related legal documents for the Town. I attended Commission, Planning and Zoning and other Board Meetings to assure compliance with Florida ethics, Sunshine and public records laws. Finally, I worked closely with several directors in the Public Works, Building, Code Enforcement, Parks & Recreation and Police Departments.

Prior to that I was the Deputy General Counsel and Region 5 Director/General Counsel for AFSCME Florida Council 79, I was responsible for servicing, and providing legal support in labor employment issues, hearings, arbitrations and administrative proceedings in four (4) counties: Monroe, Miami-Dade, Broward, and Palm Beach. This included about 25 locals and over 11,000 dues paying members. I argued over a 100 arbitration cases and/or administrative hearings and resolved many other cases through settlement agreements. Finally, before AFSCME, I was an Assistant City Attorney with the City of Miami. I was assigned to the litigation department and carried a caseload of about 70 tort liability cases of which I was responsible from answering the complaint, discovery, and closing argument at trial (Jury or Bench). I represented the Departments of Public Works, Risk Management Police and Fire in tort defense litigation. I had several jury trials and many motions for summary judgments.

Thus, I will bring to Ft. Pierce City Attorney's Office the highest level of professionalism, ethics, dedication and commitment. Also, I bring vast knowledge and experience in City Municipal Law, Administrative Law, Labor and Employment law, F.S. Chapter 163, Municipal Planning/Land Development Regulation, F.S. Chapter 162, Code Enforcement, F.S. Chapter 286, Sunshine Law, F.S. Chapter 119, Public Records, Ethics, Forfeiture, Risk Protective Orders (RPO) and collective bargaining. Due to my military experience, I understand politics and diplomacy. Thus, I will be able to advise the City Council and Department Heads what is legal and ethical. I will give City Council Members the same information, keep them well informed and when necessary, promptly conduct research to provide Council the best legal advice and course of action. Also, due to my experience and knowledge in Labor and Employment, Forfeiture and RPOs, the city will be able to eliminate any outside counsel providing a savings to the City of Ft. Pierce. Finally, I am trained in all aspects of FEMA, NIMS, NRF and ICS so I can assist the City of Ft. Pierce in times of an emergency.

For these reasons, I am very interested in being the City of Ft. Pierce City Attorney. I honestly believe that the above-mentioned qualifications, knowledge, experience and leadership skills are all assets that I possess which will enable me to hit the ground running and immediately contribute to the high demands required by the City Council, City Attorney's Office and the City of Ft. Pierce. If there is anything else you need, please contact me.

Respectfully,

Manny Anon, Jr.
MANNY ANON, JR.

MANNY ANON, JR.

Education

THE AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW
Washington, D.C., J.D. – May 1992
Activities: Hispanic Law Society Association, Parliamentarian; Phi Delta Phi International Legal Fraternity; Honor Code Committee; Judiciary and Budget Committee; *Honor:* Who's Who Among American Law Students.

UNIVERSITY OF MIAMI, Miami, Florida
B.A. – May 1989, Politics and Public Affair/Chemistry and Biology Minor.
Activities: Pi Sigma Alpha Honor for Political Science Majors; Kappa Sigma Fraternity, Vice President; Student Body Government, Cabinet Member, Chief Justice of the Supreme Court, Intra Fraternity Council Justice and UM Moot Court Finalist.
Honor: Dean's List; Who's Who Among American College Students; Outstanding Young Men of America; Outstanding Young Scholar; National Association of Student Government Award; University of Mimi Leadership Certificate Program; Kappa Sigma Fraternity; Scholarship-Leadership Award; Omicron Delta Kappa Honor Society; and Order of Omega Honor Society.

MIAMI-DADE COMMUNITY COLLEGE, Kendall, Florida
A.A. May 1986, Pre-Legal/Pre-Med.
Honor: Dean's List; Achievement of Excellence Award; Phi Theta Kappa Honor Society, Vice President; Phi Alpha Phi Pre-Med Society, Vice President.

Employment History

UNITED STATES ARMY RESERVE JUDGE ADVOCATE GENERAL
United States Army Reserve, 174th Legal Operations Detachment, Miami Florida
Team Chief/S3 Operation Officer, August 3, 2001 - Present
I am in charge of the Orlando Office, supervising four (4) Judge Advocate Officers and two (2) enlisted paralegals. Also, I am in charge of training and providing legal advice to service members and their dependents in family, civil and criminal law; assisting soldiers with legal questions, preparing wills, notaries and powers of attorneys.

CITY OF SEBASTIAN, Sebastian, Florida
City Attorney, February 2010 - Present
Legally advise the City Council, Manager and Directors on all matter pertaining to the City including, all labor and employment and personnel matters, draft and review ordinances, resolution, contracts, legal opinions and other related legal documents.

CITY OF PORT ST. LUCIE, Port St. Lucie, Florida
Sr. Assistant City Attorney, August 2016 – January 2019
Labor and Employment Attorney, Litigation, prepare and review ordinances, resolutions, contracts, and other related legal documents

TOWN OF SURFSIDE, Surfside, Florida
Assistant Town Attorney, July 2014 - November 2014
I prepare and review ordinances, resolutions, contracts, and other related legal documents

AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, North Miami, Florida
Deputy General Counsel, September 1999- January 2014
I provide legal support for AFSCME staff and bargaining unit members in Monroe, Miami Dade, Broward, and Palm Beach Counties. I handle all labor and employment issues, arbitrations, administrative hearings and negotiations arising out of the collective bargaining agreements.

2649 S.E. Emmett Road * Port St. Lucie, Florida 34954 * (305) 219-8083 [C] * mannyanon@yahoo.com

MANNY ANON, JR.

CITY OF MIAMI ATTORNEY'S OFFICE, Miami, Florida

Assistant City Attorney, February 1997 – September 1999

I was a trial civil litigator doing defense work for the City of Miami. I handle all litigation matters from answering complaints, to closing arguments.

SANDLER & SANDLER, Coral Gables, Florida

Associate, February 1996- October 1996

I handled commercial litigation and personal injuries cases. I drafted pleadings, argued motions, attended motion calendar, and special calendar hearings.

THE LEGAL GROUP, P.A., Miami, Florida

Associate, January 1994 – July 1995

I handled all aspects of personal injury cases.

LAW OFFICES OF CARLOS E. CASUSO, Miami, Florida

Law Clerk, August 1992 – September 1993

I researched, drafted pleadings, letters and memorandums of law

RASSNER RASSNER KRAMMER & GOLD, South Miami, Florida

Independent Research Assistant, March 1992 – May 1992

Researched Commercial and Family Law issues for Mr. Monty Rassner, Esq.

UNIVERSITY OF MIAMI SCHOOL OF LAW LITIGATION SKILLS PROGRAM, Coral Gables, Florida

Visiting Law Student, August 1991 – December 1991

Trial and Pre-Trial skills and practices

GAEBE MURPHY MULLEN & ANTONELLI, Miami, Florida

Law Clerk, June 1991 – December 1991

Research, drafted pleadings, letters and memorandums of law

DADE COUNTY STATE ATTORNEY'S OFFICE, Miami, Florida

Certified Legal Intern, May 1991 – August 1991

I worked all phases of pre-trial preparation, morning calendar, deposition, research, opening argument, direct examination. I assisted in several criminal trials & proceedings.

Community

Services: National Hispanic Republican Association of Florida, Attorney; City of Miami Police Department Crisis Prevention Team, Allapattah Chairperson; Allapattah Crime Prevention, Chairperson; Allapattah YMCA, Board Member; Allapattah Community Action, Board Member; Allapattah Promotion, Board Member.

Honors: City of Miami Police Department Crisis Prevention Team Certificate of Appreciation; Allapattah Crime Prevention Certificate of Appreciation; State Senator Albert Gutman Certificate of Appreciation and Leadership; City of Miami Mayor Xavier Suarez and Mayor Joe Carollo Award of Appreciation.

Awards: Bronze Star, Meritorious Service Medal-2, Army Commendation Medal-5, Army Achievement Medal-4, Afghanistan Campaign Medal, Iraqi Campaign Medal, Combat Action Badge, Global War on Terrorism Medal, National Defense Service Medal, Army Reserve Components Achievement Medal, Military Outstanding Volunteer Service Medal, Army Service Ribbon, Army Reserve Components Overseas Training Ribbon, Marine Corps Certificate of Appreciation, USASETAF Certificate of Appreciation, USASETAF Commander's Coin, 5th Corp Certificate of Appreciation, 5th Corp Commander's Coin, 174th Commander's Coins and 478th Commander's Coin.

**CITY OF FORT PIERCE, FLORIDA
CITY ATTORNEY**

Name: MANNY ANON, JR.

Home Address: 2649 SE EMMETT ROAD, PORT ST. LUCIE FLORIDA 34952

Home/Work/Cell phone numbers: (305) 219-8083

E-mail address: manon@cityofsebastian.org

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1. Why are you interested in becoming Fort Pierce's next City Attorney and how does this position fit into your overall career plans?

-I was born and raised in Miami Florida; however, I moved to St. Lucie County in 2016. I have fallen in love with the Treasure Coast which offers great cities, beautiful beaches and friendly community for all ages. Ft. Pierce is another amazing city in the Treasure Coast, the "Sunrise City". This city offers stable neighborhoods with quality housing choices, a diverse local economy with easy mobility and leisure opportunities for all ages and life style. Since I am from St. Lucie County, Ft. Pierce City Attorney is a great opportunity for me to return home. I would be literally 12-14 miles from City Hall. Also, Ft. Pierce City Attorney would be a progressive step in my career as a City Attorney. The Ft. Pierce City Attorney's position would both be challenging and rewarding. It is challenging because Ft. Pierce is a bigger city with a larger budget, diverse community, more departments (including a larger Public Works and Police Department) and the Ft. Pierce Utility Authority (FPUA). It is rewarding because I could manage and mentor staff and work with outside council in order to provide the City of Ft. Pierce quality legal advice and services.

2. What is the largest number of employees that you have managed and where? What is the largest annual operating budget that you have managed?

-As my resume reflects, while working for AFSCME Florida Council 79, As Region 5 Director/General Counsel, I ran the day-to-day operations of the AFSCME Florida Council 79 Region 5 Office and supervised a staff consisting of 4 staff representatives, 2 clericals and one attorney. I would have to guess that the budget I had to work with including staff and expenses was over \$500,000.00

In the military, I was the Team Chief in Orlando supervising four (4) Judge Advocates and two (2) enlisted service members. Also, I was the S3/S7 Operational Officer in charge of training and providing legal service and advice to service members and their dependents on family, civil and criminal law wills, notaries, Power of Attorney and other legal documents.

Also, during my deployments in support of Operation Iraqi Freedom and Operation Enduring Freedom I managed an equivalent to a law office and supervised paralegals. During my first deployment, my duties included serving as the Command Judge Advocate at Camp Darby in Livorno, Italy. I supervised one paralegal and a support staff. Additionally, in further support of Operation Enduring Freedom, I was re-deployed to Bagram, Afghanistan. In Bagram, I served as the Chief Legal Assistant Officer, Chief Claims Officer and Part-time Military Magistrate. I supervised a paralegal. During my second tour, I served with the 25 ID and the 3-1 CAV in support of Operation Iraqi Freedom. I was initially assigned to the 25 ID in Tikrit, Iraq as a Team Leader and supervised 2 Judge Advocates (lawyers). Subsequently I was reassigned to the 3-1 CAV in Mosul, Iraq. My duties included serving as the Chief Legal Assistant Officer, Chief Claims Officer and Chief Contract/Fiscal Officer. In Mosul, I supervised one paralegal. My third

deployment I served as the Command Judge Advocate at Camp As Sayliyah Doha, Qatar. Here I supervised 3 paralegals.

At my current position as the City of Sebastian City Attorney, I only share an office assistant with the City Manager. I am a one stop shop with a current budget of \$210,280.00

3. How do you stay professionally current and on top of issues with the potential for significant impact on your jurisdiction? How do ensure that your employees stay current?
- I stay professionally current in many ways. First and foremost, The Florida Bar offers courses and seminars to stay current on all legal matters. I am currently a member of the City County & Local Government and Labor & Employment Sections. I attend yearly seminars or acquire the CD/Books on Land Use, Labor and Employment Law Annual Update/Certification Review and City County and Local Governmental Certification Review courses. Second, I am a member of Florida Municipal Attorney's Association (FMAA) and attend their yearly seminar. Third, I am a member in IRC/SLC Bar Association. Fourth, I am a member and attend seminars with the Florida League of Cities. Fifth, I subscribe to Attorney Listserv Network and get to post questions and/or review current issues online. Sixth, during the pandemic, I monitored and kept updated on the State of Florida Governor's Executive Orders. Seventh, I maintain a professional network relationship with local government municipal attorneys from Indian River County and other municipalities in the County. We have monthly lunch meeting and bounce issues off of each other. Finally, I will register this year and take next year, the City County and Local Governmental Law Certification. I will follow up by taking the Labor and Employment Law Certification the following year. That way I will be Florida Bar Board Certified.**
4. Describe your leadership and management style with your employees?
- As to my leadership style, I live by the following Army Values (LDRSHIP).**
- **Loyalty – Bear true faith and allegiance to the U.S. Constitution, the Army, my unit and other Soldiers. Likewise, I will be loyal and faithful to the City of Ft. Pierce City Council, City Manager, City Clerk and all city departments that I serve.**
 - **Duty – I will fulfill my obligation and accomplish my tasks as part of a team.**
 - **Respect – Treat people as they should be treated, i.e., with dignity and respect while expecting others to do the same.**
 - **Selfless Service – I served my country and did my duty loyally and without thought of recognition or gain. I will put the best interest of the City of Ft. Pierce City Council, City Manager, City Clerk and all city departments that I serve before my own.**
 - **Honor – It is a matter of carrying out, acting and living the Army values in everything I do.**
 - **Integrity – Do what is right, legally, ethically and morally all the time. Earn the respect and trust of others.**
 - **Personal Courage – The courage to stand up for and act upon things that you know are honorable and right though not popular with others. As City of Ft. Pierce City Attorney, I will do what is legal and ethical to the best of my ability.**

As to my management style, I believe I have a proactive and adaptive management style. In every organization where I have worked, I have found professionals who operate with minimal input while others need significantly more feedback and oversight. Some of the latter people, even after very reasonable effort has been made, just do not succeed. Thus, over the course of my career, civilian and military, I have taken almost every personnel action possible, both positive and punitive. I have been able to approach actions in a progressive manner such that employees are notified of what is expected, provided copies of policies and given the opportunity to voice any concerns or address any issues. Also, I

believe in an open door policy. I have been fortunate in that in my civilian and military career, I have worked with very dedicated public servants. I have always learned something new in each of my oversea deployments or jobs I have held. I am very proactive, flexible, adaptable, but hands on. Tough but fair. It is my goal in each job I hold to learn and become a better person, officer and attorney. I hope that most of my staff will say that they have learned from me, become better and more proficient at their job as a result of their interaction with me or my mentorship.

5. Have you ever worked directly for a policy making body?
-Yes, I worked directly for a policy making bodies (elected and appointed). As the Town of Surfside Assistant City Attorney, I attended Commission, Planning and Zoning and other Board Meetings to assure compliance with Florida ethics, Sunshine and public records laws. Finally, I worked closely with several directors in the Public Works, Building, Code Enforcement, Parks & Recreation and Police Departments.

As the City of Port St. Lucie Senior Deputy Assistant City Attorney, I attended City Council, Code Enforcement and other Board Meetings to assure compliance with F.S. Ch. 162, Code Enforcement, Florida Ethics, F.S. Ch. 286, Sunshine Law and F.S. Ch. 119, Public Records Law. I advised several departments, including Human Resources, on all Labor, employment and personnel matters, Risk Management, Neighborhood Services, Utilities, Parks & Recreation and Police.

As to the City of Sebastian City Attorney, I attend City Council, Code Enforcement, Construction and Planning & Zoning Board Meetings to assure compliance with F.S. Ch. 162, Code Enforcement, Florida Ethics, F.S. Ch. 286, Sunshine law and F.S. Ch. 119, Public Records laws. I legally advised the City Council, City Manager, City Clerk and City Department Heads on all matter pertaining to the City including, labor and employment, personnel matters, litigation, Forfeiture, Risk Protective Orders, election matters, airport issues, draft and review ordinances, resolutions, contracts, legal opinions and other related legal documents. I was involved with the 2040 Comp Plan, City Charter Review, Recall Election, and Canvassing Board. I provide Sunshine and Public Records law training to the elected and appointed officials. I track and advise Council of executive orders and pending legislation before the Florida Legislature and Congress. I provide legal advice to several departments, including Manager, Clerk, Human Resources, Airport, Golf Course, Procurement, Parks & Recreation, Building, Community Development, Police, and Code Enforcement.

6. Are you a member in good standing of the Florida Bar?
-Yes, I have been a member in good standing with the Florida Bar since 1993
7. Describe your workload tolerance.... what type of office hours do you typically keep?
-I intend on keeping the current office hours; however, I will review it for efficiency. My philosophy is as long as you are doing the work and getting the job done, I can be flexible with staff. Me personally, I will be First in/Last out. I usually work until the job gets done. This includes taking work home during the weekend, if necessary. Also, I will be available by phone to the Mayor and all members of the City Council.
8. What would you hope to accomplish the first 30 days on the job; the first 6 months; and the first year?
-First 30 days: I will acclimate myself to the City of Ft. Pierce, Mayor, Council Members, City Manager, City Clerk, Department Heads and the staff of the City Attorney's Office. I will attend City Council, Planning and Zoning, Code Enforcement/Special Magistrate, Construction Board and Board of Adjustment Meetings. I will become familiar with the

City of Ft. Pierce City Charter and Code of Ordinance. I will meet with the City Manager to determine hot topics. I will begin evaluating the office and staff. I will begin to focus on the Redistricting of the City of Ft. Pierce and working with St. Lucie County.

First 6 months: I will continue to provide quality legal advice and services to the City Council, various boards and the City Staff. I will begin to evaluate any amendment/revisions to the City Codes. I will continue to provide regular updates to the City Council on changes to federal and state laws, as well as pending suit, settlements and legal cases. I will serve as the police legal advisor to the City of Ft. Pierce Police Department on Forfeiture, Risk Protective Orders, School Resource Officer Agreements, and other legal matters. I will continue to provide legal support on land use matters, including meeting and negotiating with staff, developers and their attorneys. I will provide legal support for all department heads, including Human Resource, Airport, Golf Course, Parks and others. I will maintain a professional network with local government attorneys from Indian River and St. Lucie Counties and other municipalities in the County. I will continue to advise and assist in reviewing and updating procurement documents and procedures; review significant legal claims and insurance settlements, as deemed necessary; coordinate and monitor the use of any outside council services; and draft and/or review proposed ordinances, resolutions, releases, orders and other legal documents, as needed.

First year: Continue all above. Additionally, I plan to attend the Florida Municipal Attorney Association; City, County and Local Government; and Land Use or Labor and Employed Law Annual Update Seminar. Hopefully prepare for and take the City, County and Local Government Certification Course and Examination. I will provide legal support on a City Election and the law, including being a member of the Canvassing Board. I will work on the City Attorney's Office Budget.

9. What experience do you have with organizational and/or performance analysis directed at identifying issues in need of change?

-My greatest strength is team building. I believe the best approach at solving complicated issues is collaborating and consensus with other lawyers or experts. In the City of Port St. Lucie, when tough legal issues come up, we met and brain stormed or had what I called a POW WOW. We described the issue, tried to ascertain the law or what governed, legally analyzed it and draw a rational conclusion. As to ongoing litigation we met with the Deputy City Attorney, Risk Management, outside counsel and formulated a strategy or discussed issues. As it pertained to Labor and Employment matters, I met with HR Director, Department Director and/or designees and evaluated the investigation and determined if there was just cause to discipline. If so, then we determined the just cause for the specific level of disciplines sought. I will bring this team building mentality of working with other departments and subject matter experts in coming up with the best solution. I will have weekly staff meetings, regular meetings and update with the City Manager meetings and as needed Department Head meetings.

Additionally, my strongest passion is sunshine law and ethics in government. I can assure Council that if appointed, as your City of Ft. Pierce City Attorney, you will get sound legal advice on Florida Ethics, F.S Ch. 286, and Sunshine law and F.S. Ch. 119, Public Records laws that will not be impacted by political games or improper influence. I will be as creative as possible to legally and ethically support the mission in getting to the "yes". I will tell Council what the law says and what risks are associated, if any. I will never attempt to usurp the executive function of the City Council or City Manager, nor will I ever jeopardized my professional or personal standards of ethics and professionalism.

10. Please describe your experience in dealing with intergovernmental entities. Specifically, how do you work with the City Manager and other sections/branches of the City government while maintaining your independence?

-As stated above, I maintain a professional network relationship with local government municipal attorneys from Indian River County and other municipalities in the County. We have monthly lunch meeting and bounce issues off of each other. Additionally, I currently meet and plan to continue the practice with the City Manager to discuss City matters and my legal opinion. I have never had a situation in the City of Sebastian where I could not maintain my legal independence and provide my legal opinion without interference.

11. Tell us how you communicate with your governing body and its individual members.

-What I do for one Council Member, I share with all. So when researching an issue or sharing something important (EO, FLC or a cases) I send to all. In order to avoid a sunshine violation, I preface the emails "Please Do Not Reply All, thank you". If I am addressing an individual member question, I will treat them with respect and will request that they put their issue in writing. Alternatively, I will send them an email confirming the issue in writing. This is to avoid any confusion as to exactly what I am researching for the member. Once completed, in a timely manner, I will forward my opinion, along with any supporting cases or statute to the member.

12. How would you handle situations where the Commissioners wish to take actions that you do not consider lawful?

-I do not like answering hypothetical questions like this. However, I can say that I will always do what is legal and ethical no matter the consequences. When advising council members I believe they truly want to do what is legal and right of the city. I would probably start by telling them that what they are proposing to do is not consistent with the law or the City Charter. I would tell them my advice is to do X instead. If they follow my advice, right or wrong, they are protected because they relied on my legal opinion. However, if they do not, they could be holding themselves out there and be subject to personal liability.

Case in point my situation with the City of Sebastian when a majority of the board violated the sunshine law. I did what was legal, ethical and continued to represent the City of Sebastian to the best of my abilities. (See #21 below).

13. How would you handle questions of law, including issues relating to public safety that may be viewed differently by an ethnically and economically diverse community and Council?

-I would be respectful and sensitive to the affected community or council member. However, it should be noted that as the City Attorney for the City of Ft. Pierce, I could not assist and/or offer any legal advice to the community or residents. That being said, as stated above in #11, I will request that the Council Member puts their issue in writing. Alternatively, I will send them an email confirming the issue in writing. This is to avoid any confusion as to exactly what I am researching for the member. Once the legal research is completed, in a timely manner, I will forward my opinion, along with any supporting cases or statute to the member. One big public health issue now-a-days with the spike in COVID is the wearing of masks. Currently, the Governor's No Mask Mandate is being challenged in court by several school boards. Thus, by the time I come on board as City Attorney, the issue should be resolved or working its way through the courts. Bottom-line I will do what is legal and ethical.

14. Please provide a copy of a legal opinion that you have authored. (You may provide a redacted copy.

-See attached three (3) Legal Opinions (A-C).

15. Have you ever been found to have committed any acts of discrimination, sexual harassment, or creation a hostile work environment? If so, please explain.
-No, never in 20 plus years in the military or almost 28 years practicing law in the State of Florida.
16. Do you have any unusual personal consideration(s) that would need to be resolved before you could accept this position? If so, please explain.
-No, I would like to start working immediately after negotiating the terms and conditions of my contract with the City of Ft. Pierce City Council. I have no ties to law firms. However, I would only ask Ft. Pierce City Council to allow me to continue to work with City of Sebastian City Council on the side (advice, attend council meetings that do not conflict), until the City of Sebastian can find my replacement. Other than that, it is my intent to be a full time City of Ft. Pierce City Attorney, advising the city and running the City Attorney's Office and staff. I expect that is what the City Council desires and deserves from its City Attorney.
17. Should you become a finalist candidate, we will perform education, credit, civil, criminal and motor vehicle court records, internet search and reference checks on you. In doing so, will we find anything that you need to explain in advance?
-No. However, TC Palm ran several articles of an old investigation of which I was not the subject of the investigation in Port St. Lucie. There was an ancillary allegation that I made a "term of endearment", i.e., sweetie, which I denied. As a result, I was never the subject of an investigation and was never written up or discipline in any manner. I thought it died until I was seeking the City of Sebastian job when it re-surfaced. Again, as I told the TC Palm, I was not the subject, all was denied, and I was never discipline in any fashion [PERIOD]. In fact the current City of Port St. Lucie City Attorney, James Stokes, my old boss, corroborated that I was never discipline and in fact continued working with the city for over 1 -1/2 years until I left on my own.
18. Is the resume you submitted accurate and current? If not, please explain any discrepancies
-Yes, to the best of my knowledge my resume is accurate and current.
19. Are you currently employed?
-Yes, I am currently the City of Sebastian City Attorney. Also, I am a Reservist with the United States Army JAG Corp.
20. Have you ever been fired or resigned under pressure from a job? If so, please explain.
-No, never.
21. Have you ever sued an employer or been sued by an employer or employee? If so, please explain.
-Yes, in order to defend the City of Sebastian against three (3) rogue city council members that violated the Sunshine Law and the City of Sebastian Charter, the Mayor, City Manager and I successfully filed an injunctive relief in order to render the April 23, 2020 Illegal Meeting as *void ab initio* and to maintain the status quo.
22. What are your compensation expectations?
-I believe the current salary of the outgoing City Attorney is a fair compensation at \$164,800.

CITY OF FT. PIERCE ATTORNEY'S OFFICE

In addition to #8 above, as City Attorney, I will address and implement the following:

- **Outstanding Litigation cases.** I will coordinate and work with the outgoing City Attorney to do a proper hand off on all pending litigation cases (including potential Annexation), agreements, contracts and issues facing the city. I will work with Code Enforcement Officer and represent the city at all future Special Magistrate Code Enforcement Hearing. I will work with the Code Enforcement Department, figure out any outstanding liens and when necessary, file Surplus Funds Complaints in order to protect the city's liens and recover any surplus funds from foreclosure cases.
- **Outside Counsel.** Related to the issue above are any monies being spent on outside counsel? I need to understand what work is outsourced, i.e., HR and PD. I understand using outside counsel on certain areas of expertise/litigation is common and within the City Attorney's purview. This is not a new concept for most municipalities; especially one like the City of Ft. Pierce where the City Attorney's Office is small. I believe the City of Ft. Pierce outsources all labor & employment Forfeiture Complaints and Risk Protective Orders. However, due to my knowledge and years of experience in these areas, I would be able to immediately begin bringing all Labor and Employment and PD forfeiture and RPO matters back in-house at a significant savings to the city. Finally, it is my understanding that the City is self-insured and this company handles most of the Tort Litigation, Worker's Comp and Discrimination matters. Thus, I would be able to work closely with Risk Management and actively monitor these cases. Like in City of Sebastian, I will proactively inject myself in all litigation strategy, settlement discussion and meetings of all outstanding Tort, WC and Employment matters being handled by outside counsel.
- **Reinstate confidence and commitment in the City Attorney's Office.** In order to develop confidence, commitment and a better efficient City Attorney's Office, I will establish the following: 1. Bi-weekly one-on-one meeting with each Council Member to discuss any legal matters or concern they might have, if necessary. My Policy will be what I do for one Council Member, I will share with all. Also, I will have an open door policy. 2. I will meet and coordinate with the City Manager and City Clerk on any legal matters. Also, monthly meetings or as needed with Department Heads. 3. Provide my City Cell to Council Members, City Manager, Clerk and City Department Heads for 24/7 availability. 4. I would like to work with IT Manager to see if they can develop a Legal Tracking System whereby Department Heads can log on, submit and track legal issues to the City Attorney's Office. Also, VPN access so I can take my laptop home and work over the weekend and evenings, when necessary. 5. Continue to network with other City Attorney's from the Treasure Coast area. Specifically, I would like to meet for lunch, network and discuss legal issues facing municipalities in the State of Florida with other City Attorneys in the St. Lucie and Indian River Counties including Indian River County, St. Lucie County, Port St. Lucie, Vero Beach, Fellsmere, Indian River Shores, and the Town of Orchids. 6. Be a member of the City, County and Local Government Law Section and Labor and Employment law Section; thus, attend at least two (2) Florida Bar Seminars a year in order to stay up with any changes in both State and Federal law. Finally, get Florida Bar Board Certification in City, County and Local Government Law.
- **Review and Revision of all HR Policies and Procedure.** One plan to assist HR Manager, in legally reviewing and revising all of the HR Policies and Procedure to be in compliance with all state and federal law. These include Social Media, Telecommunication, Sexual Harassment, Substance and Drug Abuse (Medical Marijuana), Smoking and the Bargaining/Non-bargaining Policies and Procedures. Also, to review all Collective Bargaining Agreements. Additionally, I will work with the Planning Director and staff in legally reviewing and revising the City Codes.

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such

board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

History.—s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353; s. 2, ch. 2012-25.

Florida Attorney General

Advisory Legal Opinion

Number: AGO 92-05

Date: January 8, 1992

Subject: Sunshine Law, candidates' night/political forum

Mr. Paul R. Gogleman, III

Attorney for Town of Melbourne Beach

RE: GOVERNMENT IN THE SUNSHINE LAW—PUBLIC MEETINGS—ELECTIONS—CANDIDATES—COUNTIES—applicability of Sunshine Law to candidates' nights or political forum attended by incumbent candidates and commissioners. s. 286.011, F.S.

QUESTION:

1. Does the Government in the Sunshine Law apply to two non-incumbent candidates for the town commission who have not been elected attending a political function at which they express their positions on matters which may foreseeably come before the commission?
2. If not, does the Sunshine Law apply to a non-incumbent commission candidate attending a political forum or candidate's night to express his or her views on matters which may foreseeably come before the commission and a current commissioner is in attendance?
3. Does the Sunshine Law apply to a political forum or candidate's night at which a non-incumbent candidate and an incumbent candidate each express positions on matters which foreseeably may come before the commission and at least one other incumbent commissioner, not a candidate, is present, but not a participant?
4. If the Sunshine Law applies in Question One, would it apply when a non-incumbent candidate and an incumbent candidate express their positions on a matter which may foreseeably come before the commission and at least one other incumbent commissioner, not a candidate, is present, but not a participant?

SUMMARY:

1. The Government in the Sunshine Law does not apply to meetings of non-incumbent candidates for political office who have not been elected.
2. In light of the answer to Question One, the attendance of a currently serving commissioner who does not participate in a political forum does not subject the forum to the requirements of the Sunshine Law.

3. The expression of an incumbent candidate's position on a matter which may foreseeably come before a commission, absent an interchange between an attending commissioner, would not subject the meeting to the Sunshine Law.

4. In light of the answer to Question One, no response to Question Four is required.

You state that the Town of Melbourne Beach has a town commission composed of the Mayor and four commissioners elected at large. The terms of the commissioners' offices are staggered such that two seats are up for reelection at any one time. All candidates seeking a seat on the commission run against each other in an at large election, with the two candidates receiving the most votes winning the election.

Various groups sponsor candidates' forums in conjunction with each election. Candidates for seats, including incumbents, are invited to speak and are asked to express their positions on matters which may foreseeably come before the town commission. Incumbent commissioners who are not seeking reelection may also be in attendance.

AS TO QUESTION 1:

The Government in the Sunshine Law, s. 286.011, F.S. (Sunshine Law) has been interpreted by the courts to apply to any gathering between two or more members of a board or commission to discuss some matter on which foreseeable action may be taken by the board or commission.[1] In *Hough v. Stembridge*,[2] the court interpreted the Sunshine Law to hold that "members-elect of boards, commissions, agencies, etc. are within the scope of the Government in the Sunshine Law." [3]

Thus, those candidates who have been elected to membership on a board or commission, but have yet to assume the office, are subject to the Sunshine Law as any other member of the board or commission would be. There is no judicial decision or interpretation of the Sunshine Law, however, which has extended its application to candidates for office, unless the candidate is an incumbent seeking reelection.

Accordingly, I cannot say that the Sunshine Law applies to a candidates' forum in which the participants are non-incumbent candidates who are not members-elect of the board or commission.

AS TO QUESTION 2:

This office in an informal letter to The Honorable Kathryn Cox, stated that the expression by an incumbent council member at a meeting such as a political forum of his or her position on a matter which may foreseeably come before the council would not necessarily subject the meeting to the Sunshine Law.[4] In that letter, it was observed that previously this office stated that it was not a violation of the Sunshine Law for one commissioner to send a report to another commissioner for informational purposes, so long as there is no interaction between the commissioners.[5] Similarly, this office has concluded that the Sunshine Law is not violated by a board member expressing his or her views or voting intent on an upcoming matter to a news reporter who the member knows will publish the account in a local newspaper prior to the meeting, so long as the member is not using the reporter

as an intermediary to communicate with other members to circumvent or evade the requirements of the Sunshine Law.[6]

Accordingly, as long as there is no discussion between the incumbent and another member of the commission on matters which will foreseeably come before the commission, the forum or candidate's right at which a non-incumbent candidate expresses his or her views would not be subject to the Sunshine Law.

AS TO QUESTION 3:

As noted above, discussions between an incumbent candidate and a non-incumbent candidate are not subject to the Sunshine Law, as long as the incumbent is not using the non-incumbent candidate as a conduit to communicate with other members of the board or commission. The mere expression of an incumbent candidate's position at a political forum attended by another member of the commission could be likened to the circumstance in AGO 89-23, if there is no interchange between the incumbent and the other commissioner attending the forum.

Thus, if the council members avoid discussion among themselves of issues which may come before the council, the forum would not be subject to the Sunshine Law.

AS TO QUESTION 4:

In light of the answer to Question One, no answer to this question is necessary.

Sincerely,

Robert A. Butterworth

Attorney General

RAB/t

[1] See Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, 698 (Fla. 1969) (intent of the Sunshine Law is to "cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board").

[2] 278 So.2d 288, 289 (3 D.C.A. Fla., 1973).

[3] 278 So.2d at 289.

[4] Informal Letter to The Honorable Kathryn Cox, February 7, 1991.

[5] See AGO 89-23.

[6] Attorney General Opinion 81-42.

296 So.2d 473

Supreme Court of Florida.

TOWN OF PALM BEACH et al., Petitioners,

v.

Jules T. GRADISON, Respondent.

TOWN OF PALM BEACH et al., Petitioners,

v.

Fred GLADSTONE, Respondent.

TOWN OF PALM BEACH et al., Petitioners,

v.

FAIRMONT CONVERTING CO., INC., Respondent.

TOWN OF PALM BEACH et al., Petitioners,

v.

Morris LANSBURGH, Respondent.

TOWN OF PALM BEACH et al., Petitioners,

v.

Perry KAYE, Respondent.

TOWN OF PALM BEACH et al., Petitioners,

v.

Ralph H. SHERE et al., Respondents.

TOWN OF PALM BEACH et al., Petitioners,

v.

Walter PORANSKI et ux., Respondents.

TOWN OF PALM BEACH et al., Petitioners,

v.

FIRST BANK AND TRUST CO. OF BOCA RATON, etc., Respondents.

Nos. 44099 to 44106.

May 1, 1974. Rehearing Denied July 10, 1974.

Synopsis

Action challenging **town** zoning ordinance. The Circuit Court, **Palm Beach** County, James C. Downey, J., upheld the ordinance, and the challengers variously appealed. The District Court of Appeal, [279 So.2d 353](#), reversed the order but certified the question. The Supreme Court, Adkins, C.J., held that a citizens' planning commission composed of private citizens, established by the **town** council, which appointed the members, was subject to the government in the sunshine law.

Certified question answered, and cause remanded.

Dekle, J., dissented and filed opinion in which Roberts, J., joined.

Procedural Posture(s): On Appeal.

West Headnotes (7)

[1Municipal Corporations](#)

Though legislature would have no right to require meetings of civic organizations, unconnected with municipal government, to conform to government in the sunshine law, a subordinate group or committee selected by governmental authorities should not feel free to meet in private. [West's F.S.A. § 286.011](#).

[2Municipal Corporations](#)

Citizens' planning commission, composed of private citizens, and established by **town** council, which appointed its members, was subject to government in the sunshine law. [West's F.S.A. § 286.011](#).

[3Municipal Corporations](#)

One purpose of government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to point just short of ceremonial acceptance. [West's F.S.A. § 286.011](#).

[4Municipal Corporations](#)

Government in the sunshine law should be construed so as to frustrate all evasive devices. [West's F.S.A. § 286.011](#).

[5Municipal Corporations](#)

Under government in the sunshine law, when in doubt, members of any board, agency, authority or commission should follow the open-meeting policy of the state. [West's F.S.A. § 286.011](#).

[6Municipal Corporations](#)

Mere showing that government in the sunshine law has been violated constitutes irreparable public injury so that ordinance is void ab initio. [West's F.S.A. § 286.011](#).

7Municipal Corporations

Although criminal prosecution requires proof of scienter, unintended violation of government in the sunshine law will negate any action taken by a **town** council. [West's F.S.A. § 286.011](#).

Attorneys and Law Firms

*474 Chester Bedell and John A. DeVault, III, Bedell, Bedell, Dittmar, Smith & Zehmer, Jacksonville, and Burns, Middleton, Farrell & Faust, **Palm Beach**, for petitioners.

H. L. Cooper, Jr., O'Connell & Cooper, West **Palm Beach**, for Jules T. **Gradison**, Morris Lansburgh, Perry Kaye, Ralph H. Shere and Walter Poranski.

Larry B. Alexander, Jones, Paine & Foster, West **Palm Beach**, for Fred Gladstone and Fairmont Converting Co., Inc.

Ross, Hardies, O'Keefe, Babcock, McDugald & Parsons, Chicago, Ill., and Fisher, Prior, Pruitt & Schulle, West **Palm Beach**, for First Bank and Trust Co. of Boca Raton.

Opinion

ADKINS, Chief Justice.

By petition for writ of certiorari, we have for review the consolidated cases arising out of a decision of the District Court of Appeal, Fourth District ([IDS Properties, Inc. v. Town of Palm Beach, 279 So.2d 353](#)), which is accompanied by a certificate of the District Court of Appeal that its decision had passed upon a question of great public interest, to-wit:

'Whether a zoning ordinance adopted by zoning authorities and the **Town** Council after public hearings is rendered invalid under the [s 286.011, F.S.](#)1971, (F.S.A.), Government in the Sunshine Law, because of the nonpublic activities of a citizen's planning committee which committee was established by the **town** council and acting on behalf of the council in an advisory capacity participated in the formulation of the zoning plan.'

We have jurisdiction. Fla.Stat., art. V, s 3(b)(3), F.S.A.

The **Town** Council of the **Town of Palm Beach**, hereinafter referred to as '**Town** Council,' passed a resolution providing that the Council would undertake the updating and revision of the **town** zoning ordinances. Interviews were held with a planning firm, hereinafter called '**Planners**,' and, at a public meeting, the **Town** Council authorized a contract with the **Planners**. A citizens' planning commission was decided upon and chosen by the **Town** Council at a nonpublic administrative meeting. The nominees were told that the **Town** Council had nominated each one to serve on the **town** planning committee for the purpose of guiding the **Planners** in their efforts to assure that the plan produced would be consistent with the character, image and land-use controls intended by the citizens. Changes in the plan during its formulation were made by the **Planners** to reflect the decisions of the planning committee.

The planning committee, a lay group of citizens, were not regularly employed personnel of the **Town**. The members of the committee were not landscape or civil engineers nor expert vocational zoning planners performing their work outside the scope of the sunshine law. Neither were they contractors engaged by the **Town** for making zoning studies, surveys or plans. To the contrary, they were a buffer lay group of citizens to serve part-time as the alter egos of the **Town** Councilmen to make tentative decisions guiding the zoning planners and advising the Council as to their ultimate zoning ordinances. In other words, the Council delegated to the committee much of their administrative and legislative decisional zoning formulation *475 authority which is ordinarily exercised by a city-governing body itself—and particularly the position of the process where the affected citizens expect to be officially heard. Thus, the nature of the committee and its function reached the status of a board or commission that to act legally must comply with the sunshine law.

The trial court specifically found that the Planning Advisory Committee meetings with the Planners were not open to the public, nor were minutes taken. These meetings were numerous and detailed.

At a joint meeting of the **Town** Council and the planning committee the role of the committee was explained. The **Town** Council was of the opinion the committee should work as an ‘element’ of the zoning commission, and further, that the **Town** Council had the authority to override any changes induced by the zoning commission and ‘would do so without timidity.’ This joint meeting was held without notice, without members of the public or press present, and no official minutes were taken or recorded.

Thereafter, the President of the **Town** Council and various members of the zoning commission met with the **town** manager and were finally advised as to the operation of the committee. An agenda was prepared for presentation of the tentative comprehensive plan to a meeting of the **Town** Council. At that meeting the plan was discussed. Further executive sessions of the zoning commission were held.

Thereafter, full public meetings and hearings of the zoning commission and of the **Town** Council were conducted and proper procedure followed. The comprehensive zoning plan was approved in essentially the same form as that which had been produced by the consultants and the planning advisory committee.

The government in the sunshine law contains the following:

‘(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting.’ [Fla.Stat. s 286.011](#), F.S.A.

The only question to be determined is whether the citizens planning commission composed of private citizens, which was established by the **Town** Council and the members thereof appointed by the **Town** Council, was subject to the government in the sunshine law.

Every meeting of any board, commission, agency or authority of a municipality should be a marketplace of ideas, so that the governmental agency may have sufficient input from the citizens who are going to be affected by the subsequent action of the municipality. The ordinary taxpayer can no longer be led blindly down the path of government, for the news media, by constantly reporting community affairs, has made the taxpayer aware of governmental problems. Government, more so now than ever before, should be responsive to the wishes of the public. These wishes could never be known in nonpublic meetings, and the governmental agencies would be deprived of the benefit of suggestions and ideas which may be advanced by the knowledgeable public.

Also, such open meetings instill confidence in government. The taxpayer deserves an opportunity to express his views and have them considered in the decisionmaking process.

Those who do not attend public meetings are given ample opportunity to participate in government by securing information of governmental activities from the news media. Responsible reporting of governmental activities results in letters or telephone calls from interested citizens so that governmental officials are given the benefit of *476 both sides of the question. No governmental board is infallible and it is foolish to assume that those who are elected or appointed to office have any superior knowledge concerning any governmental problem. Every person charged with the administration of any governmental activity must rely upon suggestions and ideas advanced by other knowledgeable and interested persons. As more people participate in governmental activities, the decisionmaking process will be improved.

Few, if any, governmental boards or agencies deliberately attempt to circumvent the government in the sunshine law.

We feel that the **Town** Council of **Palm Beach** acted in good faith, but any committee established by the **Town** Council to act in any type of advisory capacity would be subject to the provisions of the government in the sunshine law.

The citizens' planning committee was not an organization formed by any civic group such as a taxpayer's league, better government league, civic association, etc. It was conceived and formed by the **Town** Council for the purpose of working with the planning consultant so that the plan produced would be consistent with the land-use controls intended by the citizens. The citizens' planning committee was an arm of the **Town** Council.

12The Legislature would have no right to require meetings of civil organizations, unconnected with municipal government, to conform to the government in the sunshine law. However, a subordinate group or committee selected by the governmental authorities should not feel free to meet in private. The preponderant interest of allowing the public to participate in the conception of a proposed zoning ordinance is sufficient to justify the inclusion of this selected subordinate group, within the provisions of the government in the sunshine law.

Cases from other jurisdictions dealing with the scope of similar statutes compel the conclusion that bodies such as the **Palm Beach** Planning Committee selected by the **Town** Council are governed by [Fla.Stat. s 286.011](#), F.S.A.

In [Raton Public Service Co. v. Hobbes, 76 N.M. 535, 417 P.2d 32 \(1966\)](#), the Board of Directors of a city-owned electric utility were held to be within the scope of a statute governing 'all other governmental boards and commissions.'

In [Glick v. Trustees of Free Public Library, 2 N.J. 579, 67 A.2d 463 \(1949\)](#), trustees of the Library were held to be within the purview of a statute requiring the 'governing body' to advertise for bids.

In the case of [Bogert v. Allentown Housing Authority, 426 Pa. 151, 231 A.2d 147 \(1967\)](#), the Pennsylvania Supreme Court, interpreting that State's 'right to know' statute, stated:

'Within the past several decades we have witnessed the creation of these public bodies called 'authorities' which have been granted the power to, and do, perform important governmental functions which vitally affect the public. Unlike other public bodies, the members of the 'authorities' are appointed and not elected and are not Directly responsible for their actions to the electorate. If the elected members of public bodies are to be subjected to public disclosure of their actions, how much more important that the appointed members of public bodies be required to make such disclosure.' (p. 151)

In [Beacon Journal Publishing Co. v. City of Akron, 3 Ohio St.2d 191, 209 N.E. 399, 404 \(1965\)](#), it was held that a city planning commission created by the city charter with 'such other powers and duties as the council may confer upon the planning commission,' was subject to the open meeting provision of the Akron City Code which applied to 'any board or commission . . . created by the charter or by action of council.'


*477 In [Lhormer v. Bowen, 410 Pa. 508, 188 A.2d 747, 749 \(1963\)](#), proposed rezoning ordinance was held ineffectual to restrict the issuance of a building permit, one of the reasons being the failure of the planning commission to hold a public hearing on its preliminary report before submitting a final report to the borough council for action, as required by the zoning enabling legislation.

In [Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, 263 Cal.App.2d 41, 47, 69 Cal.Rptr. 480, 485 \(1968\)](#), California's Third District Court of Appeal upheld an injunction restraining the Sacramento County Board of Supervisors, and its committees, from holding informal meetings in violation of the Brown (California) Act. It held that there was nothing in the new Brown Act 'to demarcate a narrower application than the range of governmental functions performed by the agency.' It further held the Act applied not only to 'action' but also to 'deliberative gatherings . . . however confined to investigation and discussion.' Noting the widespread evasion of pre-Brown Act open-meeting statutes 'through unannounced 'sneak' meetings and through indulgence in euphemisms such as executive session, conference, caucus, study or work session, and meeting of the committee of the whole,' the court concluded that the statute could be pushed 'beyond debatable limits' to block such evasive techniques. The court continued:

'An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in the light of the Brown Act's objectives, the term 'meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business.' (p. 487)


34One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency, and relates to any matter on which foreseeable action will be taken.

5The principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State. See Florida Law Review, Government in the Sunshine by Ruth Mayes Barnes, Vol. XXIII, 361, 365 (Winter 1971).

6Mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury so that the ordinance is void *Ab initio*.  [Times Publishing Co. v. Williams, 222 So.2d 470 \(Fla.App.2d 1969\)](#). Florida Law Review, Government in the Sunshine by Ruth Mayes Barnes, Vol. XXIII, p. 369 (Winter 1971).

7Although a criminal prosecution requires proof of scienter ([Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, 699 \(Fla.1969\)](#)), an unintended violation of the government in the ***478** sunshine law will negate any action taken by the **Town** Council. [Fla.Stat. s 286.011](#), F.S.A.

The Superior Court of New Jersey in [Wolf v. Zoning Board of Adjustment of the Borough of Park Ridge, 79 N.J.Super. 546, 192 A.2d 305 \(1963\)](#), held that the proper implementation of their 'Right to Know Law' requires the court upon proper application to set aside any official action taken without compliance, even in the absence of bad faith, saying:

'The trial judge noted, and the defendant officials stress, that the act states that 'official action taken in violation of the requirements of this act shall be Voidable (Emphasis theirs.) in a proceeding in the Superior Court,' thereby supposedly indicating a legislative intent that the voiding of such action should rest in the discretion of the judge. The court concluded that since no impropriety or bad faith on the part of the board was indicated, it should exercise its discretion to permit the action to stand. We think the court took too narrow a view of the intent and underlying policy of the statute. The purpose of the act, as reflected in  [N.J.S.A. 10:4-1](#), is to implement the declaration therein that it is 'the public policy

of this State to insure the right of the citizens of this State to attend meetings of public bodies * * * for the protection of the public interest.' In other words, the object of the act is primarily prophylactic, and not necessarily restricted to creation of a remedy for illegalities at particular public meetings from which the public is excluded. Appropriate implementation of that object and policy calls, as a general rule, for the Superior Court upon proper application to set aside any official action, as defined by the act, which is taken without compliance with the prescriptions of the statute, as here. We need not now decide that no discretion is ever to be reserved to the court to save the validity of official action taken in contravention of the statute. That question may be left to await a case where a sufficiently impelling counter-interest may be argued to bespeak sustaining the action impugned. It suffices here to say that mere absence of bad faith or other impropriety on the part of the public body should not ordinarily move the court to stay its hand in voiding official action taken contrary to the statute upon proper application therefor.' (Emphasis supplied.) (pp. 308—309)

[Fla.Stat. s 286.011\(1\)](#), F.S.A., specifically provides that 'no resolution, rule, regulation or formal action shall be considered binding' where the government in the sunshine law is violated. We follow the reasoning of the New Jersey court in *Wolf v. Zoning Board of Adjustment of the Borough of Park Ridge*, *Supra*.

Answering the question presented by the District Court of Appeal in the case *Sub judice*, we hold that the zoning ordinance adopted by the zoning authorities and the **Town** Council after public hearing was rendered invalid because of the non-public activities of the citizens planning committee, which committee was established by the **Town** Council, active on behalf of the Council in an advisory capacity and participated in the formulation of the zoning plan. We approve the decision of the District Court of Appeal.

Having answered the certified question, this cause is remanded to the District Court of Appeal for further proceedings in accordance with the views expressed herein.

It is so ordered.

ERVIN, BOYD and McCAIN, JJ., concur.

DEKLE, J., dissenting with opinion.

ROBERTS, J., dissents and concurs with DEKLE, J.

TANYA M. EARLEY

PERSONAL

Address: NA

Contact: Phone: (954) 214-0537
Email: tanya.earley@yahoo.com

EDUCATION

Juris Doctor - 2007
University of Miami School of Law, Coral Gables, Florida

Bachelor of Arts, English - 2000
Georgetown University, Washington, DC

SUMMARY OF RELATED EXPERIENCE

2019 - Present	<u>CITY OF FORT PIERCE, FLORIDA</u> Population 41,600
2021 - Present	Interim City Attorney
2019 - Present	Assistant City Attorney
2014 - 2019	<u>OFFICE OF THE STATE ATTORNEY</u> Kissimmee, Florida
	Assistant State Attorney
2012 - 2014	<u>OFFICE OF THE STATE ATTORNEY</u> Miami, Florida
	Assistant State Attorney
2011 - 2012	<u>DONNA M. BALLMAN, P.A.</u> Davie, Florida
	Associate
2007 - 2011	<u>OFFICE OF THE STATE ATTORNEY</u> Miami, Florida
	Assistant State Attorney
2005	<u>THE HONORABLE ADALBERTO JORDAN,</u> <u>UNITED STATES DISTRICT JUDGE</u> Miami, Florida
	Intern
2000 - 2004	<u>UNITED STATES DEPARTMENT OF JUSTICE</u> Washington, DC
	Paralegal Specialist, Civil Division, Torts Branch

TANYA M. EARLEY, ESQ.
Tanya.Earley@yahoo.com

August 12, 2021

Via Electronic Mail

Honorable Mayor and Members of the City Commission
Care of Mr. Robert E. Slavin
100 North U.S. Highway 1
Fort Pierce, FL 34950

Dear Mayor Hudson and Members of the City Commission:

I am honored that you have asked me serve as your Interim City Attorney. Please accept this letter as my formal application for the position of City Attorney.

Since joining the Fort Pierce City Attorney's Office in 2019, I have successfully litigated cases involving labor and employment, code enforcement, animal custody, civil forfeiture, mental health/risk protection, and actions for declaratory relief. In addition to providing legal counsel to staff informally and on an as-needed basis, I have processed hundreds of formal requests for legal services.

Over the past two years, I have practiced before Fort Pierce's boards and committees, cultivated effective professional relationships with staff, and worked daily to ensure that the City's Code of Ordinances is correctly interpreted and applied. Moreover, having served Fort Pierce as the Assistant City Attorney *and* the Interim City Attorney, I have a unique understanding of what is required to promote efficiency, productivity, and stability within the Office— all while providing excellent legal service.

Despite the challenges that world events have wrought, Fort Pierce has been resilient. The City is poised for incredible growth and a brilliant future. There is no other community that I would rather serve.

Sincerely,



Tanya M. Earley

TANYA M. EARLEY, ESQ.

Tanya.Earley@yahoo.com

EDUCATION

University of Miami School of Law, Coral Gables, FL

Juris Doctor, *cum laude*, May 2007

Honors: Dean's Honor Scholarship; Award of Distinction, Litigation Skills Program

Georgetown University, Washington, DC

Bachelor of Arts, English, May 2000

Honors: Dean's List

EXPERIENCE

CITY OF FORT PIERCE, FL

Interim City Attorney, July 2021-Present and Assistant City Attorney, May 2019-Present

- Attend all meetings of the City Commission and the Fort Pierce Redevelopment Agency and provide legal counsel as needed
- Render written and verbal legal opinions to City officials, charter officers, department heads, and staff
- Review, approve, negotiate, and/or draft a vast array of documents, including contracts for goods and services, agreements for the lease, sale, and development of City property, union contracts, proposed resolutions, and proposed ordinances
- Advocate for the City in all Code Enforcement and Animal Control hearings
- Advocate for the City in matters before the Civil Service Appeals Board
- Coordinate and assist in the defense of employee grievances from inception to arbitration
- Prepare, file, and prosecute civil forfeiture and risk protection order actions on behalf of the Fort Pierce Police Department
- Represent the City in litigation at the trial and appellate levels, including filing pleadings, motions, briefs, and making court appearances
- Oversee all administrative functions of the City Attorney's Office
- Supervise and train legal support staff

OFFICE OF THE STATE ATTORNEY, Kissimmee, FL

Assistant State Attorney, March 2014-May 2019

- Prosecuted crimes for the State of Florida with an emphasis on economic and violent crimes
- Supervised and trained legal interns and attorneys
- Appeared in circuit court daily for motions and calendar calls
- Deposed witnesses, defend depositions, and prepare discovery responses
- Drafted and respond to pretrial motions

OFFICE OF THE STATE ATTORNEY, Miami, FL

Assistant State Attorney, August 2007 – October 2011; and September 2012-March 2014

- Prosecuted crimes, including vehicular homicide, armed robbery, and narcotics trafficking
- Served as lead counsel for jury trials, bench trials, and probation violation hearings

DONNA M. BALLMAN, P.A., Davie, FL

Associate, October 2011 – September 2012

- Litigated employment law claims including labor, discrimination, and non-compete disputes
- Negotiated and drafted settlement agreements
- Drafted legal documents, including pleadings, discovery motions, and summary judgment motions
- Appeared in court for motions, evidentiary hearings, and case management conferences

THE HONORABLE ADALBERTO JORDAN, UNITED STATES DISTRICT JUDGE, Miami, FL

Intern, Summer 2005

- Drafted orders addressing: summary judgment, choice of law, and the pleading requirements of the Federal Rules of Civil Procedure

UNITED STATES DEPARTMENT OF JUSTICE, Washington, DC

Paralegal Specialist, Civil Division, Torts Branch, July 2000 - July 2004

- Supported attorneys in the defense of claims filed under the National Vaccine Injury Compensation Act
- Compiled data in response to Congressional inquiries

BAR MEMBERSHIP

Admitted to the Florida Bar, member in good standing since 2007

**CITY OF FORT PIERCE, FLORIDA
CITY ATTORNEY
SEMI FINALIST CANDIDATE QUESTIONNAIRE**

Name: Tanya Marie Earley

Home Address: 572 Dillard Drive SE, Palm Bay, FL 32909

Home/Work/Cell phone numbers: 321-914-3376/772-467-3042/954-214-0537

E-mail address: tanya.earley@yahoo.com

1. Why are you interested in becoming Fort Pierce's next City Attorney and how does this position fit into your overall career plans?

I am proud to say that Fort Pierce is already my client. Although the advertised position would represent a high point in my legal career, it is also a tremendous opportunity to continue my professional growth while bringing much-needed stability to an office that has seen 100% attorney turnover in three years. I am fortunate to have met incredible people and discovered a growing city with a bright future. If I am your next City Attorney, I will dedicate myself to building an office that is competent, reliable, and responsive to the City's needs.

2. What is the largest number of employees that you have managed and where? What is the largest annual operating budget that you have managed?

As Interim City Attorney, I supervise a legal assistant and manage a budget that exceeds \$500,000. As an Assistant State Attorney in Miami, I assisted in the supervision and training of two junior attorneys. In Kissimmee, as the lead attorney in my division, I worked with newly barred attorneys in the office and in the courtroom. They were assigned to me one at a time. However, due to their level of experience, I was involved in nearly every aspect of their hands-on training and constantly evaluated their progress, from bringing them up to speed on office procedures to helping them through their first jury trials.

3. How do you stay professionally current and on top of issues with the potential for significant impact on your jurisdiction? How do ensure that your employees stay current?

I have attended multiple continuing legal education (CLE) seminars in the past two years. This is a great opportunity to learn from colleagues and to strengthen professional contacts. I also participate in online CLEs, webinars, and conference calls with other local government attorneys to discuss changes in the law. I have joined listservs for police legal advisers and municipal law attorneys. These connections have been particularly helpful in navigating the many novel legal issues that sprang from the pandemic. Finally, if there is an issue of import to Fort Pierce, it is likely that other jurisdictions on the Treasure Coast and beyond have wrestled with it also. Therefore, I review the meetings, resolutions, and ordinances of other cities and speak with their legal counsel when appropriate.

4. Describe your leadership and management style with your employees.

An effective manager sees the potential in his or her team and motivates them to perform optimally. The key to this is providing hands-on training, communicating well, and trusting the team enough to assign progressively difficult tasks. When people are treated as professionals and given commensurate responsibility, they almost always rise to meet the challenge. When work product does fall short, it is an opportunity for redirection and education rather than reproach. Disciplinary matters should be addressed swiftly, progressively, and in accordance with the City's Personnel Rules and Regulations.

5. Have you ever worked directly for a policy making body?

Yes, as an attorney for the City of Fort Pierce.

6. Are you a member in good standing of the Florida Bar?

Yes.

7. Describe your workload tolerance.... what type of office hours do you typically keep?

Effective lawyering requires hard work and long hours. As an Assistant State Attorney, I managed heavy caseloads and rarely ended my workdays at five. I have waited until 10pm for a jury verdict, given legal advice to on-scene police officers in the pre-dawn hours, and spent countless Sunday afternoons reviewing files. As legal counsel for Fort Pierce, my job description has changed, but my work ethic is the same. I am committed to working until outstanding tasks are not just completed but completed well. Furthermore, because technology connects us all now more than ever, it is my responsibility to make myself available to City officials and staff beyond traditionally defined work hours and even if I am not physically in the office.

8. What would you hope to accomplish the first 30 days on the job; the first 6 months; and the first year?

First 30 Days: Priority one will be to advertise for a new Assistant City Attorney. Next, I would meet with City officials and staff to gather information. From there, I will consider what changes I can make to provide optimal service. Any such changes would be contemplated, not in a vacuum, but in light of the resources that will be available to the office in the upcoming fiscal year.

First 6 Months: Six months in, I would like the new Assistant City Attorney to be on board and adequately trained to work efficiently and independently. I would hope to see a measurable increase in the processing time for requests for legal services. Finally, I would plan to meet with the City Manager and Director of Finance to discuss potential adjustments, including cost-saving measures, for the next fiscal year.

First Year: One year in, the office should be appropriately staffed, and I would like to work on longer-term goals such as building on institutional knowledge and fostering stability and consistency in terms of leadership and in terms of the quality of services we provide.

9. What experience do you have with organizational and/or performance analysis directed at identifying issues in need of change?

I have the advantage of having worked in this office for two years. That said, performance analysis in this legal setting is more than counting litigation wins and losses. The City Attorney's Office serves every department of the City. Its role as advisor and counselor is difficult to quantify, but it should be evaluated on an ongoing basis by regularly checking in with department heads to ensure that their needs are met.

As applied to evaluating employee performance, I am familiar with the City's performance review forms and will be ready to use them appropriately to memorialize progress over the course of the review period and to set specific, realistic goals for improvement. If I am performing well as a manager, nothing that goes into a performance review should be a surprise. Successes and mistakes should be addressed in real-time; they should not go unmentioned until the next review period. I would likewise welcome frequent feedback from the City Commission on how I can provide better service to them as a charter officer.

10. Please describe your experience in dealing with intergovernmental entities. Specifically, how do you work with the City Manager and other sections/branches of the City government while maintaining your independence?

In Fort Pierce, the City Clerk, the City Manager, and the City Attorney are distinct charter officers with coequal status. The City Manager executes and implements policy. The City Attorney ensures that policy goals are executed in a manner that protects that City from liability. Conceivably, the two offices can share the same goals but disagree on how to achieve them. Establishing mutual respect and a good line of communication can help resolve such disagreements before they reach impasse. Ultimately, my responsibility is to the City and not to any one officer or coworker and I will honor that responsibility.

11. Tell us how you communicate with your governing body and its individual members.

I speak with the City Commissioners individually in scheduled meetings and on an as-needed basis. For more urgent matters, I telephone them. I recognize that their time is precious and strive for efficiency in my communications. If necessary, I will schedule shade meetings to obtain a consensus on how to move forward with ongoing litigation.

12. How would you handle situations where the Commissioners wish to take actions that you do not consider lawful?

During my tenure as Interim City Attorney, this issue has not presented itself. Faced with this scenario, I would offer legally viable alternatives. In the absence of such, I would be direct and advise the Commissioners in an appropriate manner that their desired course of action could expose the City to liability. As an attorney, I have an ethical obligation to steer my client away from legally questionable practices and to refrain from assisting in the commission of same. I will act accordingly.

13. How would you handle questions of law, including issues relating to public safety, that may be viewed differently by an ethnically and economically diverse community and

Commission?

When I was a prosecutor, my ethical obligation was not to zealously represent the state, but to secure justice. If justice demanded that I decline to prosecute a case on constitutional grounds, I did. Likewise, if justice demanded that I recommend a harsh penalty, I did. In providing legal advice to the Fort Pierce Police Department, I have applied the same philosophy. By giving sound legal advice, particularly on constitutional issues, I can contribute to the Police Department's goal of fostering trust between law enforcement and the community while reducing the City's exposure to liability. Looking ahead, I would like to increase the frequency of meetings and training opportunities to optimize the provision of legal services to the Department.

14. Please provide a copy of a legal opinion that you have authored. (You may provide a redacted copy.

15. Have you ever been found to have committed any acts of discrimination, sexual harassment, or creation a hostile work environment? If so, please explain.

No.

16. Do you have any unusual personal consideration(s) that would need to be resolved before you could accept this position? If so, please explain.

No.

17. Should you become a finalist candidate, we will perform education, credit, civil, criminal and motor vehicle court records, internet search and reference checks on you. In doing so, will we find anything that you need to explain in advance?

No.

18. Is the resume you submitted accurate and current? If not, please explain any discrepancies.

Yes.

19. Are you currently employed?

Yes.

20. Have you ever been fired or resigned under pressure from a job? If so, please explain.

No.

21. Have you ever sued an employer or been sued by an employer or employee? If so, please explain.

No.

22. What are your compensation expectations?

I would request to start at \$155,000.



TO: Danny Visconti, Director, Indian Hills Golf Course

FROM: Tanya Earley, Assistant City Attorney

THROUGH: Peter Sweeney, City Attorney

RE: Indian Hills Golf Course

RLS FILE: 19-58

DATE: September 30, 2020

I have reviewed the attached request for legal services related to the release of potential claims arising from the use of the Indian Hills Golf Course and its equipment, including golf carts.

I have made minor revisions to the existing golf cart rental agreement. The revised document is attached.

In its current form, the golf cart rental agreement provides that renters must defend and indemnify Fort Pierce and the Golf Course in the event of injury to persons or property. Although the indemnity clause provides some potential legal protection, the "blanket" or general release that you suggested would be more comprehensive in that it would apply to all patrons and cover all activities on premises.

If the decision is made to proceed with a general release, the following language could be utilized:

In consideration for the use of the Indian Hills Golf Course ("Golf Course"), I, for myself and on behalf of my heirs, assigns, personal representatives, and next of kin, agree to release and hold harmless the City of Fort Pierce and the Golf Course, their officers, officials, agents and/or employees, other participants, sponsoring agencies, and if applicable, owners and lesser of the premises ("RELEASEES") FROM ANY AND ALL CLAIMS OF INJURY, DISABILITY, DEATH, OR LOSS OR DAMAGE TO PERSON OR PROPERTY OF ANY NATURE, THAT MAY ARISE FROM MY OWN NEGLIGENCE OR FROM THE NEGLIGENCE OF THE RELEASEES, OR OTHERWISE, AS A RESULT OF THE USE OF SAID GOLF COURSE AND/OR ITS GOLF CARTS OR OTHER EQUIPMENT both known and unknown EVEN IF ARISING FROM MY OWN NEGLIGENCE OR FROM THE NEGLIGENCE OF THE RELEASEES or others, and assume full responsibility for my use of the said Golf Course and/or its golf carts or other equipment.

Although any judge reviewing such a general release must do so within the context and unique facts of the given case, it is important to note that Florida's courts generally disfavor and frequently invalidate these types of agreements. To increase the likelihood that a reviewing court will enforce the general release, staff should ask patrons to sign the receipt/paperwork containing the general release, the release itself should be in a font that is easy to see and read, and patrons should be given sufficient time to review it prior to signing.

If you have any questions, please contact the City Attorney's Office via phone or email.

Thank you.

TE/mm

cc: Nicholas C. Mimms, P.E., City Manager
Linda Cox, City Clerk

SUSAN M. GARRETT

PERSONAL

Address: 1461-B Captain's Walk
Fort Pierce, Florida 34950

Contact: Phone: (404) 219-2998
Email: susangarrett@mindspring.com

EDUCATION

Juris Doctorate - 1987
Emory University School of Law, Atlanta, Georgia

B.A., French Language & Civilization - 1976
McGill University, Montreal, Quebec, Canada

SUMMARY OF RELATED EXPERIENCE

2020 - Present	<u>TORCIVIA, DONLON, ODDEAU & RUBIN, P.A.</u> West Palm Beach, Florida Senior Associate
2012 - 2020	<u>CITY OF ATLANTA, GEORGIA</u> Population 488,800 2019 - 2020 Law Department, Division Chief, Public Safety 2018 - 2019 Law Department, Deputy City Attorney 2017 - 2018 Department of Procurement, Interim Chief Procurement Officer 2012 - 2017 Senior Assistant City Attorney
2009 - 2012	<u>CITY OF EAST POINT, GEORGIA</u> Population 33,712 Assistant City Attorney
1996 - 2008	<u>LAW OFFICE OF SUSAN M. GARRETT</u> Decatur, Georgia Principal
1993- 1996	<u>KIRWAN, GOGER, CHESIN, PARKS & REMAR, P.C.</u> Atlanta, Georgia Associate
1988 - 1993	<u>REMAR & GRAETTINGER, P.C.</u> Atlanta, Georgia Associate

**TORCIVIA, DONLON,
GODDEAU & RUBIN, P.A.**

701 Northpoint Parkway, Suite 209
West Palm Beach, Florida 33407-1950
561-686-8700 Telephone / 561-686-8764 Facsimile
www.torcivialaw.com

Glen J. Torcivia
Lara Donlon
Christy L. Goddeau*
Leonard G. Rubin*

Jennifer H.R. Hunecke
Susan M. Garrett
Elizabeth V. Lenihan*

*FLORIDA BAR BOARD CERTIFIED
CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

August 12, 2021

By email to slavin@bellsouth.net

Mayor Linda Hudson
Commissioner Curtis Johnson, Jr.
Commissioner Jeremiah Johnson
Commissioner Thomas K. Perona
The City of Fort Pierce, Florida
c/o Slavin Management Consultants
3040 Holcomb Bridge Road, A1
Norcross, Georgia 30071

Re: Fort Pierce City Attorney

Dear Mayor Hudson and Commissioners:

I am writing to submit my application for the position of Fort Pierce City Attorney. A copy of my resume is enclosed. I had the pleasure of meeting Mayor Hudson, Commissioner Perona and Commissioner Jeremiah Johnson in 2018 when I was a finalist for the city attorney position. At that time I was an experienced municipal attorney who had practiced in the Atlanta, Georgia area for nearly twenty years, and had recently become licensed in Florida. I owned a second home in Fort Pierce, where I planned to relocate.

Since that time, I have enhanced my qualifications to become Fort Pierce City Attorney in several respects. In early November, 2020, I left Atlanta and moved to my home in Fort Pierce, where I am now a full-time, permanent resident. I also began working with Torcivia, Donlon, Goddeau and Rubin, P.A, a highly regarded municipal law firm in West Palm Beach. I have gained invaluable experience representing Florida municipalities and benefitting from the firm's considerable expertise in Florida municipal law.

Mayor and Commissioners
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My municipal law career has given me the unique opportunity to work with cities, towns and villages of all sizes, demographics and economic circumstances, as well as experience handling widely varying legal matters. As a member of the City of Atlanta Law Department, I developed particular expertise in public safety, procurement, land development, and historic preservation. Through my work here in Florida, I also have experience in Sunshine and Public Records laws, annexation, code enforcement, and labor matters.

Most importantly, I thrive on the unique challenges of government work and genuinely enjoy working for, and with, elected officials and staff of diverse backgrounds.

If selected, I would respectfully request that the City consider engaging my services through my current firm, with which I would like to maintain my relationship. Torcivia, Donlon, Goddeau and Rubin, P.A. has been providing legal services to governmental entities for more than three decades. We represent a number of municipalities and local governments throughout Florida. Currently, we serve as the lead municipal attorney for twelve municipalities and provide contracted legal services to several other cities and a variety of other local government agencies.¹ Except for our attorneys who focus on labor and employment matters (which include those for local governments), all of our attorneys are highly experienced local government lawyers, with three being Florida Bar board certified in City, County, and Local Government Law. The firm's website may be viewed at <https://www.torcivialaw.com>.

The firm's founding partner, Glen Torcivia, and I are confident that the relationship can be structured in a way that enhances the level of service and lowers, rather than increases, the cost. I would hold the position of City Attorney, perform the duties of the position, and be available to the City just as if I were its employee. I would retain and work with the current in-house staff as the City desires. The firm's resources would be available on an as-needed basis and on favorable terms as compared with retaining outside counsel. Several of our municipal clients have engaged the firm based on this model and found it to be very cost-effective.

¹ The firm serves as primary municipal attorney for Belle Glade, South Palm Beach, Loxahatchee Groves, Ocean Ridge, Sewall's Point, Greenacres, Highland Beach, Lake Worth Beach, North Palm Beach, Juno Beach, Hypoluxo, and Palm Springs. We provide contracted legal services for Riviera Beach, Wellington, Port St. Lucie, Tequesta, the School Board of St. Lucie County, the Children's Services Council of St. Lucie County, the Indian Trail Improvement District, the Northern Palm Beach County Improvement District, the Health Care District of Palm Beach County, the Port of Palm Beach District, the Property Appraiser of Palm Beach County, the Immokalee Fire Control District, the Immokalee Water and Sewer District, and the Loxahatchee River District.

Mayor and Commissioners
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I hope that you will give my candidacy and my proposal favorable consideration. In addition to my professional qualifications, I feel a personal commitment to Fort Pierce and would welcome the opportunity to be of service to the City.

Very truly yours,



Susan M. Garrett

cc: Glen J. Torcivia
Enclosure

SUSAN M. GARRETT

1461-B Captain's Walk
Fort Pierce, Florida 34950
(404) 219-2998

susangarrett@mindspring.com

Experience:

Senior Associate, Torcivia, Donlon, Goddeau & Rubin, P.A.

West Palm Beach, Florida

November, 2020 – Present

- Legal advice and representation to municipalities in all aspects of local government law, including land use, code enforcement, contracts and procurement, public safety, personnel, public records and Sunshine Law, and general business matters.

Division Chief, Public Safety, City of Atlanta Law Department

Atlanta, Georgia,

2019-2020

- Primary legal advisor to all public safety agencies including Police, Fire & Rescue, Courts, Solicitor, Public Defender, and Corrections.
- Advice and counsel on all business matters including contracts, finance, legislation, human resources, disciplinary actions, public records, open meetings, personnel and medical records, privacy issues, risk management and avoidance, and litigation oversight.

Deputy City Attorney, City of Atlanta Law Department

Atlanta, Georgia

2018 – 2019

- Legal advisor to Executive Offices (Mayor) and City Council members, Finance Executive Committee, Department of Finance, Information Management Department, Department of Procurement, Department of City Planning, Department of Parks and Recreation, Department of Aviation.
- Oversight of bond and disclosure counsel, legislation, contract solicitations and bid protests, revenue, permitting, franchise and telecommunications matters, annexation, zoning and land use litigation.

Interim Chief Procurement Officer, City of Atlanta Department of Procurement

Atlanta, Georgia

2017 – 2018

- Interim executive leadership as member of Mayor's Cabinet managing 75+ employee department.
- Responsible for solicitation, contract execution and administration for all city goods, supplies, services and real estate for \$2.2 B annual budget.

Susan M. Garrett
Page Two

Senior Assistant City Attorney

City of Atlanta, Georgia

2012- 2017

- Key legal advisor to Department of Procurement, Atlanta Information Management Department, Department of Finance, Department of Planning & Community Development, Department of Human Resources, and Executive Offices.
- General business/financial advice, legislative drafting and document review.
- Representation in administrative proceedings and employment litigation.
- Procurement advice, drafting and negotiation of contracts, including employee benefits, technology, telecommunications franchise agreements, consulting services, intergovernmental agreements.
- Counsel to Board of Zoning Adjustment and License Review Board; Community Development and Human Services Committee and Zoning Committee.

Assistant City Attorney, City of East Point

East Point, Georgia

2009 -2012

- Municipal governance, employment, finance, procurement, contracts, legislation, land use and economic development. Advice and representation in administrative proceedings and litigation.
- Acting City Attorney, November 2011 – April 2012.

Principal, Law Office of Susan M. Garrett

Decatur, Georgia

1996-2008

- Representation of local government, civic organizations, businesses and individuals in land use, historic preservation, and environmental matters;
- Interim City Attorney, City of Clarkston, Georgia, May – August 2008.

Associate, Kirwan, Goger, Chesin, Parks & Remar, P.C.

Atlanta, Georgia.

1993-1996

- Representation of individuals and businesses in federal constitutional law, civil rights and employment-related administrative proceedings and litigation.
- Representation of health care providers in licensure, patient confidentiality, and general business matters.

Susan M. Garrett
Page Three

Associate, Remar & Graettinger, P.C.
Atlanta, Georgia.
1988-1993

- Representation of individuals and businesses in federal constitutional law, civil rights and employment-related administrative proceedings and litigation.

Legal Teaching Experience

Adjunct Professor, Georgia State University
Atlanta, Georgia
Fall Semester, 2005-2019

- Historic Preservation Law course in post-graduate Heritage Preservation Certificate program.

Visiting Professor, Emory University School of Law
Atlanta Georgia.
1993-1995

- Legal Research, Writing & Appellate Advocacy

Instructor, Georgia State University
Atlanta, Georgia
1987-1988 and 2000-2002

- Legal Research, Writing & Appellate Advocacy

Education

- Emory University School of Law, Atlanta, Georgia.
Juris Doctorate, June 1987.
Executive Editor, Emory Journal of International Dispute Resolution (now Emory International Law Review).
Author, Comment, *Resolving International Environmental Disputes Between Private Parties and States*, 1 Emory J. Int'l Disp. Res. 81(1987).
- New York University, New York, N.Y. and Paris, France, 1980-83.
Graduate studies in French.
- McGill University, Montreal, Quebec, Canada.
B.A., French Language & Civilization, 1976
Post-graduate Diploma in Education (French and ESL), 1977

Bar Admissions

- State of Georgia, 1987
- Georgia Superior and Appellate Courts, 1987.
- U.S. District Court for the Northern District of Georgia, 1987.
- U.S. Court of Appeals for the Eleventh Circuit, 1988.
- State of Florida, 2018

Affiliations

- International Municipal Lawyers' Association, 2009 to date.
- American Bar Association, Public Contract Law and State and Local Government Law Sections, 2009 to date.
Vice Chair, Public Contracts Committee, 2020-2021.
- State Bar of Georgia, 1988 to date.
Local Government and Environmental Law Sections, 2009 to date. Individual Rights Section, 1988-2009. Chair, 1998-2002.
Diversity Program Committee, 1999.
- The Florida Bar, City, County & Local Government Law Section, 2018 to date.

Community Service

- *City of Decatur (Georgia) Historic Preservation Commission.* Member, 1995-1997 and Chair, 1997-1998.
- *City of Clarkston (Georgia) Planning & Zoning Committee.* 2005-2006.
- Annual guest lecturer at Historic Preservation Commission Training programs throughout the southeastern states.
- Frequent lecturer and panelist at Continuing Legal Education seminars on zoning land use, historic preservation, and civil rights law matters.
- Panelist on *Ransomware and Governments* (local government cybersecurity issues) at International Municipal Lawyers' Association Annual Conference, 2019.

**CITY OF FORT PIERCE, FLORIDA
CITY ATTORNEY
SEMI FINALIST CANDIDATE QUESTIONNAIRE**

Name: Susan M. Garrett
Home Address: 1461-B Captain's Walk, Fort Pierce FL 34950
Home/Work/Cell phone numbers: (404) 219-2998 (cell)
E-mail address: susangarrett@mindspring.com

1. Why are you interested in becoming Fort Pierce's next City Attorney and how does this position fit into your overall career plans?

I love being a municipal lawyer and I love living in Fort Pierce, so the prospect of serving the City would be the highlight of my career. I have no plans to move and would hope to serve in the position for a long time into the future.

2. What is the largest number of employees that you have managed and where? What is the largest annual operating budget that you have managed?

As Deputy City Attorney with the City of Atlanta I managed eight lawyers and paralegals but did not have direct budget responsibility. As Interim Chief Procurement Officer, I managed a staff of approximately 75 with a budget of approximately \$3.5M.

3. How do you stay professionally current and on top of issues with the potential for significant impact on your jurisdiction? How do ensure that your employees stay current?

I make it a point to attend municipal law seminars, particularly those offered by the Florida and International Municipal Lawyers Associations and the League of Cities. I plan to pursue Board Certification in City, County and Local Government from the Florida Bar. I also make it a point to read several local newspapers to stay aware of local, regional and state issues that may affect my clients. I would encourage my employees to do all of the same, and would provide support as the budget permits.

4. Describe your leadership and management style with your employees.

As a leader and manager, I believe in treating my team members and colleagues with the same level of courtesy and respect that I expect from them. I try to be accessible and approachable without becoming overly informal. I am clear in communicating my expectations and I expect the best from everyone. When things go wrong, I am more focused on fixing the problem and taking steps to ensure it doesn't happen again, than on fixing blame. I show my team that I have their backs as long as they are doing their best. My patience is not infinite, however, and if performance issues do not improve, I will reluctantly do what's necessary to protect the organization.

5. Have you ever worked directly for a policy making body?

Yes, from 2009 – 2020 I worked directly with the City Councils in the City of East Point, Georgia and the City of Atlanta. Since moving to Florida last November I have worked

with numerous municipalities in Palm Beach and Martin Counties.

6. Are you a member in good standing of the Florida Bar?

Yes.

7. Describe your workload tolerance.... what type of office hours do you typically keep?

I am accustomed to keeping flexible hours due to the frequent evening council, commission, and board meetings that characterize municipal work. Despite that I try to maintain fairly regular office hours during the business day in order to be accessible to clients and colleagues. I also realize that it is part of the city attorney's job to be available after hours and on weekends when needed. I am not a workaholic, but I believe in doing whatever it takes to get the job done in a timely manner.

8. What would you hope to accomplish the first 30 days on the job; the first 6 months; and the first year?

During the first 30 days on the job, I would focus on providing a smooth transition while establishing solid working relationships within my office and with the Commission, the Mayor, the Manager, and department heads. I would work closely with existing legal staff to re-allocate responsibilities in a way that that makes the best use of everyone's talents, and provides the City with the best possible level of service. I would avoid making immediate significant changes unless there is an urgent need to do so.

During the first six months, I would begin addressing any immediate staffing and service issues. I would continue to build relationships within City officials and colleagues, to discuss their short and long term goals for the City, so that I may anticipate how the City Attorney's Office will support those goals. I would review the budget to determine where additional resources are most needed and where savings might be realized. In particular, I would examine the use of outside counsel and determine whether the work may be handled more economically without sacrificing quality.

During the first year, I would develop a 1, 3 and 5 year plan for the City Attorney's Office. The plan would address attracting and retaining excellent talent, enhancing the quality of legal services provide to the City, all while operating in a cost effective manner.

9. What experience do you have with organizational and/or performance analysis directed at identifying issues in need of change?

My most relevant experience with organizational change occurred when I served as Interim Chief Procurement Officer for the City of Atlanta in 2017-2018. The department was in turmoil after my predecessor had been terminated and subsequently prosecuted on corruption charges. I had to immediately stabilize the department, restore employee morale, improve departmental processes, with added checks and balances, and regain the confidence of City leadership and the public. The success of these efforts was tested when, in early 2018, the City was hit by a cyberattack and my department had to maintain operations without access to computer systems. We developed a contingency plan that allowed us to successfully procure millions of dollars' worth of emergency technology contracts using proper procedures and documentation, despite the challenging circumstances.

10. Please describe your experience in dealing with intergovernmental entities. Specifically, how do you work with the City Manager and other sections/branches of the City government while maintaining your independence?

I have experience working with both council-manager and strong mayor local governments. I remain mindful of the fact that the City is my organizational client and the mayor, council members and departments are constituencies within the organization. I treat all constituencies with respect and endeavor to serve everyone's needs, as long as doing so does not put me in a conflicted position with respect to the City.

11. Tell us how you communicate with your governing body and its individual members.

When I begin working with a new council or commission, I educate myself on the written procedures and customary practices of the local government with regard to communications, and conduct myself accordingly. I try to establish a respectful and cordial working relationship with each member and gain their trust, while keeping in mind that the City and not any group or individual is my client.

12. How would you handle situations where the Commissioners wish to take actions that you do not consider lawful?

I would advise them, respectfully but candidly, of my legal opinion and the reasons I have reached that conclusion. My advice would include the likely or potential consequences of taking the action at issue. To the extent it is possible without violating Sunshine or public records laws, I would share this opinion privately with the individual(s) promoting the action. However, if asked publicly to state my opinion, I would have to provide a candid answer. If there is a good faith legal argument that could support the legality of the action, I will acknowledge it, even if I disagree.

13. How would you handle questions of law, including issues relating to public safety, that may be viewed differently by an ethnically and economically diverse community and Commission?

My experience as Public Safety Division Chief for the City of Atlanta Law Department in 2019-2020 gave me a keen awareness of how public safety issues are viewed differently by people from different backgrounds and experiences. While these differing perspectives do not change the law, they do impact the policies that apply the law. A proposed ordinance change, for example, can be viewed very differently by people from two neighborhoods in the same city.

14. Please provide a copy of a legal opinion that you have authored. (You may provide a redacted copy.)

Please see attached.

15. Have you ever been found to have committed any acts of discrimination, sexual harassment, or creation a hostile work environment? If so, please explain.

No.

16. Do you have any unusual personal consideration(s) that would need to be resolved before you could accept this position? If so, please explain.

No.

17. Should you become a finalist candidate, we will perform education, credit, civil, criminal and motor vehicle court records, internet search and reference checks on you. In doing so, will we find anything that you need to explain in advance?

No, but please see answer to question 21.

18. Is the resume you submitted accurate and current? If not, please explain any discrepancies.

Yes, it is accurate and current.

19. Are you currently employed?

Yes. I am an attorney with the West Palm Beach firm of Torcivia, Donlon, Goddeau and Rubin, P.A.

20. Have you ever been fired or resigned under pressure from a job? If so, please explain.

No.

21. Have you ever sued an employer or been sued by an employer or employee? If so, please explain.

I have never sued an employer or been sued by an employer or client. In 2019 I was joined as an individual defendant in a lawsuit against the City of Atlanta alleging violation of the Equal Pay Act and related claims due to my position as interim head of the procurement department. Although I was the acting department head, I did not have final authority over compensation, which was controlled by Human Resources. The claims against the individual defendants were dismissed and the case was settled by the City.

22. What are your compensation expectations?

My compensation expectations are flexible within the range that the City has budgeted for the position. However, as mentioned in my cover letter, my preference would be that the City enter into a contractual relationship with my law firm where I would serve in the role of City Attorney, but remain an employee of the firm. We believe that the arrangement can be structured in a way that provides all the services I would provide as a City employee, at no greater cost, along with access to additional resources from the firm as needed.



MEMORANDUM

TO:
FROM: Susan M. Garrett, Division Chief, Public Safety
SUBJECT: *Martin v. City of Boise*, 920 F. 3d 584 (9th Cir. 2019), cert. denied (December 16, 2019).
DATE: January 17, 2020

The purpose of this Memorandum is to summarize the decision of the United States Court of Appeals for the Ninth Circuit in *Martin, et al. v. City of Boise*, 920 F. 3d 584 (9th Cir. 2019) (“*Martin*”); to discuss the significance of the United States Supreme Court’s denial of certiorari review in that case; and to discuss the potential impacts of the *Martin* decision on the City of Atlanta in light of the decision of the Court of Appeals for the Eleventh Circuit in *Joel v. City of Orlando*, 232 F. 3d 1353 (11th Cir. 2000).

The Atlanta Urban Camping Ordinance, Atlanta City Code § 106-12 meets the constitutional standards described by the Eleventh Circuit Court of Appeals in *Joel*. Like the Orlando ordinance at issue in *Joel*, the City of Atlanta ordinance is tailored to serve a legitimate public purpose and focuses on certain prohibited conduct, rather than mere status. In fact, unlike both the Orlando ordinance and the Boise ordinance at issue in *Martin*, the Atlanta ordinance contains no reference to “sleeping” in its definitions of prohibited conduct.

In *Martin*, the Ninth Circuit Court of Appeals held that the Eighth Amendment to the Constitution (proscribing the use of cruel and unusual punishment) prohibits the imposition of criminal penalties on homeless individuals for sitting, sleeping or lying outside on public property when they are unable to obtain shelter.

Factual and Procedural Background

Between 2007 and 2009, each of the *Martin* plaintiffs was convicted at least once of violating the City of Boise’s Camping Ordinance and/or the Disorderly Conduct Ordinance.

The plaintiffs filed suit against the City in the United States District Court for the District of Idaho, seeking damages and injunctive relief, challenging their prosecution under the Camping Ordinance and Disorderly Conduct Ordinance on various grounds, including a claim that it violated the Eighth Amendment prohibition against cruel and unusual punishment.

The Boise Camping Ordinance at issue criminalizes using “any use of the streets, sidewalks, parks or public places as a camping place at any time.” Boise City Code § 9-10-02. The ordinance defines “camping” broadly:

The term “camp” or “camping” shall mean the use of public property as a temporary or permanent place of dwelling, lodging, or residence, or as a living accommodation at anytime between sunset and sunrise, or as a sojourn. Indicia of camping may include, but are not limited to, storage of personal belongings, using tents or other temporary structures for sleeping or storage of personal belongings, carrying on cooking activities or making any fire in an unauthorized area, or any of these activities in combination with one another or in combination with either sleeping or making preparations to sleep (including the laying down of bedding for the purpose of sleeping).

After the lawsuit was filed, the Boise Police Department implemented a new policy that the Camping Ordinance would not be enforced against homeless individuals on any night when there was no shelter space available. In implementing the policy, the police relied upon the shelters to report when they were full. In 2014 the ordinances were both amended to incorporate the policy.

The Idaho District Court granted summary judgment to the City on all of the plaintiffs’ claims and they appealed to the Ninth Circuit Court of Appeals. Following several intermediary rulings and remands, a three-judge panel of the Court of Appeals issued a decision reversing the trial court’s ruling in several respects, including as to the Eighth Amendment claim. The Court of Appeals issued its final decision on April 1, 2019, denying rehearing by the panel and by the full court, and amending the earlier opinion. 920 F 3d 584 (2019). The City of Boise petitioned the United States Supreme Court for writ of certiorari, which was denied without opinion on December 16, 2019.

The Ninth Circuit Court of Appeals Decision

After a lengthy discussion of various procedural issues, the Court of Appeals turned to the merits of the plaintiffs’ Eighth Amendment claim, framing the question as follows:

Does the Cruel and Unusual Punishment Clause of the Eighth Amendment preclude the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter?

The Court of Appeals held that it does. 920 F 3d at 614.

The Eighth Amendment to the United States Constitution provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amend. VIII. The Court of Appeals reasoned that this amendment not only forbids excessive punishments, but also places limits on *what the government may criminalize*. *Id.*, citing *Ingraham v. Wright*, 430 U.S. 651,667 (1977). The Court discussed Supreme Court precedent which draws a distinction between punishing individuals for *conduct* and punishing them for

status. See *Robinson v. California*, 370 U.S. 660 (1962) (invalidating statute that criminalized the status of narcotic addiction), and *Powell v. Texas*, 392 U.S. 514 (upholding Texas statute that criminalized the conduct of appearing intoxicated in public).

Examining the Boise city ordinances, the Court of Appeals reasoned that punishing individuals for sleeping outside, when they had no other place to go, was punishing them for conditions they were powerless to avoid.¹

Although the ordinance appears to regulate conduct, the Court found that in the case of homeless persons the conduct was involuntary, such that it could not be separated from status. As a result, the Court concluded that “just as the state may not criminalize the state of being ‘homeless in public places,’ the state may not criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets.” 920 F. 3d at 616 – 617. Accordingly, the Ninth Circuit Court of Appeals held that “a municipality cannot criminalize such behavior consistently with the Eighth Amendment when no sleeping space is practically available in any shelter.” *Id.* at 618. The Court emphasized that its ruling was a narrow one and did not mandate that the City must provide sufficient shelter for the homeless, or that it must allow anyone who wants to do so to sit, lie or sleep in the streets. *Id.*

Significance of the Supreme Court’s Denial of Certiorari and Impact of the Ruling in the City of Atlanta

The Ninth Circuit Court of Appeals decision in *Martin* constitutes binding precedent only in the states and territories belonging to that circuit: California, Hawaii, Idaho, Montana, Oregon, Washington, Guam and the Northern Marianas. The United States Supreme Court’s denial of the writ of certiorari means only that fewer than four members of the Court were in favor of granting the writ; it does not indicate or even imply the Court’s approval or disapproval of the lower court’s ruling. See *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950).

The City of Atlanta is located within the jurisdiction of the Court of Appeals for the Eleventh Circuit, consisting of the states of Alabama, Georgia and Florida. The *Martin* case is not binding precedent in this jurisdiction. Moreover, the Court of Appeals for the Eleventh Circuit addressed similar issues and reached a different conclusion in *Joel v. City of Orlando*, 232 F. 3d 1353 (11th Cir. 2000).

In *Joel*, the Court of Appeals for the Eleventh Circuit held that an Orlando city ordinance prohibiting camping on public property was constitutional. 232 F.3d at 1362 The Court found that the prohibition of “camping” on public property, defined to include sleeping outdoors, was rationally related to the city’s interest in promoting public health and safety, and did not violate

¹ The Court was not swayed by the City’s contention that the shelters had space available when the arrests were made. 920 F. 3d at 610.

the equal protection rights of the homeless, even though it may have a disproportionate impact on homeless persons. The Court rejected the plaintiffs' Eighth Amendment challenge because the ordinance "targets conduct, and does not provide criminal punishment based on a person's status." *Id.* The Court further noted that "[t]he City is constitutionally allowed to regulate where 'camping' occurs."

The City of Atlanta Urban Camping Ordinance, Atlanta City Code § 106-12, prohibits camping on any street, sidewalk, other right-of-way, or area underneath a bridge, within the City of Atlanta; storage of personal property underneath a bridge, and/or in a park; and interference with ingress and egress to public property or parks, as those terms are defined in the ordinance. Unlike both the Orlando and Boise ordinances, the Atlanta Ordinance does not prohibit "sleeping." The Atlanta Ordinance further provides that no person may be arrested for violating this code section until s/he has received an oral or written warning from the Atlanta Police Department to cease the prohibited conduct. If the violator fails to comply with the warning, s/he may then be arrested for violation of this section.

ELIZABETH M. LOCONTE

PERSONAL

Address: 2632 NE 13th Avenue
Pompano Beach, Florida 33064

Contact: Phone: (386) 747-7687
Email: elizabethmurphyloconte@gmail.com

EDUCATION

Juris Doctor
Cornell Law School

Bachelor of Arts
University of Florida

SUMMARY OF RELATED EXPERIENCE

2020 - Present	<u>CITY OF HALLANDALE BEACH, FLORIDA</u> Population 39,656 Assistant City Attorney
2019 - 2020	<u>TOWN OF DAVIE, FLORIDA</u> Population 104,399 Town Attorney
2016 - 2019	<u>COUNTY OF VOLUSIA, FLORIDA</u> Population 553,284 Assistant County Attorney
2015 - 2016	<u>AMERICAN TOWER CORPORATION</u> Boca Raton, Florida Senior Attorney
2000 - 2015	<u>LAW OFFICE OF ELIZABETH S. MURPHY P.A.</u> Palm Beach, Florida Principal
2000 - 2002	<u>CITY OF WEST PALM BEACH, FLORIDA</u> Population 68,000 Assistant City Attorney
1999 - 2000	<u>VALENTINO SPA</u> Rome and NYC In House Counsel

Elizabeth Murphy LoConte, J.D.

ElizabethMurphyLoConteJD@gmail.com (386) 747 7687
2632 NE 13th Avenue, Pompano Beach, FL 33064 Florida Bar No. 870463

August 3, 2021

Re: Application for Fort Pierce City Attorney

Dear Madam Mayor and Members of the Fort Pierce City Commission:

I am applying for the position of Fort Pierce City Attorney. A third generation Floridian, I graduated with Phi Beta Kappa honors from the University of Florida and earned my JD from Cornell Law School. Please find attached my:

- Resume
- 16 letters of recommendation from prior bosses and community and national leaders
- Writing samples from the County of Volusia
- Cornell Law School transcript

1. Deep Bench Government Legal Skills

You will find that I am a clear thinking, dedicated and consensus building government lawyer. As set forth below and on the attached, I have a history of successful multi-faceted land use, utility, construction, employment and sizable contractual procurements as a government attorney. Additionally, while I ran my own law firm in the Town of Palm Beach, I served for 7 years as a policy maker for the Town (5 years as a Planning and Zoning Commissioner and 2 years as a Landmarks Preservation Commissioner). I also served on the Florida Bar Ethics Committee for several years, and clerked at Cornell Law for the ABA Editor in Chief on the Restatement of Law Governing Lawyers.

2. Sitting for Next Florida Bar City, County and Local Government Law Board Certification Exam.

I am applying to become board certified in City, County and Local Government Law as soon as the window opens in three weeks. Additionally, I have taken the following 119 hours of CLE credits since 2015, mostly governmental, and keep up on annual legislation affecting Florida counties and cities.

11/22/2019 3307	Raymond J. Ehrlich, Jr. Trial Advocacy Seminar	CD	4.0	0.0	0.0
11/18/2019 2938	City, County and Local Government Law Cert. Review	CD	8.5	1.5	0.0
10/22/2019 2946	42nd Annual Local Government Law in Florida	CD	10.5	2.0	1.0
08/09/2019 1905030N	Opioid Conference	Live	3.0	3.0	0.0
07/08/2019 2629	Land Use 2018	DVD	7.0	1.0	0.0
06/08/2019 2632	City, County, Local Govt Certification Review 2018	CD	8.5	1.5	0.0
04/10/2018 2311	Public Finance in Florida 2017	CD	7.0	0.0	1.0
03/09/2018 1800536N	Young Lawyers Professionalism Roundtable	Live	1.0	1.0	0.0
01/11/2017 1509210N	Real Estate Transactions: Key Pitfalls to Avoid	Webinar	3.5	0.0	0.0
10/11/2016 1847	Hot Topics in Evidence - 2015	CD	7.5	1.0	0.0
09/13/2016 2052	39th Annual Local Government Law in Florida	CD	11.0	1.0	0.0
08/11/2016 2030	Sunshine Law Public Records & Ethics for Public	CD	8.0	4.0	0.0

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06/24/2016 1604159N Criminal Law CLE: Dilemmas in Accused 911	Live	2.0	1.00.0
02/20/2016 1837 Sunshine Law Public Records & Ethics for Public Of	CD	8.0	4.00.0
09/01/2015 1406787N Access MCLE Complete Bundle	On-line	30.05	00.0

3. Examples of High Value Public Projects

As an Assistant County Attorney for the County of Volusia, I participated in various County Leadership negotiations, particularly complex, high value multi-faceted construction and industrial development projects. For example, I:

- Worked for several years negotiating disputes related to the County's FHWA/FDOT funded \$47M arched bridge and memorial plaza, and in the procurement of construction and design services (primarily Daytona Beach International Airport related) utilizing tens of millions of dollars of DOT grants over the years.
- Served as the County legal representative to its Industrial Development Authority, where I worked on bond issues from \$35M to \$100M+ and revamped the Authority's industrial bond procedures. I served as County counsel for two of its three Advertising Authorities (CVBs), where I ensured County, State and Federal rules were followed in all procurements and employment issues.
- Revamped the CCNA issues at the Daytona Beach International Airport, and years before rewrote the design professional procurement and construction contracts for the City of West Palm Beach. One of the attached letters of recommendation is from my former WPB City Attorney, Pat Brown.
- Am presently assisting a procurement by utilizing the competitive solicitation of another agency, the State of Georgia, (a/k/a piggyback) of a \$5M fleet of electric buses for the City of Hallandale Beach, working to obtain necessary consensus of the stakeholders: city, county (surtax implications and reimbursements), vendor (BYD), grantor (FDOT) and source GA DOAS.

4. Legal Diligence / Commercial Acumen / Robust Ethical Training

As an attorney, I am used to constantly analyzing and mitigating significant business, financial, and legal risks. My recommended mitigation usually includes a Plan B and Plan C, because I am both a strategist and realist. I take steps to control what I can, develop and rely heavily on ever improving standard operating procedures and work training others to plan steps for contingencies for items outside of the agency's control. Additionally, I served for several years on the Florida Bar Associations Ethics Board, and at Cornell Law School I clerked for Professor C. Wolfram, Editor in Chief of the ABA's Restatement on Professional Ethics. The rigors of legal ethical training help me to prepare and keep audit-ready files, not as a rushed afterthought but as a proactive, repeatable, and expected practice of disclosure and diligence, while allowing me to use my background, training and common sense to uncover and welcome the development of new streams of income for the public agency.

5. Management and Education

I have long helped my staff and the department directors and their staff to help themselves through training, analysis and improvements to standard operating procedures, and the creation of forms. I truly

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2632 NE 13th Avenue, Pompano Beach, FL 33064 Florida Bar No. 870463

enjoy empowering other people to excel at their jobs. I have also been giving Sunshine and Public Record training for years to county and city departments, boards, authorities and special districts. Moreover, as a public official in the Town of Palm Beach, I was interviewed on projects and improving our boards, and for years I served on 5 committees of the Town of Palm Beach Civic Association (Transportation and Construction, Beautification, Commissions, Underground Utilities and Zoning), served on its board, and as was honored to serve for several years on its Executive Committee. Please see my letters of recommendation from national movers and shakers with whom I served on the two commissions and/or the Civic Association Executive Committee. I was also interviewed from time to time on the local NBC affiliate/WPTV regrading legal, real estate and political ethics issues in the news.

6. Note on Why I Seek to Make the Change

I enjoy my present career at the City of Hallandale Beach; however, I accepted the offer and salary understanding the FRS treatment would be same as with my former employer, Volusia County for the same title and responsibilities. I learned recently that the City is not applying the Senior Management multiplier, as the County did, which would cost me more than \$140,000 in pension revenue later. As such, I have decided to locate a higher salary or move to an FRS provider than continues to classify my position as Senior Management. I am interested in a City Attorney salary of \$155,000-\$165,000.

Please let me know if you would like to meet by Zoom, or in person at the offices. I stand ready to provide (almost) immediate, measurable, positive outcomes. As I love my job, I respectfully as that you please not communicate my application outside your county unless I am being offered the position.

Thank You,

Elizabeth Murphy LoConte, J.D.

ElizabethMurphyLoConteJD@gmail.com

Encl.

Resume, Writing Samples and Letters of Recommendation from:

- 1) Charles D. Hargrove, Deputy County Attorney for County of Volusia (former boss)
- 2) Patrick N. Brown, Former City Attorney of West Palm Beach (former boss)
- 3) American Tower Corp.
- 4) Keith Austin, Esq., Chartered
- 5) Richard Kleid, Esq., President Pro Tem, Palm Beach Town Council
- 6) Harriet Himmel, entrepreneur, investor
- 7) Stanley M. Rumbough, Jr., co-founder of WPO and of Citizens for Eisenhower
- 8) William M. Guttman, Former Chief Legal Officer of Time, Inc.
- 9) David C. Lucey, Esq., Colleague
- 10) Ned Barnes, President, Palm Beach Civic Association
- 11) Stephen L. Brown, Former CEO and President of John Hancock Insurance Group
- 12) Client letter (redacted for privacy)
- 13) Hon. Bill Moss, West Palm City Commissioner
- 14) Robert Slater, CPA
- 15) Astronaut Edgar Mitchell, 6th Man on the Moon
- 16) Muriel "Mickie" Siebert, 1st Woman on Wall Street

ELIZABETH S. MURPHY LOCONTE, J.D.

(386) 747 7687 ElizabethMurphyLoConteJD@gmail.com

I. EDUCATION

Cornell Law School, Juris Doctor

University of Florida, Bachelors of Arts – Phi Beta Kappa, Omicron Delta Kappa Awards

Eurocentres Madrid Summer School

II. EXPERIENCE

March 2020-Present: Assistant City Attorney, City of Hallandale Beach. Am responsible for Procurement review / processes for public works, parks and recreation, city cemetery, construction and engineering, leases, transportation surtax projects, electric vehicle fleet, development services, contract review and negotiation, ILAs, FEMA and CARES grant funding projects, police contracts, injunction litigation, ordinances and resolutions, real estate, comprehensive plan amendments, and serving as counsel for planning and zoning board, code enforcement board and unsafe structures board.

November 2019-March 2020: Town Attorney, Town of Davie. Drafted and revised municipal ordinances and resolutions; Updated templates for RFQ, RFI, ITB procurement division and vendor and design professional contracts to fortify legal and commercial position of public agency, including sovereign immunity, insurance, indemnification, debarment and public records trade secret submittals; Oversaw pending litigation; Negotiated settlements; Drafted and negotiated mutual aid and interlocal agreements with water district, Seminole Tribe, county school board, educational board, county and other public agencies; Advised on state and federal grant compliance; Opined on easements, right of ways, restrictive covenants, site plan reviews, zoning variances, special use applications, purchase and sale agreements, procurement contracts, FEMA, cell tower agreements, industrial bond issue amendment, developer's agreements, CCNA, union and employment SOPs and contracts on behalf of administration, budget and finance, parks and recreation, police, IT, public works, engineering, building, planning and zoning, code, fire, human resources, public information, utilities and the CRA; Advised at town council, CRA and charter review meetings; Assisted on short term rental and sober home code enforcement investigations. *For reasons unrelated to performance, board cancelled contract for convenience.

July 2016-November 2019: Assistant County Attorney, County of Volusia. Served as part of local government operations legal team: Responsible for contract negotiation, drafting, compliance, enforcement; Public Records and Sunshine law research, training and compliance; Litigation and dispute resolution services for engineering, transportation and construction and general procurement; Updated debarment policy; Worked with risk management to increase protections and reduce liability; Drafted Purchase and Sale and Right of Way Agreements and Easements; Researched and investigated employment issues; Served as counsel to county advertising authorities (CVBs) and special districts, including the Industrial Development Authority and Educational Authority; Provided emergency management oversight; Drafted annual private road debris removal waiver applications and ROW consents, municipal mutual aid reimbursement agreements and school shelter agreements; Drafted Ordinances and Resolutions; Handled FEMA and DEM grant compliance and reimbursements; Addressed ongoing emergency operations facility issues, statewide agreements and 911 nurse triage program; Presented Payment in Lieu of Taxes for ALFs; Negotiated medical services provider contract for Department of Corrections (DOC) and hospital discount participation agreements; Obtained direct federal payment for DOC inpatient services; Advised on Fire services; Advised airport, county convention center, agricultural extension, department of corrections, purchasing and procurement, parks and recreation and county leadership.

2015 - June 2016: Senior Attorney, American Tower Corporation ATC (NYSE) (Boca Raton) Was responsible for rooftop, easement, distributed antenna systems (DAS) and tower and rooftop marketing contracts, ground leases and easements. (ATC relocated out of State mid-2016.)

2000-2015: Principal, Law Office of Elizabeth S. Murphy P.A. (Palm Beach) Practice Areas:

Business/Corporate, Commercial/IP, Real Estate and Employment

***Business/Corporate** experience included advising on business entity selection and structure in US and Europe; Cross border business planning and transactions; Mergers and acquisitions; Joint ventures; Corporate governance; Private equity; Acquisition and disposition of assets and affiliates; Creation and dissolution of Partnership Agreements; Purchase and sale of controlling and minority interests; Licensing, franchising and distributor agreements; Governing documents; Non-Disclosure Agreements; Due Diligence; Equity and incentive compensation; Compliance; Fiduciary duty advice regarding corporate governance and transactional matters; Director and Officer liability, Shareholder disputes, indemnification and insurance; Corporate restructuring.

***Commercial/Intellectual Property** experience included service for 5 years as in-house counsel for self-made billionaire couturier Valentino in Rome. Responsibilities included licensing, franchising, distribution, commercial contracts and spearheading over 1,300 trademark registrations, renewal, infringement and copyright cases. (Starting at time of hire with 200 cases, we ramped up to 1,300 to shore up value of IP portfolio for successful sale for US\$300M+ to a fashion conglomerate.) While in Palm Beach, served as General Counsel and Officer for 8 years to VBH Group of Companies, incorporated entities in three countries, applied for trademarks in 30 countries, negotiated labor, insurance, real estate buildout and commercial contracts and helped owner to convert investment of \$12M to approximately \$60M by Year 8. For multiple clients, negotiated, drafted, enforced, terminated and litigated software, licensing, distribution and international commercial trade agreements and assisted with valuation/sale process of company assets.

***Real Estate and Land Use** experience included representation of property owners and investors in buying, developing, selling and leasing residential and commercial property; Worked with lenders and borrowers on mortgage loans on commercial projects, workouts, foreclosures and restructuring; Represented contractors in litigation on construction, worker's compensation compliance, insurance, defects, delays and negligence; Advised and represent clients on land use, zoning, code enforcement, property tax protests, unity of title, easements, ground leases, evictions, constructive evictions, adverse possession, public utilities, water rates and RFPs. Real Estate experience includes service as a West Palm Beach Assistant City Attorney and on Palm Beach Landmarks Preservation Commission and on Planning and Zoning Commission;

***Employment** experience included advising clients on federal and state labor and employment laws, EEOC defense (race, color, gender, national origin, age and sexual harassment); Unemployment and overtime claims, FMLA and ADA; Retaliation, Design and implementation of progressive discipline plans; Negotiation, drafting, enforcement, termination and litigation of all levels of employment contracts, executive compensation packages and benefits, separation, severance and non-compete agreements, wrongful termination; Ongoing advice regarding hiring, terminations, layoffs, benefits, job assignments, training, promotions and demotions; Drafting of employee handbooks and policies; Advising on Reductions in work force; OWBPA; OSHA; Post-separation privacy and copyright issues; Employee theft and torts; Breach of contract; Hostile work environment; Education of managers and staff on Harassment and reporting policies. 2011-2013: VP and Private Client Advisor, M&T Bank Subsidiary (Wilmington Trust)

2000-2002: Assistant City Attorney, City of West Palm Beach. Public Works and Engineering contracts.

1999-2000: In House Counsel, Valentino SpA (Rome and NYC). Commercial contracts, franchises and IP.

- III. COMMISSIONS AND BOARD SERVICE Served as public official in Town of Palm Beach (5 years as zoning commissioner and 2 years as a landmarks preservation commissioner) and on Florida Bar Association Ethics

Committee, board and executive committee of the Palm Beach Civic Association (and on its Transportation and Construction, Beautification, Zoning, Underground Utilities and Commissions committees), as officer and board member of the Palm Beach Business Group, board member of the Palm Beach Opera Guild, board member of the Fontana Properties Association, board member of the Cornell Club of Eastern Florida and Fort Lauderdale and Boca Raton (current), board member of VBH Srl and officer of VBH Luxury, Incorporated; Graduate of the Palm Beach Citizens' Police Academy; Allocations committee member for United Way of Miami and United Way of NYC. Occasional interviewee on legal, real estate and urban issues for the Palm Beach NBC affiliate, WPTV.

IV. LANGUAGES English, proficient in Italian and understands most Spanish

Attachments: A. Letters of Recommendation:

- 1) Charles D. Hargrove, Deputy County Attorney for County of Volusia (former boss)
- 2) Patrick N. Brown, Fmr City Attorney of West Palm Beach (former boss)
- 3) American Tower Corp.
- 4) Keith Austin, Esq., Chartered
- 5) Richard Kleid, Esq., President Pro Tem, Palm Beach Town Council
- 6) Harriet Himmel, entrepreneur, investor
- 7) Stanley M. Rumbough, Jr., co-founder of WPO and of Citizens for Eisenhower
- 8) William M. Guttman, Fmr Chief Legal Officer of Time, Inc.
- 9) David C. Lucey, Esq., Colleague
- 10) Ned Barnes, President, Palm Beach Civic Association
- 11) Stephen L. Brown, Fmr CEO and President of John Hancock Insurance Group
- 12) Client letter (redacted for privacy)
- 13) Hon. Bill Moss, West Palm City Commissioner
- 14) Robert Slater, CPA
- 15) Astronaut Edgar Mitchell, 6th Man on the Moon
- 16) Muriel "Mickie" Siebert, 1st Woman on Wall Street

**CITY OF FORT PIERCE, FLORIDA
CITY ATTORNEY
SEMI FINALIST CANDIDATE QUESTIONNAIRE**

Name: Elizabeth Murphy LoConte, Esq.

Home Address: 7790 NW 34th Street, Davie, FL 33021

*Note: This address is confidential pursuant to Chapter 119, F.S., so for my mailing address I use a house I own with my daughter located at 2632 NE 13th Ave., Pompano Beach, FL 33064.

Home/Work/Cell phone numbers: (954) 457 1489 and (386) 747 7687

E-mail address: ElizabethMurphyLoConteJD@gmail.com

1. Why are you interested in becoming Fort Pierce's next City Attorney and how does this position fit into your overall career plans?

I would like to become the City Attorney because I care about good governance and I am qualified to protect the legal, ethical, and financial interests of the City of Fort Pierce. I have 14 years of government service in Volusia, Palm Beach and Broward Counties, and would like to move to Fort Pierce and grow roots there.

2. What is the largest number of employees that you have managed and where? What is the largest annual operating budget that you have managed?

At the County of Volusia, a paralegal was assigned to each of the 12 attorneys, at the Town of Davie there was one junior attorney and at the City of Hallandale Beach the three attorneys share the services of an office manager and paralegal. The annual budget at the County of Volusia was just under \$1B when I left, though attorneys do not manage the budget, but rather provide guidance as to legal sufficiency in assisting leadership to raise revenue/grants and allocate funds.

3. How do you stay professionally current and on top of issues with the potential for significant impact on your jurisdiction? How do ensure that your employees stay current?

I stay professionally current by exceeding the minimum Continuing Legal Education (CLE) courses that relate to Florida government laws, regulation and practice. Please see the list of my 119.5 credits from FlaBar.org from 2015 (30 more than the 90 required) on Exhibit "A."

In addition to the above 119.5 credits, I am taking 12.5 more City, County and Local Government Law Certification hours identified below:



Play
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 Materials
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 Certificate

- **Credit(s):** 12.5 CLE; 12.5 City, County, & Local Government; 12.5 State & Federal Government & Administrative Practice; 2 of which can be used towards Ethics

Description

Board certification review course for attorneys preparing to take the exam. The course will cover: Home Rule and allocation of taxing powers, public finance, Sunshine Law and Public Records, ethics (general), public sector employment liability, eminent domain, ethics (Part III, Chapter 112, F.S.), procurement, sovereign immunity, land use, zoning, and practice and procedures before local quasi-judicial and legislative government.

Welcome & Introduction

Isabelle Lopez, Program Chair

Home Rule & Allocation of Taxing Powers

Heather Encinosa, Nabors, Giblin & Nickerson

Ethics Under Part III, Ch. 112, F.S., Conflicts of Interest, Financial Disclosures

Steven Zuilkowski, Florida Commission on Ethics

Florida Bar Ethics

Sheila Tuma, The Florida Bar

Sunshine Law & Public Records

Patricia Gleason, Attorney General's Office

Public Sector Liability

Erin Jackson, Johnson Jackson, Tampa

Sovereign Immunity

Peter J. Sweeney, Jr., City Attorney, City of Ft. Pierce

Procurements

Frederick Springer, Bryant Miller Olive

Public Finance

Grace Dunlap, Bryant Miller Olive

Kareem Spratling, Bryant Miller Olive

Eminent Domain

Regina Ross, St. Johns County Attorney's Office, St. Augustine

Land Use, Zoning, Practice & Procedure Before Local Government Legislative & Quasi-Judicial Boards

Mark Barnebey, Blalock Walters

I have purchased and begun review of the City, County and Local Government Law Certification course and when the sign-up window opens next month will sign up to sit for the next exam (May of 2022). I have already obtained the agreement from the following six well known government lawyers to write letters of recommendation for the Certification once requested by the Florida Bar (the Bar requests them directly):

- 1) Noah McKinnon, former Flagler County Attorney (386) 677 3431, nmckinnon@mckinnonand mckinnonpa.com
- 2) Randy Hayes, Ormond Beach City Attorney (386) 676 3392, randy.hayes@ormondbeach.org
- 3) Larry Smith, former Volusia County Deputy County Attorney (Trial division) and former Circuit Court Judge in Duval County (386) 717 4558, lawmanlarry20@aol.com
- 4) Arthur Graham, Volusia Assistant County Attorney (386) 736 5950, agraham@volusia.org
- 5) John "Giff" Chumley, former Volusia Assistant County Attorney (407) 262 8400, gchumley@fishback.com
- 6) Charles Spencer, Volusia Risk Manager (also a J.D.) (386) 736 5963, cspencer@volusia.org

*The above six references are in addition to the 16 letters of recommendation that I have already submitted to you for this position. As my former boss, Charles Hargrove, Esq. was one of the original 16, I have not included his name on the list above, but he has graciously offered to write a *second* letter when the Florida Bar certification section requires a letter specific to my application to become board certified in City, County and Local Government Law.

As for local issues, I read two newspapers online now (Miami Herald and Sun Sentinel) in order to remain on top of daily issues facing my jurisdiction, as well as state and national and news. I also listen to public radio for pieces on smart growth, electric buses,

sustainability, etc. around the world. In order to stay current on state legislation, I digest several annual legislative session reports published online in order to notify my departments and affected policy makers and update our code, as appropriate, and I review the Florida League of Cities position papers on legislation not yet passed but under consideration. In that regard, I found the online Fort Pierce position paper on state legislation to be very helpful, and I would like to part of helping in that process.

In order to provide legal advice and manage risk for board members and department directors, I have conducted annual training on Sunshine, Public Records and Robert's Rules of Order. I also have worked directly with department heads to comply with time sensitive changes required by legislation.

4. Describe your leadership and management style with your employees.

"It doesn't make sense to hire smart people and then tell them what to do. We hire smart people so they can tell us what to do." – Steve Jobs

One of my favorite parts of working in government is working with outstanding employees who share my goal of public service for the greater good. My management style is to use the law as it evolves to teach the team the current best ways to fish, not just give them fish to consume. For example, at the beginning of each project I sit down with the department director or project manager and read past what is in the written request to ask "How is the current relationship?" "Is the vendor performing?" Are there any issues you would like me to add in this negotiation that will make things easier for administration, full disclosure and compliance for the City?" Asking these relatively open-ended questions, and *listening carefully to the answers, comments and concerns*, I take solid, well-reasoned steps to address their concerns. This is why department directors and their staff trust me. I also work with Administration and department directors on updating standard operating procedures on an evolving basis so that the entire governmental agency, as applicable, can benefit from the improved best practices.

I lead by example and have a style that encourages other to meet their departmental and budget goals in a timely, legally sufficient and legally defensible, manner. Please refer to Charles Hargrove's letter of recommendation explaining why they like to work with me.

Finally, I organize and document in a way that any person can pick up and understand the model. A frugally minded lawyer, a pet peeve of mine is reinventing the wheel, sometimes even two or three times. Resources are always tight (as they should be when using other people's money), and we share a heightened collective responsibility as stewards of public money to ensure we are as efficient, responsible, and transparent, at all times. This is why I take the time to be clear in my thoughts, systems, and communications.

5. Have you ever worked directly for a policy making body?

Yes. The Town of Davie.

6. Are you a member in good standing of the Florida Bar?

Yes.

7. Describe your workload tolerance.... what type of office hours do you typically keep?

My workload tolerance is extremely high, I meet all deadlines and I continue to flourish under pressure. I ran my own law firm in the Town of Palm Beach for over 10 years, while also serving various terms as a Planning and Zoning Commissioner, Landmarks Preservation Commissioner, board and (5) committees member of the community-run Palm Beach Civic Association and Florida Bar Ethics Committee member. I connect well with people at all levels of government, including state and federal, business stakeholders and the public. I also have an excellent memory and exercise sound judgment. As a lawyer, I am always "on" professionally. I retain information working on 20-30 projects at a time, am highly organized, and I have served as counsel for multiple boards at the same time (e.g., council, CRA, County Industrial Development Authority, County Advertising (CVB) Authorities, Planning and Zoning, etc. and I remain undaunted by a heavy, fast paced, workload.

The City of Hallandale Beach presently has a 4- day work week (Monday-Thursday, 10 hours a day for the minimum 40-hour work week), so I am working in the office from 7:30 am – 6:00 pm, plus evening Planning and Zoning meetings. Though work is not required on Fridays or weekends, I typically follow up on projects throughout that time so that the ball can continue rolling for other people in the workflow who are waiting for my analysis, review and advice. I am respectful of other people's time.

Were I to be hired as City Attorney for Fort Pierce, I understand that it is a 24/7 essential services on-call position. I am happy to be available for any emergency, and ready for any event.

8. What would you hope to accomplish the first 30 days on the job; the first 6 months; and the first year?

First, I would introduce myself to each department, and let them know my door is open. Second, I would see what is on the agenda(s) and triage anything that requires review in terms of draft resolutions, ordinances, code or comprehensive plan amendments, etc. so that there is no disruption in the flow and timing of project in the pipeline from my predecessor. Then I would take a week to run a deep dive review into the documents, systems and practices of my office, working with staff, to understand the projects(a) that require immediate attention, (b) those that are on the workflow for the next public meeting(s) and (c) those that are more long term.

Once I have the immediate tasks for public meetings at hand, I would schedule a sit down ("one on one") with each member of the Commission to learn their outlook, issues, requests, complaints, goals and expectations, and then with each department director for the very same items. It is very important to me to conduct this review within the first 30 days.

By the six-month mark, I would expect to have all my projects lined up and in process, and I would like to review the City Code for areas of improvement. For example, at Volusia, Davie and Hallandale I have made substantive improvements to our Procurement Contracts and operating procedures with regard to sovereign immunity, trade secret public records and indemnity provisions. I have also revamped the CCNA procedures and conducted the training I mentioned above. At this time, I would have a clear plan on working with the City Manager, Staff and Commission in meeting the goals laid out by the Commission for the next year. By this time, I would also have a clear understanding of the infrastructure aging reports so that I can ensure our maintenance is timely and help identify ways to carry it forward promptly if it is not.

By the one-year mark, I would expect to have served the legal needs of the Commission, the departments, and worked to assist the City to meet its infrastructure, redevelopment and state and federal grant goals. At that point, I would also seek direction from the Commission as to which county agency boards or committees, *if any*, it would like me offer to serve in order to enhance accomplishing the various goals and desired outcomes of the City.

9. What experience do you have with organizational and/or performance analysis directed at identifying issues in need of change?

As identified above, I look to study and understand systems and governance models, and look for cracks so that we can be nimble and identify and fix them prior to crises. Such organizational analysis is preventative medicine. I know it sounds overly simple, but putting your finger on the pulse of the operations and actually listening allows you to detect cracks while there is still time to fix them. I meet weekly with the Planning and Development and Transportation teams, as well as with the Department of Public Works, to ensure that the expectations of Commissioners are being met each day. I routinely pull contract provisions, or actual facts of which I am aware, to assist in formulating effective legal strategies for the City. Communication and ability to see both the macro and the micro are key.

10. Please describe your experience in dealing with intergovernmental entities. Specifically, how do you work with the City Manager and other sections/branches of the City government while maintaining your independence?

I have many years of working with City and County Managers as legal counsel. At the County of Volusia, I represented multiple departments -- Contracts, Procurement, Engineering and Construction, Transportation, Department of Corrections, Emergency Management, two of the three county CVSs, the county Waterpark, the Industrial

Development Authority, the County Fairgrounds and Agricultural Extension, and more. I was routinely present on negotiation teams with the County Manager and various community developers, stakeholders and the public. During the tenure of both County Managers while I was there there, they each asked me to prepare letters back and forth in the various high-stake negotiations. If there was a difficult matter, I was honored that many times they would turn to me because I know how to document a project properly and not waive rights so that the government is better protected should litigation ensue later.

I have always understood that they chose to work with me because of, not despite, my independence. The facts are the facts in every case and project, but I work hard to formulate clear and effective legal strategies to get the project done and avoid creating legal liability for the taxpayers to pick up.

11. Tell us how you communicate with your governing body and its individual members.

I will communicate with the body as I do any board I represent: clearly, with solid back up documentation in the sunshine or, as appropriate, in the shade.

As for individual meetings, it will be important to me to communicate the exact same thing to each Commissioner, generally in "one on one" meetings, the week before each public Commission (or attorney-attended board) meeting, and if and when any of them contacts me for advice. Those individual meetings could be in person, by phone or electronic device, as directed by and at the pleasure of the Commission member.

12. How would you handle situations where the Commissioners wish to take actions that you do not consider lawful?

As I have been doing my entire legal career, if a client asks to do something that strays from what is lawful I advise of the law, cite the section of the municipal, county, state or federal law or regulation, and propose a way to accomplish as goal through lawful means. Very often, if you learn the background, you can identify an alternative straightforward path to a goal that differs from a proposed path that may be problematic for the City.

Having clerked at Cornell Law School for the ABA Editor in Chief of the Restatement of Professional Ethics (Professor Chuck Wolfram), and having later served on the Florida Bar Association Professional Ethics committee, I am absolutely in tune with the treatment of proposed (future) activity that may skirt the law, continuing activity and disclosures of past activity.

Where it is not a question of lawful vs. unlawful, but more a commercial exposure or risk, I point out the potential liability, my opinion of the *likelihood* of the event occurring and leave the policy making to the policy makers. (An example of the latter is recommending acceptance of Microsoft terms in a license agreement necessary for IT.

Venue in California may be costly, but the likelihood of a dispute is low and it the liability must be balanced against the City's need for the service or product.)

13. How would you handle questions of law, including issues relating to public safety, that may be viewed differently by an ethnically and economically diverse community and Commission?

The law does not change based upon application by a diverse community. I would handle the question of law exactly the same, regardless of whether the community, or members of the community, disagree with the Commission. That is our job, and it is going to be difficult at times. I am aware of diverse racial and ethnic population in the City of Fort Pierce. That is one of the draws to this position for me. Cities are going through some changes to ensure ethnic and economic access equity and, while tense at times, I am geared to be a practitioner who can contribute in a positive way to that process. I have had a very good teacher in my own father, who worked with the Dade County Community Relations Board for years after having served as a Coral Gables Commissioner and Mayor. I recall that he considered that community relations work as important, if not more important, than his political work. I would be honored to follow in his footsteps in some small way and be part of the community relations process at the City of Fort Pierce.

14. Please provide a copy of a legal opinion that you have authored. (You may provide a redacted copy.)

I have provided a copy of Memorandum prepared in 2019 as Exhibit "B" while representing the Industrial Development Authority of Volusia County pertaining to the finding of public interest pursuant to the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") in connection with a \$35M industrial bond issue. As a result, the Board adopted our recommendation to require additional indemnities, as well as a Payment in Lieu of Taxes agreement, as conditions of approval for the purchase of an assisted living facility.

15. Have you ever been found to have committed any acts of discrimination, sexual harassment, or creation a hostile work environment? If so, please explain.

No.

16. Do you have any unusual personal consideration(s) that would need to be resolved before you could accept this position? If so, please explain.

No, but I would like to point out that my contract with the Town of Davie was terminated not for cause, but for convenience. It was not related to my performance. Please see the confirmation of this fact from our HR Director and note from Vice Mayor Susan Starkey thanking me for a "great and thorough job" as Town Attorney attached as Exhibit "C."

I left my dream job at the County of Volusia at the end of 2019 to become the Town Attorney for this rural town in Western Broward County. Please contact Vice Mayor Susan Starkey (954) 882 0227 for an excellent recommendation. After three months, the Mayor moved to terminate and all four of the other voters said I did a good or great job; however, two of them, while noting my good performance, said they were voting with the Mayor because "she will not stop" if they do not go along with her. I obtained interviews with four counties right away (including Miami and Dade) while I still waiting my 30 days with Davie, and interviewed with Hallandale Beach. I liked their team (still do!) very much, and Covid was starting, so I accepted the Hallandale position and started in March of 2020.

I love my job at Hallandale, not just because of the team and work but because of the outstanding department directors and staff. As you can see from my resume, I am not a person who changes jobs frequently, but (as explained in my application) I learned at the end of 2020 that my FRS was not being reported with the same Senior Management multiplier than I enjoyed at the County of Volusia, even though the title and substantive job duties remain exactly the same, i.e., Senior Management. Therefore, I am seeking a change that either has the FRS or pays more, such as this position. (I know that Fort Pierce does not participate in the FRS.)

17. Should you become a finalist candidate, we will perform education, credit, civil, criminal and motor vehicle court records, internet search and reference checks on you. In doing so, will we find anything that you need to explain in advance?

No.

18. Is the resume you submitted accurate and current? If not, please explain any discrepancies.

Yes.

19. Are you currently employed?

Yes, City of Hallandale Beach. Please do not contact them unless a position is being offered.

20. Have you ever been fired or resigned under pressure from a job? If so, please explain.

My contract at the Town of Davie was terminated for convenience, not for cause. It was not related to my performance.

Also, about ten years ago I worked for M&T Bank for several years. I was not fired, but I resigned because I was not going to meet my business development goals. It was a great learning experience and I have no regrets.

21. Have you ever sued an employer or been sued by an employer or employee? If so,

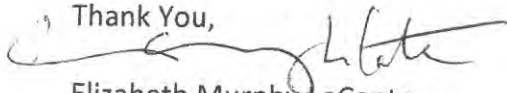
please explain.

No.

22. What are your compensation expectations?

\$155,000 - \$165,000 base plus either the pension or other retirement options (457 contribution) for the City Attorney, and other standard benefits for Senior Management.

Thank You,



Elizabeth Murphy LoConte

Exhibit "A"

Credit Date	Course	Title	Item	Gen Credit	PR Credit	Tech Credit
11/22/2019	3307	Raymond J. Ehrlich, Jr. Trial Advocacy Seminar	CD	4.0	0.0	0.0
11/18/2019	2938	City, County and Local Government Law Cert. Review	CD	8.5	1.5	0.0
10/22/2019	2946	42nd Annual Local Government Law in Florida	CD	10.5	2.0	1.0
08/09/2019	1905030N	Opioid Conference	Live	3.0	3.0	0.0
07/08/2019	2629	Land Use 2018	DVD	7.0	1.0	0.0
06/08/2019	2632	City, County, Local Govt Certification Review 2018	CD	8.5	1.5	0.0
04/10/2018	2311	Public Finance in Florida 2017	CD	7.0	0.0	1.0
03/09/2018	1800536N	Young Lawyers Professionalism Roundtable	Live	1.0	1.0	0.0
01/11/2017	1509210N	Real Estate Transactions: Key Pitfalls to Avoid	Webinar	3.5	0.0	0.0
10/11/2016	1847	Hot Topics in Evidence - 2015	CD	7.5	1.0	0.0
09/13/2016	2052	39th Annual Local Government Law in Florida	CD	11.0	1.0	0.0
08/11/2016	2030	Sunshine Law Public Records & Ethics for Public	CD	8.0	4.0	0.0
06/24/2016	1604159N	Criminal Law CLE: Dilemmas in Accused 911	Live	2.0	1.0	0.0
02/20/2016	1837	Sunshine Law Public Records & Ethics for Public Of	CD	8.0	4.0	0.0
09/01/2015	1406787N	Access MCLE Complete Bundle On-line		30.0	5.0	0.

Legal Writing Sample



To: Industrial Development Authority
From: E. Murphy, Assistant County Attorney
Re: IDA Qualified Private Purpose Bond TEFRA Approvals
Date: February 12, 2019
C: C. Hargrove, Deputy County Attorney

This is an memorandum on the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") approval process, the pending application for TEFRA approval by Antares of Ormond Beach LLC and the Request by Ormond Beach for a Payment in Lieu of Taxes ("PILOT") agreement.

I. TEFRA

A. Qualified Private Activity Bonds

Pursuant to section 103 of the Internal Revenue Code ("Code"), interest received by investors on eligible bonds is tax-exempt for federal income tax purposes. Interest on private activity bonds qualifies for this tax-exempt treatment if the bonds meet the requirements for "qualified bonds" as defined in section 141(e) and other applicable requirements provided in section 103. Section 141(e) of the Code requires, in part, that qualified bonds meet what is known as the TEFRA public approval requirement of section 147(f).

B. TEFRA Approval

The TEFRA process is meant to provide a reasonable opportunity for interested individuals to express their views on (1) the proposed issuance of bonds, (2) the nature of the improvements and projects for which the bond funds will be allocated and (3) the public purpose of the project that will justify affording the private company the benefit of the proposed tax exempt financing. A bond issue is treated as approved by any governmental unit if such issue is approved either by the elected representatives of the governmental until after a public hearing following reasonable public notice or by voter referendum of the governmental unit. Thus, an applicant may ask the elected officials of a municipality, a county or state government to grant TEFRA review in seeking approval in order to obtain tax exempt financing for its privately owned project. TEFRA approval is not automatic, but is at the discretion of the elected officials.¹

C. TEFRA Substantial Public Benefit

Under the TEFRA, a showing of substantial public purpose or benefit to the public must be demonstrated by the applicant to the satisfaction of elected officials.

According to the Joint Committee on Taxation (H.R. 4961, 97th Congress; Public Law 97-248, 12/31/82, p. 99):

*"... Congress believed that providing tax exemption for the interest on certain IDBs may serve legitimate purposes in some instances **provided that** the elected representatives of the State or local governmental unit determine after public input that there will be **substantial public benefit** from issuance of the obligations..."*

"Congress did not intend that this requirement automatically invoke any State administrative procedural requirements as to hearings in general." [emphasis added]

D. 2019 Changes to TEFRA Process (Effective 4/1/2019)

1. The public hearing notice posting period will be reduced to seven (7) days.
2. Notice may be posted on the agency's or issuer's primary public website.
3. Multiple locations of projects can be treated as a single project, if used in an "integrated operation."
4. Generally, one year delay from public hearing and public approval is fine.
5. Generally, one year delay from public approval and bond issuance is fine.
6. Blind Pools of qualified 501(c)(3) bonds are addressed.
7. Certain post issuance "TEFRA" Cures are available.

II. Antares of Ormand Beach Private Activity Bond TEFRA Application

The Applicant has represented as follows:

- A. New (\$35,000,000) state-of-the-art assisted living and memory care facility with upscale amenities for senior residents (87 Assisted Living + 37 Memory Care). Source: Summary of Benefits ("SOB"), p. 1.
- B. 20% of Beds are Income Restricted. Applicant will enter into a Land Use Restriction Agreement with the Issuer and the Trustee. The Agreement requires a set aside during the qualified project period of at least 20% of the units for tenants whose incomes do not exceed 50% of the applicable area median income, as determined by the US Department of Housing and Urban Development ("HUD"). Source: Report A-14.
- C. According to HUD's 2018 statistics, 50% of the median income in Volusia County, Florida is \$19,500 for a residential unit with one tenant and \$22,300 for a residential unit with two tenants. Source: Report, p. B-14.

- D. Annual rent will range from \$45,000 to \$63,600 (i.e., \$3,750-\$5,300/mth).
Source: Independent Accountants' Examination Report ("Report"), p. B-9.
- E. A nationally renowned expert has opined that there is a need for assisted living units within the Ormond Beach area in excess of total project units.
Source: Summary of Benefits, Applicant Submission. Source: SOB, p. 1.
- F. The project will provide services to seniors within the Ormond Beach community, including providing limited shelter during emergency periods.
Source: SOB, p. 2.
- G. The project will include a small, professionally designed live theater with lighting, video and sound available to community and civic groups and seniors in Ormond Beach. Source: SOB, p. 2.
- H. The facility will serve the growing needs of the Ormond Beach senior community by providing a modern and desirable residence to enjoy their later years in an environment with dignity and proper attention to their living requirements. Source: SOB, p. 2.
- I. When fully ramped, the project will create over 200 construction jobs to be replaced by over 60 permanent jobs. Source: SOB, p.2.
- J. Bonds are authorized to be sold to sophisticated investors in minimum denominations of \$25,000 or any integral multiples of \$5,000 in excess thereof. Source: CTA Resolution No. 06-18, p. 4. Applicant is willing to increase denominations to \$100,000. [Bond Guide, p. 14 requires denomination of not less than \$1M.]
- K. The project will pay an estimated \$3.4 million in local property taxes over the next 10 years, with Ormond Beach to receive 24% of this total (not including additional \$300,000+ impact/permit fees). Source: SOB, p. 2. [When asked how long the bond documents require Applicant to hold the facility, the offer sent by Applicant's counsel was 5 years.]

Applicant certified on December 6, 2018, that it had received, reviewed and agreed to comply with the Guide to IDR Bond Financing, including Section 10 (i), "History of Financial Performance," which requires 3 years of audited financial statements for Applicant, *"third party guarantors and other parties from which revenues to repay the debt are dependent."* Section 10 (i) continues to provide that Applicants in business for less than three years must also submit pro forma projections *"covering the three years following the commencement of operation of the project."*

Applicant has submitted no financial history and has declined county's request to provide a third party guarantor with its own financial history to stand behind Applicant's indemnities to county and the IDA. The requirement for three years of projections for new companies is in addition to (not in lieu of) a requirement of financial history, whether that history is from applicants or their guarantors. Concerns about public purpose and a PILOT agreement aside, the county attorney cannot recommend to the IDA or to the county council approval of a TEFRA application lacking either a financial history or a guarantor with a financial history.

III. Payment in Lieu of Taxes ("PILOT") Agreements

A. Background. As part of the presentation for this project to the city and county to obtain the public financing TEFRA subsidy, Applicant has written that it will pay \$3.4 million in ad valorem taxes over the next 10 years. To ensure that this promise is fulfilled, the city asked Applicant to agree to enter into a PILOT agreement so that in the event it is sold to, merged into or converted into a not for profit organization recognized as such by the IRS, the promise of ad valorem payments will not go unfulfilled.

B. Examples of Florida PILOT Agreements

1. Jacksonville
2. Largo
3. Tallahassee

C. Considerations of PILOT Implications

- a. Goal is to provide by agreement for payment of an amount equivalent to what would be owed in taxes, regardless of subsequent disposition to, merger with or conversion to a not for profit or a for profit that may sell or convert to a not for profit.
- b. A for profit or not for profit might decide not to open or buy a facility in Volusia County if the PILOT is deemed to be a burden on title, making the project less attractive than in counties that do not have a PILOT agreement policy (i.e., a competitive disadvantage).

- c. Section 10(a), page 11 of the Guide to IDA Financing and Application states:

Economic Impact. Indicate how the community will benefit by the completion of the project with Industrial Development Revenue Bonds, i.e., new jobs created, existing jobs preserved, business to remain viable in the community, **new capital investment added to**

tax rolls, additional payroll in circulation, project to be located in economic target area, etc. *[emphasis added]*

- d. The IDA is conducting the TEFRA hearing for the county. As the IDA is not the issuer, the hearing is not under the IDA statute. However, for guidance the mission Statement of the IDA is helpful. It provides: *"The Industrial Revenue Development Bond (IRDB) program administered by Volusia County Industrial Development Authority (IDA), provides an alternative tax-exempt financing vehicle for manufacturers and qualifying 501c3 non-profits that are planning capital investment projects in Volusia County. IRDBs are securities issued by the IDA, and approved by County Council."* The mission of the IDA to promote capital investment projects in the county could be argued to be in conflict with the requirement of PILOT agreements as part of ALF TEFRA approvals, as encumbering title with a PILOT requirement might operate to deter capital investment projects.
- e. As a condition of a TEFRA approval, a PILOT agreement has been upheld by the Florida Supreme Court in City of Largo v. AHF-Bay Fund, LLC, 215 So.3d 10 (Fla. 2017).
- f. Such an agreement should not be used to demonstrate public purpose where it does not otherwise exist, but is instead useful to ensure that public funds will not subsidize private entities that market their promise to pay taxes to the taxing authorities, yet, after TEFRA approval, cease paying taxes.
- g. A recent statutory change more favorable to tax exemption of ALFs, discussed below, makes it timely to consider whether PILOTs with their owners should become a matter of policy when TEFRA approval is sought.
- h. Case Study: Just over one year ago, a for profit LLC purchased a \$9M for profit LLC that had been paying ad valorem taxes for 31 years. The LLC received \$26M conduit tax exempt financing and TEFRA approval in December of 2017. Weeks later, it applied for ad valorem tax exemption based on its parent company's status as a 501(c)(3) granted in 2002. Although it was granted partial exemption in 2018 as a home for the aged (income based) by the property appraiser, it appealed to the VAB for a 100% tax exemption as a "home for special services" and as a result the \$9M asset was wiped off the tax rolls. The lawyer for the Applicant in its

successful appeal to the VAB stated "As you know, the Legislature revised the exemption definition statute (section 196.012) this past year to provide for the inclusion of facilities that possess "a valid license under chapter 400 or **part I of chapter 429**" (my emphasis), thereby including assisted living facilities under the type of property identified in section 196.197. " That type of property is "homes for special services. Unlike Section 196.1975, which requires the ALF to meet income tests, Section 196.197 mandates that homes for special services "shall be exempt" if they are a Florida not for profit exempt as of January 1 of the year of application for exemption by having qualified as an exempt organization under the provisions of 501(c)(3) of the Internal Revenue Code.

- i. The total current assessed value of the 77 for profit ALF in Volusia County is \$159,073,977.00, with corresponding annual ad valorem taxation revenue of \$3,185,258.74.
- j. The concern expressed by Ormond Beach, that after obtaining the benefit of tax exempt financing the Applicant will apply for property tax exemption under Section 196.012(a) and 196.197, raises a legitimate public policy concern that lawfully could be addressed by county policy for TEFRA approvals of ALFs.

¹§ 26 CFR part 5f provides, in part:

§1.147(f)-1 Public approval of private activity bonds.

(a) *In general.* ...A private activity bond meets the requirements of section 147(f) **only if the bond is publicly approved pursuant to paragraph (b) of this section or the bond qualifies for the exception for refunding bonds in section 147(f)(2)(D).**

(b) *Public approval requirement--*(1) In general. Except as otherwise provided in this section, a bond meets the requirements of section 147(f) if, before the issue date, the issue of which the bond is a part receives issuer approval **and host approval (each a public approval)** as defined in paragraphs (b)(2) and (3) of this section in accordance with the method and process set forth in paragraphs (c) through (f) of this section.

Department of the Treasury, Internal Revenue Service, 26 CFR Pars 1 and 5f [TD 9845] RIN 1545-BG91, Public Approval of Tax-Exempt Private Activity Bonds, Effective date: December 31, 2018. [emphasis added]

Susan Starkey



Share your name and photo?

Elizabeth LoConte Share...



also looking out for me
where he knows people.

Warm regards,
Elizabeth

Tue, Feb 25, 2:24 PM

Thank you for doing
such a great and
thorough job. Tell Jeff hi
when you see him.
Don't know if he will
remember me.
I'm not sure if Cooper
City is still looking for a
job.



From: Grace Garagozzo Grace_Garagozzo@davie-fl.gov

Subject: Compensation and Benefits

Date: Feb 21, 2020 at 3:22:04 PM

To: Eliz Murphy LoConte

elizmurphylocontejd@gmail.com

Good Afternoon Elizabeth,

I wanted to provide you with some information. According to your contract in section 2.3, the Town will be compensating you for thirty (30) days. Therefore, you will continue to be paid from February 20, 2020 until March 20, 2020. In addition, you will receive three (3) weeks of severance pay which will end on April 10, 2020. Your medical, dental, and vision coverage will continue until May 31, 2020.

A COBRA notice will be sent certified mail. Please let me know if you need any additional information.

Grace Garagozzo
Human Resources Director
6591 Orange Drive
Davie, Florida 33314
Telephone: (954) 797-1094
Facsimile: (954) 797-1079

Strategic Priorities

- * Commitment to Customer Satisfaction
- * Dedication to Excellence in Service Delivery
- * Respecting and Promoting Diverse and Sustainable Community and Neighborhood Values with consideration of our historic roots
- * Creating an Environment that is Conducive to Innovation, Creativity, and Collaboration
- * Nurturing the health, safety, and welfare of the community



- 1.7 Employee agrees to provide a thorough and comprehensive monthly case management tool providing updates of all cases, pending litigation, issues, trainings provided, lien reviews, ethics opinions authored, lien and status updates, and such other detail as required or recommended by the Town Council. Said document shall provide quantifiable data as well as detailed narrative as to the activities performed by the Town Attorney that month. Employee further agrees to provide said document to the Town Council and Town Administrator within five (5) days after the conclusion of the preceding month.

SECTION 2: TERM

- 2.1 Employee is appointed as In-house Town Attorney for a three (3) year term effective November 25, 2019 and concluding November 24, 2022.
- 2.2 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Town Council to terminate the services of Employee at any time.
- 2.3 The Town shall provide Employee thirty (30) days written notice of termination unless otherwise agreed to by the parties or as indicated in Section 3.1, during the first year of this Agreement, the Employee shall receive three (3) weeks of severance pay, or after the first year of this Agreement, the Employee shall receive twenty (20) weeks of severance pay as described in Section 215.425(4)(a)1, Fla. Stat.

SECTION 3: TERMINATION BY TOWN

- 3.1 In the event Employee is terminated for misconduct as defined in Section 443.036(20), Fla. Stat. or because of conduct unbecoming a public official, including but not limited to violation of Section 112.313, Fla. Stat., any criminal or unethical conduct, misfeasance, malfeasance, nonfeasance or dereliction of duty, the Town shall have no obligation to provide (30) days written notice and no severance will be earned.

SECTION 4: NOTICE OF RESIGNATION BY EMPLOYEE

- 4.1 In the event that Employee voluntarily resigns her position during the term of this Agreement, Employee shall give the Town at least sixty (60) days written notice prior to the effective date of such resignation. This provision may be waived by written consent of both parties.

SECTION 5: COMPENSATION AND LEAVE

- 5.1 The salary of Employee shall equal one hundred and sixty thousand (\$160,000) Dollars per the year, which shall be payable in bi-weekly installments at the same time as other employees of the Town are paid. Beginning on the first full pay period of October 2020, Employee shall be eligible during the term of this contract to any cost of living increases provided to non-represented employees.
- 5.2 Employee shall be entitled to a car allowance of Four Hundred Dollars (\$400) per month while this Agreement is in force. Said car allowance shall be paid in the same manner as all other employees receiving a car allowance. Employee shall be entitled to a mileage reimbursement in accordance with the Town's travel policy.

- EMBRY-RIDDLE AERONAUTICAL UNIVERSITY
INFRASTRUCTURE FUNDING AGREEMENT (MICAPLEX)

INFRASTRUCTURE PROJECT FUNDING AGREEMENT

THIS INFRASTRUCTURE PROJECT FUNDING AGREEMENT for the Embry-Riddle Research Park (this "Agreement") is entered into by and between the County of Volusia, Florida, a political subdivision of the State of Florida with its principal place of business at 123 West Indiana Avenue, DeLand, FL 32720-4614 (the "County") and Embry-Riddle Aeronautical University, Inc., a Florida corporation with its principal place of business at 600 South Clyde Morris Boulevard, Daytona Beach, FL 32114-3900 ("ERAU") and is effective as of the date of last signature below by either party (the "Effective Date").

WITNESSETH

WHEREAS, on August 4, 2016, ERAU presented to the County its plan for the development of a comprehensive, innovative research park (the "Research Park");

WHEREAS, the Research Park will include a one-of-its-kind wind tunnel and state of the art indoor unmanned aerial training center;

WHEREAS, ERAU has secured in excess of twenty nine million (\$29,000,000) dollars to fund the Research Park;

WHEREAS, ERAU has requested financial assistance from the County in connection with certain infrastructure and physical improvements in the Research Park, which will allow ERAU, in turn, to invest in business incubation and growth in the local economy;

WHEREAS, infrastructure improvements include, but are not limited to, roads, sidewalks, storm water and other site work (the "Infrastructure Improvements"); and

WHEREAS, it is in the public interest for the County to fund physical and Infrastructure Improvements related to the Research Park;

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and ERAU agree as follows:

SECTION 1. *Recitals.* The foregoing recitals are true and correct and are hereby incorporated as part of this Agreement as if fully set forth herein.

SECTION 2. *General Purpose and Description of the Project.* The general purpose of this Agreement is for the County to provide infrastructure funding in support of the Research Park in order to enable the Research Park, through its proposed one-of-its-kind wind tunnel and state of the art indoor unmanned aerial training center, to incubate new businesses, jobs and growth for the local economy. This Agreement memorializes the agreement and understanding of the parties as to their respective duties and responsibilities as it relates to this undertaking. The project is an economic development tool designed to accelerate the growth and success of the Research Park and success of related entrepreneurial companies through support resources. Companies utilizing the services of the Research Project, including the one-of-its-kind research tunnel and indoor state of the art unmanned

aerial training center, have the potential to create jobs and economic improvement for the community, develop and commercialize new technologies, strengthen the local and regional economies, increase the ad valorem tax base for the County and expand the technological and aeronautical consumer base for the County. Clusters of companies working together in an incubator atmosphere derive strength from working with one another, thus encouraging further innovation benefitting the County, its businesses and its residents.

SECTION 3. *Research Park Infrastructure Contributions.* Subject to annual appropriation in the legislative discretion of the county council, the County will contribute up to a total of \$2,250,000 for reimbursement of physical and Infrastructure Improvements as evidenced by receipt of the certificate(s) of occupancy and supporting invoices for the physical structures such as hangars, laboratories and research office buildings and Infrastructure Improvements. ERAU shall submit no more than one request for reimbursement in any fiscal year and the greatest amount submitted in any one fiscal year shall be \$1,500,000.

SECTION 4. *Term of Agreement.* The term of this Agreement shall begin on the Effective Date hereof and end on December 31, 2020, unless otherwise terminated at an earlier date (the "Term").

SECTION 5. *Restrictions.* The maximum funding by the County for the entire term of this Agreement shall not exceed the above-specified amounts. Said funding provided by the County shall be cumulative for the entire term and shall be paid to ERAU. Said funding shall be used solely for infrastructure and physical improvements. This Agreement is not providing funding for traditional higher education functions, including but not limited to dormitories, buildings used predominately as classrooms, bookstores, cafeterias, athletic facilities, health centers and the like, but rather for a portion of the infrastructure and physical improvement expenses in connection with and inside the Research Park.

Nothing contained in this Agreement shall prevent the County or ERAU from seeking funding from other sources, including but not limited to, other sources for purposes of expanding the Research Park, offsetting operating costs, the purchase of tangible assets or specialized consulting costs for the County obtaining grants or other available funding to offset funding already committed or issued by the County. ERAU represents and warrants that the physical and Infrastructure Improvements for which it will be reimbursed by the County are not paid or being paid by any party, entity, organization or public agency other than the County.

SECTION 6. *Force Majeure.* In the event ERAU or the County fails to satisfy a requirement of this Agreement in a timely manner due to a hurricane, flood, tornado, a war, major upheaval or other act of God or force majeure, then said party shall not be in default hereunder; provided, however, that performance shall recommence upon such event ceasing in its effect.

SECTION 7. *Indemnity.* ERAU shall, at its own expense, indemnify, defend, and hold harmless the County and its public officials (elected and appointed), successors and assigns, agents, officers, and employees, from and against all claims of every kind and nature (including losses incurred or suffered in consequences either of bodily injury to a person or damage to property), damages, losses and expenses, including, but not limited to attorneys' fees, arising out of or resulting from the performance of this Agreement provided that the claim, damage, loss and expense is caused by any negligent act or omission of ERAU, or anyone directly or indirectly employed by ERAU, except that ERAU will not be

required to indemnify, defend and hold harmless the County if such claim, damage, loss and expense is the result of the negligence of the County, or of anyone directly or indirectly employed by the County or anyone for whose acts the County may be liable.

SECTION 8. *No Waiver of Regulatory Authority.* ERAU acknowledges and agrees that to the extent that the County is the government jurisdiction responsible for issuing some of the permits related to the infrastructure construction, nothing in this Agreement constitutes or is intended to operate as a waiver of such regulatory authority.

SECTION 9. *Compliance with Laws and Regulations.* In performing under this Agreement, the County and ERAU agree to abide by all applicable laws, statutes, ordinances, rules and regulations pertaining to, or regulating the performance set forth herein, including those now in effect and hereafter adopted. Any material violation of said laws, statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement, and shall entitle the non-violating party to terminate this Agreement immediately upon delivery of written notice of termination to the violating party.

SECTION 10. *Public Records.* The County and ERAU acknowledge that they are required to comply with the Florida Constitution, and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls the terms of this Contract. ERAU agrees to comply with all provisions of such Public Record Act, as applicable.

SECTION 11. *Third Parties.* This Agreement is solely for the benefit of the County and ERAU. No right, nor any cause of action, shall accrue hereunder to or for the benefit of any third party.

SECTION 12. *Assignment.* This Agreement, and the rights and privileges established by it, shall not be assigned or transferred in whole or part by either party without the advanced written consent of the other party, which consent may be granted or withheld in that party's sole discretion, and any attempted assignment or transfer without the other party's consent shall be null, void and of no legal effect.

SECTION 13. *Modification.* Any waiver, alteration or modification of any part or provision of this Agreement, or the cancellation or replacement of this Agreement, shall be valid only if in writing and executed by both parties to this Agreement.

SECTION 14. *Validity, Performance, Venue and Enforcement of Agreement.* The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. Venue shall be in Volusia County, Florida. The invalidity or enforceability of any provision of this Agreement shall not affect or impair any other provision.

SECTION 15. *Time.* Time is of the essence in this Agreement and this provision shall apply to all terms and conditions contained herein.

SECTION 16. *Notices.* Whenever either party desires to give notice to the other, notice shall be sent to:

County: County of Volusia
Attn: James Dinneen, County Manager
123 West Indiana Avenue
DeLand FL 32720

ERAU: Embry-Riddle Aeronautical University
600 South Clyde Morris Boulevard
Daytona Beach, FL 32114-3900

Either party may change by written notice as provided herein, the addresses or persons for receipt of notices. All notices shall be effective upon receipt.

SECTION 17. *No Partnership.* Nothing in this Agreement shall be construed to establish an agency, partnership or joint venture relationship between the County and ERAU.

SECTION 18. *Default.* If either party is determined to be in default of any terms or provisions herein, the party not in default must notify the party in default in writing. Said default shall be remedied or brought into compliance by the party in default within thirty (30) days of receipt of such notice. In the event the defaulting party fails to timely correct or remedy the event of default, unless the time to cure period is extended in writing by the non-defaulting party, the non-defaulting party may declare the Agreement in default and pursue any remedy available by law or equity against the defaulting party.


SECTION 19. *Headings.* All sections and descriptive headings in this Agreement are inserted for convenience only and shall have no effect upon the construction or interpretation hereof.

SECTION 20. *Severability.* If any provision, term or clause of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, it shall be severed, the remainder continuing in full force and effect, but only to the extent that the remainder does not become unreasonable or otherwise contrary to the purpose and intent of this Agreement.

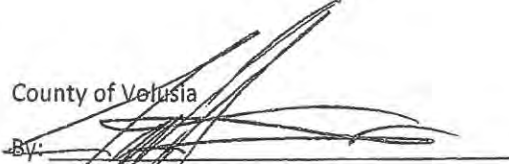
[Signatures are on the following page]

IN WITNESS WHEREOF, the County and ERAU have hereunto executed this Agreement for the purposes herein expressed.

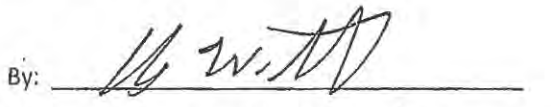
ATTEST:


By: _____
Name: James T. Dinneen
Title: County Manager
Dated: 12/22/16

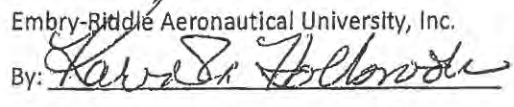
County of Volusia


By: _____
Name: Jason P. Davis
Title: County Chair
Dated: 12-19-16

ATTEST:


By: _____
Name: Charles W. Sevastos
Title: Vice-President and General Counsel
Dated: Dec. 12, 2016

Embry-Riddle Aeronautical University, Inc.


By: _____
Name: Karen A. Holbrook
Title: Interim President
Dated: Dec. 12, 2016



CITY OF ORMOND BEACH

Office of the City Attorney • P.O. Box 277 • 173 South Beach Street • Ormond Beach, FL 32175-0277 • (386) 676-3217 • Fax (386) 676-3321

August 31, 2021

Re: Recommendation for Elizabeth Murphy LoConte

To whom it may concern:

It is a privilege for me to provide a recommendation of employment for Elizabeth Murphy LoConte. Elizabeth is a seasoned attorney with extensive experience across a broad spectrum of legal practice areas, particularly as they relate to local government issues.

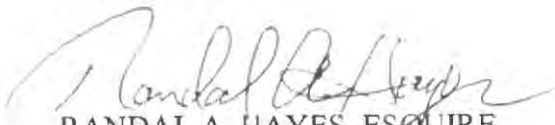
I had the pleasure of working with Elizabeth during the time she served as an assistant county attorney for Volusia County. Her knowledge and skill were instrumental in bringing to a successful conclusion a complicated land development project that was proposed for the city of Ormond Beach involving an effort by out-of-state developers to fund construction of the project through the issuance of public bond financing under the federal Tax Equity and Fiscal Responsibility Act (TEFRA). Elizabeth's experience proved to be instrumental in preserving, in perpetuity, the receipt by all affected taxing authorities (i.e., the county, city, and school district) 100% of the ad valorem tax revenue that might otherwise have been lost. This outcome simply would not have been possible without her dedicated service to local community issues.

I have had the pleasure to practice law as a local government attorney for over thirty years, and the best reward is seeing the positive affect our work has on the quality of life of the ordinary people we serve. Elizabeth is a brilliant lawyer who has proven her dedication to public service.

As public servants, we know well the impact that our work has on the quality of life of our residents. Elizabeth has served the residents of Volusia County and the city of Ormond Beach with honor and distinction, and she will do so for you as well.

I highly recommend that you give her candidacy strong consideration.

Best regards,


RANDAL A. HAYES, ESQUIRE
City Attorney

ANDREW W. MAI

PERSONAL

Address: 5110 Appenine Loop West
St. Cloud, Florida 34771

Contact: Phone: (407) 580-7532
Email: [andrewwoodfordmai@gmail.co](mailto:andrewwoodfordmai@gmail.com)

EDUCATION

Georgetown Law Center - 2001
William Mitchell College of Law - 2000

SUMMARY OF RELATED EXPERIENCE

2021 - Present	<u>PERSSON, COHEN & MOONEY, P.A.</u> Represent communities such as Venice and Longboat Key; Special Counsel to the City of North Port
2011 - 2021	<u>OSCEOLA COUNTY, FLORIDA</u> Population 350,000 County Attorney
2008 - 2011	<u>CITY OF SIOUX CITY, IOWA</u> Population 80,000 City Attorney
2006 - 2008	<u>WEISS SEROTA HELFMAN</u> Associate; represented cities and counties in South Florida

July 26, 2021

Andrew W. Mai
5110 Appenine Loop West
St Cloud, Florida 34771
Andrewwoodfordmai@gmail.com

Re: Fort Pierce City Attorney

To Whom it May Concern:

Thank you for the opportunity to apply for the position of City Attorney. I am confident that you will find that my experience makes me more than qualified for this position. I was the County Attorney for Osceola County for the past nine years. Osceola County is a thriving community of 350,000 people. Prior to working with Osceola County, I was City Attorney for the City of Sioux City, Iowa. A community of 85,000 people.

As County Attorney I managed a staff of six and oversaw all legal matters from dog bites to multi million dollar contracts. I have extensive experience managing outside counsel. I have given back to the municipal community as the former Florida Chair of the International Municipal Attorneys Association(IMLA) and as a Board Member of the Florida Association of Counties.

As City Attorney I managed a staff of six and oversaw all legal matters. Sioux City is the largest city in the tri state area of northwestern Iowa and as such the position was a high profile position. I was frequently called upon to address the media on various issues. I was looked upon to help lead the community.

I can handle any situation that may arise. I am independent. I am level headed and able to work with anyone, even difficult people. I have been doing this for some time and I enjoy the work. Fort Pierce is a beautiful community. I hope to have the opportunity to continue to help the community thrive.

Thank you for your time and consideration.

Sincerely,

Andrew W. Mai

ANDREW MAI Attorney

PROFILE

Almost twenty years experience with over thirteen years experience as the City or County Attorney.

Always open to new challenges and ready to meet those challenges.

CONTACT

PHONE:
407-580-7532

EMAIL:
Andrewwoodfordmai@gmail.com

OUTREACH

Board Member Florida Association of County Attorneys (FACA)

Florida Chair International Municipal Attorneys Association (IMLA)

HOBBIES

Cycling
Chess
Hiking
Poetry

WORK EXPERIENCE

Persson, Cohen & Mooney, P.A.

2021-present

Represent communities throughout Florida. Including the Cities of Venice and Longboat Key.
Special Counsel to the City of North Port

Osceola County County Attorney

2011-2021

County attorney for a County with 350,000 residents
Supervise a staff of six and outside counsel
Advise the County Commission
Responsible for all legal affairs

Sioux City, Iowa City Attorney

2008-2011

City Attorney for a City with 80,000 residents
Supervised a staff of six and outside counsel
Advised the City Council
Responsible for all legal affairs

Weiss Serota Helfman Associate

2006-2008

Associate with a law firm that represented cities and counties in the South Florida area.
Represented Miami Dade County, Homestead, Islamorada, Cutler Bay and many others.
Drafted ordinances among other tasks.

EDUCATION

Georgetown Law Center

2000 - 2001

William Mitchell College of Law

1998 - 2000

**CITY OF FORT PIERCE, FLORIDA
CITY ATTORNEY
SEMI FINALIST CANDIDATE QUESTIONNAIRE**

Name:

Home Address:

Home/Work/Cell phone numbers:

E-mail address:

1. Why are you interested in becoming Fort Pierce's next City Attorney and how does this position fit into your overall career plans? I have been working in local government law my entire career. I enjoy the variety of work municipal law brings which is I why I plan on continuing to represent local governments going forward. Fort Pierce has a variety of unique opportunities and I would enjoy being part of the City.
2. What is the largest number of employees that you have managed and where? What is the largest annual operating budget that you have managed? As Osceola County Attorney I managed a staff of six and outside counsel. Our budget was \$1.5 million dollars. As Sioux City City Attorney I also represented a staff of six and a similar budget.
3. How do you stay professionally current and on top of issues with the potential for significant impact on your jurisdiction? How do ensure that your employees stay current? I have been actively involved in the International Municipal Attorney's Association for the past 14 years. I was Florida Chair of the Association. I attend conferences both as a speaker and to learn. I bring that knowledge back to staff both in person and through written materials.
4. Describe your leadership and management style with your employees. I treat employees as professionals. I only hire and retain professionals. I expect them to get their work done and it must be done correctly. I respect that each person has individual challenges in their lives and I do what I can to accommodate those challenges.
5. Have you ever worked directly for a policy making body? Yes I have thirteen years experience working as a City Attorney, County Attorney and Community Development District Attorney, reporting directly to the Board.
6. Are you a member in good standing of the Florida Bar? Yes.
7. Describe your workload tolerance.... what type of office hours do you typically keep? I like to be in the office every day. I am used to taking calls and doing work every day including weekends.
8. What would you hope to accomplish the first 30 days on the job; the first 6 months; and the first year? In the first thirty days I will be learning and listening and determining needs. In the first six months I expect to implement any changes that need to be made. Within a year things should be running very smooth. I have done this transition three separate times with excellent results.
9. What experience do you have with organizational and/or performance analysis directed

at identifying issues in need of change? I have taken over as County Attorney, City Attorney and Community Development Attorney. In each case I have been successful in identifying needs and implementing change.

10. Please describe your experience in dealing with intergovernmental entities. Specifically, how do you work with the City Manager and other sections/branches of the City government while maintaining your independence? I have monthly meetings with the City Manager and department heads. This allows me to discuss potential issues that may arise. I maintain a professional relationship with them so that the government can operate effectively and maintain appropriate boundaries.
11. Tell us how you communicate with your governing body and its individual members. In person with meetings as frequent as necessary. In addition I take calls whenever necessary to address time sensitive issues. I will develop a monthly report on the departments activities for easy reference.
12. How would you handle situations where the Commissioners wish to take actions that you do not consider lawful? I would provide advice to the Commissioner and also provide the consequences of acting illegally. I provide the legal basis for my advice and whether the law is unsettled or not.
13. How would you handle questions of law, including issues relating to public safety, that may be viewed differently by an ethnically and economically diverse community and Commission? I look at it from every angle. I always provide all the options and consequences. I am compassionate and I try to understand things from others points of view.
14. Please provide a copy of a legal opinion that you have authored. (You may provide a redacted copy. This is attached.
15. Have you ever been found to have committed any acts of discrimination, sexual harassment, or creation a hostile work environment? If so, please explain. No
16. Do you have any unusual personal consideration(s) that would need to be resolved before you could accept this position? If so, please explain. I would like you to consider hiring me as outside counsel. I think this would be beneficial to the City as I could then draw on the resources of my firm and provide more cost effective representation.
17. Should you become a finalist candidate, we will perform education, credit, civil, criminal and motor vehicle court records, internet search and reference checks on you. In doing so, will we find anything that you need to explain in advance? No.
18. Is the resume you submitted accurate and current? If not, please explain any discrepancies. Yes
19. Are you currently employed? Yes
20. Have you ever been fired or resigned under pressure from a job? If so, please explain. Osceola County fired me without cause. I am proud of my service to Osceola County over 9 years.
21. Have you ever sued an employer or been sued by an employer or employee? If so, please explain. No.

22. What are your compensation expectations? As outside counsel I believe I could find some cost savings to the City by utilizing the firm's experience and expertise in various matters. This could be done either through a retainer, as we currently do with the City of Venice or through a reasonable hourly rate.



PERSSON, COHEN & MOONEY, P.A.

ATTORNEYS AND COUNSELORS AT LAW

David P. Persson**
Andrew H. Cohen
Kelly M. Fernandez*
Maggie D. Mooney*
R. David Jackson*
Regina A. Kardash*
Lori M. Dorman
Andrew W. Mai

* Board Certified City, County and Local Government Law

** Of Counsel

Telephone (941) 306-4730
Facsimile (941) 306-4832
Email: amai@swflgovlaw.com

Reply to: Venice

MEMORANDUM

DATE: May 17, 2021

TO:

CC:

FROM: Andrew Mai

SUBJECT: Noise Ordinance

The purpose of this Memorandum is to determine the constitutionality of the Town of Longboat Key's noise ordinance.

Current Noise Ordinance

Noise is regulated pursuant to Section 130.02 of the Town of Longboat Key municipal code. Section 130.02(C)(1) provides:

"No person shall make, cause, allow, or permit to be made any unreasonable sound within the geographical boundaries of the town or within those areas over which the town has jurisdiction, including the waters and beaches adjacent to, abutting or bordering the town."

Unreasonable sound includes the following in 130.0(C)(2)(a) in addition to many other categories:

Lakewood Ranch
6853 Energy Court
Lakewood Ranch, Florida 34240

Venice
236 Pedro Street
Venice, Florida 34285

“Radios, phonographs, tape players, television sets, musical instruments, drums or similar devices. Operating, playing or permitting the operation or playing of any radio, CD or DVD player, tape player, phonograph, television set, musical instrument, drum or similar device which produces or reproduces sound in such a manner as to annoy, disturb, injure or endanger the comfort, repose, health, peace, or safety of a reasonable person of normal sensibilities.”

Annoy, disturb, injure or endanger the comfort, repose, health, peace, or safety of a reasonable person of normal sensibilities is further defined in Section 130.02(c)(3) as follows:

“The standards which shall be considered in determining whether sound annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities shall include, but shall not be limited to, the following:

- (a) The volume of the sound.
- (b) The intensity of the sound.
- (c) Whether the nature of the sound is usual or unusual within the town.
- (d) The volume and intensity of the background sound, if any.
- (e) The proximity of the sound to residential sleeping facilities.
- (f) The nature and zoning of the area within which the sound emanates.
- (g) The time of the day or night the sound occurs.
- (h) The duration of the sound.
- (i) Whether the sound is produced by a commercial or noncommercial activity.

Finally, 130.02(D), provides exemptions to the regulation of sound including for church bells, government sponsored activities, and sporting events among others.

Applicable law

Vagueness

An ordinance must not be vague or it is unconstitutional as it prevents a person from knowing what they must do or not do to obey the law. See *Catalano*, 104 So.3d 1069 (Interpreting State Noise Statute). However, statutes do not have to determine standards with mathematical certainty. *Id.* A regulation that calls for police officers to judge whether a sound is excessive, raucous, disturbing, or offensive is vague and therefore unconstitutional. *Id.*

Right to Free Speech

“The First Amendment applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws “abridging the freedom of speech.” U.S. Const. Amdt. 1. Under that Clause, a government, including a municipal government vested with state authority, “has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S. Ct. 2286, 33 L. Ed. 2d 212(1972). Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. This commonsense meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker

conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.” See *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). If the regulations are found to be content based, even in part it is highly unlikely that a Court would find that regulation was narrowly tailored to serve a compelling state interest.

The right to play music is protected by the first amendment. *State v. Catalano*, 104 So.3d 1069 (Fla. 2012). That right may be subject to reasonable limitations. *Id.* Limitations are reasonable if they are justified without reference to the content of the regulated speech, narrowly tailored to serve a significant government interest and leave open ample alternative channels for communication of information. *Id.* Protecting the public from excessively loud noise is a compelling state interest. *Grayned v. City of Rockford*, 408 U.S. 104 (1972). If overamplified loud speakers assault the citizenry the government may turn them down. *Kovaks v. Cooper*, 336 U.S. 77 (1948).

Severability

If portions of a regulation are found unconstitutional even constitutional portions may not be severed and continue if the intent of the legislative body was for the legislation to contain those exemptions. See *Catalano*, 104 So.3d 1069.

Application of the Law to the Ordinance

Vagueness

Section 130.02 contains many provisions which call into question its constitutionality due to vagueness. For example, a court could deem Section 130.02 as unconstitutional because discretion is given to the law enforcement officer to determine whether the, “device which produces or reproduces sound in such a manner as to annoy, disturb, injure or endanger the comfort, repose, health, peace, or safety of a reasonable person of normal sensibilities.” This is true even though Section 130.02(c)(3) provides standards to help an officer in determining whether the sound violates the law. A court could find that the ordinance is vague as it is impossible for a person to know what sounds the officer would find violate the ordinance. *Id.* A vague ordinance is unconstitutional.

The ordinance could be modified so that it is not vague. This could be done in any number of ways. In the past the Town has considered doing a study to determine an acceptable decibel level. The ordinance could be modified to forbid noise exceeding this decibel level. Equipment could be purchased that measures the decibel level. In the alternative, the Town could modify the ordinance to forbid a noise that can be heard from a certain distance. The Court in *Catalano* upheld a similar provision in a state law. There may be other modifications that may make the ordinance so that is not vague and therefore constitutional.

Freedom of Speech Content Based Regulation

Section 130.02 contains many provisions which require the person reading the ordinance to listen to the content of the speech in order to determine whether the speech violates the ordinance. Content based speech requires that the noise regulation serve a compelling state interest. Although the Courts have found that governments can regulate noise, those regulations have not been found to serve a compelling state interest that would survive strict scrutiny. Absent the higher standard the regulation would be

authorized if it is required for the public health, morals, peace, safety, or welfare and is the regulation is reasonable and substantially connected with the public interest sought to be served.

The ordinance could be modified to remove any regulation of noise that creates a regulation based upon content. This modification would make the ordinance constitutional.

Severability

The ordinance contains exemptions very similar to the State regulation adjudicated in *Catalano*. As such a court is unlikely to sever the unconstitutional provisions of the ordinance and leave the remaining portions of the ordinance intact.

Conclusion

A citation issued pursuant to Section 130.02, if challenged, would likely be unenforceable as Section 130.02 is likely unconstitutional under the law for vagueness and as a content based regulation.

RAFAEL E. SUAREZ-RIVAS

PERSONAL

Address: 4766 Alton Road
Miami Beach Florida 33140

Contact: Cell: (786) 368-6797
Email: suarezrivassr@bellsouth.net

EDUCATION

Juris Doctor - 1979
Nova Southeastern University Law Center

Bachelor of Arts - 1976
University of Miami

SUMMARY OF RELATED EXPERIENCE

2020 - Present	<u>OFFICE OF MIAMI CITY COMMISSIONER</u> <u>MANOLO REYES</u> Chief Policy and Legislative Advisor
2002 - 2019	<u>CITY OF MIAMI, FLORIDA</u> Population 454,279
2018 - 2019	Chief Assistant City Attorney, City Attorney's Office
2013 - 2018	Senior Assistant City Attorney, Division Chief, Land Use Transactional Division, City Attorney's Office
2002 - 2012	Assistant City Attorney, City Attorney's Office
2020 - Present	<u>TOWN OF MEDLEY, FLORIDA</u> Population 958 Hearing Officer
2017 - Present	<u>BROWARD COUNTY, FLORIDA</u> Population 1,953,000 Hearing Officer
2013 - 2021	<u>VILLAGE OF WELLINGTON, FLORIDA</u> Population 64,396 Hearing Officer
2012 - 2016	<u>VILLAGE OF BAL HARBOUR, FLORIDA</u> Population 2,513 Hearing Officer
2009 - Present	<u>TOWN OF GOLDEN BEACH, FLORIDA</u> Population 659 Hearing Officer

2009 - Present	<u>CITY OF SUNNY ISLES BEACH, FLORIDA</u> Population 21,942 Hearing Officer
2009 - 2011	<u>CITY OF NORTH MIAMI BEACH, FLORIDA</u> Population 41,523 Hearing Officer
2003 - 2007	<u>BROWARD COUNTY, FLORIDA</u> Population 1,623,000 Hearing Officer
1999 - 2002	<u>CITY OF HOLLYWOOD, FLORIDA</u> Population 139,357 Senior Assistant City Attorney
1999	<u>CITY OF BOCA RATON, FLORIDA</u> Population 75,000 Special Counsel
1994 - 1997	<u>FLORIDA INTERNATIONAL UNIVERSITY</u> Florida Adjunct Professor
1992 - 1998	<u>BROWARD COUNTY, FLORIDA</u> Population 1,623,000 Assistant County Attorney
1991 - 1992	<u>KATZ, KUTTER, HAIGLER & ALDERMAN</u> Fort Lauderdale, Florida Associate
1989 - 1991	<u>CITY OF MIRAMAR, FLORIDA</u> Population 41,000 City Attorney
1985 - 1989	<u>CITY OF MIAMI, FLORIDA</u> Population 359,000 Assistant City Attorney
1982 - 1985	<u>CITY OF MIAMI BEACH, FLORIDA</u> Population 93,000 Assistant City Attorney
1981 - 1982	<u>BRITTON, COHEN, KAUFFMAN, BENSON & SCHANTZ</u> Florida Associate

RAFAEL E. SUAREZ-RIVAS, ESQ.
4766 ALTON ROAD
MIAMI BEACH, FLORIDA 33140
CELLULAR (786) 368-6797
EMAIL: SUAREZRIVASR@BELLSOUTH.NET

EDUCATION

Nova Southeastern University Law Center, Juris Doctor, 1979
University of Miami, Bachelor of Arts, 1976

**AREAS OF
PROFESSIONAL
CONCENTRATION**

Florida Bar Board Certified – City, County and Local Government Law
Land Use/Real Estate Law and Litigation
Procurement Law and Litigation
Municipal Law– Public Works and Contracts

LEGAL EXPERIENCE

Chief Policy and Legislative Advisor, Office of Miami City Commissioner Manolo Reyes, 2020-
Chief Assistant City Attorney, City of Miami Attorney's Office, 2018-19;
Senior Assistant City Attorney, Division Chief, Land Use/Transactional Division, City of Miami, City Attorney's Office, 2013-2018;
Assistant City Attorney, City of Miami, Florida, City Attorney's Office: 1985-89, 2002-12;
Town of Medley, Hearing Officer, 2020- Present;
Village of Wellington, Hearing Officer, 2013-21;
Village of Bal Harbour, Florida: Hearing Officer, 2012-16;
Town of Golden Beach, Florida: Hearing Officer, 2009 – Present;
City of Sunny Isles Beach, Florida: Hearing Officer, 2009 – Present;
City of North Miami Beach, Florida: Hearing Officer, 2009-11;
Broward County, Florida: Hearing Officer, 2003-07, 2017-Present;
City of Hollywood, Florida: Senior Assistant City Attorney, 1999-2002;
City of Boca Raton, Florida: Special Counsel, 1999;
Florida International University, Florida: Adjunct Professor, 1994-97;
Broward County, Florida: Assistant County Attorney, 1992-98;
Katz, Kutter, Haigler & Alderman, Ft. Laud., Florida: Associate, 1991-92;
City of Miramar, Florida: City Attorney, 1989-91;
City of Miami Beach, Florida: Assistant City Attorney, 1982-85;
Britton, Cohen, Kauffman, Benson, & Schantz, Florida: Associate, 1981-82.

ACTIVITIES

AV Rated, Competence and Ethics, *Martindale-Hubbell*
Florida Trend Legal Elite: Top Government Attorney, 2010
Cuban American Bar Association: Mentoring and Judicial Committees, 2005-08
Lorman Educational Systems: Lecturer in areas of Procurement, Public Records and Sunshine Law, 2001-07, 2013-14
The Florida Bar: Certification Committee, 2000-03, 2014- 2016.
Florida Bar Journal Editorial Board: Deborah M. Smoot Memorial Editor's Award, 1998
The Public Lawyer: Board of Editors, 1994-95
The Florida Bar: City, County and Local Government Law Section Executive Council, 1992-94 ; City, County and Local Government Law Certification Committee ,1999-2003.
Dade County Bar Association: Editor in Chief, *Court Handbook for Dade County Lawyers*, 1990
Florida Bar Journal: Editorial Board Member, 1989-2002, 2005-08
Dade County Bar Bulletin:Co-Editor, 1987-88
Stetson Law Review Local Government Law Symposium, Editorial Board Member ,1987-1993
Co-Author, *The Bert J. Harris, Jr., Private Property Rights Protection Act: An Overview*, *Florida Bar Journal*, 2015

RAFAEL E. SUAREZ-RIVAS, ESQ.
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Co-Author, *Bid Protests Under the Administrative Procedure Act, Florida Bar Journal, 2018*

Co-Author, *The Foreclosure of Local Special Assessment Liens, Florida Bar Journal, 2021*

PROFESSIONAL

Florida Bar Association, Member since 1980

ASSOCIATIONS

REFERENCES

Daniel Abbott, Weiss, Serota, Ft. Laud. , Fl.
Iris V. Escarra, Esq., Greenberg Traurig, Miami, Florida
Lucia A. Dougherty, Esq., Greenberg Traurig , Miami, Florida
Glenn Marcos, Assistant Director, Broward County Purchasing Dept.
Victoria Méndez, Esq., City of Miami City Attorney

Writing samples and additional references available upon request.

**CITY OF FORT PIERCE, FLORIDA
CITY ATTORNEY
SEMI FINALIST CANDIDATE QUESTIONNAIRE**

Name: Rafael E. Suarez-Rivas

Home Address:4766 Alton Road . Miami Beach, FL. 33140

Home/Work/Cell phone numbers:(305) 674-9546/(305)250-5420/(786)368-6797. Please use cell phone number.

E-mail address: suarezrivasr@bellsouth.net

1. Why are you interested in becoming Fort Pierce's next City Attorney and how does this position fit into your overall career plans?

I enjoyed being a City Attorney once before . I would like to hold the position again as an older, more seasoned, and wiser lawyer.

2. What is the largest number of employees that you have managed and where? What is the largest annual operating budget that you have managed?

As a City of Miami Supervisor /Division Chief I managed 6 to 8 attorneys. While I was Miramar City Attorney the annual Law Dept. was approximately half a million dollars. The Miramar budget did not include payment of tort , police forfeiture, and civil rights claims. Thee were paid from Risk Management related accounts

3. How do you stay professionally current and on top of issues with the potential for significant impact on your jurisdiction? How do ensure that your employees stay current?

I read the Florida Bar News/ Florida Bar Journal, Florida Law Weekly , the Daily Business Review, use Westlaw , use the Local Government List Service , and attend or listen to the DVDS of a few Florida Bar Seminars each year. While I was a Supervisor I strongly encouraged all Assistant Attorneys in the Division to do the same as I or something similar. Additionally, we held luncheon mini seminars on municipal law topics.

4. Describe your leadership and management style with your employees.

My leadership style is vibrant, encouraging, collegial, inclusive, empowering and yet mentoring and directing notably towards younger colleagues. My management style is to afford general oversight and periodic review , yet to allow a colleague, official, or director to stand on their own and take responsibility and hopefully enjoy the satisfactory results. I am a good and positive manager yet not a micro-manager.

5. Have you ever worked directly for a policy making body? Yes I have .

6. Are you a member in good standing of the Florida Bar? Yes I am.

7. Describe your workload tolerance.... what type of office hours do you typically keep?

If you spoke to any of the City Attorneys I worked for ,who are listed as among my

references, you would be informed my work hours averaged at 50 hours per week from my billing. This included a prodigious amount of memo drafting, research, legislative and contract drafting and /or review, meetings, and attendance at Board meetings.

8. What would you hope to accomplish the first 30 days on the job; the first 6 months; and the first year?
I would in the first month meet with the Mayor, City Commission, and City Manager and ask them to prioritize their 3 most important legal / regulatory issues. In the first 6 months I would have hope to tackle many or most of these or at least a substantial portion, depending on their nature. After the first year I would intend to issue a report showing how I had addressed or helped address a resolution or eventual resolution of many or most of these issues. I may also devise my own annual goals and "wish list" to accomplish during my tenure after the first 6 months.
9. What experience do you have with organizational and/or performance analysis directed at identifying issues in need of change?
I did quarterly mini reviews and annual reviews of the attorneys in my Division. I annually evaluated legal secretaries and paralegals. I have performed numerous annual self-reviews, self-critiques, and compiled annual lists of accomplishments. I have participated in team evaluations.
10. Please describe your experience in dealing with intergovernmental entities. Specifically, how do you work with the City Manager and other sections/branches of the City government while maintaining your independence?
I have successfully worked with and for various City Managers, Planning, Procurement, Public Works, quasi-autonomous City agencies and instrumentalities, and other Department Directors. The City Attorney is appointed by the Mayor and Commission who are his clients. The City Administration and Department Directors are also clients. You must serve each of them diligently, faithfully, competently, and neutrally to the very best of your abilities.
11. Tell us how you communicate with your governing body and its individual members.
Agenda briefings, personal meetings, public hearings, telephonic and in person conversations are all modes of communication. So are virtual meetings in the last 2 years. I try to communicate clearly, directly, honestly, and responsively to the issues at hand.
12. How would you handle situations where the Commissioners wish to take actions that you do not consider lawful?
I would advise them of the legal issues. I would afford them a period of contemplation. I would advise them privately to reconsider their intended actions during this period of contemplation. I would advise them of the possible consequences.
13. How would you handle questions of law, including issues relating to public safety, that may be viewed differently by an ethnically and economically diverse community and Commission?
Legally the City Attorney must provide the best answer under Florida law following the rule of law. Ethics, community composition, economics, and sociology may be considered as factors, yet they cannot be the determinative factor – the law is the determinative factor.
14. Please provide a copy of a legal opinion that you have authored. You may provide a

redacted copy.

It has been furnished by separate email .

15. Have you ever been found to have committed any acts of discrimination, sexual harassment, or creation a hostile work environment? If so, please explain.
No, the answer is in the negative. I have not found to have committed any such acts at any time .

16. Do you have any unusual personal consideration(s) that would need to be resolved before you could accept this position? If so, please explain.
No, I do not.

17. Should you become a finalist candidate, we will perform education, credit, civil, criminal, and motor vehicle court records, internet search and reference checks on you. In doing so, will we find anything that you need to explain in advance?

Not that I am aware of .

18. Is the resume you submitted accurate and current? If not, please explain any discrepancies.
My resume is accurate and current.

19. Are you currently employed?
Yes

20. Have you ever been fired or resigned under pressure from a job? If so, please explain.

During December of 1998 I and 4 other Assistant County Attorneys were abruptly dismissed by an Interim Broward County Attorney, without cause, (my reviews were very good) on his very first day on the job. I considered these terminations to be "political" or "cleaning house", they were unrelated to job performance.

21. Have you ever sued an employer or been sued by an employer or employee? If so, please explain.
No, I have not .

22. What are your compensation expectations?

Annual salary in the range of \$165,000-\$ 185,000. This is also impacted by the benefits such as car and cell phone allowances, insurance, pension and/or deferred compensation, and similar emoluments the City does offer or may decide, in its discretion, to offer.

**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
MEMORANDUM**

TO: Joseph A. Ruiz, Chief of Staff
Office of the Mayor, the Honorable Francis Suarez
FROM: Rafael Suarez-Rivas, Division Chief Land Use/Transactional
DATE: March 8, 2018
RE: Donation or Loan of Furniture to Be Used by Mayor
Matter ID No.: 18-529

You have requested an informal legal memorandum on substantially the following questions:

QUESTION

CAN THE OFFICE OF THE MAYOR ACCEPT A DONATION OR LOAN OF FURNITURE TO BE USED BY THE MAYOR? WHAT PROCESS MUST BE FOLLOWED?

BRIEF ANSWER

Yes, the Office of the Mayor, acting through the City Manager, may administratively accept a donation or loan of furniture to be used by the Office of the Mayor provided the value of the gift or donation of furniture does not exceed twenty-five thousand dollars (\$25,000.00). The donation or loan must be for the use and benefit of the City of Miami ("City") and not for a private purpose or use. If the value of the donation or loan of furniture exceeds twenty-five thousand dollars (\$25,000.00) the decision to accept such a donation or loan needs to be adopted by the City Commission.

DISCUSSION

The Charter of the City of Miami provides that the City has the power “to acquire by purchase, gift, devise, condemnation, or otherwise, real or personal property or any estate or interest therein, inside or outside the city, for any of the purposes of the city...”¹ However, the City of Miami Code of Ordinances (the “Code”) prohibits the acceptance, directly or indirectly, of any gift of personal property or anything of value by an official of the City where any purchase order or contract might be awarded, except where given for the use and benefit of the city.² This Code Section clearly provides that a gift of furniture to the Mayor is acceptable if the furniture is used for municipal purposes and to the benefit of the City. The furniture must be officially used in the Office of the Mayor, and may not be used for private or personal benefit, such as in a private residence or private office for personal benefit.

The city’s use and benefit requirement for the acceptance of a loan or gift of furniture simply reflects the long-standing rule of law in Florida, which provides that gifts received of this nature must be for a public purpose that is synonymous with the use and benefit of the City. As was stated in his concurring opinion in *State ex rel. Kirkland v. Kirk*,

"It is elementary that neither the State nor a public officer may accept donations of private funds or expend the same except as may be duly authorized by law. However, it has long been the policy of the State, reflected in our laws and departmental interpretations thereof, to accept gifts of private funds for proper state purposes provided the same are freely given and are uncontrolled by their donors and do not present conflicts of interests or further special interests." 198 So. 2d 331, 332 (Fla. 1967).

The value of gifts that may be administratively accepted by the city manager are limited by the Code, up to an estimated value of twenty-five thousand dollars (\$25,000.00)³. The Code is silent on gifts above this value, however the past practice of presenting any donation over this monetary value to the City Commission for their acceptance on behalf of the City, is considered the proper method for acceptance of such donations. Simply expressed, delegation of authority for the City Manager to accept gifts on behalf of the City is limited to twenty-five thousand dollars (\$25,000.00), and if the City Commission adopts by Resolution donations that exceeds twenty-five thousand dollars (\$25,000.00) as prescribed by the Code, there should be no legal issue for the City to accept the donation.

CONCLUSION

The City has the authority to accept gifts of personal property for public purposes of the city pursuant to both the City of Miami Charter and Code. The Code prohibits any City of Miami official from accepting anything of value where a purchase order or contract might be awarded. Moreover, prudent practice, caution, and the avoidance of an appearance of impropriety strongly suggest the gift or loan not come from a City vendor, provider, contractor, consultant or a lobbyist.

¹ City of Miami Charter, Sec. 3(f)(i)

² Code of Ordinances, Ch. 2, Art. 5, Sec. 2-613

³ Code of Ordinances, Ch. 18, Art. 3, Sec. 18-115

Any furniture accepted by the City for use by the Mayor must be used for the benefit or municipal purposes of the City and may not be used in any private fashion or outside the Offices of the Mayor. The value of the furniture that may be administratively accepted by the City Manager is twenty-five thousand dollars (\$25,000.00).

Please note that this memorandum is strictly limited to the facts contained herein and is not a general pronouncement on the legal points raised.

RSR:MA/db

Prepared by: Michel Ayub, Certified Legal Intern/LLM Candidate - under the supervision, review, revision, and direction of Rafael Suarez-Rivas, Senior Assistant City Attorney, Division Chief, Land Use/Transactional Division.

**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
MEMORANDUM**

TO: Joseph A. Ruiz, Chief of Staff
Office of the Mayor

FROM: Rafael Suarez-Rivas, Division Chief Land Use/Transactional

DATE: March 8, 2018

RE: Donation or Loan of Furniture to Be Used by Mayor
Matter ID No.: 18-529

RECEIPT

This is to acknowledge receipt of the above-captioned correspondence from the Office of the City Attorney.

Received by: _____

Print Name: _____

Date: _____

Please sign and return this receipt to Rafael Suarez-Rivas, Division Chief Land Use/Transactional.

**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
MEMORANDUM**

TO: Emilio T. Gonzalez, City Manager
City Manager's Office - COM
FROM: Rafael Suarez-Rivas, Chief Assistant City Attorney
DATE: April 25, 2018
RE: David Martin - Process to be Followed to Accept Gift Pursuant to
Section 18-115
Matter ID No.: 18-1020

You have requested an informal legal memorandum on substantially the following question:

QUESTION

PURSUANT TO SECTION 18-115 OF THE CITY CODE WHAT IS THE
PROCESS FOR THE CITY MANAGER TO ACCEPT A GIFT?

BRIEF ANSWER

The City Manager is allowed to accept donations of goods and services less than \$25,000. Any donations of goods and services of \$25,000 or more must be approved by the City Commission. Monetary donations no matter the amount must also be approved by the City Commission. If Commission approval is not required then an acknowledgement letter and receipt can be sent to accept the donation. If Commission approval is required then a resolution must be approved prior to acceptance of the donation.

DISCUSSION

Section 18-115 of the City Code states “[t]he city manager is authorized to accept the donation of goods and services up to an estimated value of \$25,000 on behalf of the city.” Which means that the City Manager is allowed to accept gifts of goods and services less than \$25,000. All gifts of goods and services valued at \$25,000 or more must be approved by the City Commission. Section 18-115 only applies to donations of goods and services. If the donation is monetary then it must be approved by the City Commission regardless of the amount.

The process for the City Manager to accept donations of goods and services valued at less than \$25,000 is that an acknowledgement letter and receipt would be sent to the person making the donation. Donations of goods and services valued at \$25,000 and monetary donations must be heard by the City Commission. The process for the acceptance of those gifts is that a resolution must be

drafted and that resolution would need to be approved by the City Commission. If the resolution is approved then the gift can be accepted by the City Manager.

Therefore, if the total estimated value of the furniture that David Martin wants to donate to the City is less than \$25,000 then the City Manager can accept the donation without the matter being heard by the City Commission. The City Manager can just send Mr. Martin an acknowledgement letter and receipt. If the total estimated value of the furniture that David Martin wants to donate to the City is \$25,000 or greater than \$25,000 a resolution must be drafted that would have to be heard by the City Commission. The resolution would have to be approved by the Commission in order for the Manager to accept Mr. Martin's furniture donation.

As was discussed in the Informal Memo 18-529, a copy of which is attached for your information and records, all such gifts must be for the use and benefit of the City of Miami for official use in City owned buildings.

In reviewing the photographs and good faith estimates of value from the donor David Martin that were included in your Legal Services Request it is noted that the total value of the furniture to be donated to the City is \$8,500.00. We have included a proposed sample bill of sale which needs to be signed and delivered to the City Manager along with the furniture. A simple letter of acknowledgment of the gift. from the City Manager would comply with the City Code

CONCLUSION

Donations of goods and services that have a value that is less than \$25,000 can be accepted by the City Manager without the requirement of City Commission approval. To accept the donation the City Manager would only need to send an acknowledgment letter and receipt. Any donations of goods and services with a value of \$25,000 or more and all donations of money must be heard by the City Commission. A resolution would be required and that resolution would have to be approved by the City Commission in order for the City Manager to accept the donation.

Prepared by: Cameitra Telfort, Paralegal - Under the supervision, review, revision, and direction of Rafael Suarez-Rivas, Senior Assistant City Attorney

CANDIDATE RANKING FORM

Place each candidate's name on this list in the order that you are most interested in having he or she continue in the process. The name of your first choice should be placed on the first line and the names of the others in descending order based on your level of interest in them. All candidates need to be ranked and tied rankings should be avoided.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

CANDIDATE TABULATION FORM

<i>Raters</i>	#1	#2	#3	#4	#5	#6	#7	#8	#9	Total	Avg
CANDIDATES											
Anon, Jr., Manny											
Earley, Tanya											
Garrett, Susan											
LoConte, Elizabeth											
Mai, Andrew											
Suarez-Rivas, Rafael											

ORDER BY RATINGS

Rank	Candidate Name	Average	Spread
1			Base
2			
3			
4			
5			
6			

BOKSNER QUALIFICATIONS MATRIX

Name	Employer	Pop	Position	Highest # Empls	Local Gov't General Counsel Exp	Legal Office Mgmt Exp	Outside Counsel Mgmt Exp	Amt. of Prof. Exp (Years)	Diverse Community Exp	Florida Bar	Ever Left a Job Involuntarily	Pay Expected (K)
Boksner, Aleksandr toledo1998@aol.com	City of Miami Beach	91.7	Deputy City Attorney / General Council	12	Yes	Yes	?	20	Yes	Yes	No	Negotiable

Aleksandr Boksner
7749 Paddock Place, Davie, Florida 33328
305-216-6258

September 8, 2021

Robert E. Slavin
SLAVIN MANAGEMENT CONSULTANTS
3040 Holcomb Bridge Road, A1
Norcross, Georgia 30071

Submitted Electronically

RE: City of Fort Pierce, City Attorney Position

Dear Mr. Slavin:

Please accept this Letter of Interest and Resume in regards to the City Attorney Position with the City of Fort Pierce, Florida.

I am currently the Deputy City Attorney for the City of Miami Beach, Florida, and provide legal counsel to the Mayor and City Commissioners, the City Administration and the various City Departments on a broad spectrum of legal issues. More specifically, I am responsible for those matters that involve the City's governmental business operations, land use interpretation and drafting, federal and state litigation, statutory implementation, application and procedures, labor and employment, and other numerous legal matters that impact the governmental functions of the City of Miami Beach.

At your earliest convenience, please review my resume to further evaluate my candidacy for this excellent position. I look forward to discussing my qualifications in further detail and welcome the opportunity for an interview. Thank you for your consideration.

Sincerely,

/s/ Aleksandr Boksner

Aleksandr Boksner

ALEKSANDR BOKSNER

7749 Paddock Place, Davie, Florida 33328

305-216-6258

SUMMARY OF PROFESSIONAL EXPERTISE AND STRENGTHS

- Twenty years of extensive experience in advising on, operations, regulatory compliance, policies, procedures, financing and administrative guidance on government business practices, including legal management of regulatory departments, principles of civil, constitutional and administrative law, preparation of resolutions and ordinances, liaison with corporate vendors, contractors, citizens and external agencies on sensitive and controversial issues, and formation of cost-effective and goal-oriented legal compliance with emerging legal disputes (contractual and statutory).
- Strong government counsel orientation with extensive experience advising elected officials, government departments and the Office of the Inspector General on all aspects of governmental compliance and investigation, litigation (commercial, land use, construction, tort and appellate), sovereign immunity, employee relations, legislative process and procedure, contract formation and drafting, governmental procurement and purchasing (traditional procurement and Job Order Contracting), and various aspects of public/private development agreements, including modifications, operability studies and fiscal challenges, and in connection with these entities day-to-day business activities, interaction with vendors, contractors, federal and state entities and officials.
- Strong senior counsel with substantial experience in advising, and working with, elected officials (and government administration) and private business colleagues on various public/private governmental contracts and legal issues, risks, preferred outcomes and strategies.
- Strong substantive knowledge and analytical skills, with excellent judgment and ability to quickly and effectively identify, assess, communicate and resolve legal and, as appropriate, business issues as necessitated by municipal policy requirements, objectives and the law.
- Excellent interpersonal, communication (written and verbal), negotiating and drafting skills.
- Apply critical thinking to issues, demonstrating resourceful, pragmatic and creative approach to issue solving and addressing governmental entity and municipal-related policy objectives.

PROFESSIONAL EXPERIENCE

The City of Miami Beach, a municipal corporation

Deputy City Attorney and General Counsel, Miami Beach, Florida 2009 to Present

Marion County, Florida, a political subdivision of the State of Florida

Chief Assistant County Attorney, Ocala, Florida 2008 to 2009

Charlotte County, Florida, a political subdivision of the State of Florida

Chief Litigation Attorney, Port Charlotte, Florida 2005 to 2008

NRT, Inc.

Associate Counsel, Weston, Florida 2004 to 2005

Office of the State Attorney, Eleventh Judicial Circuit of Florida

Assistant State Attorney, Miami, Florida 2001 to 2004

BAR ADMISSION AND EDUCATION

Bar Admission

Florida, 2001

Tennessee, 2008

University of Toledo College of Law, Toledo, Ohio

Juris Doctor, 2001

University of Cincinnati, Cincinnati, Ohio

Bachelor of Arts, 1998

LANGUAGES

English and Russian

DESCRIPTION OF EXPERTISE AND EXPERIENCE

Government Counsel

Extensive experience representing, advising and rendering legal opinions to elected officials, managers/administrators, boards, commissions and other staff on all aspects of governmental business operations and governance, operations and policy initiatives, and other aspects of their regulatory compliance, business function, labor and employment, and litigation. Advised governmental entities in connection with their day-to-day activities and contractual relationships and obligations, including aspects pertaining to vendors, citizens, suppliers, contractors and employees, and reviewing and preparing agreements relating to such matters, including project specific agreements, Job Order Contracting, land use licensing and permitting, memorandums of understanding, mutual aid and cooperation assistance agreements and consent agreements. Experience in analyzing pending and proposed legislative (federal and state) action impacting the administration, operation and functionality of the governmental corporations, and the investigation of complaints and claims involving all aspects of government departments, staff and programs. General Counsel to the City of Miami Beach Inspector General and Office of the Inspector General.

Regulatory, Compliance and Litigation

Extensive experience ensuring compliance with municipal, state and federal ordinances, statutes, regulations and codes, including, Florida Building Code, National Fire Prevention Code, Local Government Code Enforcement Boards Act, Drug-Free Workplace Act, Florida Public Records Act, Florida Contraband Forfeiture Act, False Claims statutes and ordinances (Federal, state and local), Florida Uniform Traffic Control Law, Florida Vessel Safety Law, Whistle-blower's Act, Clean Water Act, Criminal and Civil Justice Policy Council, Bank Secrecy Act, 31 U.S.C. Section 5311 – 5332, Florida Anti-Fencing Act, Florida Communications Fraud Act, Florida Money Laundering Act, Florida Mutual Aid Act, Bert J. Harris, Jr. Private Property Rights Protection Act and Florida Land Use and Environmental Dispute Resolution Act. Experience as Chief Litigation Counsel for lawsuits in federal and state courts representing public entities for violation of the United States Constitution and Florida Constitution, defense of various statutory and common law causes of action, including regulatory taking, inverse condemnation, eminent domain, 5th Amendment taking under §1983, covenants of good faith and fair dealing, doctrine of recoupment, termination of contractual agreements for convenience, littoral takings, public records law, and all other litigation matters impacting governmental business operations.

Government Contracting

Extensive experience representing governmental entities in collaborating, documenting and completing contractual agreements pursuant to the Florida Interlocal Cooperation Act of 1969, and those contractual agreements involving purchase and sale, architecture and engineering, Federal cost reimbursement, administrative services, indemnity and hold harmless, independent contractor, sponsorship agreements, utility franchise, Capital Improvement Project (CIP) design build, risk services, licensing, invitation to bid (ITB), request for qualification (RFQ), request for proposals (RFP), professional services, artist, revocable permits and easements, concessionaire, street scape and management. Extensive experience in negotiating and drafting agreements documenting these contractual agreements, including terms, conditions, modifications, amendments, demands, cure letters, notices of default, as well as those documents mandating indemnification and the assertion of a legal defense. As part of each contractual agreement, managing and coordinate the involvement of relevant staff and professional experts in those areas which directly impact the specific governmental operations and functions.

**CITY OF FORT PIERCE, FLORIDA
CITY ATTORNEY
SEMI FINALIST CANDIDATE QUESTIONNAIRE**

Name: Aleksandr Boksner

Home Address: 7749 Paddock Lane, Davie, Florida 33328

Home/Work/Cell phone numbers: 305-216-6258

E-mail address: toledo1998@aol.com

1. Why are you interested in becoming Fort Pierce's next City Attorney and how does this position fit into your overall career plans?

I consider Fort Pierce to be a great city on the treasure Coast. I have strived throughout my entire legal career for the opportunity to serve such a great municipality, and would welcome those challenges that accompany such an endeavor. It would be my absolute honor and privilege to serve as the next City Attorney for the City of Fort Pierce, and this position would serve as the pinnacle of my legal career. In my experience representing Florida municipal and county governments, I believe that this knowledge would be an ideal fit for those expected challenges that the City of Fort Pierce will be experiencing over the next several years.

2. What is the largest number of employees that you have managed and where? What is the largest annual operating budget that you have managed?

I'm currently in a leadership and management role, and have overseen a total of 21 employees within the City Attorney's Office for the City of Miami Beach. This would reflect the supervision of 12 attorneys (excluding outside litigation counsel). I have managed the budget for the City Attorney's Office, which is presently at 6.3 million.

3. How do you stay professionally current and on top of issues with the potential for significant impact on your jurisdiction? How do ensure that your employees stay current?

In today's immediate notification climate for the legal profession, there are a multitude of resources that will permit an attorney to receive the most current legal decisions or those pending legislative amendments (Federal or state) that would direct impact the governmental business operations of the City of Miami Beach. In that regard, I have availed myself of these various web-based legal notification entities, which does permit me to remain current and on-top of any adverse appellate legal decision(s) or legislation that would jeopardize the City of Miami Beach's legal position in a pending matter or require a change/modification to its governmental functions or operations.

Equally important, I review numerous legal publications for those matters that potentially implicates the City of Miami Beach, and attend necessary and relevant seminar(s) that further supplements my legal knowledge on any essential subject matter pertaining to the City.

With that said, I feel that it's my responsibility to ensure that the City Attorney's Office employees develop their absolute potential best within the Office. There are several

important factors that I consider essential for members of my team. I feel that development opportunities must be shared with members of the City Attorney's Office, and suggesting that some take the opportunity to attend appropriate legal seminars to further develop their skills in the legal field. Although training programs are appropriate for different legal areas, certain types of training are particularly important for individuals willing to work hard to improve their career opportunities. These include training opportunities in areas such as leadership, management, negotiation, and other areas likely to be useful to the City and the City Attorney's Office.

4. Describe your leadership and management style with your employees.

I have strived to establish a clear teamwork approach between different attorneys and staff in order to have this concept become of true value within the City Attorney's Office culture. Regrettably, the legal profession has fostered a culture and reputation where employees are compensated and celebrated for their individual performance and contributions, which does not, and cannot, encourage a teamwork approach with handling legal matters. Therefore, it has instead fostered a sense of competition.

I wholly recognize that encouraging a collaborative work environment takes more than just putting employees on teams or telling them to work together. This type of thinking starts directly with the City Attorney and must trickle down into everyday interactions with other City staff members. The fostering of a teamwork approach is part of creating a work culture that values collaboration, rather than encouraging competition. I believe that a culture of teamwork creates opportunities for employees to work together and use all available resources and skills to reach city-wide goals and objectives.

With that said, my management style is fluid, and not wholly comprised of any one specific structure or format. I believe that a leader must have the capability to adapt to a broad-range of management styles, and implement those styles based upon the particular set of circumstances. I will encourage my employees to work collaboratively and professionally, and accomplish their respective responsibilities in a timely manner, knowing that my door is always open to discuss possible ideas, strategies and best approaches to resolving pending legal issues, matters or concerns.

5. Have you ever worked directly for a policy making body?

Yes, I have worked with the Mayor and individual City Commissioners (policy making body) in order to recommend potential legislation or other legal directives in order to address the multitude of those quality of life matters or concerns impacting the City of Miami Beach, and have consistently identified necessary measures that should be adopted, including the rendering of various opinions or reports on a multitude of legal matters affecting the City.

6. Are you a member in good standing of the Florida Bar?

Yes, I am a member of the Florida Bar in good standing.

7. Describe your workload tolerance.... what type of office hours do you typically keep?

I have nearly twenty (20) years of experience in advising four (4) different governmental entities on their operations, regulatory compliance, policies, procedures, financing and administrative guidance on various government business practices, including legal management of regulatory departments, principles of civil, constitutional and

administrative law, preparation of resolutions and ordinances, liaison with corporate vendors, contractors, citizens and external agencies on sensitive and controversial issues, and formation of cost-effective and goal-oriented legal compliance with emerging legal matters or issues (contractual and statutory).

Of those 20 years, I have been employed with the City of Miami Beach for over 12 years, and the workload of the City is very intense, extensive and fast-paced based upon a number of factors, which pertain to, and include, the City's population surging with the influx of approximately 8.5 million visitors annually. Therefore, it requires me to spend extensive time in the office in order to address the myriad of legal issues that the City faces daily.

8. What would you hope to accomplish the first 30 days on the job; the first 6 months; and the first year?

In the first 30 days as the City Attorney, I would hope to meet all department directors (including other supervisory personal), and a develop further understanding of those immediate legal issues facing the City of Fort Pierce. Additionally, I believe that weekly or by-weekly meetings with the Mayor and City Commissioners and the City Manager is essential, and I would hope to schedule such meetings.

In the first 6 months, I would hope to have attained a detailed understanding of the City Attorney's Office, and all pending or threatened legal actions against the City of Fort Pierce. Additionally, I anticipate that after consistently meeting with the Mayor and City Commissioners for the preceding months, that the policy directives and initiatives of the City Commission would become clear, and that I would be working with the City Manager to accomplish those objectives.

Lastly, In the first year as the City Attorney for the City of Fort Pierce, I anticipate that there would be a cohesive working relationship with the City Manager, and that the policy directives, goals and objectives set forth by the Mayor and City Commission would be collegially accomplished for the benefit of the City. Furthermore, I would have established an extensive and thorough understanding of all potential and existing legal threats against the City, and would be successfully addressing these threats and other legal matters. Equally important, I would have solidified the appropriate legal course of action for those issues that the City Commission has identified to be of an important concern within the City of Fort Pierce, and I would continue to meeting (on a regular schedule) with the Mayor and City Commission in order to provide legal guidance on the City's potential options for these challenging matters.

I would strived to address these issues that could impact the City of Fort Pierce, and continue to provide legal advice that is honest, concise and straight forward, and informs the City and its elected officials of the fullest extent of potential legal options.

9. What experience do you have with organizational and/or performance analysis directed at identifying issues in need of change?

In regard to this question, I've had experience in dealing with such matters, and have focused the response specifically to the City Attorney's Office and its organizational or performance analysis of the Department itself and its employees.

I believe that routine interaction and evaluation of employees within the Department to be absolutely essential and necessary to support compensation, promotion and retention

decisions as well as to ascertain how the employee(s) are performing with respect to the goals and needs of the City and the City Attorney's Office. In recognizing the limitations of, and effectiveness of the traditional review process, I consider deficit-oriented performance reviews that emphasize what an employee is not doing well to be counterproductive, generating employee dissatisfaction and lower organizational performance. It just makes sense that the negative dialogue of a review that highlights mistakes and shortcomings is not especially motivating.

Alternatively, I focus upon a process that identifies an employee's strengths and encourages collaboration among the other members of the City Attorney's Office, which would certainly include other supervisors and subordinates. I have embraced a more positive, prospectively directed system that can validate what is going well and develop future performance goals that build upon previous success, balancing the effects of any negative feedback and supporting individual employee engagement. I've recognized that it's most important not to think of performance reviews as the delivery of information by a superior to a subordinate, but to reimagine the process as a dialogue intended to share information about the work and workplace and co-create a plan which facilitates ongoing growth, development and information sharing that accomplishes the goals of the governmental organization.

10. Please describe your experience in dealing with intergovernmental entities. Specifically, how do you work with the City Manager and other sections/branches of the City government while maintaining your independence?

I have developed an extensive understanding of those necessary skills, which a City Attorney must embrace and recognize in order to provide the appropriate legal representation to the City Manager (including Department Directors). It is without question that there are various legal and administrative dynamics that exist between the governing body of a municipality and the City Administration, which may undoubtedly result in potential impediments that inevitably emerge through those efforts utilized to implement the policy direction issued by the Mayor and Commissioner. I have gained the necessary understanding to acknowledge such various dynamics, and have adapted a broad-range of management styles and experiences necessary to implement those styles according to the appropriate set of circumstances that might be necessary to accomplish a working collaboration with the City Manager and essential Department Directors, while ensuring that the City Commission directives are properly accomplished.

With that said, I would manage the role of City Attorney in a professional manner, and strive to accomplish the respective objectives and responsibilities of both the City Manager and the City Attorney, in order to achieve the desired outcome that has been identified by the City Commission.

I recognize that conflicts may arise between the respective role of the City Manager in seeking to accomplish various policy direction issued by the City Commission, which could result in a conflict with those legal obligations of the City Attorney. In the event such a conflict does present itself, I'm confident that as Fort Pierce's City Attorney, that the City Manager and I would be able to discuss all available and viable options or solutions to ensure that the City of Fort Pierce is legally protected, and that no adverse consequences would negatively implicate the Mayor and Commissioners, the City Manager or other Department staff, while making certain that the City Commission's policy directives are implemented without delay.

11. Tell us how you communicate with your governing body and its individual members.

I've directly worked with the Mayor and City Commission in a collaborative relationship, which recognizes that approachability, responsiveness and clear communication of those pending or potential legal matters of the City of Miami Beach, is absolutely an essential element to ensuring success of the governing body's priorities, objectives and policy initiatives. Equally important, I've taken a leadership role with the Mayor and City Commission, through clear and effective communication skills when faced with any legal adversity or challenge, while making certain not to sacrifice those ethical obligations of the City Attorney. This approach has permitted me to focus upon the individual goals for the members of the City Commission, and further ensured that such working relationship(s) don't transition into matters of public policy without assuring the proper legal level of transparency. In that regard, I've endeavored to provide direct and concise legal guidance and counsel to the Mayor and City Commission on policy-making activities, by providing binding legal precedent and the application of existing legal principles, in order to ascertain a pathway or direction that furthers such policy objectives of the governing body.

12. How would you handle situations where the Commissioners wish to take actions that you do not consider lawful?

I believe that the City Commissioners should be apprised of, and receive any information, which could result in potential legal issues or consequences, or that could adversely impact the Mayor and City Commissioners. Certainly, I recognize that each Elected Official will be provided further clarity on those matters which they deem important (and seek further briefings on any given subject matter), and once I have been able to properly establish this understanding, I believe that the information that would be forthcoming from me would be transparent, appropriate and avoid any confusion or misunderstandings.

However, should there be a disregard of my legal advice or opinion on a matter, I would make certain that the individual is properly informed about the potential legal risks and adverse consequences that could materialize should there be a continued effort to proceed on a course of action that ignores my legal counsel on the subject matter, which may include litigation, civil or criminal penalties, and other negative legal action. With that said, and provided that the decision which conflicts with my legal advice or opinion is not illegal pursuant to the law, I recognize that City Council, City Manager, or any Department Director are my clients and are not obligated to follow my legal advice. The City Council and City Manager will be making the ultimate decision on a matter, which would most likely be based upon their level of risk-aversion, once all the potential legal issues or consequences are disclosed.

13. How would you handle questions of law, including issues relating to public safety, that may be viewed differently by an ethnically and economically diverse community and Commission?

I believe that the City Attorney must ensure that there is continued compliance with Florida's law by instilling the free flow of information amongst the governmental entity and those private individuals that interact with the City. This would allow direct citizen input, review, and criticism of government action, and thereby increases the quality of the City's governmental operations and activities. It is essential that the City Attorney undertake an active role in preventing the municipal organization from failing to disclose or prevent the release of clear public information, when such efforts serve to unequivocally permit continued transparency that enables stronger, more appropriate relationships with the general public by allowing for more accurate verification of the City's compliance with the

law, and how it conducts its governmental business.

Ultimately, the City Attorney must be a proponent of disclosing the business operations and activities of the City, transparency produces an informed public, a responsive government, and as a result, the City's residents believe that its government has its citizens best interests. Therefore, I would handle such questions consistent with those principles set forth herein, factoring

14. Please provide a copy of a legal opinion that you have authored. (You may provide a redacted copy.

Please see attached legal opinion.

15. Have you ever been found to have committed any acts of discrimination, sexual harassment, or creation a hostile work environment? If so, please explain.

No, I have never been found to have committed any acts of discrimination, sexual harassment, or creation of a hostile work environment.

16. Do you have any unusual personal consideration(s) that would need to be resolved before you could accept this position? If so, please explain.

No, I do not have any unusual personal consideration(s) that would need to be resolved before accepting the position.

17. Should you become a finalist candidate, we will perform education, credit, civil, criminal and motor vehicle court records, internet search and reference checks on you. In doing so, will we find anything that you need to explain in advance?

There have been numerous media articles that reference pending litigation or other legal matters involving the City of Miami Beach. In that regard, I've been referenced as legal counsel for the City of Miami Beach in those media articles, as they might identify pending adverse legal matters against the City. With that said, I've not been the subject of such media articles, but the below matter is being disclosed in the abundance of caution. Should there is a belief that any other matters require commentary, please do not hesitate to contact me.

A Plaintiff and his wholly-owned corporation filed a frivolous lawsuit against the City for various alleged constitutional violations. The City prevailed on all claims, and the Federal Court ordered that the City was entitled to an award of all its reasonable attorneys' fees. The Plaintiffs paid the City \$600,000 for those attorney fees incurred, and Plaintiffs law firm paid the City \$100,000. Subsequently, the Plaintiff has issued erroneous and disparaging assertions against me and another attorney.

18. Is the resume you submitted accurate and current? If not, please explain any discrepancies.

Yes, the resume is accurate and current.

19. Are you currently employed?

Yes, I am currently employed.

20. Have you ever been fired or resigned under pressure from a job? If so, please explain.

No, I have never been fired or resigned under pressure from a job.

21. Have you ever sued an employer or been sued by an employer or employee? If so, please explain.

No, I have never sued an employer or been sued by an employer or employee.

22. What are your compensation expectations?

I'm open to discussing the salary requirements for the position of City Attorney. I do have significant legal experience, knowledge and expertise in municipal and governmental law, which I believe adds value to my candidacy for this position. I'm optimistic that a fair salary can be negotiated.

Subject: FW: Your Inquiry-CMB Regulation(s) of Firearms

From: Boksner, Aleksandr <AleksandrBoksner@miamibeachfl.gov>

Sent: [REDACTED]

To: [REDACTED]

Cc: [REDACTED]

Subject: Your Inquiry-CMB Regulation(s) of Firearms

This memorandum is in response to your verbal inquiry as to whether the City of Miami Beach has the legal authority to enact an ordinance to prohibit and/or control the sale and possession of automatic firearms throughout the City.

The Florida Legislature has declared that the regulation of firearms and ammunition (which includes the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage and transportation of firearms and ammunition), is preempted by the State of Florida, and that any existing (and future) ordinance(s) or regulation(s) that might be enacted by a county, city, town or municipality is thereby declared null and void pursuant to Section 790.33 of the Florida Statutes (which statutory provision may be identified as the Joe Carlucci Uniform Firearms Act).

The Florida Legislature's preemption authority for firearms regulation is derived directly from the Florida Constitution. Specifically, Article I, Section 8(a) of the Florida Constitution provides, "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Florida appellate courts have explained that, "the phrase 'by law' indicates that the regulation of the state right to keep and bear arms is assigned to the Florida Legislature and must be enacted by statute." *Fla. Carry, Inc.*, 133 So.3d at 972.

The Legislature's reservation (preemption) for itself of the whole field of firearms regulation is codified within Section 790.33(1), which provides:

(1) Preemption.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.

This statutory provision has explicitly preempted the regulation of firearms by local governments. *See Pelt v. State, Dept. of Transp.*, 664 So.2d 320, 321 (Fla. 1st DCA 1995), *rev. denied*, 671 So.2d 788 (Fla. 1996). Equally compelling, the Legislature in October of 2011 further emphasized and reiterated that the regulation of firearms was solely within the purview of the Florida Legislature, and not within the jurisdiction of local governmental entities. *See* Ch. 2011-109, § 1, Laws of Fla.

The legal impact of the 2011 Amendment to Section 790.33 is extensive. Specifically, the Amendment established definitive fine and penalty provisions against "any person, county, agency, municipality, district, or other entity" that enacts or causes the enforcement of any local ordinance that violates the preemption authority set forth within Section 790.33(1) of the Florida Statutes. Furthermore, this statutory amendment would subject the City of Miami Beach to a Circuit Court proceeding that would, undoubtedly, declare the ordinance improper pursuant to Section 790.33(3), and the issuance of a permanent injunction that would prohibit the City from taking

any enforcement action upon the newly enacted ordinance (It must be noted that the Mayor and City Commission would not have a defense for acting in good faith or upon the advice of counsel).

Additionally, and of greater importance, the amendment to Section 790.33(3) authorized the Circuit Court to assess a civil fine of up to \$5,000 against an elected local government official(s), including the termination of the employment or contract of any person (e.g., City Manager, Chief of Police or City Attorney) acting in their official capacity, for knowingly and willfully enacting or causing the enforcement of a local ordinance that violates the statutory preemption codified within Section 790.33(1). The Legislature has further authorized the Florida Governor to remove from office the elected local government official for the knowing and willful enactment of such a local ordinance, and the City would be legally prohibited from expending any public funds to defend or reimburse the Mayor or City Commission that have been found to have violated the statutory prohibitions proscribed in Section 790.33(3).

Regrettably, the City of Miami Beach does not have any legal authority to enact any legislation that regulates firearms and/or ammunition, and any attempts to enact such legislation would result in the knowing and willful violation of Section 790.33(1) of the Florida Statutes...exposing each elected or appointed member of the City Commission to a civil fine of up to \$5,000, and removal from office by the Governor of the State of Florida.

Should you have any questions, please do not hesitate to contact me.

MIAMIBEACH



ALEKSANDR BOKSNER

Deputy City Attorney

Education:

University of Cincinnati, Cincinnati, Ohio (B.A. 1998)

The University of Toledo College of Law, Toledo, Ohio (J.D. 2001)

Member:

State of Florida

State of Tennessee

U.S. District Court, Middle District of Florida

U.S. District Court, Southern District of Florida

Florida Middle District Bankruptcy Court

Aleksandr Boksner joined the City of Miami Beach Office of the City Attorney in 2009. Mr. Boksner provides legal counsel to the Mayor and City Commissioners, City Manager, and Department Directors pertaining to its governmental business practices, liability and sovereign immunity, including those regulatory and technical departments, State of Florida public records and government in the sunshine laws, contract formation, interpretation and drafting, legislative process and procedure, regulatory and statutory compliance, and the legal impact of civil and criminal litigation surrounding all aspects of the City of Miami Beach's governmental business operations.

Mr. Boksner prepares various resolutions and ordinances, drafts prospective legislation for consideration by the State of Florida, and reviews contracts for compliance with the City of Miami Beach procurement code, in conjunction with the negotiation of various public/private contracts, land use disputes, franchise agreements and other contractual agreements. He supervises the prosecution of code enforcement matters before the Special Master to ensure regulatory compliance with those technical statutes, regulations and codes. He handles a multitude of litigation matters (commercial, land use, construction, tort and appellate) which involve issues of sovereign immunity, regulatory taking, inverse condemnation, littoral takings and other statutory and common law causes of action impacting the City of Miami Beach. Mr. Boksner provides broad range and extensive legal guidance on the City of Miami Beach's governmental operations and governance, policy initiatives and other aspects of the City's business functions and litigation.

Prior to joining the City of Miami Beach Office of the City Attorney, Mr. Boksner's professional experience and background consisted of significant legal positions at other governmental agencies that included the Office of the County Attorney, Marion County, Florida; Office of the County Attorney, Charlotte County, Florida; and Office of the State Attorney, Miami, Florida.