




CITY OF HALLANDALE BEACH, FLORIDA

MEMORANDUM

DATE: January 4, 2018
TO: Honorable Mayor and City Commission
FROM: Jennifer Merino, City Attorney 
SUBJECT: City Attorney Annual Performance Review

The employment agreement between myself and the City Commission provided for an initial performance review to have been conducted in August 2017. The review was to be conducted in any manner deemed suitable by the City Commission. As you may recall, due to a number of extraordinary events occurring in August 2017, notably the unanticipated resignation of a commissioner and a death in my family, no performance review was conducted. Therefore, I have placed this performance review on the agenda to ensure that the Commission have an opportunity to consider my performance and terms of employment prior to the anniversary of my first year on February 6th.

The past eleven months have been eventful, to say the least. Certainly, very little of what occurred this past year could be described as ordinary or customary. Nonetheless, we persist in every effort to continue the work of serving the residents of Hallandale Beach. When I joined the City in February 2017, the City was in the midst of an administrative overhaul. Commencing my first year as City Attorney would have been challenging in the best of circumstances, but the number of novel legal issues encountered this past year have been surprising. Ultimately, I hope you will agree that I have faced them with the highest professional integrity and an unmatched work-ethic. My primary goal as City Attorney has always been to provide every member of the Commission and the administration with reliable, unbiased, and efficient legal advice. I strive to provide you with a complete assessment of all legal options and the accompanying risks and advantages. Very little in the law is simple or obvious, but I believe I have done a good job of providing you with the information you need to do your job as elected officials, even if sometimes the only news I can give you is bad news.

As a member of the Commission, you are directly aware of some of the more time consuming legal obstacles I have worked through in the past six months. There is likely no further elaboration I can provide you as it relates to the effort that has gone into the vacancy/special election issue, investigations internal and external, budget deadlocks and hearings, pension and collective bargaining issues and on-going litigation with former employees. These are sensitive and ongoing issues that have clearly taken more time and resources than anyone could have anticipated. You are also aware of the various training presentations I have provided on quasi-judicial procedure, cones of silence, public records laws, Sunshine law, ethic codes and new official training. However, I would like to highlight aspects of my work in the past year that you may not necessarily be aware of.

In the past eleven months, the Office of the City Attorney has undergone a transformation organizationally and physically. Organizationally, only Ms. McKenney remains of the staff present prior to my tenure. This meant that I spent significant time recruiting and reviewing candidates to fill vacant positions. However, this also allowed me to reconceive the structure of the office. I restructured the organization to add a dedicated focus to tort litigation. By adding a paralegal position for litigation support, I hope to ensure that we will have less of a need for outside counsel in the future.

We also undertook the work-intensive task of purging thousands of physical documents and files. The office maintains files dating back to the early 1980's. Many of these were records that did not need to be maintained or were no longer accurate. To date we have reviewed and prepared dozens of boxes of records for purging. We have also commenced new electronic storage and organization processes. We now maintain comprehensive accounting of all costs by case and internal dockets for all litigation. This data will help us evaluate similar cases moving forward. Finally, we instituted electronic storage for Internal Service Requests (ISR), which were previously stacked in boxes, and will be moving to completely electronic ISRs in the near future.

To accompany this new organizational structure, I also reviewed the Code pertaining to the City Attorney. I compared our Code to that of other cities and counties throughout Florida. Thanks to your support, we have now updated the Code to reflect long-standing practices and some new best-practices for this office. As you are all aware, I also worked with administration to find solutions to significant concerns I had with the physical space of the City Attorney's Office. After months of planning and consideration of a number of options, the City Attorney's office now has, for the first time ever, independent meeting space and an independent entrance.

With respect to litigation, my first task when I joined the City was to meet with staff, Risk Management and all outside counsel to evaluate each case individually. In addition to instituting the organizational efforts above, my office has worked closely with Risk Management and outside counsel to address an unanticipated surge in litigation that occurred prior to my tenure. The effect of the surge was exacerbated by older cases that lingered unresolved. We have worked to bring a significant number of cases to a resolution and control increasing costs of litigation. However, the City also tried its first personal injury case in at least ten years. Often plaintiffs will hold out for

unwarranted settlements because they know municipalities have tight-budgets, few in-house legal resources and huge non-litigation workloads. In this case, we properly valued the case and the jury verdict confirmed our valuation. This is an important statement that we hope will discourage spurious and frivolous litigation. I do anticipate more trials of older cases in the coming year.

My office also provides legal advice and oversight to fourteen City departments. Every contract, every legal issue, every resolution and every ordinance has to be researched, drafted, and/or reviewed by myself or my staff. In the past year, I have taken on most of this function myself for two reasons: 1) since it was my first year with the City, this was the best way to become familiar with the processes and issues the various city departments were facing on a day-to-day basis, and 2) the vacant positions and focus on clearing some of the litigation surge meant that there really was no other option to get the job done. We were all hands on deck, twenty-four hours a day.

I have found that this is by far my favorite part of the job. Working with staff to resolve issues and provide solutions is extremely fulfilling. I also found that I could not adequately provide these services myself long-term without the support of assistant legal counsel. Ultimately, in a full-service city with nearly 600 employees, no one person can be in all places at all times. This is especially true if one wants to be proactive, as I do. Unfortunately, I can honestly say that my staff and I have significant room for improvement in this area. Now that we are fully staffed, we have certainly improved, and expect to continue that trend into the next year. However, while we have significantly improved the thoroughness of our reviews, as I discuss below, I have not yet lived up to my standards of efficiency and timeliness. I hope to show significant improvement in that respect in the next year as I and my new staff become more familiar with the City, training is completed, and we settle into a more functional space.

Nonetheless, I have utilized this experience to commence some important initiatives that will continue throughout my tenure. The first is setting boundaries to preserve the authority of the Commission. As the only Charter officer outside the administrative organization, I consider it my legal responsibility to ensure that administration's actions are properly authorized by the Commission. To this end, I have worked with Procurement and other departments to ensure that expenditures are only made pursuant to a proper resolution, as necessary. For example, if the Commission did not authorize a contract extension, an extension must return to commission for approval. Prior to authorizing purchase orders or processing extensions, Procurement is now reviewing the original resolutions to determine exactly what the commission authorized. I have also worked consistently with the administration to advise them of the limitations to what can be accomplished without commission approval.

Second, I have encouraged departments to participate in the review and evolution of contracts, resolutions and ordinances. No idea is dumb, no concern is *de minimis*. The instruments and laws we draft are not merely words on paper, the words we choose have day-to-day implications for the departments that have to carry out these responsibilities. It is important to the success of every initiative that departments participate in this process. I encourage an open door policy and will

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call on staff at all levels as part of my review of any item. As my office becomes more efficient, it is my goal that this participation will become more productive and fulfilling for the departments.

Third, my review of contracts and drafting of resolutions goes beyond the four corners of the document. We now conduct a thorough review that includes determining that any number of legal processes and policies relevant to the item were adhered to. Although this takes more time, it is the only way to ensure that we catch cracks in our processes before they become chasms. It also furthers my objective of ensuring that the Commission's will is respected. I am working with my staff to have them conduct this same level of review. I am also happy to report that, in my experience, staff has been very cooperative in the process and worked with me to identify issues and find solutions when necessary.

In addition to the goals I have identified above, in the coming year I specifically hope to work with the administration and this Commission to finalize and institute a Whistleblower ordinance (coming soon), a revised Code of Silence and other code revisions I have identified in the past year, and an updated Procurement Code. Most importantly, I hope to live up to my own high standards of professional integrity and efficiency while maintaining your trust and respect.

Cc: Roger Carlton, City Manager
Mario Bataille, City Clerk