



CITY OF HALLANDALE BEACH, FLORIDA

MEMORANDUM

DATE: February 14, 2018

TO: Honorable Mayor and City Commission

FROM: Jennifer Merino, City Attorney *JM*

SUBJECT: Supplemental Memo re: Filling Temporary Vacancy of Mayor Cooper

This morning I was notified by former Commissioner Leo Grachow of a resolution dating back to 2014 which instituted a process for the appointment of an individual to fill a commission vacancy.¹ Mr. Grachow was appointed to fill the vacancy left by former Vice Mayor Alex Lewy's resignation. Shortly *after* his appointment, the commission authorized Resolution 2014-61 formalizing a process for future appointments. At the meeting authorizing the resolution, City Attorney Whitfield properly indicated to the commission that the resolution would not bind future commissions. A review of the video reveals that Commissioner Grachow asked for clarification prior to the vote, "it's just a process that is available for use and if a succeeding commission should face the same situation they may say 'no, we don't even want to use this?' It's just a template we are giving them?" The City Attorney confirmed his understanding and Mayor Cooper further clarified in other terms that the resolution would not bind a future commission.

I note that resolutions are intended only as "an expression of the commission on matters of official concern, opinion, or administration, of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body." Only ordinances are "an official, legislative action of the commission, which action is a regulation of a general and permanent nature and enforceable as local law." City Charter Sec. 5.01 and Florida Statutes Sec. 166.041(1). Should the commission elect to enact a permanent process to generally regulate the appointment of individuals to fill vacancies on the commission, it would be appropriate to do so by way of an ordinance codifying the requirements.

¹ His email is attached.

As part of the legal research on this issue I reviewed the City Charter, City Code, Florida Statutes and conducted multiple searches of my office's database of resolutions. There are thousands of resolutions, indexed only by number, date and title and searched through keyword searches. Several searches of resolutions conducted prior to February 6, 2018 did not return Reso. 2014-61, the resolution identified by Mr. Grachow. This is likely due to how the file was titled at the time; it did not contain a reference to appointment or vacancy. This is a perfect example of why general permanent regulations should not be done by resolution.

The City Charter states that an appointment is made by a majority of the remaining commissioners. If an appointment cannot be made within 30 days, the appointment is decided "by lot," meaning randomly. The City's Code of Ordinances does not contain any additional restrictions. On February 13, 2018, the commission followed the requirements of the City Charter and City Code, executed a nomination process during a publicly noticed meeting of the commission and a majority of the commission voted in accordance with that process. The majority was not bound by Resolution 2014-61 and could have voted to amend it or repeal it if its existence had been known. As I stated during the meeting, there are many valid ways to conduct the appointment process. It is the right of the commission to determine which methodology it uses, so long as it abides by the Charter and Code.

As indicated during yesterday's meeting, there will be a swearing in of the appointed commissioner on February 20, 2018. For the sake of clarity and to avoid future confusion, I have added a repeal of Reso. 2014-61 to the Resolution formalizing the appointments of February 13th.² I have also corrected the title of the resolution in my office's database and asked the City Clerk to do the same. If the Commission would like to formalize a process for future appointments, an ordinance can be drafted upon direction of the commission. However, I note that the last four appointments made by this commission have utilized differing processes and I do not recommend that the commission restrict a process which is essentially meant to deal with unforeseen or emergency situations.

Cc: Roger Carlton, City Manager
Former Commissioner Leo Grachaw
Mario Bataille, City Clerk

² "As a general rule, [a] Legislature may ratify, validate, or confirm through a curative act anything that it could have authorized initially and may still authorize." 10A Fla. Jur. 2d *Constitutional Law* § 387.

Merino, Jennifer

From: Merino, Jennifer
Sent: Wednesday, February 14, 2018 8:38 AM
To: Leo Grachow; Merino, Jennifer
Subject: RE: FYI

Good morning Commissioner Grachow,
I will review and advise. If the process needs to be corrected, it will be.

Thank you,
Jennifer Merino

----- Original message -----

From: Leo Grachow <leograchow@gmail.com>
Date: 2/14/18 2:27 AM (GMT-05:00)
To: "Merino, Jennifer" <jmerino@hallandalebeachfl.gov>
Subject: FYI

TO: *City Attorney Merino*
FROM: [former] *Commissioner Leo Grachow*

I call to your attention a process that was established via Commission Resolution for the filling of a vacancy that occurs within 12 months of a Commissioner's term in office ending, and which appears to have been violated at an un-noticed meeting of Tuesday, February 13th, 2018:

Item 14(E) [page 13] of the Commission minutes [passed by a vote of 4-1] of 06/04/14, which state (highlights mine)

A. A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA ESTABLISHING A UNIFORM PROCESS FOR FILLING A CITY COMMISSION SEAT VACANCY BY APPOINTMENT WHEN THERE ARE LESS THAN TWELVE (12) MONTHS REMAINING BEFORE THE NEXT REGULAR CITY OR GENERAL ELECTION; AND PROVIDING FOR AN EFFECTIVE DATE. (SPONSORED BY: CITY COMMISSION) (STAFF: CITY CLERK) (SEE BACKUP)

Mayor Cooper introduced the Item.

City Attorney Whitfield gave a presentation noting that, as requested by the City Commission, **the process utilized on May 20th, 2014 to fill the Seat No. 2 vacancy is being formalized via resolution.** She further answered questions posed by the City Commission. City Attorney Whitfield pointed out that the City Commission may revise the process via resolution as necessary.

MOTION BY COMMISSIONER GRACHOW, SECONDED BY VICE MAYOR JULIAN, TO APPROVE A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA ESTABLISHING A UNIFORM PROCESS FOR FILLING A CITY COMMISSION SEAT VACANCY BY APPOINTMENT WHEN THERE ARE LESS THAN TWELVE (12) MONTHS REMAINING BEFORE THE NEXT REGULAR CITY OR GENERAL ELECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

After further discussion by the City Commission, Mayor Cooper called the question.

MOTION BY COMMISSIONER GRACHOW, SECONDED BY VICE MAYOR JULIAN, TO APPROVE A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA ESTABLISHING A UNIFORM PROCESS FOR FILLING A CITY COMMISSION SEAT VACANCY BY APPOINTMENT WHEN THERE ARE LESS THAN TWELVE (12) MONTHS REMAINING BEFORE THE NEXT REGULAR CITY OR GENERAL ELECTION; AND PROVIDING FOR AN EFFECTIVE DATE. The Motion carried on a 4/1 Roll Call vote as follows:

AYES: Commissioners Grachow and Sanders and Vice Mayor Julian and Mayor Cooper

NAYS: Commissioner Lazarow

leograchow@gmail.com



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