

To: The Honorable Mayor and City Council

From: Jeff P. H. Cazeau, Esq., City Attorney

Date: December 2, 2020

RE: PROPOSED ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 15 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES ENTITLED “PERSONNEL, PENSIONS AND RETIREMENT”, BY AMENDING ARTICLE I. “DEPARTMENT OF PERSONNEL”, SPECIFICALLY AT SECTION 15-14, ENTITLED, “OATHS, PROHIBITIONS”, TO REMOVE EMPLOYEE RESTRICTIONS AND PROHIBITIONS; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CORRECTION OF SCRIVENOR’S ERRORS, CODIFICATION AND AN EFFECTIVE DATE.

RECOMMENDATION

At the request of the Mayor and Council, the City Attorney’s Office has drafted a proposed ordinance amending Chapter 15 “Personnel, Pensions and Retirement” at Article I, of the City Code entitled “Department of Personnel” specifically at section 5-14 to eliminate the rule that prohibits employees from running for office in other jurisdictions and also to remove a provision which prohibits individuals in service to the City from making donations to or participating in political campaigns.

BACKGROUND

During the Fall 2020 election season, two (2) City employees became candidates for public office and were subsequently elected into office in their respective jurisdictions. Shortly thereafter, City Administration became aware of provisions of the City’s Code and Civil Service Rules which prohibits City employees from continuing in their employment subsequent to their candidacy or election into public office. As a result, two (2) City employees resigned in conformance with the City’s Code and Rules and the employment of two (2) additional City employees is under review as they have declared their intent to run for public office.

At the November 24, 2020, Council Meeting, the Mayor and City Council discussed the prohibitions within the City Code and expressed that it is an infringement on the rights of City employees to seek and hold elective office. The City Attorney’s Office was directed to review the Code and amend it to remove any provisions which are out of date and which prevent City employees from continuing their employment with the City while seeking public office.



Council Report

The proposed ordinance removes all language which restricts employees from continuing in their employment after becoming a candidate for public office. It also removes restrictions which prohibit City employees from making donations to or participating in political campaigns.

ATTACHMENTS

Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 15 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES ENTITLED “PERSONNEL, PENSIONS AND RETIREMENT”, BY AMENDING ARTICLE I. “DEPARTMENT OF PERSONNEL”, SPECIFICALLY AT SECTION 15-14, ENTITLED, “OATHS, PROHIBITIONS”, TO REMOVE EMPLOYEE RESTRICTIONS AND PROHIBITIONS; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CORRECTION OF SCRIVENOR’S ERRORS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of North Miami (“City”) Code of Ordinances (“Code”) is a compilation of the governing rules and regulations of the City, carefully arranged and officially promulgated by the Mayor and City Council, from time to time; and

WHEREAS, during the Fall 2020 election season, two (2) City employees became candidates for public office and were subsequently elected into office in their respective jurisdictions; and

WHEREAS, shortly thereafter, City Administration became aware of provisions of the City’s Code and Civil Service Rules which prohibits City employees from continuing in their employment subsequent to their candidacy or election into public office; and

WHEREAS, as a result, two (2) City employees resigned in conformance with the City’s Code and Rules and the employment of two (2) additional City employees are under review as they have declared their intent to run for public office; and

WHEREAS, further review of the City’s Code indicates that the mere contribution to or participation in a political campaign by any “person holding a position in the service of the city” is considered a violation punishable as a misdemeanor crime; and

WHEREAS, the Mayor and City Council find these provisions of the City’s Code are an infringement on the right of individuals to seek and hold public office and are archaic for the current time; and

WHEREAS, all persons in the service of the City, including City employees are entitled to the same fundamental freedoms as all American Citizens to seek public office, to support political campaigns, and to participate in the political process during their personal time; and

WHEREAS, the City’s administrative regulations already contain provisions which ensure that City employees will not engage in political activities at the workplace or during work hours; and

WHEREAS, the City Council desires to revise the City’s code to remove all prohibitions which limit City employees from continuing in their employment should they seek public office and which restricts individuals in service to the City from contributing or participating in political campaigns; and

WHEREAS, the Mayor and City Council find the proposed revisions to the City Code will preserve the rights of City employees to be active in the political process.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. **Amendment to Chapter 15 of the Code of Ordinances.** The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 15 of the City of North Miami Code of Ordinances entitled “Personnel, Pensions and Retirement”, by amending Article 1, “Department of Personnel”, specifically at section 5-14 entitled “Oaths; prohibitions” as follows:

CHAPTER 15 – PERSONNEL, PENSIONS AND RETIREMENT

ARTICLE 1. DEPARTMENT OF PERSONNEL

* * * * *

Sec. 15-14. - Oaths; prohibitions.

(a) Oaths. For the purpose of the administration of the personnel provisions of this chapter, any member of the personnel board and personnel manager shall have the power to administer oaths.

(b) Prohibitions.

1. Discrimination. No person in the classified service of the city or seeking admission thereto shall be appointed, promoted, reduced, removed, or in any way favored or discriminated against because of his race religion, creed, color, national origin, age, gender, disability, marital status, sexual orientation or his political or religious opinions or affiliations.

2. Fraud. No person shall willfully or corruptly make any false statement, certificate, mark, rating or report in regard to any test, certification, or appointment held or made under the personnel provisions of this chapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of such personnel provisions or of the rules and regulations

~~made thereunder. No officer or employee in the service of the city shall continue in such position after becoming a candidate for nomination or election to any public office.~~

3. Bribery. No person seeking appointment to or promotion in the service of the city shall either directly or indirectly give, render or pay any money, service or other valuable thing to any person for or on account of or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.

4. Solicitation. No person shall orally, by letter, or otherwise solicit or be in any manner concerned in soliciting any assessment, subscription or contribution for any political party or political purpose whatever on city property from any person holding a position in the service of the city. ~~No person holding a position in the service of the city shall make any contribution to the campaign funds of any political party or any candidate for public office or take any part in the management, affairs or political campaign of any political party, further than in the exercise of his rights as a citizen to express his opinion and to cast his vote.~~

(c) Penalties. Any person who by himself or with others willfully or corruptly violates any of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment for a term not exceeding two (2) months, or by both such fine and imprisonment. Any person who is convicted under this section shall for a period of five (5) years be ineligible for appointment to or employment in a position in the city service, and shall, if he be an officer or employee of the city, immediately forfeit the office or position he or she holds.

* * * * *

Section 2. Conflicts. All ordinances, parts of ordinances, civil service rules, or administration regulations in conflict or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 3. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Codification. The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word “ordinance” may be changed to “section,” “article” or any other appropriate word.

Section 5. Effective Date. This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this _____ day of _____, 2020.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this _____ day of _____, 2020.

PHILIPPE BIEN-AIME
MAYOR

ATTEST:

VANESSA JOSEPH, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

JEFF P.H. CAZEAU
CITY ATTORNEY

SPONSORED BY: COUNCILMAN SCOTT GALVIN

Moved by: _____
Seconded by: _____

Vote:

Mayor Philippe Bien-Aime	_____ (Yes)_____ (No)
Vice Mayor Alix Desulme, Ed.D.	_____ (Yes)_____ (No)
Councilman Scott Galvin	_____ (Yes)_____
(No)Councilwoman Carol Keys, Esq.	_____ (Yes)_____ (No)
Councilwoman Mary Estimé-Irvin	_____ (Yes)_____ (No)