



City of North Miami Beach Interoffice Memorandum

City Attorney's Office

TO: Mayor and City Commission

FROM: Hans Ottinot, Interim City Attorney
Arthur H. Sorey, III, City Manager
Andrise Bernard, City Clerk

DATE: June 15, 2021

RE: City Board Members: Criminal Background Checks and Removal Upon Arrest for a Felony or Conviction for a Felony

Background Analysis

This item is being presented at the request of Commissioner Smukler to discuss whether the City should adopt a policy addressing board members and criminal conduct in the past or future. To that end, staff has prepared scenarios where the City Commission may want to adopt legislation. This list is not exhaustive and is being provided to assist with discussion only.

Possible Legislation

(1) Legislation providing that persons with felony convictions within the past five (5) cannot apply to serve on a city board. **Currently, the City code provides that a board member may be removed with or without cause. § 2-32.4(b).** However, the City can strengthen this section by adding a provision that if an applicant has been convicted of a felony within the past five (5) years, then the applicant cannot serve on a city board. Therefore, the application will be rejected.

(2) Legislation providing that before a person may become a board member or reappointed to the board, he or she must agree to allow a criminal background check to be completed. If the background check shows that there has been a felony conviction in the past five (5) years or formal charges have been filed for a felony charge is pending, then the application will be rejected.

(3) Legislation providing that if a person, after becoming a board member, is arrested for a felony and formal charges have been filed, then the board member shall either resign

from the board within ten (10) days of the filing of the charges or the person will be automatically removed from the board by the city clerk.

(4) Alternatively, the legislation for existing board members could be tied to being convicted of a crime or pleading guilty, which would allow the board member to continue to serve while the case is pending or the legislation could provide that the board member is “suspended” from serving on the board until the case has concluded.

In all events where persons are removed before the case is concluded, the City’s ordinance could allow that if the person is found not guilty or the charges are dropped, he or she can reapply to the board.

Recommendation

The City Commission can keep the status quo because the City Commission has the discretion to remove board members on case-by-case basis. Alternatively, consider passing an ordinance which addresses criminal background checks and removal of board members due to criminal conduct which rises to a level of a felony within the past five (5) years from the date of recommendation for appointment.

Fiscal/Budgetary Impact

The budgetary impact will be minimal if legislation is adopted.