

ORDINANCE #2020-05

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING ARTICLE X, "CODE OF ETHICS," IN CHAPTER II, "STRUCTURE OF CITY GOVERNMENT," OF THE CITY CODE OF ORDINANCES BY CREATING SECTION 2-80, "DEFENSE OF OFFICIALS IN ETHICS MATTERS"; PROVIDING FOR THE PAYMENT OF COSTS ASSOCIATED WITH THE DEFENSE OF OFFICIALS; ESTABLISHING PROCEDURES AND APPLICABILITY FOR SUCH DEFENSE; RESERVING FOR THE CITY CERTAIN RIGHTS AND IMMUNITIES; ALLOWING FOR THE RECOVERY OF LEGAL COSTS FOR MALICIOUS, FRIVOLOUS OR GROUNDLESS COMPLAINTS; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of North Miami Beach (the "City") finds that in order to encourage qualified persons to serve the City it is necessary to protect such persons from certain legal expenses incurred in protecting themselves from allegations of violating ethics standards and guidelines while acting within the course and scope of their service to the City; and

WHEREAS, the Mayor and City Commission finds that the adoption of this Ordinance is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are confirmed, adopted, and incorporated herein and made a part of hereof by this reference.

Section 2. Code Amended. The Code of Ordinances of the City of North Miami Beach is hereby amended as follows:

CHAPTER 2 – STRUCTURE OF GOVERNMENT

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ARTICLE X – CODE OF ETHICS

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Section 2-80 – Defense Of Officials In Ethics Matters; Legislative Intent

It is the intent of the City Commission of the City of North Miami Beach, Florida, to enact by ordinance local laws creating a means by which City Officials may have covered the costs incurred by the City Official for legal representation when they, individually or collectively, become the subject of an ethics allegation(s), investigation(s) and/or charge(s), so as to protect officials from incurring personal legal expenses when acting in the course and scope of their official capacity and encouraging qualified persons to serve or remain serving the City.

Section 2-80.1 – Definitions.

When used in this section, the following words shall mean as indicated:

- (a) “Official” shall mean the following: the Mayor, all members of the City Commission, City Manager, Assistant City Manager(s), the City Clerk and all City department heads;
- (b) “City Funds” shall mean only such funds appropriated for expenditure by the City Commission for the purposes of this Section, not otherwise permitted by law;
- (c) “Legal Expenses” shall mean reasonable attorney’s fees and necessary defense expenses directly incurred in defending an Official in accordance with this Section;
- (d) “Legal Defense” shall mean the services provided by the City Attorney’s Office in defending an Official in accordance with this Section.

Sec 2-80.2 – Legal Expenses Incurred in Defense of Officials

- (a) *Provision of reimbursement.* Upon the request of an Official, the City shall, subject to the restrictions and conditions specified herein, provide the reimbursement for reasonable fees and costs incurred by the Official, for the successful legal defense of any action or proceeding brought against such Official for acts or omission arising out of and in the course and scope of the Official’s employment or function, when such Official is alleged to have violated and investigated and/or charged with a violation of any provision of

the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes, Section 2-11.1, Miami-Dade County Code, or any applicable City ethics ordinances.

- (b) Limitations. Such reimbursement shall be limited to the payment of Legal Expenses incurred with defending actions or proceedings in accordance with the provisions of this section, where the Officials is adjudicated not to have violated ethics standards, where there is a finding of no probable cause to substantiate an alleged complaint, violation, or charge, and/or where an alleged complaint, violation, or charge is dismissed or the investigation thereof is closed with no adjudication. Nothing in this section shall authorize the City to reimburse an Official where it is determined that the alleged act or omission was committed outside the course or scope of the employment or duties of the Official, where the official does not contest the charges and/or stipulates to probably cause, where the official pleads no contest, and/or where the Official has acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property. Nothing in this section shall authorize the City to provide for the Legal Defense of an Official where it is alleged that said Official failed to comply with applicable financial and gift disclosure requirements mandated by Chapter 112, Florida Statutes, Section 2-11.1, Miami-Dade County Code, or any applicable City ethics ordinances concerning financial and gift disclosure. This section shall not apply to any action brought or initiated by the City against an Official. A letter of instruction, without further discipline, shall not disqualify an Official from seeking reimbursement.
- (c) Request and approval. A written reimbursement request for legal defense costs (the “Request”) shall be submitted by the Official and reviewed in accordance with the following procedure:
- (1) A request from an Official shall be submitted to the City Manager and the City Attorney;
 - (2) A request shall be submitted promptly after the Official, following the final disposition of a complaint, charge, or other investigation, along with notice of such final disposition and substantiated invoices reflecting the fees and costs incurred with the legal representation; and

- (3) After a confirmation of the reasonableness of the legal expenses incurred, the final disposition, and that no disqualifying conditions have been, the invoices shall be routed for reimbursement.
- (d) Authorization. The City Manager is hereby authorized to expend City Funds, upon the review and approval of a Request, where applicable, for the payment of Legal Expenses in accordance with subsection (a). The authorization to expend City Funds shall not extend to any appeal or other judicial review without additional authorization of the City Commission. The expenditure of City Funds shall be limited to the amount of City Funds annually appropriated by the City Commission for purposes of this section. No funds of the City, other than City Funds, as defined in this Section, shall be used for the Legal Defense of an Official.
- (e) Reservation of Rights and Immunities. The reimbursement contemplated herein shall be solely within the discretion of the City and shall be subject to annual appropriation.
- (1) The City reserves unto itself the right to deny or revoke approval of the Request if it is determent by the City Manager to be beyond the scope of this section or inconsistent with the purposes of this section;
- (2) The City reserves unto itself the right to deny or revoke approval of the Request where such Official fails to cooperate in substantiating the costs of the defense of such action or proceeding;
- (3) Nothing in this section shall be construed as a waiver by the City or any Official of any claim of immunity, including sovereign immunity, applicable to any action;
- (4) Any Official who submits a Request and is subsequently provided a Legal Defense at the expense of the City in accordance with this section shall be prohibited from seeking further remuneration from the City for any expenses incurred by said Official during or resulting from the defense of any action or proceeding contemplated by this section;
- (f) Applicability. The provisions of this section shall apply to all actions and proceedings pending upon or instituted after the effective date of this section. As used herein, an action shall be construed to be pending where the action has not been tried, or if tried where the judgment has not become final by reason of the completion of any appellate proceedings.

(g) Malicious, Frivolous or Groundless Allegations. In accordance with F.S. §112.317(8), or Section 2-1074(t), Miami-Dade County Code, where it is determined that the complaining party filed a frivolous or groundless complaint, or filed a complaint with malicious intent to injure the reputation of the Official by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation, the City may seek recovery of Legal Expenses incurred by the City from the complaining party in the name of the Official, or as a subrogee of the Official.

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Section 3. Implementation. The City Manager, City Clerk, and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions as may be appropriate by their position to execute the purpose of this Ordinance.

Section 4. Incorporation into the Code. The provisions of this Ordinance, to the extent appropriate, shall become and be made a part of the Code of Ordinances of the City of North Miami Beach. The City Clerk is authorized to take all actions necessary to incorporate the provisions of this Ordinance into the Code of Ordinances, including, but not limited to, renumbering or relettering sections and to change and that the word “ordinance” may be changes to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intention.

Section 5. 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 6. **Conflicts.** All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 7. **Effective Date.** This Ordinance shall become effective immediately upon adoption.

PASSED AND ADOPTED on FIRST READING THIS ___ day of _____ 2020.

PASSED AND ADOPTED on SECOND READING THIS ___ day of _____ 2021.

ANDRISE BERNARD
CITY CLERK

ANTHONY F. DEFILLIPO
MAYOR

(CITY SEAL)

APPROVED AS TO FORM & LANGUAGE
& FOR EXECUTION:

WEISS SEROTA HELFMAN COLE &
BIERMAN, PL
CITY ATTORNEY

Sponsored by: Mayor & City Commission