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— LLP —
A T T O R N E Y S

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MEMORANDUM

TO: Mayor Leslie Waters
Vice Mayor Roger Edelman
Councilor Bob Matthews
Councilor Thomas Barnhorn
Council James Quinn
Councilor Christopher Burke
Councilor Trish Springer

FROM: Jay Daigneault, Esq., City Attorney

CC: Ann Toney-Deal, City Manager

DATE: October 18, 2018

RE: Steven Hirschfield complaint

Dear Mayor, Vice Mayor, Councilmembers:

As you know, the City yesterday received a letter from Mr. Steven Hirschfield which he intended to constitute a “formal complaint against Mayor Waters and the City of Seminole.” Mr. Hirschfield requested a “full investigation of her actions” and demanded a response in a timely manner. I understand from the email that accompanied the complaint that Mr. Hirschfield visited City Hall early yesterday morning and attempted to meet with the City Manager. I became aware of the matter yesterday shortly after 12:00pm, when I returned the City Manager’s voicemail left shortly before then. She asked if I was available to meet with her and Mr. Hirschfield regarding the complaint. Up through about 3:00pm yesterday, she attempted to arrange that meeting with him and my office. In an email time-stamped 2:58pm, Mr. Hirschfield indicated that any such meeting would have to either include Fire Chief Burford or be recorded by audio. I do not know why Mr. Hirschfield placed these conditions on a meeting. In any event, I advised the City Manager that Chief Burford would have no role in the matter so her attendance would be inappropriate, and that the proposed audio recording of a meeting was legally inadvisable. These positions were relayed to Mr. Hirschfield along with an invitation to meet absent the imposed conditions. In short, as of this writing, neither I nor the City Manager has met with Mr. Hirschfield personally. I have reviewed the written complaint in detail and spoken to Mayor Waters about the events that prompted it. This memorandum is intended to briefly relay my observations relative to the complaint.

At the outset, it is important to note that no state or local law compels or provides for the submission or investigation of a “formal complaint” under the facts presented here. This memorandum is provided to you solely to update you on the status of the matter and because I understand there have been media inquiries about the matter to which you may desire to respond.

As you know from your own reading of the complaint, it stems from a CERT meeting that occurred on Tuesday evening, October 16, 2018. Without repeating the details of the complaint at length or Mayor Waters’ response to them, it is appropriate to say that Mr. Hirschfield and Mayor Waters engaged in a conversation at the CERT meeting that each perceived differently. Mr. Hirschfield generally complains that Mayor Waters approached him angrily, demanded to know why he attended recent Council meetings and acquired City records, and told him that he had no business meddling in City business. Further, Mr. Hirschfield alleges that, at the end of the meeting, Mayor Waters whispered to him “in a threatening manner” that he should heed her advice (which advice was, according to him, to “back off” of his interest in the City’s affairs). It bears noting that Mr. Hirschfield states that “[t]his was all done inappropriately in a public forum witnessed by many people within the Seminole CERT program.”

Mayor Waters acknowledges having spoken with Mr. Hirschfield. She inquired about his recent interest in the business of the City, but maintains that she did so respectfully and professionally. Her impression was that Mr. Hirschfield quickly became angry and defensive about the questions, and she was taken aback by his response. Mayor Waters advises that others may have heard parts of their conversation, but no one was else was party to it. So, though other people were in the room, I am presently unaware of their identities so, of course, I have not spoken to any of them. In short, I cannot resolve the factual disputes regarding precisely what was said or its tone, tenor, or manner, but I do not believe that such factual resolution is required. For purposes of the brief analysis below, I have taken the allegations of Mr. Hirschfield’s complaint as true and concluded that they are without legal consequence to the City.

Mr. Hirschfield has characterized the interactions as “inappropriate” and “threatening,” and as an “assault.” As to the first, and crediting Mr. Hirschfield’s characterization of the interaction for purposes of this memo,¹ inappropriate behavior of the type identified in the complaint is not legally actionable or consequential. The same is true of conduct and speech that is viewed as unprofessional or unpleasant or unkind. As to the allegation of using a threatening manner in advising that Mr. Hirschfield should heed Mayor Waters’ advice,² it is similarly not actionable under these facts. It is related to the characterization of the interaction as an assault. Under Florida law, the three elements of the tort of assault are: (1) an intentional, unlawful **threat**; (2) an apparent ability to carry out the threat; and (3) creation of a well-founded fear that the **violence** is imminent. See e.g. Cannon v. Thomas ex rel. Jewett, 133 So. 3d 634 (Fla. 1st DCA 2014). It is not alleged and there is no indication that a threat of any kind accompanied the interaction, much less

¹ This should not be read to imply that Mayor Waters behaved inappropriately or that I believe she did. I have simply resolved the factual disputes in Mr. Hirschfield’s favor in an abundance of caution for purposes of the analysis.

² Again, I am simply taking the allegation as true and neither stating nor implying that a threatening manner was employed (assuming for the sake of argument that I could identify what a “threatening manner” is to begin with—manners of speech are necessarily subjective to the listener, so what one person may find threatening another person may find benign or pleasant).

a threat of violence. Clearly, the elements of an assault, which include an intentional, unlawful threat of violence, are not present.³

In summary, then, what appears to have occurred is a conversation between two persons who perceived and remembered the conversation differently. While the complaint seeks to “hold the City accountable for [Mayor Waters’] actions,” there simply is no legal barrier prohibiting and no legal consequence flowing from the type of interaction described in the complaint.

As always, please feel free to reach me with any questions or concerns you may have regarding this memorandum.

Respectfully,

A handwritten signature in blue ink, appearing to read 'JD', with a long horizontal stroke extending to the right.

/s/ Jay Daigneault, Esq.
City Attorney

JD/jad

³ I also note that the tort of assault is an intentional tort. As such, it is not actionable as to the City under § 768.28, Fla. Stat.