

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

PROTECT ST. PETE BEACH ADVOCACY
GROUP, a Florida not-for-profit corporation,
et al.,

Plaintiffs,

Case No. 24-000041-CI

v.

CITY OF ST. PETE BEACH, a political
subdivision of the State of Florida, *et al.*,

Defendants,

and

CP ST. PETE, LLC,

Intervenor.

**PLAINTIFFS' REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, Protect St. Pete Beach Advocacy Group *et al.*, by and through the undersigned counsel, pursuant to Fla. R. Civ. P. 1.510(c), offer this reply in support of their Motion for Summary Judgment and in support thereof state as follows:

- 1. THE CITY CONCEDES THAT THREE COMMISSIONERS MADE, “FORMAL, UNEQUIVOCAL, AND IRREVOCABLE ANNOUNCEMENTS THAT THEY ARE SURRENDERING THEIR OFFICE,” BEFORE THE FIRST APPOINTMENT WAS MADE.**
 - The City concedes that the Commissioner for District 1 (Commissioner Graus), “formally unequivocally and irrevocably announced his resignation” on **December 18, 2023**. (*See* City’s Response at 7-8).
 - The City concedes that the Commissioner for District 2 (Commissioner Grill), “formally unequivocally and irrevocably announced his resignation” on **December 12, 2023**. (*See* City’s Response at 8).

- The City concedes that the Commissioner for District 4 (Commissioner Marone), “formally unequivocally and irrevocably announced his resignation” on **December 21, 2023**. *See City’s Response at 9*).
- The first appointment was voted on December 21, 2023, after Commissioner Marone left the dais after surrendering his position.

2. THE CITY COMMISSION SOUGHT APPLICANTS FOR VACANCIES (ALL SEATS) ON DECEMBER 18, 2023.

- On December 18, 2023, The City’s “public meetings” email list sent an email to its subscribers stating: “The City of St. Pete Beach has a vacancy on the City Commission all District seats (Districts 1-4).”
- This email was discussed and approved by the City Commission (including Commissioner(s) Graus, Grill, Marone and Friszolowski) on December 18, 2023. *See Stip. Ex. B-3 at 23-25*.
- It is unreasonable to conclude that 4 vacancies did not exist when the members of the commission voted on this as their course of action.

3. THE CITY SEEKS A TORTURED INTERPRETATION OF THE WORDS “OCCUR,” “RESIGNATION,” AND “SIMULTANEOUSLY” IN ORDER TO AVOID THE PLAIN LANGUAGE OF ITS CHARTER.¹

There is no factual dispute here. At bottom, there is agreement that at least three commissioners announced their formal unequivocal and irrevocable resignation from the City Commission before the first appointment was voted upon. If Plaintiff is correct in its interpretation of the charter, the extraordinary vacancy language of Section 3.06(d) triggered, and vacancies were required to be filled by election and not by appointment.

The City is incorrect in its tortured interpretation of the words “occur,” “resignation,” and “simultaneously.” The City argues an implausible definition of the word “occur.” The City argues that the word “occur” as used in the City Charter means to “happen.” However, it can also mean

¹ The arguments raised by the Intervenor largely mirror those raised by the City. Plaintiffs filed an omnibus response addressing these arguments. Any argument by the Intervenor that Plaintiffs did not respond to the Intervenor’s argument is without merit.

“to exist or be present in, among, etc.” *Occur*, CAMBRIDGE DICTIONARY; *see also Occur*, MERRIAM-WEBSTER DICTIONARY (“to be found or met with”).

Collins Dictionary has three definitions of “occur,” two of which could possibly be applicable here. One means “when something occurs, it happens” the other means that “when something occurs in a particular place, *it exists* or is present there.” *Occur*, COLLINS DICTIONARY. Cambridge Dictionary also offers two plausible definitions. One means “to happen.” The other means “*to exist* or be present in, among, etc.” *Occur*, CAMBRIDGE DICTIONARY. Britannica Dictionary offers two similar competing definitions. One (somewhat formal) definition means “to happen” while the other means “to appear *or exist*: to be found.” And per Longman Dictionary of Contemporary English occur can mean “to happen” or “or happen or exist in a particular place or situation.” *Occur*, LONGMAN DICTIONARY OF CONTEMPORARY ENGLISH.

The City essentially admits that there were multiple simultaneous vacancies. They admit that at least three commissioners “formally, unequivocally, and irrevocably” resigned before the first appointment took place. Their attempt to redefine “resignation” as actually leaving office is unpersuasive. The Florida Supreme Court has interpreted comparable language as meaning a vacancy is created the moment a resignation occurs. The City’s own definition of “resignation” is “a formal statement of your *intention* to leave a job or position.” City’s Response at 15. There was no doubt that all four Commissioners formally announced their intention to resign before any appointments took place. If there is any doubt, the Court should consider the dozens of newspaper articles that all interpreted the Commissioners’ statements at the December 12 and 18 meetings as stating an unequivocal intent to resign. This email sent by the city and voted on by the City Commission on December 18, 2023 further supports the notion that four vacancies occurred by December 18, 2023. *See* Stip. Ex. G.

The City argues that “resignations” must occur at the same time in order for the extraordinary vacancy provisions to trigger. City’s Response at 2 (“They planned *for their resignations* to occur on different dates so the City could take advantage of provisions in its Charter (the “Charter) allowing the seats to be filled by the appointment . . .”); *id.* (“The legal question presented by Plaintiffs’ motion is whether the prior commissioners *resigned simultaneously* such that the appointment of the new commissioners may have been improper under Sections 3.06(d).”); *id.* at 11 (“Plaintiffs move for summary judgment on only one theory—that the appointments were invalid under Section 3.06(d) of the Charter because the prior commissioners’ *resignations* ‘*occurred simultaneously*.’”); *id.* (“As a matter of law, the ‘*resignations*’ of the prior commissioners did not ‘occur simultaneously’ . . .”); *id.* (“Plaintiffs’ argument fails because *the resignations* of the prior commissioners did not occur simultaneously.”). This argument is at best misleading.

Plaintiffs have never argued that four commissioners resigned at the same time and for good reason—this is not what the Charter requires for the extraordinary vacancies provision to be triggered. Although a resignation was what created the vacancies in this case, a resignation is a single act which “occurs” at one specific moment in time. A vacancy, on the other hand, is an ongoing event which can last for a brief moment or an extended period. By repeatedly focusing attention to the word “resignation” (which does not appear in the text of 3.06(d)) instead of the word “vacancies,” the City is attempting to divert the Court’s attention away from the indisputable fact that multiple vacancies occurred simultaneously, thus triggering the extraordinary vacancies provisions in Section 3.06(d) of the City Charter.

This City’s argument as to interpretation of Section 3.06 relies too heavily on policy. *See, e.g.,* City’s Response at 25 (“By interpreting ‘resignation’ to mean the act of quitting office, the

Court will enable stable, effective local government consistent with democratic process.”). “The determination of constitutional provisions should not vary based upon fluctuations of the individual “election process” for a given year.” *Advisory Opinion to Governor re Appointment or Election of Judges*, 983 So. 2d 526, 530 (Fla. 2008).

It is not true that the City would have been unable to function until August. By the City’s own telling, it would have been able to have meetings with a quorum by March 26, 2024 at the latest. That it wouldn’t have had a full board doesn’t mean that it can bypass the requirements of the Charter and appoint interim Commissioners without any grant of authority.

That the City will conduct votes where passage relies on the votes of the appointed interim-commissioners from Districts 2 and 4 is not an unlikely remote future possibility. *Contra* City’s Response at 17 (“Plaintiffs’ claims are not ripe because they are hypothetical, speculative, and contingent.”). The City has already held important votes—like the Sirata CUP—that passed only because wrongly appointed Commissioners from these Districts voted.

4. SECTION 3.09 OF THE CITY CHARTER DOES NOT AUTHORIZE THE APPOINTMENT OF INTERIM COMMISSIONERS.

It is black letter law that where two statutory provisions conflict, the more specific provision controls over the more general. The Intervenor argues that Section 3.09 of the City Charter authorizes the city commission to appoint interim commissioners. But this section speaks to the appointment of City staff, not its legislative leaders. Specifically, this section speaks to the commission’s ability to appoint a City Clerk, a City Manager, and a City Attorney. It also contains catch-all language authorizing appointment of “such other officials that [the commission] deem[s] necessary.” The Intervenor argues that this language authorized the commission to appoint interim commissioners, *see* Intervenor’s Response at 15-18, but the canon of advises otherwise. *In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786,

801 (Fla. 2014) (“[T]he statutory and constitutional construction principle of ejusdem generis—which is a Latin term for ‘of the same kind’—is instructive on this issue. Distilled to its essence, this rule provides that where general words or phrases follow an enumeration of specific words or phrases, ‘the general words are construed as applying to the same kind or class as those that are specifically mentioned.’” (quoting *Fayad v. Clarendon Nat’l Ins. Co.*, 899 So. 2d 1082, 1088–89 (Fla. 2005))).

5. THE OUTGOING COMMISSIONERS CREATED THE “CRISIS” THAT THEY ATTEMPT TO SOLVE WITH ILLEGAL APPOINTMENTS.

Commissioners Grill and Friszolowski attended an August 11, 2023 presentation by the Florida League of Cities where the requirements of SB 774 and Form 6 were discussed at length. *See* Stip. Ex. A-2 at 5:11-17; Stip. Ex. A-2 at 30:2-9; Stip. Ex. B-2 at 10:18-25 (“The Florida League of Cities have estimated. So, we went to the FLC Conference in was it summertime, August? *So, nobody should be surprised.*”); *see also* Stip. Ex. A-2 at 11:11-15 (Commissioner Friszolowski discussing Florida League of Cities meeting); Stip. Ex. B-2 at 12:8-11 (Friszolowski: “So, Commissioner Grill is correct. We, the three of us attended the Florida League Cities. That was one of the seminars. *I don’t think this is a new issue.*”).

They chose not to resign at that time, but instead decided to wait until after qualifying had closed for the March election and after it was too late to have additional races added to the ballot. Commissioner Grill and Mayor Pettila also received an email inviting them to a presentation by FLC with the subject line “Join Us for FLC University’s Quarterly Ethics Webinar! Form 6.” *See* Ex. B (compilation of records received from the City pursuant to Plaintiffs’ public records request).

If the outgoing commissioners were legitimately concerned about continuity of their local government, the responsible thing to do would have been to announce their resignation as soon as possible to provide the commission, City staff, and the voting public as much time as possible to

ensure properly elected officials were available to take their place. Instead, they waited until the last regularly scheduled commission meeting of the year and created a situation that left the City with a choice—either (1) rush to appoint interim commissioners before the end of the year in violation of the City charter or (2) temporarily have a commission that is incapable of having a quorum. It chose the former. At the same time, the City has cited to no authority permitting this course of action. The City now asks this Court to retroactively sanction its decision by arguing that complying with its governing document would have been difficult under the self-imposed crisis created by the outgoing commissioners. The court should not entertain this request.

6. PLAINTIFFS DO NOT SEEK A “SNAP ELECTION.”

The City repeatedly claims (without support) that Plaintiffs demanded a “snap election” to be held within 15 days of the second vacancy. City’s Response at 2 (“The City’s only option, according to Plaintiffs, is to conduct the immediate election the Supervisor already said it wouldn’t conduct.”); *id.* at 6 (“[I]t is undisputed that the City could not have conducted a snap election on its own.”); *id.* at 19 (“But Plaintiffs would have Section 3.06(d) apply and require the City to bear the burden, risk, and expense of a snap election . . .”); *id.* at 21 (“The City exhausted its options on a snap election.”); *id.* at 27 (“Plaintiffs’ claims are barred because they demand that the City do the impossible—*i.e.*, hold a snap election . . .”). **Plaintiffs have made no such demand.**

7. PLAINTIFFS’ MOTIVES HAVE NO RELATIONSHIP TO ANY ISSUE IN THIS LAWSUIT.

The City Claims that this suit was brought by “an advocacy group and several individuals with political objectives.” City’s Response at 2. Again, this statement is wholly without support. And even if it were true it would be wholly irrelevant to the merits of the Plaintiffs’ Claims (or the City’s affirmative defenses). Even if there was an emergency; even if there was a potential disruption to a local government of approximately 9,000 residents, *see* City’s Response at 3, this

does not justify the City purporting to appoint four commissioners in violation of the plain language of the City Charter, which limits the powers of Commissioners under these circumstances. The Commission had no more authority to appoint interim commissioners than did Plaintiffs', Plaintiffs' counsel, Governor DeSantis, President Biden, or anyone else. The appointments are a nullity--- a legal fiction, done without legal authority and the Court should recognize them as such.

8. THE CITY CANNOT PREVAIL ON ITS IMPOSSIBILITY DEFENSE.

The City cannot claim impossibility because they admit they made no attempt to determine the feasibility of holding an election other than through the Supervisor. The impossibility defense doesn't consider the ability of the individual or entity to perform its obligations, it considers only whether the obligated act is capable of being performed. The Supervisor never said that it was impossible for the City to hold its own election, it only said that it did recommend doing so and that it wasn't aware of other municipalities in the County having done so. But other municipalities were able to hold elections following resignations promoted by Form 6.² And the City has admitted that it made no effort to contact a private election vendor to determine whether it would be practicable or feasible to conduct an election before August 20, 2024. *See* Ex. A (City's Answers to Plaintiffs' First Interrogatories, Interrogatory No. 2) (admitting that "[t]he City did not seek the assistance of a contracted vendor").

Impossibility is an affirmative defense and is the City's obligation to prove. It is not enough to say that the vendor Plaintiffs' contact wouldn't have been able to conduct an election. And it

² Ryan Wyatt Turbeville, *High Springs residents vote for new city commissioner in special election*, WCJB 20 ABC (Mar. 26, 2024) (High Springs special election held March 26, 2024); Maya Washburn, *New Florida financial disclosure law leads majority of North Palm Beach council to resign*, THE PALM BEACH POST (Dec. 19, 2023) (elections held for North Palm Beach Village Council on March 19, 2024 following resignations announced on December 14, 2023).

isn't enough to say that the Supervisor refused. If the resignations had happened even a week earlier, there would have been enough time to hold a qualifying period and submit names to the Supervisor for inclusion on the March ballot.

Holding its own election would also not have been "illegal." The City is not legally obligated to use the Supervisor of Elections. Nothing in Florida Statutes prohibits it from conducting an election itself. The City claims that the Election Code requires it to get permission from the Supervisor *as to the closing date for voter rolls*. The City never asked the Supervisor for consent as to a closing date, and there is no reason to think the Supervisor of Elections would have actively stood in the City's way if it had attempted to do so.

The City's ordinances may require compliance with the Florida Election Code. But the City cannot use this as a self-imposed obstacle in order to claim an impossibility defense. The City could have changed its ordinances. The only illegality was imposed by the City itself. It should not be able to create an impossible situation and then complain that its obligations are impossible to fulfil. The City created the Charter and the Charter language and it bears the risk of complying with those requirements. One cannot claim impossibility as a defense where it knew of the risks of complying with a legal provision and voluntarily assumed those risks. Essentially, the City has started a fire and is blaming the Plaintiffs for trying to put it out.

9. CONCLUSION

The Court should grant Plaintiff Protect St. Pete Beach Advocacy Group's Motion for Summary Judgment, deny the City of St. Pete Beach and intervenors CP St. Pete LLC Motion(s) and grant any relief it deems just and proper.

Dated May 7, 2024.

Respectfully submitted,

/s/ Leonard M. Collins

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CERTIFICATE OF SERVICE

I certify that, on May 7, 2024, the foregoing document was furnished by email to all individuals identified on the Service List that follows.

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