



Written response of the City Manager to Resolution 2022-05(a)

By way of background, on March 18, 2022, the Commission for the City of Pahokee voted to terminate the City Manager without cause. On March 22, 2022, after a new Commission was seated, the Motion to terminate the City Manager was opened for reconsideration, and this time the Commission voted to terminate the City Manager for cause. The interim City Attorney asked the Commission to identify the reasons constituting cause. The Commission identified the following, "insubordination, accident in city vehicle, and lack of city application or resume." Then on March 25, 2022, the final Resolution, the wording of which was revised after the prior approval, was read into the record and approved by the City Commission. The new reasons identified as cause for the City Manager's termination were, "insubordination, lack of information provided concerning the City Manager's accident in a city vehicle and lack of an application or resume."

The change in wording from the Resolution approved on March 22 to the final resolution approved on March 25 appears to try to avoid liability of the Commission for retaliation under the Florida workers' compensation law. The initial reason stated for cause was "accident in city vehicle." This is an accident

that is covered by worker's compensation and termination based on this accident constitutes retaliation.

As to the termination, the Commission can only deny the City Manager the severance provided for in his Employment Agreement if he is terminated with cause. Pursuant to the City Manager's Employment Agreement, cause is defined as:

(1) Misfeasance, Malfeasance and/or Nonfeasance in the performance of the Manager's duties and responsibilities.

(2) A plea agreement, a plea of *nolo contendere*, a pretrial intervention agreement, or a conviction of a felony or misdemeanor, whether or not adjudication is withheld.

(3) (a) Insubordination; or

(b) Substantial failure to meet reasonable Goals and Standards, as set pursuant to paragraph 6C after receipt of notice of substantial failure, and a reasonable time to implement a plan to cure the substantial failure.

(c) Inability to Perform Job duties.

(1) If Manager is unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks, Employer shall have the option to terminate this Agreement in accordance with the provisions and requirements of 9A, Without Cause, and in accordance with Federal provisions under the Americans with Disabilities Law and other applicable laws. Any payments due to Manager will be offset by any disability benefits Manager receives from or through Employer for the four-week period.

(2) If necessary, to determine whether to continue the services of Manager due to inability to perform job duties, Employer has the right to require a physical or psychiatric examination by a qualified physician or psychiatrist to be chosen from a list of at least three doctors approved by

the Employer. In the event such examination is required, Employer will pay all costs of said examination.

As mentioned above, Resolution 2022-05(a) sets forth the reasons for the City Manager's termination with cause: insubordination, lack of information provided concerning the City Manager's accident in a city vehicle and lack of an application or resume. The only reason identified in this Resolution that could constitute cause as defined in the City Manager's Employment Agreement is insubordination. However, the Resolution does not identify what conduct by the City Manager allegedly constituted insubordination. The Resolution is completely lacking in detail or specific facts and therefore, it is impossible for the City Manager to respond. Failure to provide sufficient notice of the charges is a denial of due process. Relying on the verbal discussion at the three Commission meetings, the insubordination appears to consist of the City Manager's failure to provide information and/or documents. Some of the information requested, according to the Interim City Attorney was more appropriately directed to the Human Resources Department rather than the City Manager. Regardless, this does not rise to the level to terminate the City Manager for cause. Broward County School Board v. Abram, 2016 Fla. Div. Adm. Hear. LEXIS 28 (Failure to respond to repeated requests and directives constituted insubordination, which was cause for a three-day suspension without pay).

The other reasons cited by the Commissioners for the City Manager's termination, "lack of information provided concerning the City Manager's accident in a city vehicle and lack of an application or resume" appear to fall under (3)(b) which require notice to the City Manager of the failure to meet

reasonable Goals and Standards and a reasonable time to implement a plan to cure the failure. Since that did not occur in this case, these reasons cannot support a finding of cause for termination.

While the City of Pahokee has the absolute right to terminate the City Manager, it has done so with cause, thereby denying Mr. Thompson the severance he would be entitled to if his termination was without cause. Since severance money constitutes a substantial interest, should the Commission proceed to adopt a final resolution of removal terminating with cause⁴, the City Manager is entitled under Fla.Stat. 120.57 to a hearing before the Florida Division of Administrative Hearing to determine if the City of Pahokee has established just cause. Alternatively, given Mr. Thompson's Employment Agreement, he could sue for breach of contract¹ which would allow a court to determine whether the Commission established cause or not. Where an employee would be denied severance if termination were for cause, it is a question of fact and, therefore, up to a jury to determine if the alleged insubordination constitutes cause. Strahm v. Aetna Cas. & Sur. Co., 285 So. 2d 679 (Fla. 3d DCA 1973). We are confident that, regardless of which appeal process is pursued, we will be successful in this process.

Based on the foregoing, we request that the City revise the termination of the City Manager without cause and provide him with the severance to which he is contractually entitled.

¹ In a breach of contract lawsuit, in addition to alleging that the termination was not for cause, an additional breach of the contract will be raised, based on the elimination of a benefit provided under the Employment Contract, specifically the requirement that the City Manager return the City vehicle to which he was entitled until his termination is finalized.

Respectfully submitted,

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