

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Raul Aguila, City Attorney 

DATE: December 11, 2019

SUBJECT: **City Attorney's Status Report**

LAWSUITS FILED BY OR AGAINST THE CITY OF MIAMI BEACH SINCE THE LAST REPORT:

1. **ALTMED, LLC., A FLORIDA CORPORATION v. THE CITY OF MIAMI BEACH, A MUNICIPAL INCORPORATED IN THE STATE OF FLORIDA** Case No. 2019-030562-CA-01 (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida)

On October 25, 2019, the Plaintiff served the above-subject lawsuit upon the City of Miami Beach. The Plaintiff attempts to challenge the statutory validity of Ordinance 2019-4247 (the "Ordinance"), which created a distance separation requirement of 1200 feet between individual medical cannabis dispensaries. Specifically, the Plaintiff seeks to challenge the Ordinance by alleging that (1) it was improperly enacted under Section 166.041 of the Florida Statutes due to a motion to increase the distance to 1,200 feet on the second and final public reading; and (2) the 1,200 feet separation requirement between the dispensaries within the City violates Section 381.986 of the Florida Statutes, which prohibits municipalities from placing specific limits on the number of dispensing facilities that may be located within the municipality. The Plaintiff also seeks to assert a claim of equitable estoppel, alleging that it relied on the City's actions and existing ordinances in good faith, and incurred substantial expenditures in developing its future dispensary site prior to the enactment of the Ordinance.

The City Attorney's Office considers the causes of action set forth in the complaint to be devoid of any legal merit, and will be defending the City to the fullest extent of the law.

2. **DEUTSCHE BANK NATIONAL TRUST COMPANY, AS INDENTURE TRUSTEE, FOR NEW CENTURY HOME EQUITY LOAN TRUST 2005-2, v. ANNELISSE CURRA, UNKNOWN SPOUSE OF ANNELISSE CURRA, CITY OF MIAMI BEACH, FLORIDA, PALMS ASSOCIATION OF ALTON ROAD, INC., UNKNOWN TENANT #1 AND UNKNOWN TENANT #2, AS UNKNOWN TENANTS IN POSSESSION** Case No. 2019-031635-CA-01 (Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 1025 Alton RD, Unit 408, Miami Beach. The Summons and Complaint were served on the City on November 4, 2019.

The City's Answer and Affirmative Defense will be timely filed.

3. **BANK OF AMERICA, N.A. v. EDDRIAN BURCIAGA; LIENKA BURCIAGA; FLAMINGO/SOUTH BEACH CONDOMINIUM ASSOCIATION, INC.; MIAMI BEACH, FLORIDA; UNKNOWN TENANT #1; UNKNOWN TENANT #2** Case No. 2019-31909-CA-01 (Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 1500 Bay Dr Unit 1518, Miami Beach. The Summons and Complaint were served on the City on November 7, 2019.

The City's Answer and Affirmative Defense will be timely filed.

4. **MIAMI NEW TIMES, LLC v. CITY OF MIAMI BEACH** Case No. 2019-032548-CA-01 (Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida)

On November 7, 2019, the Plaintiff served the above-subject lawsuit, which seeks a writ of mandamus to enforce the Public Records Law, upon the City of Miami Beach. More specifically, the lawsuit alleges that the City of Miami Beach ("City") violated Article I, Section 24(a) of the Florida Constitution, and Chapter 119 of the Florida Statutes, by refusing to furnish Plaintiff with the draft internal audit reports of Beach Towing and Tremont Towing. The City asserted, and continues to assert, the applicability of the statutory provision identified within §119.0713(2)(b) of the Florida Statutes, which provides that the audit reports of an internal auditor are not public records until the audit becomes final upon presentation to the Mayor and City Commission.

The Circuit Court ordered the City to file its Response to the lawsuit on November 12, 2019, and the Court heard argument regarding this matter on November 14, 2019. The Court ruled that any statutory exemption, which may be provided pursuant to §119.0713(2)(b) Fla. Stat., was waived due to the draft audit report(s) being previously released (to a single journalist) purportedly by a towing company representative. The City has appealed the Circuit Court's ruling to the Third District Court of Appeals which has, as of this writing, granted a Stay of the Circuit Court's Order.

The City of Miami Beach, by and through the City Attorney's Office, will continue taking the appropriate legal action to defend its position that the statutory exemption for draft audit reports of an internal auditor was properly asserted and has not been waived.

5. **RONALD M SAINT-VIL V. CITY OF MIAMI BEACH AND AUGUSTIN RODRIGUEZ** Civil Action No. 1:19-cv-24640 (United States District Court for the Southern District of Florida)

Plaintiff sued the City claiming he was falsely arrested. The City will be appropriately defending this lawsuit.

6. **MARILYN STANDER V. THE CITY OF MIAMI BEACH** Civil Action # 2019-033061 CA01 (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida)

The City was served with this complaint on November 19, 2019, which alleges that on January 22, 2019, the plaintiff, Marilyn Stander, was caused to trip and fall on the sidewalk at 1460 West Avenue in the City of Miami Beach due to the sidewalk being uneven, elevated, defective or otherwise in a state of disrepair. The plaintiff is alleging that she was injured as a result of her trip and fall at this location. The City shall file its answer to the complaint, and propound discovery to the plaintiff.

7. MASTR ALTERNATIVE LOAN TRUST 2007-1 U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE V. KEVIN HARDY A/K/A KEVIN J HARDY A/K/A KEVIN LAMONT HARDY, ET AL Case No. 16-2019-CA-008192-XXXX-MA (Circuit Civil Court of the Fourth Judicial Circuit of Florida, in and for Duval County Civil Division)

This is an action to foreclose a mortgage on real property located at 1228 Windsor Harbor Dr, Jacksonville. The Summons and Complaint were served on the City on November 27, 2019

The City's Answer and Affirmative Defense will be timely filed.