

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission
FROM: Rafael A. Paz, Acting City Attorney 
DATE: July 28, 2021
SUBJECT: City Attorney's Status Report

The following is a brief summary of the lawsuits filed against the City of Miami Beach since the June 23, 2021 CAO Status Report:

1. **MICHAEL GONGORA v. CITY OF MIAMI BEACH, FLORIDA**, Case No. 2021- 016925-CA-21 (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida).

On July 9, 2021, Commissioner Michael Gongora filed suit in Miami-Dade County Circuit Court seeking a declaratory judgment finding that he is permitted to serve a third term as commissioner. The lawsuit seeks to invalidate a 2014 charter amendment which was approved by over 70% of the City's voters, and which established lifetime term limits of eight years for commissioners and six years for mayor.

As discussed at the June 23, 2021 City Commission meeting, I am committed to expediting this matter so as to obtain a ruling on the merits prior to the close of the candidate qualifying period. To this end, I have retained outside counsel from the law firm of Carlton Fields to represent the City in this matter.

2. **CHRISTOPHER MAIORINO v. CITY OF MIAMI BEACH AND LANZO CONSTRUCTION CO FLORIDA** Case No. 2021-011592-CA-01 (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida).

The City was served with this complaint on June 22, 2021 alleging that on May 6, 2020, Plaintiff Christopher Maiorino, while riding his bicycle in the Venetian Islands neighborhood, at East San Marino Drive and 2nd San Marino Terrace, San Marino Island, struck a raised storm drain manhole and fell. The Plaintiff is also suing Lanzo Construction, who contracted with the City to conduct infrastructure improvements and work on the subject location. The City will file its Answer to Plaintiff's Complaint, and will also file a cross-claim against Lanzo Construction in connection with the foregoing.

3. **MONICA O'CHANEY v. A & A DRAINAGE INC., a Florida Corporation, and THE CITY OF MIAMI BEACH** Case No. 2021-014642-CA-01 (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida).

The City was served with this lawsuit on June 30, 2021, wherein the Plaintiff, Monica O'Chaney, alleges that on or about November 2, 2018, she tripped and fell into the storm drain/manhole cover on the sidewalk located at the corner of 11th Street and Meridian Avenue. Plaintiff further alleges that A & A Drainage, Inc. was performing repairs and maintenance on the sidewalk and/or storm drain manhole cover, which manhole cover was not properly sealed or secured resulting in her fall into the storm drain.

Plaintiff contends that the City owns, maintains and/or controls this sidewalk area and is liable for her accident as a result of the purported negligence by A & A Drainage, Inc. in sealing/securing the manhole cover (which caused her to fall into the storm drain).

The City will timely file its Answer and Affirmative Defenses in this matter, and will seek indemnification from A & A Drainage, Inc.

4. **SETAI HOTEL ACQUISITION LLC and SETAI RESORT & RESIDENCES CONDOMINIUM ASSOCIATION, INC. v. CITY OF MIAMI BEACH and BHI MIAMI LIMITED CORP.**, Case No. 2021-016693-CA-02 (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida)

On July 6, 2021, Setai Hotel Acquisition LLC and Setai Resort & Residences Condominium Association, Inc. ("Plaintiffs"), filed suit in Miami-Dade County Circuit Court seeking declaratory and injunctive relief in connection with the City Commission's adoption of (i) Ordinance No. 2021-4422 (amending the RM-3 district regulations to create additional regulations on ground floor additions, and amending supplementary district regulations pertaining to rooftop additions in the Architectural District), and (ii) Resolution No. 2021-31723 (approving the vacation of a portion of the southern half of 21st Street east of Collins Avenue).

Plaintiffs allege a number of procedural violations, due process violations, violations of the U.S. and Florida Constitutions and City Charter, claims under 42 U.S.C. § 1983, illegal spot zoning, illegal contract zoning, inverse condemnation, damages, and attorney's fees. The City has not yet been served with the complaint.

Note: In a separate but related matter, on July 13, 2021, Plaintiffs filed an appeal to the Historic Preservation Special Master of the Historic Preservation Board approval, dated June 24, 2021, for the Seagull Hotel property at 100 21st Street.

5. **NAYDA A. ARCOS v. CITY OF MIAMI BEACH and BEBETA'S, LLC** Case No. 2021-014754-CA-01 (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida)

On July 15, 2021, the City was served with this Complaint. Plaintiff Nayda Arcos alleges that on September 7, 2019, she was walking on the sidewalk located at 1900 Calais Drive, Miami Beach, (which she claims was extremely unlevelled), causing her to slip and fall and resulting in injuries. In addition to suing the City, Plaintiff is also suing Bebetas LLC, alleging they owned, operated or maintained the sidewalk at issue here. The City will timely file its response to the complaint.

6. **C.W., JR. v CITY OF MIAMI BEACH** Case No. 2021-011445-CA-01 (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida)

On July 15, 2021, the City was served with this Complaint. Plaintiff C.W. Jr. alleges that on April 9, 2018, he approached several City of Miami Beach police officers to provide them with information regarding an ongoing incident. At that time, Plaintiff alleges that the City of Miami Beach police officers used excessive physical force on Plaintiff, resulting in injuries. The Complaint asserts battery, false arrest and malicious prosecution claims against the City. The City will timely file its Answer and Affirmative Defenses to the Complaint.