



MEMORANDUM

AGENDA ITEM #V.B.

DATE: SEPTEMBER 18, 2023
TO: COUNCIL MEMBERS
FROM: STAFF
SUBJECT: LEGAL COUNSEL REPORT / LEGAL OPINIONS

Please find herewith two legal opinions received from Legal Counsel since the July 2023 Council Meeting.

Recommendation

Information only.



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From: [Samuel S. Goren](#)
To: [Isabel Cosio Carballo](#)
Cc: [Steve Geller](#); [Steve Geller](#); [Kathe Lerch](#); [Steve Geller](#); [Kimberly Longo](#); [Jacob G. Horowitz](#); [Sean M. Swartz](#); [Paul B. Hernandez](#); [Kimberly Longo](#)
Subject: RE: Hello!! Quick thought for your consideration ...
Date: Tuesday, August 1, 2023 2:01:43 PM
Attachments: [image003.png](#)
[image005.png](#)
[image006.png](#)

Isabel,

Good Tuesday afternoon.

As you requested and as we further discussed, we have conducted a little more legal research and analysis as to the current and prospective need for a ratification vote of the SFRPC collegial body subsequent to certain public decisions of the Executive Committee.

In the regard, we have re-read and reviewed:

1. The SFRPC's 'Statement of Organization' (the 'Statement') last amended and revised in April, 2021;
2. The Statement was significantly reviewed and revised in 2021. However, Section 7.0, 'Officers, Term of Office and Duties; and specifically Section 7.0(3)(b) which states that:

‘...The Executive Committee shall act for and on behalf of the Council, and shall take such action as may reasonably be necessary to fulfill the duties, functions and responsibilities of the Council as if a quorum were present. It is the intention of the Council that other members present at a Council meeting where a quorum is not present and where the Executive Committee shall act for and on behalf of the Council, shall be permitted to fully participate in the proceedings and matters then pending before the Council or the

Executive Committee’

was not modified and has been carried forward in-tact; and,

3. After many years of good faith lobbying, and independently of the presence of COVID in the year 2020, Senate Bill 1398 (the ‘Bill’) was adopted by the FL Legislature in 2020 to embrace Communications Media Technology (‘CMT’). The Bill is now codified as Section 120.525 (4), FS, ‘Meetings, hearings and workshops’ wherein:

‘...for purposes of establishing a quorum at regional planning councils that cover three or more counties a voting member who appears via telephone, real-time videoconferencing, or similar real-time electronic or video communication that is broadcast publicly at the meeting location may be counted toward the quorum requirement if at least one-third of the voting members of the regional planning council are physically present at the meeting location. A member must provide oral, written, or electronic notice of his or her intent to appear via telephone, real-time video conferencing, or similar real-time electronic or video communication to the regional planning council at least 24 hours before the scheduled meeting’;

Based upon our review of the foregoing, we are of the opinion that the Statement and the Bill can and must be read together in what is commonly referred to as ‘in para materia’ such that statutes (here the Statement and the Bill) must also be construed and read together.

That said, and with the implementation of the Bill and CMT, as well as the creation of a full and complete record of the actions taken by the Executive Committee and the predominant presence and active

participation (including voting) of collegial body members engaged through CMT, it is no longer legally necessary for the SFRPC collegial body to subsequently ratify the valid and binding decisions of the Executive Committee going forward.

(**One caveat: See also Section 1.9.3 of the Executive Director's Employment Agreement wherein the Executive Committee may be delegated the authority by the Governing Body of the SFRPC to perform the annual evaluation of the Executive Director, but subject nonetheless to the approval by the Governing Body of the SFRPC).

We trust that the foregoing legal analysis is responsive to your inquiry.

Regards,

Samuel S. Goren



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From: Samuel S. Goren
Sent: Monday, July 31, 2023 7:52 PM
To: 'Isabel Cosio Carballo' <isabelc@sfrpc.com>
Cc: Steve Geller <steve@gellerlawfirm.com>; Steve Geller <sgeller@broward.org>; Kathe Lerch <klerch@sfrpc.com>; Steve Geller <bkopec@broward.org>; Kimberly Longo <KLongo@gorencherof.com>
Subject: RE: Hello!! Quick thought for your consideration ...

Isabel,

Good evening. Always good to see you and our SFRPC colleagues.

I will dig a little deeper given the passage of the amendment to Ch. 120, FS affecting RPC's of 3 or more counties and the implementation of Communications Media Technologies, along with the passage of the revised Statement of Organization.

I will circle back with you, tomorrow.

In the interim, to you and all, pls. enjoy a restful and good evening.

Samuel S. Goren



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From: Isabel Cosio Carballo [<mailto:isabelc@sfrpc.com>]

Sent: Monday, July 31, 2023 4:56 PM

To: Samuel S. Goren <SGoren@gorencherof.com>

Cc: Steve Geller <steve@gellerlawfirm.com>; Steve Geller <sgeller@broward.org>; Kathe Lerch <klerch@sfrpc.com>; Steve Geller <bkopec@broward.org>; Kimberly Longo <KLongo@gorencherof.com>

Subject: Hello!! Quick thought for your consideration ...

Sam, it was great to see you today! I forgot to mention that we might want to revisit the whole notion that what is adopted by the Executive Committee then needs to go back on the agenda the following month.

As you know, when this practice was developed it was because if you were not in the room physically, you were not in the meeting and unable to vote. Not anymore! More members are online than in the room.

Unless, there's a strategic purpose to it such as when we brought the dues item back in May because no Miami-Dade County members were at the April meeting, I am not sure that practice makes any sense anymore. Is it a law or rule, or just a best practice?

Thank you Sam!

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SOUTH FLORIDA REGIONAL PLANNING COUNCIL

MEMORANDUM

TO: The Honorable Steve Geller, Chair, SFRPC

CC: Samuel Kaufman, First Vice Chair
Quentin Beam Furr, Second Vice Chair
Rene Garcia, Treasurer
Michelle Lincoln, Secretary
Mario Bailey, Immediate Past Chair
Isabel Cosio Carballo, Executive Director

FROM: Samuel S. Goren, General Counsel *SSG*
Sean M. Swartz, Assistant General Counsel *SMS*

DATE: September 11, 2023

RE: South Florida Regional Planning Council ("Council") / Executive Director Sick Leave Conversion

Based upon our recent discussions and inquiry from the Chair, this Memorandum shall address our office's opinion with respect to the Executive Director's conversion of accrued sick leave under her Employment Agreement with the Council.

Pursuant to the Council's Personnel Policies and Procedures at Section 7.7, "All employees whose sick leave accrual balance exceeds 500 hours at the end of November of each year will be eligible to participate in the Sick Leave Conversion Plan. Only those hours beyond 500 total hours of accrued sick leave are eligible for conversion. Accrued sick leave may be converted to vacation leave at a ratio of two (2) sick leave hours to one (1) vacation leave hour for accrued sick leave up to 800 hours at a maximum conversion of forty (40) hours vacation leave credited once annually the first period in January."

The Executive Director's Employment Agreement only addresses payout of up to 50% of the 240 hours of Annual Leave that she is credited on October 1st and which expires September 30th of each year. Her Agreement does not discuss sick leave or conversion of

sick leave to vacation hours. As such, we concur that the 120 hours that she can request payment for under her Agreement and the 40 hours that she can request payment for by converting two weeks of sick leave as per the Personnel Policies are two entirely separate matters. In addition, the conversion of the Executive Director's sick leave does not violate Section 215.425, F.S. which governs compensation and bonuses for government employees. Therefore, we are of the opinion that the Executive Director may legally convert 80 hours of sick leave to 40 hours of vacation leave in accordance with her Employment Agreement and under the Council's Personnel Policies and Procedures.

If you have any further questions on this matter, please feel free to contact our office.

SSG:SMS